

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 157

**Lukmos**  
communications

28 NOVEMBER 2013

TRANSCRIPT PAGES 17775 TO 17953

1 **[PROCEEDINGS ON 28 NOVEMBER 2013]**

2 **[09:16] CHAIRPERSON:** The commission resumes.

3 The main reason why we are late this morning is that we were  
4 shown an enlarged photograph of the scene at scene 1 by the  
5 police together with some blocks which are intended to  
6 represent various vehicles at the scene, which we will  
7 be using later in the proceedings to enable us to  
8 understand better the movements of the vehicles and people  
9 and so forth at the relevant times. However, I understand that  
10 Adv. Budlender is going to resume cross-examination this  
11 morning. Does not intend to use that, so we will make a  
12 plan later when we do use it. Something has to be done to  
13 remove the microphones from that table there. I am sure  
14 that is something that the municipality will be able to help  
15 us with. Brigadier, you are still under oath. Mr  
16 Budlender.

17 **CROSS-EXAMINATION BY MR BUDLENDER SC [CONTD.]:**

18 Thank you, Chairperson. Brigadier, just to round off the topic  
19 we were dealing with yesterday afternoon. Could you look  
20 at exhibit HHH45, which is a 10 page document, could we have  
21 HHH45 on the screen please. This is the shortened version,  
22 I fear that this might happen, I will move on and I will come  
23 back to it later, Chairperson. There is a version of it, which has  
24 another statement attached but this is a two pager, I will  
25 come back to it later. Right can I move on then,

1 Brigadier, sorry for that diversion. Now we know,  
2 Brigadier, that from the agreed timeline that the shooting  
3 at scene 1 took place at 15:53. The shooting took place at  
4 at scene 1 according to the agreed time line.

5 **BRIGADIER CALITZ:** Mr Chairperson, yes,  
6 I have to look at the timeline, I cannot recall the time.

7 **MR BUDLENDER SC:** Alright and then could  
8 you go to FFF25, that is the occurrence book, could we have  
9 that on the screen please. FFF25 page 25. Do you have it,  
10 Brigadier?

11 **BRIGADIER CALITZ:** I have it, Mr  
12 Chairperson.

13 **MR BUDLENDER SC:** That is a typed version  
14 of the JOC occurrence book, correct?

15 **BRIGADIER CALITZ:** I believe it is a correct  
16 version thereof.

17 **MR BUDLENDER SC:** Yes, and if we go to  
18 entry 1017 we, which is at 15:55, that is two minutes after  
19 the shootings at scene 1 we see this report, situation  
20 report Pappa1 reporting the group are moving to TRT member  
21 and they tried to attack them. Pappa1 reporting that the  
22 people are moving around and some are down. Now your  
23 evidence yesterday was, or the day before was that that  
24 report was actually giving by Colonel Vermaak and not by  
25 Pappa1, is that correct?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **MR BUDLENDER SC:** And you heard the  
4 report, did you?

5 **BRIGADIER CALITZ:** I beg your pardon, Sir?

6 **MR BUDLENDER SC:** Did you hear the  
7 report?

8 **BRIGADIER CALITZ:** No, negative,  
9 Mr Chairperson.

10 **MR BUDLENDER SC:** You did not? Oh well we  
11 know that General Naidoo heard the report and we know what  
12 his response was, he knew what he must do when he heard the  
13 report, he must send medical assistance, correct?

14 **BRIGADIER CALITZ:** I cannot testify on the  
15 conditions where General Naidoo was and what  
16 heard.

17 **MR BUDLENDER SC:** I am not asking whether  
18 –

19 **CHAIRPERSON:** You say you know General  
20 Naidoo heard it; I take it that is based on a statement  
21 which is an exhibit? Perhaps it would help the witness if  
22 you drew his attention to that.

23 **MR BUDLENDER SC:** Could we look at  
24 JJJ108. Do you have it, Brigadier?

25 **BRIGADIER CALITZ:** I have it, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** Page, could you go to

3 paragraph 59 of JJJ108, which, that is the statement of

4 General Naidoo.

5 **BRIGADIER CALITZ:** I have the wrong one,

6 just repeat the reference number again, please.

7 **MR BUDLENDER SC:** JJJ108.

8 **BRIGADIER CALITZ:** Whose statement is

9 this?

10 **MR BUDLENDER SC:** General Naidoo. Thank

11 you, Commissioner.

12 **BRIGADIER CALITZ:** Sorry, Mr

13 Chairperson. It was not part of my bundle.

14 **MR BUDLENDER SC:** Could you go to, you will

15 see that is the statement of General Naidoo, do you see

16 that?

17 **BRIGADIER CALITZ:** I see it, Mr

18 Chairperson.

19 **MR BUDLENDER SC:** And then paragraph,

20 could you go to paragraph 60.

21 **CHAIRPERSON:** It appears to be on page

22 10.

23 **MR BUDLENDER SC:** Do you have it, and

24 this is what General Naidoo says. "My group and I were at

25 IRA 1 and at approximately 15:45 I heard Lieutenant Colonel

1 Vermaak who was in the police helicopter indicate that  
2 people were down at hill 1 and we should get medical  
3 assistance for them. He added later that the veldt was set  
4 alight by the strikers and fire trucks should be deployed.  
5 I immediately activated my reserve group to move towards  
6 hill 1 as I had both medical and fire personnel in my  
7 group". You see that?

8 **BRIGADIER CALITZ:** I see it, Mr  
9 Chairperson.

10 **MR BUDLENDER SC:** And that appears to be  
11 a reference to the situation report which I showed you in  
12 the, in the occurrence book.

13 **BRIGADIER CALITZ:** Mr Chairperson,  
14 no I do not believe so, because the time is indicated as, 15:45. So it  
15 may be, I am not sure if he -

16 **CHAIRPERSON:** He says 15:45 -

17 **BRIGADIER CALITZ:** 15:50, ten minutes later,  
18 but it can refer to the incident.

19 **CHAIRPERSON:** Well he says 15:45 what is  
20 important is that it confirms your evidence or appears to  
21 confirm your evidence that the entry 1017 is incorrect  
22 insofar as it says that that report was by Pappa1, you say  
23 the Chopper 1 and what you say in that regard is supported  
24 by what General Naidoo says in this paragraph.

25 **BRIGADIER CALITZ:** Correct, Mr

1 Chairperson.

2 **CHAIRPERSON:** It does seem to be talking

3 about the same thing because he talks about people were

4 down and that is the entry in 1017, Pappa1 which should be

5 Chopper 1 reporting that the people moving around and some

6 are down. So that seems to be the same, I am not sure it is

7 but it looks like it.

8 **BRIGADIER CALITZ:** It can be.

9 **MR BUDLENDER SC:** Then we, yes he seems

10 to be out by 10 minutes on the time. If we then go to

11 KKK4, can you get that, that is the cell phone records.

12 Could you go to page 7 of that? Do you have it, Brigadier?

13 **BRIGADIER CALITZ:** I did, Mr

14 Chairperson.

15 **MR BUDLENDER SC:** Now we, now Brigadier

16 Pretorius was in charge of the JOC, correct?

17 **CHAIRPERSON:** She was not in charge of the

18 JOC she was the recording things at the JOC.

19 **MR BUDLENDER SC:** She, the person, the officer

20 in charge of the JOC, not the JOCCOM.

21 **CHAIRPERSON:** Yes.

22 **MR BUDLENDER SC:** She was in charge of

23 the JOC itself.

24 **CHAIRPERSON:** I see.

25 **MR BUDLENDER SC:** Is that correct,

1 Brigadier?

2 **BRIGADIER CALITZ:** In so far as the notes must be

3 taken, Correct.

4 **MR BUDLENDER SC:** She was in charge of

5 the management of the JOC and what went on at the JOC, not

6 the JOCCOM. I think she was called JOC Commander. The

7 administer head of the, what was going on there.

8 **BRIGADIER CALITZ:** What was going on

9 inside the JOC.

10 **MR BUDLENDER SC:** Yes, yes.

11 **BRIGADIER CALITZ:** Correct, Mr

12 Chairperson.

13 **MR BUDLENDER SC:** And we will see the, that

14 as I have shown you that report by Colonel Vermaak was at,

15 would you have a look on page 7 of KKK4, about half

16 way, the sixteenth entry, there is an entry at 16:03:34 you

17 see that?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 It is a SMS, as if you are referring to that.

20 **MR BUDLENDER SC:** That is correct and it

21 says that Brigadier, at 16:03 Brigadier Pretorius sent an

22 SMS to IPID, correct?

23 **BRIGADIER CALITZ:** That is what the records

24 show, Mr Chairperson.

25 **MR BUDLENDER SC:** And if you look at the

1 entry before that, you will see at 16:02 General Mbombo sent

2 an SMS to the National Commissioner, correct?

3 **BRIGADIER CALITZ:** Correct, Mr

4 Chairperson.

5 **MR BUDLENDER SC:** Yes. Now we also know

6 what General Mpembe understood the situation to be as a

7 result of that report by Colonel Vermaak in, I am going to

8 show you what his evidence was in that regard. Could we go

9 to the transcript for day 1 to 7 please. Before we get

10 there I accept of course that you do not know what

11 precisely, you do not know what Brigadier Pretorius reported

12 to IPID and you also do not know what the Provincial

13 Commissioner reported to the National Commissioner, what we

14 know is that both of them sent SMSs within a few minutes of

15 the incident.

16 **BRIGADIER CALITZ:** I do not have any knowledge of

17 that, Mr Chairperson.

18 **MR BUDLENDER SC:** We see that from the

19 cell phone records.

20 **BRIGADIER CALITZ:** I see it in front of me,

21 Mr Chairperson.

22 **COMMISSIONER HEMRAJ:** But Brigadier

23 Pretorius does cover this in her statement.

24 **MR BUDLENDER SC:** Then if you will go to

25 page 13301, could the record be taken to page 13301.

1 **CHAIRPERSON:** While we are looking at  
2 this, I see from slide 67 of exhibit L that Brigadier  
3 Pretorius is described at the operation room commander.

4 **MR BUDLENDER SC:** Yes.

5 **CHAIRPERSON:** Which is the titled which  
6 she had in support, what you call it.

7 **MR BUDLENDER SC:** Now the purpose of my  
8 showing you this, Brigadier, is to show you what General  
9 Mpmembe's evidence was of his understanding of the meaning  
10 of the SITREP from Colonel Vermaak, do you understand, do  
11 you understand what I am seeking to do.

12 **BRIGADIER CALITZ:** I understand, Mr  
13 Chairperson.

14 **MR BUDLENDER SC:** Alright. So you will see  
15 there at line 7, the Chairperson says "now the fact that  
16 this report said that the group are moving to TRT members  
17 clearly conveys that the POP people then got out of the  
18 way, the TRT people are now in the front line and the note  
19 continue, they tried to attack them. Now they obviously  
20 means the strikers, not the TRT people. Now if the  
21 strikers tried to attack the TRT people what would the TRT  
22 people have done in response, they would have defended  
23 themselves I will take it, is that right, General Mpmembe says  
24 correct Chairperson." Then the Chairperson says, "They  
25 would have used their assault rifles and fired at the

1 advancing strikers, is that right and General Mpembe says  
2 correct Chairperson. Chairperson, I know that was not  
3 intended as the first part of the plan, the first part of  
4 the plan was that the POP people would deal with them, with  
5 less than lethal force but obviously that is now, that  
6 stage had been passed. The TRT people would have fired  
7 their assault rifles, some of the group would have been  
8 injured at the very least or possibly killed, is that  
9 right, General Mpembe says correct Chairperson. The  
10 Chairperson and that is why when the report went on people  
11 moving around and some are down surely that would have  
12 indicated to you that there was to put it gently a strong  
13 probability that people had been killed, you heard that,  
14 you agree with the proposition I put to you and General  
15 Mpembe says Chairperson with a proposition I agree but when  
16 it was said by Pappa1 I could not understand because Pappa1,  
17 it was Brigadier Calitz". Now he is clearly incorrect in  
18 the last comment, it was Colonel Vermaak, not Pappa1." Now  
19 you see what, how General Mpembe understood the report  
20 from, which was on the radio.

21 **BRIGADIER CALITZ:** I can see  
22 his evidence, Mr Chairperson.

23 **MR BUDLENDER SC:** Your evidence is that  
24 you did not hear the report at all and you simply proceeded  
25 with the operation as if nothing had happened, is that

1 correct?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 not with the second part that nothing happened.

4 I went along with the operation as it played out in front of

5 of me. I testified that the group in front of incident 3

6 moved passed me and we then shot on them, from the Nyala,

7 I shouted at the driver to move forward.

8 That was my evidence.

9 **MR BUDLENDER SC:** No, I do not mean as if

10 nothing had happened, you proceeded as if the shooting at

11 scene 1 had not taken place.

12 **BRIGADIER CALITZ:** I was not aware of that

13 incident at that stage, no, Mr

14 Chairperson.

15 **MR BUDLENDER SC:** Brigadier, you were

16 sitting next to the radio in Pappa1?

17 **BRIGADIER CALITZ:** It is Correct, Mr

18 Chairperson.

19 **MR BUDLENDER SC:** Can we then go to FFF25

20 again, the occurrence book report. The occurrence book and

21 could we look at the next entry 1018. I will read it, the

22 time given is 15:56 it says "situation report Pappa1

23 reporting the people are running towards the houses,

24 running to the western side of the hill, 18 bodies are

25 down. Chopper 1 reporting that It is at the back of the

1 hill other people are running towards the Karee hostel”.

2 Now did you hear that report?

3 **BRIGADIER CALITZ:** Mr Chairperson, I

4 presume it is the report I got from Colonel Vermaak

5 in which I asked him why the TRT did not

6 follow up. Where he informed me that

7 there is various people lying in the

8 field, I believe it was at that stage.

9 **MR BUDLENDER SC:** So you, the report you

10 received, if that is the same report is that 18 bodies were

11 down?

12 **BRIGADIER CALITZ:** I cannot recall the specific number

13 but I know he was counting at one stage, and as he

14 counted, he mentioned to me that there is

15 various people lying in the field.

16 **MR BUDLENDER SC:** Well I assume whoever

17 made the entry in the occurrence book did not make up the

18 number, that that must be the number, which he used.

19 **BRIGADIER CALITZ:** I think that is what is noted

20 incident report book, if we look at the notes there is

21 an entry, that Chopper 2 reported two

22 bodies down and we know that was much later

23 at hill 3.

24 **MR BUDLENDER SC:** Yes, but the report at

25 15:56 is that 18 bodies are down and you continued to

1 proceed with the operation.

2 **BRIGADIER CALITZ:** Mr Chairperson, I

3 think my evidence was quite clear on why I went ahead.

4 Out of my experience, I do not know if I need to repeat it

5 again.

6 **MR BUDLENDER SC:** I am not, you are welcome

7 to expand but I just want to; we will come back to that,

8 we will come to that in due course.

9 **BRIGADIER CALITZ:** Thank you, Sir.

10 **MR BUDLENDER SC:** But you knew that 18

11 bodies were down and I want to read to you what Mr De Rover

12 says, have you met Mr De Rover, the expert the police have

13 consulted?

14 **BRIGADIER CALITZ:** Correct, Mr

15 Chairperson.

16 **MR BUDLENDER SC:** Alright. Can we go to

17 FFF11. That is a statement of Mr De Rover and I would like you

18 to go to paragraph 81 please. Do you have it?

19 **BRIGADIER CALITZ:** Which paragraph?

20 **[09:36] MR BUDLENDER SC:** It is paragraph 81.

21 **BRIGADIER CALITZ:** My De Rover statement

22 are going up to paragraph 69 and then it is signed.

23 **CHAIRPERSON:** There were two statements

24 that Mr De Rover had given to us, an earlier one and then a

25 later one.

1 **BRIGADIER CALITZ:** Let me just –

2 **CHAIRPERSON:** Are you looking at exhibit

3 FFF11, or are you looking at another one?

4 **BRIGADIER CALITZ:** FFF11. It is marked in

5 my –

6 **MR BUDLENDER SC:** 11A, do you have 11A?

7 I think I may be mistaken. My apologies.

8 **CHAIRPERSON:** Now, what happened with –

9 the second one is FFF11A. So if you have not –

10 **BRIGADIER CALITZ:** This is what is written

11 on top of mine. It is FFF11A.

12 **MR BUDLENDER SC:** Right. And that should

13 have –

14 **BRIGADIER CALITZ:** I only have up to 69

15 paragraphs and then it is –

16 **CHAIRPERSON:** Perhaps it actually is

17 FFF11. Do you have FFF11 as well?

18 **MR BUDLENDER SC:** Could I ask that the

19 witness be given a copy of FFF11. I apologise for the

20 confusion that may have been caused by me.

21 **BRIGADIER CALITZ:** I n my bundle they

22 referred to paragraph, Mr De Rover, 11A, in my bundle and that is

23 what they gave me.

24 **CHAIRPERSON:** That is obviously where the

25 misunderstanding came in. Anyway, they are going to

1 endeavour to sort it out now. If you have not – I think you  
2 better be given a short while to read the relevant passage  
3 in context and so on.

4 **MR BUDLENDER SC:** Brigadier, may I help  
5 you? We will start at paragraph 80. You will see – are you  
6 there, page 18? You will see that there Mr De Rover is  
7 talking about scene 1 and he expresses the view that the  
8 South African police service acted with restraint at scene  
9 1, and he believes that the use of a firearm in that  
10 situation was justified and he goes on to explain why he  
11 have that view. Then could you go to the next paragraph?  
12 And he says, “At the timing of scene 1 and immediately  
13 thereafter, the problems with the analogue radio network  
14 conspired to prevent the overall commander to stay abreast  
15 of developments and to stop police operations in  
16 a bid to regroup and reassess. It virtually goes without  
17 saying that SAPS doctrine and experience in crowd  
18 management dictates such a decision.” Now, the overall  
19 commander was of course General Mpembe, but his evidence  
20 was that it was for you to call a halt, not for him to call  
21 a halt. Let me –

22 **CHAIRPERSON:** Perhaps the witness would  
23 like to look at 82. I do not have it in front of me, but I  
24 see from what we see on the screen that there is a  
25 reference to on-scene commander, which is obviously a

1 reference to -

2 **MR BUDLENDER SC:** Yes, thank you, Chairperson,

3 that is helpful. So, could you look at 82. "In the absence

4 of countermanding order, the implementation order at scene

5 2 went ahead with the on-scene commander unaware of the

6 incidents that had just produced at scene 1." Now, my

7 question really is this. Leaving aside the question of

8 whose job it was to call a halt, yours or General Mpembe's,

9 we know, from what we have just seen from the OB book, that

10 you were aware that there had been an incident in which 18

11 bodies were down. Correct?

12 **BRIGADIER CALITZ:** It is my evidence that I was

13 not aware what the precise count was 18. It was my evidence

14 that Colonel Vermaak counted in the field and

15 told me there were people lying in the field.

16 **MR BUDLENDER SC:** We know that he – you

17 heard his report; let us put it that way. You heard his

18 report?

19 **BRIGADIER CALITZ:** It is my evidence that

20 I asked him on the radio.

21 I now see the figure 18 in the incident report book.

22 **MR BUDLENDER SC:** Alright. When he

23 counted them, what was the number? Was it like counting

24 one, two, three, or was it counting into the teens, or was

25 it counting into the twenties?

1 **BRIGADIER CALITZ:** Mr Chairperson, I  
2 cannot recall. I know he flew above  
3 above the scene, and counted, one, two, three,  
4 four, five and he continued counting, and he then told  
5 me there were various people lying in the field.

6 **MR BUDLENDER SC:** And you cannot remember  
7 whether he stopped counting before 10 or after 10?

8 **BRIGADIER CALITZ:** Mr Chairperson,  
9 no, it was too long ago, It is  
10 impossible for me to recall.

11 **MR BUDLENDER SC:** We know that the  
12 shooting at scene 2 started about twenty minutes after the  
13 shooting at scene 1. Are you aware of that?

14 **BRIGADIER CALITZ:** I have no knowledge as to  
15 when it started, no.

16 **MR BUDLENDER SC:** Well, take that on  
17 trust for the moment. If that is correct then there was  
18 time to halt the operation to reassess the situation before  
19 scene 2 happened. Do you accept that?

20 **BRIGADIER CALITZ:** Mr Chairperson,  
21 it was my evidence that I regrouped after incident 1,  
22 I called the vehicles to a standstill. It  
23 was seven to eight minutes before I let the  
24 water cannon move forward. The whole operation was  
25 stopped. We regrouped and with the information

1 I had available, I decided to

2 continue moving forward.

3 **MR BUDLENDER SC:** So do you say that in

4 fact you did call a halt to - as Mr De Rover says should

5 happen; you did stop police operations in a bid

6 to regroup and reassess. Is that your evidence?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 it was my evidence that I waited next to hill 2,

9 there is a photograph to proof this, until the water

10 canon moved forward, at which stage I gave instructions,

11 with the information I had available, for them to go ahead.

12 **MR BUDLENDER SC:** So you - if I

13 understand your evidence correctly, and tell me if I am

14 wrong, you called a halt to police operations, you

15 regrouped, you reassessed and you decided to proceed. Is

16 that what you are saying?

17 **BRIGADIER CALITZ:** With the information I

18 had to my disposal, it is correct, Mr Chairperson.

19 **COMMISSIONER HEMRAJ:** But the regrouping

20 that you did was only in respect of the Nyalas that - the

21 five Nyalas that were with you, is that not so?

22 **BRIGADIER CALITZ:** It was just the

23 Pappa Nyalas, Commissioner. I worked with the

24 dispersing group, the water cannons and

25 the helicopter above me.

1 **MR BUDLENDER SC:** And although you had  
2 heard the report that there had been – that bodies were  
3 down, you saw no reason to stop the operation?

4 **BRIGADIER CALITZ:** No, not at all, Mr  
5 Chairperson. It was my evidence that in  
6 experience of 19 to 20 years in Public Order  
7 Policing, if I may repeat it, there were various  
8 incidents where we had dispersing actions, where there were  
9 reported to me that there were people lying in the field. I also testified  
10 that in my experience, the people lying down are either,  
11 lying down not to be arrested or they were  
12 hurt by rubber bullets to such an extent that they  
13 sustained injuries to their legs or bodies. I gave the order  
14 for the dispersal, it was my – that was my  
15 understanding and that was why I took the decision  
16 I did at that time.

17 **MR BUDLENDER SC:** If you had known that  
18 the TRT had opened fire on the strikers, would you have  
19 stopped the operation? If you had – let me put it, yes, if  
20 you had known the TRT had opened fire on the strikers,  
21 would you have stopped the operation?

22 **BRIGADIER CALITZ:** I understand you correctly, with  
23 “stop the operation,” if I can just understand the question,  
24 do you mean the whole operation came to a standstill?  
25 Is that your question?

1 **MR BUDLENDER SC:** Well, would you have  
2 stopped as really what Mr De Rover says – just read again  
3 paragraph 82. He says, “In the absence of a countermanding  
4 order, the implementation of the operation at scene 2 went  
5 ahead with the on-scene commander unaware of the incidents  
6 that had just produced at scene 1.” Now, what I am asking  
7 you is if you had known that the TRT had opened fire on the  
8 strikers at scene 1, would you have proceeded with the  
9 implementation of the operation at scene 2?

10 **BRIGADIER CALITZ:** Mr Chairperson,  
11 if I was aware of the fact, or if it was reported to me  
12 by the TRT at incident 1, that there were people killed,  
13 I could have made an informed decision. I would have  
14 called the JOC.  
15 I would have instructed my people to wait in a  
16 regrouping formation. I would have moved back to the  
17 scene. I would \_\_\_\_\_communications\_\_\_\_\_  
18 assess the scene. I have people in the field with, I  
19 believe I said, Colonel  
20 Makhubela with 18, 20 years of service in the Public Order  
21 Policing. I have a person in my forward-holding area,  
22 by the name of General Major Naidoo, with enough  
23 personnel at his disposal. If I have to summarise what  
24 I would do, I would have called in General Naidoo  
25 and instructed him to take over the control at the scene.

1 Due to the fact that the incident already took place, the crime scene  
2 management would have taken over and the  
3 Public Order Policing Members would have followed up  
4 the group that was dispersed, to such an extent that  
5 to prevent regrouping and further  
6 damage to property, as my policy  
7 document dictates.

8 **MR BUDLENDER SC:** If had known that  
9 strikers had shot and killed by the TRT at scene 1, would  
10 you have communicated with the overall commander to discuss  
11 what should be done?

12 **BRIGADIER CALITZ:** Mr Chairperson,  
13 maybe you did not hear, it was my first instruction –  
14 comment, where I said I would have engaged with the  
15 JOC where the overall commander  
16 were, according to me, at that stage.

17 **CHAIRPERSON:** It appears, from what we  
18 know, that the overall commander was in fact not at the JOC  
19 at that stage. He left. He was actually on his way to  
20 helicopter when he heard that report over the radio, but of  
21 course you did not know that. So you would have endeavoured  
22 to contact him, I take it, by communicating with the JOC?

23 **BRIGADIER CALITZ:** It is Correct.

24 **CHAIRPERSON:** Would you have done so by  
25 radio?

1 **BRIGADIER CALITZ:** It is Correct, Mr  
2 Chairperson, I would make contact on my radio,  
3 and we would then communicate regarding the sensitivity  
4 of the matter, if I had a problem with the radio, by  
5 cellphone or any -

6 **CHAIRPERSON:** Yes, so he would have heard  
7 you, if you tried to get hold of him – if I could use that  
8 expression – at the JOC, you would have done so initially  
9 over the radio and he would have heard you, even though he  
10 were not at the JOC, because he was listening to the radio.  
11 That is his evidence. So he could then have come back to  
12 you in some way, is that your evidence?

13 **BRIGADIER CALITZ:** It is Correct, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** Now, I want to show you  
16 some evidence as to what may have been the state of  
17 knowledge in the JOC, and you obviously do not know that,  
18 but I just want to show it to you and then I want to ask  
19 you some questions about it. Could you go again to KKK4?  
20 That is the cell phone records. Do you have it?

21 **BRIGADIER CALITZ:** I still have it in front  
22 of me, Mr Chairperson.

23 **MR BUDLENDER SC:** And could you go then  
24 again to that same page as we were on a short while ago. I  
25 think it is page 7. Now, before we go there, we know that

1 Captain Loest was the commander of one of the TRT units at  
2 scene 1. Is that correct?

3 **BRIGADIER CALITZ:** It is Correct, Mr  
4 Chairperson.

5 **MR BUDLENDER SC:** And I think we have all  
6 seen on the film footage, he is the person or the first  
7 person who put up his hand and called on the police to  
8 cease-fire. Have you seen that?

9 **BRIGADIER CALITZ:** It is not correct,  
10 Mr Chairperson.

11 **MR BUDLENDER SC:** Have you seen him put  
12 up his hand and call for a cease-fire?

13 **BRIGADIER CALITZ:** At a later stage.  
14 I think the person you referred to, that was standing in front of the  
15 vehicle, yelling, cease-fire, it was not Captain  
16 Loest, but Sergeant Browning.

17 **MR BUDLENDER SC:** I am not going to argue  
18 with you about that, Brigadier Calitz, we will deal with it  
19 in due course. You were aware that Captain Loest was on  
20 the scene and he called for – he was on scene 1 and he  
21 called for a cease-fire?

22 **BRIGADIER CALITZ:** I know he was at the  
23 scene. I do not know when he called the  
24 cease-fire.

25 **MR BUDLENDER SC:** I did not ask you at

1 what stage, I asked you we know that he did call for a  
2 cease-fire?

3 **BRIGADIER CALITZ:** I am now

4 made aware of that, after the fact, Sir.

5 **MR BUDLENDER SC:** Yes. Therefore, he knew what  
6 were going on at scene 1, because he was right there.

7 **BRIGADIER CALITZ:** It is Correct, Mr

8 Chairperson.

9 **MR BUDLENDER SC:** Now, let us look at what

10 happened – what the cell phone records show in that regard

11 shortly after the shootings at scene 1. I showed you the

12 SMS from Lieutenant-General Mbombo to General Phiyega, and

13 then from Brigadier Pretorius to IPID, and then the next

14 one, 16:05:44, Captain Loest phones Brigadier Pretorius.

15 You see that?

16 **BRIGADIER CALITZ:** Correct, Mr

17 Chairperson.

18 **MR BUDLENDER SC:** And then at 16:08,

19 Brigadier Pretorius phones Captain Loest. Do you see that?

20 **BRIGADIER CALITZ:** I see it, Mr

21 Chairperson.

22 **MR BUDLENDER SC:** And two down, 16:13,

23 Brigadier Pretorius again telephones Captain Loest. Do you

24 see that one?

25 **BRIGADIER CALITZ:** I see it, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** And a few down, we see

3 at 16:25, Brigadier Pretorius again telephones Captain

4 Loest. Do you see that one?

5 **BRIGADIER CALITZ:** I see it, Mr

6 Chairperson.

7 **MR BUDLENDER SC:** Now, you were not there,

8 I was not there, but I put to you that it is unlikely that

9 Captain Loest, having been – who was on the scene and saw

10 what happened, did not tell Brigadier Pretorius in the

11 course of these conversations that strikers had been shot

12 and killed by TRT members. Do you agree with me, that is a

13 reasonable conclusion to draw from the evidence we see?

14 **MR SEMENYA SC:** No, I do not think that is

15 a -

16 **MR BUDLENDER SC:** Well, I am asking a

17 question, he can answer it.

18 **MR SEMENYA SC:** Yes, but I am making the

19 objection. Can I?

20 **CHAIRPERSON:** Mr Semanya, you want to say

21 something. Please carry on.

22 **MR SEMENYA SC:** I am saying that cannot

23 reside in the province of this witness to comment on,

24 whatever his answer is. He is being called to speculate on

25 what the content of the conversation could have been

1 between two people.

2 **MR BUDLENDER SC:** Chairperson, I am asking – the  
3 Brigadier obviously cannot give evidence as to what was  
4 said. I am asking him what he thinks was said, because it is  
5 going to be – the question will follow, can I just ask the  
6 question? The relevance will become apparent immediately  
7 afterwards. Obviously, Captain Loest, or Brigadier  
8 Pretorius, or no one else is bound by his answer as to what  
9 he thinks that means, but I am asking his understanding of  
10 what it means.

11 **CHAIRPERSON:** I understand what you are  
12 saying, is that this leads up to another question and I  
13 would imagine the way to solve the problem is tell us what  
14 the question is to which it leads up and we can then decide  
15 whether it is appropriate to ask him to speculate. Normally  
16 speaking, his speculation – we had this – similar occasions  
17 with other witnesses, does not help us, but if the  
18 speculation is relevant for the purposes of your next  
19 question and we know what the next question is, I be able  
20 to rule on the matter.

21 **MR BUDLENDER SC:** Thank you, Chairperson. I will  
22 go to the next question. Brigadier Calitz, if these  
23 conversations were in part about the fact that people had  
24 been shot and killed at the – scene 1 by the TRT, you say  
25 no one at the JOC told you anything about it?

1 **BRIGADIER CALITZ:** It was my evidence that

2 became aware of it when I contacted the

3 JOC at 16:47.

4 **MR BUDLENDER SC:** Yes. The result was

5 that from – yes, let me take a step back. Are you aware

6 that the shootings at scene 1 were shown on television very

7 shortly afterwards in South Africa and I suspect in many

8 parts of the world?

9 **BRIGADIER CALITZ:** Mr Chairperson, I

10 suppose so. That evening I returned to the JOC at about 10:00 to 11:00 PM.

11 at about 10:00 to 11:00 PM. Under the circumstances I was

12 in no mood to watch TV, nor did I have time to watch TV,

13 no.

14 **MR BUDLENDER SC:** Well, I am going to –

15 let me tell you and if necessary, if It is disputed,

16 evidence will be lead, is that there was an E-TV broadcast

17 shortly after 4 o' clock in which shootings were shown at

18 scene 1.

19 **BRIGADIER CALITZ:** I will take your word

20 for it, Mr Chairperson.

21 **MR BUDLENDER SC:** But you were the – so

22 anyone who saw that TV footage, would have known that

23 shootings had taken place, and we know that there were

24 communications between – shortly after the event, between

25 Captain Loest and Brigadier Pretorius, who was in charge of

1 the JOC. Correct?

2 **BRIGADIER CALITZ:** I can see it out of the

3 telephonic records, Mr Chairperson.

4 **MR BUDLENDER SC:** But you, as the

5 operational commander, knew nothing about the shootings for

6 nearly an hour. Is that correct. The shootings took place

7 at 15h53 and you first heard about them from General

8 Annandale at 16h47, that is 54 minutes later.

9 **CHAIRPERSON:** That was evidence

10 yesterday, which the mobile phone records indicate, as far

11 as we can see, that he did not receive any mobile phone

12 calls for - it looks like from, if I am reading it

13 correctly, from 15h53, when he had a call of 12 seconds

14 from Major-General Naidoo until -

15 **MR BUDLENDER SC:** 16h47, as the witness -

16 **CHAIRPERSON:** Yes.

17 **MR BUDLENDER SC:** He phoned General

18 Annandale.

19 **CHAIRPERSON:** Yes, that is right. So he

20 told us why today. So certainly as far as cell phone or

21 mobile phone communications were concerned, the story

22 appears from the document that we are looking at now. Do we

23 have a statement from Captain Loest? I understand there

24 have been interviews with him, I do not know whether they

25 have resulted in a statement yet.

1 **MR SEMENYA SC:** They consulted with

2 Captain Loest three weeks ago.

3 **MR BUDLENDER SC:** A statement is in

4 preparation. It is one of those which is in preparation,

5 Chairperson.

6 **[09:55] COMMISSIONER HEMRAJ:** Is there anything

7 from Brigadier Pretorius dealing with the content of, or

8 the subject matter of the conversation, because certainly

9 the two statements that I have seen of hers, it does not

10 appear to be covered.

11 **MR BUDLENDER SC:** As far as I –

12 **COMMISSIONER HEMRAJ:** It is?

13 **MR BUDLENDER SC:** I understand it is in

14 the latest statement. These cell phone records have only

15 recently become available and we now have to retrace

16 our steps –

17 **CHAIRPERSON:** Are you telling us that the

18 situation in which we now find ourselves is that the record

19 having been, these telephone records are going to become

20 available fairly recently; you have not yet been able to

21 obtain statements from people like Brigadier Pretorius,

22 dealing with the contents of these conversations. Is that

23 correct?

24 **MR BUDLENDER SC:** Can I check on that and

25 answer that after tea? I am not sure. Therefore, you knew nothing

1 about, you did not know about the shootings for just under  
2 an hour after they took place. Is that correct?

3 **BRIGADIER CALITZ:** Mr Chairperson,  
4 yes, if the timeline on when it started is correct, I will  
5 have to take your word for it. I became aware,  
6 of it at around, 16:47.

7 **MR BUDLENDER SC:** Now your evidence is  
8 that in relation to scene 1 is that you did not see or hear  
9 what happened there because at that time you were away from  
10 the site where it took place?

11 **BRIGADIER CALITZ:** No, Mr  
12 Chairperson, my evidence was to why I did not hear it,  
13 it was very clear, I said the reasons was due to the  
14 Nyala; I do not think I need to repeat it, I also referred  
15 to the CALS document that  
16 showed when they started  
17 "volley of fire" from the side of the TRT, and my vehicle  
18 moved forward. I refer to the evidence of others,  
19 because I was not aware of it myself, at that stage. That was my  
20 evidence, Mr Chairperson.

21 **MR BUDLENDER SC:** I understand that. You  
22 explained to us that at the time that you were parked in  
23 Pappa1 alongside the wire, you saw the strikers coming  
24 around the small kraal. Is that correct?

25 **BRIGADIER CALITZ:** Yes, "around the small

1 kraal," I testified that they came in on a 45-degree corner  
2 and referred to the photograph of Colonel  
3 Vermaak, which clearly indicated my position.

4 **MR BUDLENDER SC:** And they had  
5 previously, you say, attacked the police at scene 1 and  
6 scene 2.

7 **BRIGADIER CALITZ:** It is not correct,  
8 Mr Chairperson. I did not say they were attacked at  
9 "scene" 1. I said incident 1 occurred,  
10 and they moved away in the direction of  
11 Nyala 4, when I gave instruction that the members must  
12 return. I did say the attack happened at  
13 incident 2 where I gave the order that they  
14 must be dispersed.

15 **MR BUDLENDER SC:** Alright, so you say  
16 they attacked the police at scene 1. So they had once  
17 previously attacked the police. Is that correct? At  
18 incident 2, I beg your pardon. Is that correct?

19 **BRIGADIER CALITZ:** Incident 2, incident  
20 3, It is Correct.

21 **MR BUDLENDER SC:** And when they came past  
22 you they were moving in an aggressive manner, correct? In  
23 the crouched manner with their weapons in an aggressive  
24 manner?

25 **BRIGADIER CALITZ:** Correct, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** They were moving in the

3 direction of the POP line.

4 **BRIGADIER CALITZ:** If you talk about the POP

5 line, the Nyalas and the members of the Public Order

6 Policing, which was spaced between the Nyalas? They

7 moved towards us, Correct, Mr Chairperson.

8 **MR BUDLENDER SC:** And your response was

9 to drive off in the direction of hill 2.

10 **BRIGADIER CALITZ:** Will you please repeat

11 the question?

12 **MR BUDLENDER SC:** You did not stay to see

13 what happened; you drove away from it.

14 **BRIGADIER CALITZ:** No, again, not

15 Correct, Mr Chairperson. I did not say, I stayed

16 behind to see what happened. My evidence was that

17 when the front group moved passed my Nyala,

18 and I was in the front, and the vehicle in front of me,

19 was Pappa11, I could clearly see the

20 first attack on him. When the first group moved passed my

21 Nyala on my left-hand side, being the

22 western side, I ordered my members to us "stun

23 grenades" and to "disperse". My evidence was

24 that when the group passed me, I realised that

25 the use of the rubber bullets was ineffective,

1 and I ordered the

2 Nyala vehicles to move forward and to

3 disperse the group.

4 **MR BUDLENDER SC:** Brigadier, did you

5 think when the strikers came past you that, as you describe

6 the 45-degree angle, did you think they were going to

7 attack the POP line?

8 **BRIGADIER CALITZ:** Sir, at that

9 stage the Nyala and Public Order Policing Members

10 were already under attack. That is why we move on to the last

11 "resort", which is the use of rubber bullets. The Public Order

12 Policing Members had nothing left and I gave the

13 order for the vehicles to move

14 forward between them and to disperse them, so that they

15 could break up in smaller groups, which would make them

16 easier controllable.

17 **CHAIRPERSON:** Well, that is not a direct

18 answer to the question, but I think I know what you mean,

19 but let me just put it to you. You say the POP people were

20 already under attack by the strikers.

21 **BRIGADIER CALITZ:** Correct, Mr

22 Chairperson.

23 **CHAIRPERSON:** So I take it, and you then

24 said what you did and the instructions you gave. I take it

25 that you did that because you had assumed, correctly I

1 I would imagine, that the attack was going to continue. Is

2 that right?

3 **BRIGADIER CALITZ:** It is indeed so, Mr

4 Chairperson.

5 **CHAIRPERSON:** Yes, alright. I think -

6 yes.

7 **COMMISSIONER HEMRAJ:** What exactly do you

8 mean by the attack? What incidents are you referring to?

9 **BRIGADIER CALITZ:** Commissioner, I think

10 there will be evidence from the other Nyala

11 commanders, among others, at incident 2, where Colonel

12 Pitsi claimed they attacked his Nyala.

13 The commander of Nyala 4 will give evidence to what they

14 did and what they saw out of their vehicle. The commander of Pappa11,

15 was there before us, and I believe

16 there is evidence where they said that their

17 Nyalas was under attack and they slashing the wheels of our

18 vehicles with the pangas. I think in the evidence of one

19 of the members in my vehicle, he said he heard,

20 not shots, but things hitting against the Nyala. It could be

21 rocks, I do not know, I did not see it,

22 but there were various attacks at this

23 stage.

24 **COMMISSIONER HEMRAJ:** What did you see

25 yourself?

1 **BRIGADIER CALITZ:** I beg your pardon,

2 Commissioner?

3 **COMMISSIONER HEMRAJ:** What part of the  
4 attack did you actually see then?

5 **BRIGADIER CALITZ:** During incident 2 my  
6 Nyala static at incident 1.

7 I could see interaction at incident 2,  
8 and gave the dispersing order. The information

9 came to my attention in "hindsight," and not

10 at that stage. I did see the attacks

11 on incident 3 and incident 2, where after the people

12 stormed towards us.

13 **CHAIRPERSON:** "Towards us," do you mean, are

14 you including yourself in that or are you talking about the

15 members of the SAPS, the POP people?

16 **BRIGADIER CALITZ:** My Nyala was further

17 east –

18 **CHAIRPERSON:** Yes, I understand. That is

19 why I am saying, your Nyala was further to the east –

20 **BRIGADIER CALITZ:** Just next to –

21 **CHAIRPERSON:** And you saw the people

22 coming, you saw incident 2, as you explained to us. They

23 then walked past, around the kraal towards the scene of

24 incident 3, which is in fact where the shooting happened.

25 Is that not right?

1 **BRIGADIER CALITZ:** They moved away

2 a little, Mr Chairperson, and then they

3 stormed, yes.

4 **CHAIRPERSON:** Yes, yes, yes, but did they

5 come around the kraal and they were advancing towards the

6 position where incident 3 happened, where the shooting –

7 **BRIGADIER CALITZ:** Correct.

8 **CHAIRPERSON:** - actually happened.

9 **BRIGADIER CALITZ:** Correct, Mr

10 Chairperson.

11 **CHAIRPERSON:** Now you described to us

12 what you, of course you did not see very much of that for

13 the reasons you have explained. It was not in your line of

14 sight, but you did say that you realised that the POP

15 people were under attack. I think that was the phrase you

16 used. Now I think the question that you are being asked -

17 and I am not clear in my mind as to what your answer is -

18 what form did the attack take, what attacking actions were

19 being taken by the strikers, which you were aware of? I

20 know you only saw what really was the first part of it, I

21 suppose, and what was happening at the back I suppose by

22 way of the advancing group, but what attacking actions did

23 you see?

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 what I observed was the aggressive manner

1 in which they moved towards us. I gave evidence  
2 that Pappa11 was in front, and this is where the  
3 spears, pangas, the pounding on the vehicles, the  
4 slashing of the wheels, happened. I think,  
5 under correction, I have to look at the photo,  
6 the same attack happened to the vehicle on my left  
7 when the passed us. So they used  
8 the weapons they had in their hands to pound against and  
9 attack the vehicles – at that stage the members of the Public  
10 Order Policing in front of me in Pappa11, already back in the  
11 vehicle.

12 **CHAIRPERSON:** So the aggressive acts, if  
13 one can call them that, that you saw, I just want to make  
14 sure you saw them because I understand you saw things at  
15 incident 2 and you would have assumed, I take it, if they  
16 walked round the small kraal in aggressive mode, that they  
17 were likely to have repeated their conduct at the other  
18 side, incident 3. Whether you actually, what exactly you  
19 saw and what you assumed was taking place, based upon what  
20 you had seen earlier of course, is really, what I am busy with.

21 Now did you actually see them physically attacking the  
22 tyres and so forth of the Nyalas, or is it just something  
23 that you assumed – I am not saying inappropriately assumed,  
24 but is it something you assumed must be happening because  
25 that is what they were doing at incident 2 and they are going

1 around the kraal and they, there is no reason to believe  
2 they are not repeating it at incident 3. You understand the  
3 distinction that I am making? Did you actually see it, or  
4 is it an assumption you made –

5 **BRIGADIER CALITZ:** I understand it, yes –

6 **CHAIRPERSON:** - which may well have been  
7 a correct assumption, but that is another matter.

8 **BRIGADIER CALITZ:** No, I understand, Mr  
9 Chairperson. The only Nyala vehicle in front of me  
10 were, as I said, under correction, Pappa11.  
11 When I passed them, I could  
12 see an attack on the vehicle,  
13 and then ordered the two members in my  
14 vehicle, as soon as they engaged in the “crouching position” and  
15 looked like they moved in our direction, I  
16 ordered the “stun” grenade and the rubber bullets,  
17 at that stage they \_\_\_\_\_communications\_\_\_\_\_ Lukmos  
18 raised their weapons and started to  
19 storm. I saw the measures had not effect on them and made  
20 an informed decision that he  
21 Public Order Policing Members had no effect,  
22 and ordered the vehicles to move in between them,  
23 in order for the group,  
24 at least the group at the back could be dispersed,  
25 and that the smaller groups breaking away, could be stopped

1 by the Public Order Policing's Unit.

2 **MR BUDLENDER SC:** I do not want to pursue

3 this line because Mr Chaskalson is going to deal with the

4 movements and I do not want to duplicate. So I just want to

5 go, to round off this aspect, Brigadier Calitz. You have

6 explained to the Commission that for 54 minutes after the

7 shootings at scene 1 you were unaware that those shootings

8 and deaths had taken place. That I think is common cause.

9 I mean that is common cause, that is what your story is, your

10 explanation is.

11 **BRIGADIER CALITZ:** Mr Chairperson,

12 at which stage we agreed and my evidence was, at

13 16:47 yes. I did not agree to the other time.

14 **MR BUDLENDER SC:** That is fair enough.

15 Now, I want to suggest to you that there are two possible

16 explanations of your ignorance, what you say was your

17 ignorance of what happened at scene 1, alright?

18 **BRIGADIER CALITZ:** What will the correct

19 Afrikaans be for "ignorance," -

20 **MR BUDLENDER SC:** Lack of knowledge -

21 -

22 **BRIGADIER CALITZ:** Unaware?

23 **MR BUDLENDER SC:** Unaware.

24 **CHAIRPERSON:** Unaware. You were not aware of

25 it. You had no knowledge of it.

1 **MR BUDLENDER SC:** I want to suggest to  
2 you there are two possible explanations for what you say,  
3 or responses. One possibility is that what you have said is  
4 not true and that in fact you did know what happened. The  
5 other possibility is that what you say is true and in that  
6 event I suggest to you it reveals a massive and fundamental  
7 failure in the planning and execution of the operation.

8 **CHAIRPERSON:** If you are going to proceed  
9 with that point you will have to give the detail on which  
10 that allegation is based.

11 **MR BUDLENDER SC:** I am going to say that.  
12 I want to put it to you that this was a big and important  
13 operation and you were the operational commander, correct?

14 **BRIGADIER CALITZ:** Mr Chairperson, I  
15 do not know if I now have to react on the first statement  
16 or the second question that was made now?

17 **CHAIRPERSON:** I take it we can assume he  
18 won't deny it was a big operation, he won't deny he was the  
19 operational commander, so you put it to him. You do not  
20 have to ask him whether he agrees. I am sure he does.

21 **MR BUDLENDER SC:** I want to put it to  
22 you, Brigadier, that if 16 people were shot dead by members  
23 of the South African Police Service and the operational  
24 commander knew nothing about that for 54 minutes, that  
25 means, which reveals a massive and fundamental failure in

1 the planning and execution of the operation because the  
2 operational commander should have known about it  
3 immediately.

4 **MR SEMENYA SC:** Still, Chairperson, I do not  
5 know whatever answer the witness is giving will be a  
6 response to a question, which I still do not understand.

7 What is a fundamental and massive failure in the execution  
8 of the operation? It is too vague for me to understand.

9 **MR BUDLENDER SC:** Let me try to be  
10 clearer, Chairperson. For the operational commander to be able  
11 to carry out his functions, it is important that he should  
12 know what is going on in the operation, correct?

13 **BRIGADIER CALITZ:** It is Correct, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** And if he does not know  
16 what – if the way the operation is carried out has the  
17 result that he does not know what is going on, then that is  
18 a flaw in the operation, correct?

19 **BRIGADIER CALITZ:** Mr Chairperson, I  
20 do not agree. It depends on the briefing  
21– the operational commander, as I already indicated  
22 to you, is not in charge of the whole area of  
23 two to three kilometres, it is impossible.  
24 It depends on what the briefing was, Mr Chairperson,  
25 to the other commander. I am not aware of

1 whom he tried to contact at that stage. We know there was  
2 a problem with the radios. I therefore cannot agree with your  
3 statement. The other commanders were trained  
4 and capable to handle scene 1, which I was not  
5 aware of at that stage.

6 **MR BUDLENDER SC:** Brigadier, are you  
7 really telling the Commission that for the operational  
8 commander, it is not necessary for him to know that 16  
9 people had been killed by members of the South African  
10 Police Service?

11 **BRIGADIER CALITZ:** Mr Chairperson,  
12 no, it is definitely not what I am saying. I just said  
13 it is not necessary for me – your first question was,  
14 is it important for the operational commander to be  
15 informed. I answered that question and said,  
16 yes. So your statement is questioning the  
17 first question. ———communications———

18 **CHAIRPERSON:** Can I perhaps ask you a few  
19 questions on this line, which I hope will clear things up.  
20 You agreed that it is important, must be so, that the  
21 operational commander should know what is going on and he  
22 should be kept up to date by his subordinates on the field  
23 so that he can exercise his functions as operational  
24 commander. You agree with that, I take it?

25 **BRIGADIER CALITZ:** I agree, Mr

1 Chairperson.

2 **CHAIRPERSON:** Right, now we know from

3 what you have told us that did not actually happen. You

4 were not kept up to date. You did not know what was

5 happening, and a period of about 50 minutes expired before

6 you learned from someone in the JOC, as a matter of fact,

7 that people had been killed at scene 1, right?

8 **BRIGADIER CALITZ:** Correct, Sir.

9 **CHAIRPERSON:** That is correct. Now it

10 does look as if something went wrong because the

11 information, which you should have been receiving, which I

12 take it to be fair you expected to receive and assumed you

13 would be receiving if there was such information, was not

14 being conveyed to you. Is that correct?

15 **BRIGADIER CALITZ:** In this regard, I agree

16 with you, Mr Chairperson.

17 **CHAIRPERSON:** So is it correct, and I

18 do not know if It is, I am going to ask you; is it correct

19 therefore that your subordinates really were under a duty

20 to keep you up to date with what was going on? Would that

21 be right?

22 **BRIGADIER CALITZ:** Mr Chairperson, you

23 are Correct and that is why my evidence was that I was not

24 aware of it at that stage, in "hindsight" I know there is

25 people that can testify that they tried to

1 contact me on the radio and there is various reasons

2 they claimed why they could not get hold of me.

3 So it is Correct, Mr Chairperson.

4 **CHAIRPERSON:** Alright, perhaps I must

5 rephrase my question. It was the duty of your subordinates

6 to try, to do their best to communicate with you to keep

7 you up to date with what is going on. Is that right?

8 **BRIGADIER CALITZ:** I agree with you.

9 **CHAIRPERSON:** And that did not happen,

10 right. So therefore, something went wrong.

11 **MR SEMENYA SC:** No, no, no, Chairperson –

12 **CHAIRPERSON:** No, of course it was. You

13 were not informed. Okay, I put the question badly. Whether

14 they tried or not, we do not know, but you were not informed.

15 Either they tried and could not get through, or they did not

16 try, just did not tell you, one or the other. We do not

17 know, right? But something went wrong in the sense that

18 the communications you would expect to receive, you did not

19 receive. Is that right?

20 **BRIGADIER CALITZ:** I agree with the

21 last statement.

22 **CHAIRPERSON:** Right, now I think the

23 point Mr Budlender is busy with is to try to establish what

24 went wrong, why you did not get that information. He is

25 suggesting that the reason you did not was because the

1 planning was not right. That is the proposition he is put. I

2 see you are shaking your head; you do not agree with that.

3 That is correct, you do not agree with that?

4 **BRIGADIER CALITZ:** It is not because of your

5 statement, no. It is on the suggestion that was made,

6 I do not agree with that at all.

7 **CHAIRPERSON:** Yes, yes, yes. No, okay,

8 fair enough. Yes, I meant you do not agree with the

9 proposition he put to you. So what we will investigate

10 perhaps is why you were not informed, because you say you

11 should have been and you expected to be, and I take it you

12 felt bad about it afterwards that you were not. Whether

13 It is anyone's fault, whether it is due to a combination of

14 unhappy circumstances is one of the things we have got to

15 investigate. Would you agree with that?

16 **[10:15] BRIGADIER CALITZ:** Correct, Mr

17 Chairperson.

18 **CHAIRPERSON:** Alright, perhaps you can

19 take it further from there, Mr Budlender?

20 **MR BUDLENDER SC:** Well, thank you, Chairperson.

21 I do not want to belabour the point because it is a matter

22 for argument principally at the end. I just want to, let

23 me take the adjectives out of it.

24 **CHAIRPERSON:** No, Mr Budlender, with

25 respect that is not quite right. It is a matter we have

1 to investigate, he can see something went wrong, the  
2 question is, why, and there is a number of possible  
3 explanations, one is poor planning, one is, there were  
4 problems with the communications, or people did not try to  
5 tell him or people did try but they were not successful,  
6 there are a number of these possibilities, which we may have  
7 to look at. It may well be that the short point with this  
8 witness is that he does not know the answer and he cannot  
9 help us in that, in which case it may be appropriate to  
10 move on to some other point, but that is the way I see it.  
11 I think we should perhaps give him the  
12 opportunity, are you able to help us with the benefit of  
13 hindsight and the debriefings you received and that kind of  
14 thing, as to what actually went wrong and you can see  
15 something must have gone wrong, because you should have got  
16 the information and you did not. Are you able to help us as  
17 to what the reason was for this, the fact that you were not  
18 informed until something like 15 minutes later, or cannot  
19 you help us.

20 **BRIGADIER CALITZ:** Mr Chairperson, if I may say,  
21 there may be evidence where the people will say they  
22 they tried to contact me on the radios, the  
23 analogue hand radio, and we had problems with our radio.  
24 Further in the evidence you will see it was a huge  
25 problem, the biggest problem. The people trying to

1 contact me on the cellphones, if they did so,  
2 at that stage I was in and out, I gave orders,  
3 so I will not know, I am not aware of  
4 people trying to contact me at that stage, because I did not  
5 hear it at that stge. I do believe there were  
6 that tried to inform me,  
7 Mr Chairperson.

8 **CHAIRPERSON:** I do not know whether these  
9 mobile phone records we have given missed calls and perhaps  
10 we will be told about that, but certainly, what is clear is  
11 that you received no mobile phone calls over the period  
12 that we are talking about until you spoke to General  
13 Annandale at 16:47, is it? Yes, 16:47, which is when you  
14 heard why you did not receive cell phone, mobile phone calls  
15 is a matter that presumably will become clear later, but  
16 you cannot help us on that either, I suppose, is that right?

17 **BRIGADIER CALITZ:** Correct, Mr  
18 Chairperson.

19 **COMMISSIONER HEMRAJ:** Did you note that  
20 you had any missed calls on your cell phone, or did not you?

21 **BRIGADIER CALITZ:** Commissioner, no,  
22 not at that stage, there was no  
23 time for that, no.

24 **MR BUDLENDER SC:** Did you look, -  
25 alright. What I am putting to you, Brigadier, is that the

1 way the operation was planned and executed, I am not putting  
2 my finger on either planned or executed, but planned and/or  
3 executed, - planned and executed, had the result you say,  
4 that for 54 minutes the operational commander did not know  
5 that 16 people had been killed by the members of the South  
6 African Police, is that a fair comment, 16 strikers had  
7 been killed by the police, yes?

8 **CHAIRPERSON:** I think he said that  
9 several times when I was questioning him, I do not know, he  
10 is likely to change that answer, I think probably -

11 **MR BUDLENDER SC:** I want to put it you -

12 **CHAIRPERSON:** - or he will not.

13 **MR BUDLENDER SC:** Sorry, Chairperson, I want to  
14 put it to you that that reveals that there was a flaw in  
15 the planning and execution of the operation. Do you agree  
16 with that?

17 **BRIGADIER CALITZ:** No, Mr

18 Chairperson, I do not agree.

19 **MR BUDLENDER SC:** Do you think the  
20 planning and execution were fine and this, if the planning  
21 and execution were fine was this result fine, that you  
22 did not know for 54 minutes?

23 **CHAIRPERSON:** But he said it was not fine.

24 **BRIGADIER CALITZ:** Mr Chairperson,  
25 no, at no stage I said the results are fine.

1 I also did not say that we were fine with the people killed,  
2 like you put it, no, I do not  
3 agree. It is a tragic incident and it was not an easy  
4 event and I, as the operational commander, tried to  
5 handle it to the best of my knowledge with the information  
6 I had, so I do not agree with your statement at  
7 all.

8 **MR BUDLENDER SC:** Sorry, I did not express  
9 myself clearly, I was not saying that the killing of 16 or  
10 34 people was fine, I was saying the fact that you did not  
11 receive the information was fine, but you said that you  
12 should have received the information.

13 **CHAIRPERSON:** But, Mr Budlender, he said  
14 in answer to questions I asked him that, he indicated  
15 something went wrong and then he said there were various  
16 reasons why, possible reasons why it went wrong, he cannot  
17 himself say what they were, but he says we will hear  
18 evidence to the effect that there were problems with the  
19 communications, people tried to phone him on his mobile  
20 phone and could not get through. I understand that, I  
21 forgotten that, that we were told by Mr Chaskalson earlier  
22 that these mobile phone records do not include missed  
23 calls, so that is something that we do not know about, but he  
24 has said that there are attempts, he understands, whether  
25 that is correct or not he does not know, but the attempts

1 were made to contact him which were unsuccessful. If  
2 they'd been successful then I take it that the point you  
3 make would have fallen away, is that correct, Brigadier?

4 **BRIGADIER CALITZ:** Correct, Mr

5 Chairperson.

6 **MR SEMENYA SC:** Chairperson, the elephant for  
7 us is really that up to this point is it contended by the  
8 evidence leaders that the attackers had nothing to do with  
9 that result?

10 **MR BUDLENDER SC:** Not at all, Chairperson, but  
11 I am not cross-examining one of the attackers, I am cross-  
12 examining one of the police officers.

13 **CHAIRPERSON:** Now that that is clear  
14 perhaps we can carry on. It seems to me, if I may say so,  
15 but I think what you are putting, Mr Budlender, is going to  
16 be argument. I understand you are putting it to give the  
17 witness an opportunity to answer. As far as I can see he  
18 has given an answer which is, I do not think he can improve  
19 on. He says the matter is beyond his knowledge, it depends  
20 upon other evidence we will hear in due course. Let me  
21 just wrap it up finally, is there anything else you can  
22 contribute at this stage to answering the point that Mr  
23 Budlender put to you, that the fact that you did not get  
24 this information for 54 minutes indicates a flaw in either  
25 the plan or the execution or both? I understood you to

1 give certain answers when I asked you questions along those  
2 lines as well, is there anything further you want to add on  
3 that point or have you taken it as far as you can on the  
4 basis of your knowledge?

5 **BRIGADIER CALITZ:** No, I think

6 everything is clear to me, in the manner in which I explained  
7 it, Mr Chairperson.

8 **MR BUDLENDER SC:** Perhaps let us move on  
9 to the next point, Chairperson, the next topic. Now, Brigadier,  
10 your evidence has been that Lieutenant Colonel Scott  
11 explained the dispersal and this timing plan to the  
12 commanders at the 14:30 briefing on the Friday, - on the  
13 Thursday, correct?

14 **BRIGADIER CALITZ:** It is Correct, Mr

15 Chairperson, my evidence was, to myself and the  
16 commanders of the other groups.

17 **MR BUDLENDER SC:** Did the plan  
18 contemplate that when the barbed wire was rolled out some  
19 of the strikers would move forward and attack some of the  
20 Nyalas in the barbed wire line?

21 **BRIGADIER CALITZ:** No, not at all, Mr

22 Chairperson, I mentioned it like that in my evidence.

23 **MR BUDLENDER SC:** Was it part of the  
24 police plan that a group of the strikers would move around  
25 the kraal in an attempt to attack the police or the police

1 safe area?

2 **BRIGADIER CALITZ:** No, Mr

3 Chairperson.

4 **MR BUDLENDER SC:** Was it part of the

5 police plan that 16 strikers would be shot dead at the

6 kraal?

7 **BRIGADIER CALITZ:** Definitely not, Mr

8 Chairperson.

9 **MR BUDLENDER SC:** Was it part of the

10 police plan that they would surround the strikers at hill

11 3 and shoot at them?

12 **BRIGADIER CALITZ:** Will you repeat the question

13 please? Sorry?

14 **MR BUDLENDER SC:** Was it part of the

15 police plan that they would surround the strikers at hill

16 3 and shoot at them, hill 3?

17 **BRIGADIER CALITZ:** At hill 3?

18 **MR BUDLENDER SC:** Yes.

19 **BRIGADIER CALITZ:** No, Mr

20 Chairperson.

21 **MR BUDLENDER SC:** Was it part of the

22 police plan that some strikers would be killed at hill 3

23 in crossfire by the police?

24 **BRIGADIER CALITZ:** No, Mr

25 Chairperson.

1 **MR BUDLENDER SC:** Was it part of the  
2 police plan that anyone would be shot at hill 3?

3 **BRIGADIER CALITZ:** There was a possibility  
4 that there was an incident at hill 3, because of the  
5 dispersement in a westerly direction,  
6 by the Public Order Policing Members, it could be  
7 possible that there were rubber bullets used on the  
8 crowd.

9 **MR BUDLENDER SC:** Was it part of the  
10 police plan that 14 strikers would be killed at hill 3  
11 and 4 and would die thereafter from wounds received there?

12 **BRIGADIER CALITZ:** No, definitely not, Mr  
13 Chairperson.

14 **MR BUDLENDER SC:** I understand that. Now  
15 I want to show you JJJ82. Could we go to page 2 of that?

16 **CHAIRPERSON:** There are various  
17 indications of time, which is the time on the video I take  
18 it, in square brackets at the beginning of certain of the  
19 sentences, so if you can use those as a marker. Can you  
20 direct our attention to the particular passage in this page  
21 which you want the witness to talk about?

22 **MR BUDLENDER SC:** Chairperson, it is the third  
23 line from the foot of the page, the two sentences before  
24 7:50. Could we go up a bit, please?

25 **CHAIRPERSON:** Between -

1 **MR BUDLENDER SC:** That is right, Chairperson.

2 **CHAIRPERSON:** Between 7:20 and 7:50, yes.

3 **MR BUDLENDER SC:** Do you have that,

4 Brigadier? You are talking then about, you were talking to

5 the, - this is the parade which you addressed on Saturday,

6 the 18<sup>th</sup> of August, correct?

7 **BRIGADIER CALITZ:** I have it at the

8 bottom of my page 2, between 7:05 en 7:20, if I am correct,

9 Mr Chairperson, it is correct.

10 **MR BUDLENDER SC:** Yes, and this is what

11 you said at that parade?

12 **BRIGADIER CALITZ:** It was my words

13 to the members during the incident,

14 correct.

15 **MR BUDLENDER SC:** Yes, and at the third

16 line you are talking about the briefings and then you say,

17 the third line from the foot of the page, "The president

18 got the same view and you can read it in the papers as what

19 the ministers from the media got. They got the same

20 presentation. Then he announced that there would be a board

21 of inquiry. Some of you might wonder what is now going to

22 happen. Remember after any big action there is now a board

23 of inquiry that will sit and then take it frame by frame,

24 minute by minute of what happened," alright, and then you

25 continue.

1 "The police, we will give our 100% full  
2 cooperation, okay, at this stage we did nothing wrong.  
3 From the planning to the execution was a 110%, exactly how  
4 we planned it and it is not often that this happens in this  
5 large group. I have to congratulate you, exactly how we  
6 planned it and we briefed the commanders exactly we  
7 executed in that line." Now I am asking you, how could you  
8 possibly have said that in the light of everything that  
9 went wrong in this operation?

10 **BRIGADIER CALITZ:** Mr Chairperson, I  
11 already mentioned it in my evidence, but I can mention it  
12 again. On the questions regarding the plan,  
13 I answered that it was not part of the plan.  
14 If you can recall,  
15 Mr Chairperson, it was 110% to  
16 motivate my members and to have them returning  
17 positive to the field. Regarding the planning  
18 and the implementing of the plan,  
19 if you can read the last sentence, it says,  
20 "Exactly how we planned it and we briefed the  
21 commanders exactly we executed it in that line." That  
22 was exactly my words and the way I meant it, when I  
23 conveyed it. It is also how we followed it up. I also gave  
24 evidence to the effect that it was the schematic principles of the  
25 plan. The wire had to be rolled out, which we did.

1 At no stage did we talk about an interruption in the  
2 plan, or that the plan was interrupted.

3 -

4 I never used those words. Firstly, the wire was

5 rolled out. My orders were followed; the wire was rolled out,

6 and the vehicles formed a line. We had to disperse

7 the people and it was done. We had to,

8 - I believe there is a problem with the

9 translation, Mr Chairperson, I get a lot -

10 **CHAIRPERSON:** You may have been talking a

11 bit fast, perhaps -

12 **BRIGADIER CALITZ:** I will -

13 **CHAIRPERSON:** - you could speak a bit

14 more slowly -

15 **BRIGADIER CALITZ:** I will repeat.

16 **CHAIRPERSON:** Yes, perhaps start at the

17 sentence or two back and then proceed and I know that

18 sometimes it is difficult to keep talking slowly, but -

19 **BRIGADIER CALITZ:** I am trying my best, yes.

20 If I may again -

21 **CHAIRPERSON:** But I take it that if those

22 counsel who are following on the, through the headphones

23 detected that there is something with the translation in

24 the sense of the interpreters being stuck, then they will

25 indicate and you will then be able to slow down and perhaps

1 even repeat the sentence or so, but I do not know who the  
2 person is to look at, I think you just carry on with your  
3 evidence and if I see desperate signs coming from some of  
4 the headphone wearing counsel we will then tell you.

5 **BRIGADIER CALITZ:** Correct, Mr

6 Chairperson, it was indeed the two blonde ladies at my  
7 drew my attention and directed my attention to it, Thank you  
8 for that. As I have told you, Mr Chairperson, it was  
9 110%, as I have testified, Mr  
10 Chairperson, it was for motivation. You will recall that this  
11 was the first time that these group had to go back and disperse the crowd.  
12 A lot of these people were part of a very traumatic incident on the  
13 16<sup>th</sup>. We have, what we refer to as,  
14 Employee Health and Wellness Services, which included  
15 social workers and psychologist, to council  
16 the members, but it is one thing to talk about it and  
17 another to go back to the  
18 scene for the first time. We did not know what to expect,  
19 that is why I tried to motivate my  
20 members.

21 It is the first sentence you referred to,  
22 "100% actually how we planned it and it is not often that  
23 it happens in this case in a large group." What I meant was,  
24 in my 20 year's experience, there was actions,  
25 you sometimes get it that a person,

1 will make his or her own decision, a section commander will  
2 break away, or go left, where he was actually supposed to move  
3 in a line. If you recall your earlier question,  
4 I said a dispersion line is the Public  
5 Order Policing terms, where a basic line is the term used by TRT.  
6 The next sentence, "I have to congratulate you, you did  
7 exactly how we planned it and briefed the commanders  
8 exactly we executed it in that line," in that case  
9 "in that line," refers to the people that  
10 kept the line.  
11 During an operation is it important, that  
12 when a commander gives an order, "Pappa  
13 vehicles, go and block", that vehicles will then  
14 move and block as ordered, we have certain action  
15 action modes, which will explain this. In this case,  
16 I gave an order that the Nyala vehicles have to move  
17 in between the crowd and disperse them. It is clearly  
18 evident in the photos that we saw, especially  
19 in the case where we stopped next to hill 2, it was  
20 was exactly as per our briefing before the traumatic  
21 events, the water cannons pulling out and the  
22 follow through of the dispersement.  
23 I further motivated them and said,  
24 "The police will give its 100% full cooperation, at this  
25 stage we did nothing wrong." That was my evidence,

1 Mr Chairperson, it was aimed at the cellphone messages, the  
2 WhatsApps, and the BBMs, which spread rumours that the  
3 members involved on that day will be suspended,  
4 some will be fired, it caused tremendous strain on my members,  
5 there were groups demanding this and it was what I told  
6 my members. At this  
7 stage, it was the 18<sup>th</sup>, two days  
8 after the incident, and I had not information available  
9 indicating to me that my members were  
10 in gross negligence.  
11 As a commander and as an operational commander  
12 with my year's experience, it was my  
13 task to motivate my members, and if you look at the execution of  
14 the orders on that day, even though Mr Malema  
15 arrived, the members were so positive, not one of them  
16 stood back, but performed their duties. They were willing  
17 to remove the person from the premises, they were willing  
18 to roll out the wire, despite the dangerous conditions.  
19 We had no hesitation, and not one  
20 police officer too sick leave,  
21 at that stage, not one said, no, I  
22 am afraid, I am not going to work, so to answer the question  
23 in short, the plan, the four principles, were  
24 100% executed up to this stage.  
25 There were an interruption, but I did not talk about the

1 interruption, or the

2 shooting incident and I definitely did not talk

3 about the people that died. That is what I meant here,

4 Mr Chairperson. Sorry if I went too fast

5 again.

6 **CHAIRPERSON:** I am not listening on the

7 headphones, I do not know whether you are going too fast but

8 if we look at the ladies to whom you referred earlier, they

9 do not seem to be in distress, so you can perhaps carry on.

10 **BRIGADIER CALITZ:** They look happier

11 today.

12 **MR BUDLENDER SC:** Brigadier, I understand

13 that on the 18<sup>th</sup> the morale could be a problem.

14 **BRIGADIER CALITZ:** The morale?

15 **MR BUDLENDER SC:** Morale.

16 **[10:35] CHAIRPERSON:** Mr Budlender, you are now

17 moving onto a new aspect namely the -

18 **MR BUDLENDER SC:** I am talking, I am

19 following on the -

20 **CHAIRPERSON:** I will take the tea

21 adjournment at a stage where you indicate to me is

22 appropriate and convenient. But carry on for the

23 meanwhile.

24 **MR BUDLENDER SC:** Thank you, Chairperson.

25 **BRIGADIER CALITZ:** Mr Chairperson, I will

1 not say the moral was a problem, but the members  
2 took tremendous strain and stress as a result of the  
3 trauma of the previous two days. There is no way that  
4 events did not have an effect on my officers, it had an effect on  
5 all of us.

6 **MR BUDLENDER SC:** I do not want to put  
7 words into your mouth, Brigadier, as I understood it you  
8 said you made the speech in part because morale could be a  
9 problem because of the messages that were going around,  
10 would that be fair?

11 **BRIGADIER CALITZ:** It is Correct, I said,  
12 it could be, you asked me if the moral was low,  
13 I tried to explain the difference, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** And you were concerned  
16 that the rumours were going around that the police officers  
17 involved might be fired, dismissed, correct?

18 **BRIGADIER CALITZ:** It was my evidence.  
19 Correct, Mr Chairperson.

20 **MR BUDLENDER SC:** Do you think they  
21 thought they might be fired because they did not form and  
22 hold the dispersion line correctly or did they think they  
23 might be fired because 34 people had been killed?

24 **BRIGADIER CALITZ:** I cannot talk on  
25 behalf of my members. I know that when I did rounds,

1 I became aware that this was the only time this happened in South  
2 Africa. In order to answer the question, I can say,  
3 the members were too shocked about what happened, the people that died,  
4 and the magnitude of the incident, I think all this did put  
5 pressure on the members.

6 **MR BUDLENDER SC:** We discussed this when  
7 you started your evidence and we have agreed that the  
8 President appointed a commission of inquiry because a  
9 shocking event had occurred, 34 people had been killed, you  
10 remember that?

11 **BRIGADIER CALITZ:** It is Correct, Mr  
12 Chairperson. I gave evidence that the President a  
13 announced the night before on E-News, I made a note  
14 that I gave evidence about the fact that at, 19:33 in the evening,  
15 the president made the announcement on E-News that  
16 a commission is being appointed and his specific words  
17 was, "this is not a time to blame". As  
18 operation commander and senior commander, I did not  
19 not feel the need to blame anyone as the  
20 President gave the instruction that a commission  
21 have been appointed.

22 **MR BUDLENDER SC:** The President appointed  
23 a commission of inquiry and I think you have agreed already  
24 when you, at the outset of your evidence because he and the  
25 people of South Africa wanted to know whether the killing

1 of the 34 strikers was justified. Is that a fair comment,  
2 you think?

3 **BRIGADIER CALITZ:** I did not follow it that far.

4 I will have to take your word for it.

5 **MR BUDLENDER SC:** But what do you think

6 was the motive for the establishment of the commission, do

7 you think it was because the public wants to know whether

8 34 people, why 34 people had been killed?

9 **BRIGADIER CALITZ:** Mr Chairperson, if I can

10 have the document; I think there was four reasons set aside

11 to determine what happened, and

12 the parties, at this stage it looked to me like it was just the

13 police, my apologies for saying this, but it looks like

14 the commission had to establish, which parties were

15 responsible and what could be done to prevent this from

16 happening again. Maybe come with ideas on how we can

17 improve that which we did wrong.

18 I definitely do not think to blame.

19 **MR BUDLENDER SC:** I am not talking about

20 blame –

21 **CHAIRPERSON:** I am sorry the aspect you

22 dealt with were, one of the things that the commission must

23 look at is which parties are responsible. Now that would

24 include I take it obviously not only physical responsible

25 but culpable responsibility those who are to blame for what

1 happened. So therefore whether the police or any  
2 particular members of the police are to blame, whether any  
3 aspect of the police, actions were blameworthy, obviously  
4 are part of what we have to look at. Your message here  
5 in your speech as I read it is your view was that the  
6 police were not to blame and you were conveying that to your  
7 members and you gave reasons why you say that in your  
8 opinion you were not to blame. So they do not have to worry  
9 say you because everything, they did everything they should  
10 have done according to the plan. Is that correct?

11 **BRIGADIER CALITZ:** Mr Chairperson, yes  
12 as far as the plan goes, we do not  
13 agree with the result, but until I have information  
14 telling me that there was negligence, I can  
15 only say we will give 100% cooperation and  
16 as soon as I get information to proof negligence, I will admit such.  
17 It was just two days after my incident, and  
18 my viewpoint at that stage, Mr Chairperson.

19 **MR BUDLENDER SC:** Chairperson, just one more  
20 question before we adjourn if I may. One more short line  
21 of questions. You said that there were messages and or  
22 rumours that the members of the police who were involved  
23 would be fired. Now were those messages that people were  
24 going to be fired because the police line was not correctly  
25 formed and held or were they, was it that they were going

1 to be fired because 34 strikers had been killed, what do

2 you think it was?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 no, I will not be able to answer the question. I think it

5 it is rumours spread by the members, saying we are in trouble,

6 and as the commander of the

7 Public Order Policing, I know how to get my members

8 positive and motivate them. It was my

9 job to tell them to ignore the

10 messages, the media and the reports, ignore it all, and let us

11 go and give them our cooperation.

12 **MR BUDLENDER SC:** Let us be practical and

13 realistic. The uproar and the outcry and the commission

14 and the anxiety were focused on the deaths of 34 people,

15 not on whether a police line had been correctly formed and

16 held. You must surely agree that that is so.

17 **MR SEMENYA SC:** I am sure the people who

18 died were 40, 44.

19 **CHAIRPERSON:** 34 died on, as a result of

20 what happened on the 16<sup>th</sup>, there were 10 people who died in

21 the run-up to that starting on the 12<sup>th</sup>. However, let us not get

22 involved in that. The fact is a good deal of the outrage,

23 the concern and the shock was caused by the fact that there

24 was a high mortality rate as a result of what happened, a

25 lot of people died. I take it, it was not, and it would be over

1 simplistic to say that the mere fact that people died was  
2 in itself a cause of the, by itself the cause of the  
3 concern and the shock and the outrage because a lot of  
4 people sometimes are killed in natural disasters. The  
5 problem was it was considered that there was a distinct  
6 possibility whether right or wrong is something we are  
7 investigating but the distinct possibility that those  
8 people would not have died if the correct actions had been  
9 taken and that I take it was a major part of the  
10 motivation, would you, do you see it that?

11 **BRIGADIER CALITZ:** Mr Chairperson,  
12 it is Correct. I came to realise that the  
13 death of the protestors, the police officers and  
14 the security personnel, had  
15 a contributing effect on the negativity of my members. I,  
16 myself does not see it as the only reason. To answer your  
17 question, I think the world also wanted to see  
18 why this happened. In my view, it was not just  
19 what happened on that day,  
20 there was protestors, but there were other reason to  
21 why this built up to the extend it did.  
22 My personal, not just personal view, but also which I  
23 conveyed to my members, I believed there were other role-players,  
24 the police was only there on that day to  
25 protect the people and the property. There is a

1 bigger picture than just the actions of the police

2 on that day.

3 **CHAIRPERSON:** The main point is the terms

4 of reference, as you indicated in your summary deal inter

5 alia with responsibility, who is responsible and a number

6 of possible parties responsible are set out in the terms of

7 reference, that is part of the, those are the aspects of

8 some of them that we have to look at. One party possibly

9 responsible is the police, members of the police, another

10 was the employer, another was the strikers and another was

11 the unions. All these are matters that we have to

12 investigate. But the major thrust of the commission is, or

13 one of the major thrusts, not the only one, one of the

14 major thrusts of the commission is to investigate the

15 question of responsibility and included in that of course

16 is the responsibility of the members of the SAPS who were

17 involved and that is correct, is it not?

18 **BRIGADIER CALITZ:** I agree with your statement,

19 the way you put it, Mr Chairperson, it is correct.

20 **MR BUDLENDER SC:** The last question on

21 this, Chairperson, before we adjourn. General, I mean, Brigadier, you

22 said you saw television and I take it you also read

23 newspaper reports about what had happened, there was a

24 great deal of publicity about the events of the 16<sup>th</sup> of

25 August. You are aware of that?

1 **BRIGADIER CALITZ:** There were a lot of

2 reports. Correct, Sir.

3 **MR BUDLENDER SC:** Yes, did you, and many

4 people were saying why were the strikers killed and why

5 were the previous ten people killed and was the police

6 conduct correct in shooting the strikers, correct?

7 **BRIGADIER CALITZ:** Mr Chairperson, I

8 do not know if it is appropriate for me to answer on the

9 media reports.

10 **MR BUDLENDER SC:** No, I am asking what you

11 saw in the media reports, that is what people were asking.

12 Was this a justified action by the police?

13 **BRIGADIER CALITZ:** I am getting to that,

14 if I get the chance to complete my sentence,

15 Mr Chairperson. I do not know if you are asking me

16 to what I read in the media, as the reports from the side of the media,

17 was very biased. I know I was on the

18 Sowetan's front page, a big colour photo,

19 with the words, the perfect massacre, which I never uttered in my life.

20 I was wrongly quoted to say,

21 "shoot the target",

22 conveniently the word, " not" were removed before it was

23 published. There were a lot of these

24 biased reports, where only the one side would be published and

25 we never see the truth being reported.

1 What I want to see, if I may request, is that the  
2 same media and the same media also print and publish  
3 our side of events, as everything in the media  
4 are very biased against the police, everything I read in the media,  
5 thus far.

6 **CHAIRPERSON:** No, that is your reaction to  
7 a number of matters. But the simple question you were  
8 asked is, it is correct is it not that at the time there was  
9 a lot of publicity, you described it as one sided, that  
10 there was a lot of publicity about what happened  
11 understandably and a lot of concern was raised by a lot of  
12 people as to whether, to go back to the responsibility  
13 question, as to whether the killing, whether the police  
14 were to blame for the killing and linked of course to that  
15 is the other side of the same coin was there justification,  
16 legal justification for what the police did which takes us  
17 to a number of other questions, which we are not going to  
18 deal with at the moment but the main one was can it be said  
19 that the police indeed acted in self-defence or private  
20 defence, which would, if they did that would have meant that  
21 what they did was not illegal and they were not legally  
22 responsible. But that was certainly one of the issues on  
23 the table forming the subject of an extensive debate,  
24 national debate, international debate, you are aware of that  
25 obviously?

1 **BRIGADIER CALITZ:** I agree with you,

2 Mr Chairperson, thank you, very much.

3 **MR BUDLENDER SC:** And in all of that

4 publicity which you saw in the newspapers and on the

5 television and elsewhere did you ever see somebody say the

6 real question is whether the police line was correctly

7 formed and held or is the real question is whether the

8 killings were justified. What did they say?

9 **BRIGADIER CALITZ:** Mr Chairperson,

10 no, I already responded to that.

11 I think it is very biased regarding the police

12 killing the protestors, if that answers your

13 question. I think the media was not aware of the plan

14 and did not want to report on what actually

15 had to happen. That is my

16 answer.

17 **MR BUDLENDER SC:** The very last question

18 and the one sided reports were one sided because they said

19 the killings were unjustified or cruel or brutal, they

20 were not one sided because they said the police line was not

21 correctly formed.

22 **MR SEMENYA SC:** Chairperson, I do not know where

23 this is taking us.

24 **CHAIRPERSON:** It sounds a bit like a

25 debating point, Mr Budlender, but I think the witness has

1 already conceded that that was not the point, the subject of  
2 the press publicity on the matter.

3 **BRIGADIER CALITZ:** No, Mr

4 Chairperson, I will answer it for the last time, since it is the  
5 question. The quotes were

6 brutal, but so were the attacks on the

7 security personnel and also on the

8 police officers.

9 **CHAIRPERSON:** I understand what you are

10 saying.

11 **BRIGADIER CALITZ:** That is how the

12 media reported it to my knowledge.

13 **CHAIRPERSON:** Mr Budlender is making a

14 narrow point. You spoke in your speech about exactly we

15 executing that line and you made the point that they kept

16 to the line. His point is that that actual issue was not

17 the subject of the press publicity and I think you will

18 agree with that, will you not?

19 **BRIGADIER CALITZ:** I agree, Mr

20 Chairperson.

21 **CHAIRPERSON:** Can we adjourn now, Mr

22 Budlender? We will take the tea adjournment.

23 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

24 **[11:38]** **CHAIRPERSON:** The Commission resumes.

25 I am sorry about the delay in resumption, but there were

1 housekeeping matters we had to attend to in chambers,  
2 including the swearing in of an interpreter from English to  
3 Setswana, Sesotho, and vice versa, but we are now able to  
4 proceed. You are still under oath, Brigadier.

5 **BRIGADIER CALITZ:** Still under oath.

6 **CHAIRPERSON:** Mr Budlender.

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

8 Thank you, Chairperson. Brigadier, on the morning of 18 August  
9 you were speaking to your members before they undertook a  
10 new operation.

11 **BRIGADIER CALITZ:** It is Correct, Mr  
12 Chairperson.

13 **MR BUDLENDER SC:** And I think you may  
14 have said already that many of them had been involved in  
15 the operation on the 16<sup>th</sup> of August in which 34 people had  
16 been killed, correct?

17 **BRIGADIER CALITZ:** I do not know  
18 the exact number, but there were some members.

19 **MR BUDLENDER SC:** And as you explained  
20 that morning when you spoke to them, they were about to go  
21 into a potentially difficult situation. I want to take you  
22 to how you described it. It is JJJ82, and it is the  
23 transcript. Could we go to page 1 against the time 1:21 on  
24 the first page. You have that, Brigadier?

25 **BRIGADIER CALITZ:** I have it, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** This is what you

3 explained to the members. "Ladies and gentlemen, the

4 information is, and there is no secret, that Mr Julius

5 Malema will visit us today. The purpose of the visit is

6 that they want to take the hill back." And then if we go

7 down two more lines, "Now the people want to regroup from

8 the village. That is the Crime and Intelligence

9 information. The information is that Mr Malema will come,

10 regroup the mine, and then inform them to go back to the

11 hill, go back to the strike, and then the information is

12 that they are going to provoke the police. They also sent

13 a message to the media to say 'Come and look how the police

14 is treating us.' Alright, so you will definitely be

15 provoked and then there will be action from there." Now

16 that was a potentially difficult situation. People

17 affected by the events of the 16<sup>th</sup> of August were going to

18 try to retake the hill. Many could be expected to be

19 emotional and angry, and they were going to try to provoke

20 the police.

21 **BRIGADIER CALITZ:** It is correct,

22 Mr Chairperson.

23 **MR BUDLENDER SC:** You said to the members

24 that – we have been through the words; I do not want to debate

25 them again, but you said to the members that from planning

1 to execution was 100%. You said, "I have to congratulate  
2 you," etcetera. Now I have to put it to you because it  
3 might have to be argued at some stage that in that  
4 situation, this dangerous situation, it was rash to  
5 encourage members to behave in the same manner as they had  
6 previously when on the previous day 34 people had been  
7 killed. Would you like to respond to that?

8 **BRIGADIER CALITZ:** Mr Chairperson, if you can  
9 repeat the question. I do not understand the  
10 part on the rash?

11 **MR BUDLENDER SC:** Well, I am looking for a  
12 word "rash," ill-advised or reckless or unwise, that it was  
13 one of those words, to say to them everything you did last  
14 time was fine, just last time was 110%, because they were  
15 about to go into a very tricky situation and they should  
16 have been told to exercise great caution.

17 **BRIGADIER CALITZ:** Mr Chairperson,  
18 no, the police are exposed to dangerous situations on a daily basis,  
19 it is our duty to respond and protect people and property.  
20 It is a daily duty.

21 **MR BUDLENDER SC:** Alright, now what you  
22 said was apparently, there was apparently a journalist  
23 nearby who was filming what you said on a video or a  
24 camera. You remember that?

25 **BRIGADIER CALITZ:** It is Correct, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** Can we go to page 3 of

3 the transcript of those events, of that discussion, against

4 the numbers 9:50 in about the middle of the page, and we

5 see that Colonel McIntosh says, "Press behind there," and

6 then you say, "Alright, can somebody of the TRT or somebody

7 of that just move there, the media there, there in the

8 road. Just take his video camera. Okay, do not everybody

9 look around, that is fine. Alright, so guys, not 12 of you,

10 that is fine. There is one person going, it is fine. Come

11 back." Then at 10:26, "Oh Mac, just check the recording

12 that was made. Come to me, you can just bring him so that

13 we can check that recording, possibly just record over."

14 You remember saying that?

15 **BRIGADIER CALITZ:** Correct, Mr

16 Chairperson.

17 **MR BUDLENDER SC:** Now what gave you the

18 legal power to remove the video camera from that

19 journalist?

20 **BRIGADIER CALITZ:** Mr Chairperson, I

21 never gave any instruction that they had to take the camera

22 from the person. I said we had to go and see what is on the

23 "footage" as my "briefing"

24 contained sensitive operational information,

25 I sent Colonel McIntosh, not a group,

1 just one person, to  
2 request him if we can look at the footage, just to make sure  
3 what information he recorded,  
4 to assure that the information  
5 did not leak before we started with the operation.

6 -

7 **MR BUDLENDER SC:** Brigadier, I understand  
8 the reasoning behind what you did. What I am asking you is  
9 where is, where do you get legal authority to -

10 **MR SEMENYA SC:** Objection, Chairperson. That  
11 is entirely irrelevant to the terms of reference.

12 **MR BUDLENDER SC:** Chairperson, I am examining  
13 the Brigadier's attitude to the performance of his duties  
14 and if the Brigadier thinks that he can act without legal  
15 authority, which is a material matter, which ought to be  
16 considered.

17 **MR SEMENYA SC:** Absolutely outside the  
18 terms of reference, Chairperson.

19 **CHAIRPERSON:** I think the basis upon  
20 which the question is sought to be asked does fall within  
21 the terms of reference and I will allow the question to be  
22 asked. But it is to some extent a collateral matter, so I  
23 trust there won't be lengthy cross-examination on the  
24 point.

25 **MR BUDLENDER SC:** No, there will not be,

1 Chairperson. All I want to know is, is this, Brigadier; are you  
2 aware of any legal authority, which you have to take a video  
3 camera from a journalist, look at it, and if you wish to do  
4 so, then to delete the material on it?

5 **BRIGADIER CALITZ:** Mr Chairperson, I

6 referred to it as cooperation between the media and us.

7 At a later stage Captain Adriano talked to the

8 the media, and requested the

9 the media to see what is recorded and if

10 the media had anything, they would then not publish it

11 if it was sensitive information regarding the operation that would

12 follow. In this regards I am referring to the

13 cooperation between the media and the members in the

14 field.

15 **MR BUDLENDER SC:** With respect,

16 Brigadier, which is not really an answer to my question. Are

17 you aware of any legal – do you say that the media gave you

18 the legal right to do that? They said 'We do not mind if

19 you do this' or are you saying There is other legal

20 authority? I do not want to spend a long time on it. I

21 just want to be clear what you were relying on.

22 **BRIGADIER CALITZ:** Mr Chairperson,

23 no, I think my answer was very clear.

24 **MR BUDLENDER SC:** You say there was some

25 sort of contractual agreement between yourselves and the

1 media –

2 **MR SEMENYA SC:** Chairperson, I must register my

3 objection again.

4 **CHAIRPERSON:** I am afraid I did not

5 understand the answer. I understood the question to be

6 loosely – but let me take over. This is a collateral issue

7 relevant only in the very narrow confine as set out by Mr

8 Budlender. You were asked were you aware of any legal

9 authority that gave you the power to take someone's video

10 camera and if necessary record over it. I understood you

11 to say that you – you did not mention any legal authority

12 but I understood you to refer to some kind of cooperation

13 with the media. So were you relying on that?

14 **BRIGADIER CALITZ:** It is Correct,

15 it is indeed what I said, Mr Chairperson.

16 **CHAIRPERSON:** Well, I think that is the

17 point, then I think we can now move on, Mr Budlender.

18 **MR BUDLENDER SC:** I am happy to move on,

19 Chairperson. Thank you. Brigadier, if I understand your

20 evidence correctly, it is that the R5 rifles were not used

21 by POP members, they were used by TRT or NIU or STF. Am I

22 correct in understanding that?

23 **BRIGADIER CALITZ:** No, Mr

24 Chairperson, I did not give evidence to that. Your earlier question was

25 if the TRT, NIU and Special Forces were in possession of R5s,

1 and my reply were, yes.

2 **MR BUDLENDER SC:** Well, I think the

3 record will show otherwise, but I do not want to argue with

4 you about it. I just want to get the facts right. So do

5 the POP members carry R5 rifles?

6 **BRIGADIER CALITZ:** On this question, it is

7 correct, yes.

8 **MR BUDLENDER SC:** No, excuse me, it is not

9 for you to tell me what the correct question is.

10 **CHAIRPERSON:** No, he is given you an

11 answer; he says yes. Is that correct?

12 **BRIGADIER CALITZ:** Mr Chairperson, yes,

13 I wanted to say that the previous question you asked –

14 **CHAIRPERSON:** Let us not have an argument

15 now. Let us just question, answer –

16 **BRIGADIER CALITZ:** It is Correct, Mr

17 Chairperson.

18 **CHAIRPERSON:** Our task is difficult

19 enough as it is without – I am not criticising you, I am

20 giving you advice for the future. You have given the answer.

21 You say yes, they do. Is that right? The POP, they do

22 carry – I take it not all of them.

23 **BRIGADIER CALITZ:** No, Mr

24 Chairperson, one per section are issued with a

25 R5 –

1 **CHAIRPERSON:** Yes, how big is a section?

2 **BRIGADIER CALITZ:** Approximately eight people.

3 **CHAIRPERSON:** So roughly out of every

4 eight POP members, that is a section, there will be one with

5 an R5 rifle. Is that correct?

6 **BRIGADIER CALITZ:** It is Correct, Mr

7 Chairperson.

8 **CHAIRPERSON:** Thank you.

9 **MR BUDLENDER SC:** Do you know whether any

10 of the POP members were involved in shooting at the

11 strikers at scene 1?

12 **BRIGADIER CALITZ:** Mr Chairperson,

13 not at that stage, but currently I do have knowledge regarding it.

14 It is Correct.

15 **MR BUDLENDER SC:** Alright. Then we can

16 avoid troubling the Commissioners with a video, which shows

17 that happening. Right, now I want to go to a further

18 aspect of what you said at that meeting with your members.

19 Could we go to page 3, against the time 8:53, and if we can

20 just go to the second sentence on the, or the fourth

21 sentence on the third line, you say, "We tactically retreat

22 and you have to face the Nyala to get in there, so it is

23 right, your actions was completely right. By retreating

24 and going back to your safe haven, therefore we got over to

25 the second phase." And then at 9:20, "And that is where

1 the TRT and the NIU line were formed and when they become  
2 under attack, that is where the command was given by their  
3 commanders, as well as some of them act in self-defence.

4 Alright, so on that nothing, nothing, nothing was wrong.

5 Okay, you acted, it was justified," etcetera. Now you have

6 explained that you – let me just say, this seems to be a

7 reference to the events at scene 1. Would that be correct?

8 **BRIGADIER CALITZ:** Correct, Mr

9 Chairperson.

10 **MR BUDLENDER SC:** And it is common cause

11 that you did not actually see this yourself. This is what

12 you learned about it afterwards.

13 **BRIGADIER CALITZ:** It was two days after the incident.

14 That is how it was conveyed to me, correct Mr

15 Chairperson.

16 **MR BUDLENDER SC:** Now you say, "When they

17 become under attack, which is where the command was given by

18 their commanders, as well as some of them act in self-

19 defence." Now who told you that?

20 **BRIGADIER CALITZ:** Mr Chairperson,

21 It is die TRT "commanders" and what was discussed after

22 the incident. The "command"

23 portion, I already referred thereto in my evidence, and if I may refer

24 to the sentence, "That is where the command was

25 given by the commanders," you can clearly hear

1 the commanders of the sections groups shouting at the TRT

2 line, "Keep the basic line, keep the basic line."

3 I think we all heard it on the radio, and then the

4 following sentence says, "as well as them acted

5 in self-defence." It is where the members confirm that they

6 are acting in self-defence. It is –

7 **MR BUDLENDER SC:** I understand. So when

8 you say the command was given by the commanders, that

9 was not the command to shoot, that was the command to form

10 the TRT line?

11 **BRIGADIER CALITZ:** Mr Chairperson,

12 no commander can ever give the order to shoot, or to

13 take "lethal action". That order or command does not even

14 exist with the TRT –

15 **CHAIRPERSON:** What you are being asked is

16 what did you mean by saying the command was given by their

17 commanders, and I think what you are saying is – as Mr

18 Budlender suggests to you –

19 **BRIGADIER CALITZ:** It is Correct.

20 **CHAIRPERSON:** - it was, you were

21 referring to the command to form the basic line?

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **CHAIRPERSON:** You were not suggesting that

25 any commander gave a command to shoot, and you go on to say

1 in the rest of the sentence that insofar as shots were  
2 fired, they were fired by people acting in self-defence,  
3 and I take it you probably would have added private defence  
4 if you had been alert to the distinction. Is that correct?

5 **BRIGADIER CALITZ:** It is Correct, Mr  
6 Chairperson.

7 **MR BUDLENDER SC:** I just want to ask you  
8 about that as well. You say someone, you say the TRT  
9 commanders told you that some of them acted in self-  
10 defence. Are we to understand from that, that according to  
11 what you were told some of them did not act in self-  
12 defence? Somebody told you some of them acted in self-  
13 defence. What were you told about those others who did not  
14 act in self-defence?

15 **BRIGADIER CALITZ:** Mr Chairperson,  
16 my words, if I may explain.  
17 I say, "as well as some of them acted in self-  
18 defence." With that I meant that those that did take action  
19 and fired their weapons, did so,  
20 in "self-defence". I was informed that a lot of the  
21 TRT-members did not use weapons.  
22 I am therefore referring to those that did use their  
23 weapons.

24 **CHAIRPERSON:** So the reference to "some"  
25 was to those who fired, and the others, the rest, those not

1 covered by the word "some," they were the people who did not  
2 fire.

3 **BRIGADIER CALITZ:** It is Correct, Mr  
4 Chairperson.

5 **MR BUDLENDER SC:** Thank you. Now I just  
6 need to put to you that if we read this passage again, if  
7 we just read it from 9:20 and that is where the TRT line  
8 and the NIU line was formed, "and when they become under  
9 attack, that is where the command was given by their  
10 commanders, as well as some of them act in self-defence,  
11 alright. So on that, nothing, nothing, nothing was wrong.  
12 Okay, you acted, it was justified and that is the  
13 commitment and the cooperation that we are going to give to  
14 the people." I want to suggest to you that that statement,  
15 that "that was justified and that nothing, nothing, nothing  
16 was wrong," that is clearly a reference to the shootings in  
17 the context.

18 **BRIGADIER CALITZ:** It is Correct, Mr  
19 Chairperson. The TRT informed me that they acted in  
20 "self-defence."

21 **MR BUDLENDER SC:** And you felt  
22 comfortable to make that judgment to the members on the  
23 Saturday before they went out in a difficult operation,  
24 without the matter having been fully investigated?

25 **BRIGADIER CALITZ:** It is Correct, Mr

1 Chairperson, on the information I received and

2 what I observed, I was

3 content with my words. It is Correct, Mr

4 Chairperson.

5 **MR BUDLENDER SC:** Do you not think it

6 would have been better to say I am sure everyone acted with

7 the best of motives, maybe some people acted wrongly, maybe

8 some people acted rightly, that is a matter which the

9 commission will have to investigate?

10 **BRIGADIER CALITZ:** Mr Chairperson,

11 before we took a break, I referred to the words of the

12 President, "not time to blame," and I referred

13 to it in order to motivate my members. As the commander officer,

14 I used the words 'Maybe some of you acted

15 inappropriately', it would

16 be the wrong the attitude to have at that

17 stage. My work was to motivate my people,

18 that is why I said, with the current information I have,

19 they did not do wrong, and they must go back into the field,

20 and under difficult circumstances, give 100%

21 cooperation and execute my commands.

22 -

23 **MR BUDLENDER SC:** Alright, I am moving

24 now, Commissioners, on to a different topic. I would now

25 like to go to your statement, JJJ107, and could we go to

1 paragraph 150, and let us read it out. It says, "As later  
2 information reveals, the group of 200 to 300 armed strikers  
3 were in fact sleeping at what is now known as hill 3.  
4 Any cordon and search of the hostels and the settlement  
5 would have been fruitless. It must be remembered also that  
6 the idea was to give negotiation an opportunity to resolve  
7 the unrest." Now when, on which night did you say the  
8 strikers were sleeping at hill 3 – or 2 or 300 armed  
9 strikers were sleeping at hill 3? Do you say it was  
10 right through the events, or on the last night or after the  
11 shooting of the 16th of August?

12 **[11:58] BRIGADIER CALITZ:** Mr Chairperson, if  
13 I refer to the first part of my sentence, "As later  
14 information received," that was at Crime  
15 Intelligence. As the  
16 operational commander I was not aware of it, as I was  
17 at hill 1 and 2, busy executing my  
18 duties.

19 **MR BUDLENDER SC:** But, Brigadier, that  
20 was not the question, the question is, according to the  
21 information you were given on which nights were the  
22 strikers, or 2 or 300 strikers sleeping on hill 3?

23 **BRIGADIER CALITZ:** Mr Chairperson, I  
24 will have to look at the information I got from  
25 crime intelligence in Exhibit

1 L, the information that we got afterwards,

2 I cannot tell you at this instant, no.

3 **MR BUDLENDER SC:** So is there an

4 Intelligence report, which shows that, because we have not

5 been given it?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 no, I do not know of such a report. I told

8 you I came to hear of it and that is what I mentioned in

9 my statement.

10 **MR BUDLENDER SC:** No, you said you would

11 have to go back and look at it. What do you want to go

12 back and look at?

13 **BRIGADIER CALITZ:** Mr Chairperson, I

14 said I would go back and ask Crime

15 Intelligence what they reported at that stage,

16 either at Roots or at a normal meeting,

17 I do not recall what have been reported, I will have to

18 go and determine that.

19 **COMMISSIONER HEMRAJ:** But this statement,

20 Brigadier, is made in the context of the previous statement

21 which deals with the criticism as to why the cordon and

22 search operation was not conducted first. Does that

23 perhaps give you a time frame, the best time frame?

24 **BRIGADIER CALITZ:** Commissioner, yes, it

25 is, if you look at the paragraph, I mentioned it pertinently

1 that the search command we signed on the 16<sup>th</sup>, did  
2 not occur. It was not known to me at that stage,  
3 in another paragraph I said, it would  
4 have been fruitless,  
5 because negotiations was given a chance to  
6 serve the purpose it was supposed to do.

7 **MR BUDLENDER SC:** Brigadier, it does not  
8 seem to me terribly important but we are, well, I am  
9 puzzled by this, because as far as I am aware, I may be  
10 wrong and my learned friends will tell us if I am wrong, but  
11 as far as I am aware this is the first time we have seen any  
12 statement by any member of the Police Services, that people  
13 were sleeping on hill 3. It was not mentioned in the  
14 opening statement of the police, it was not mentioned in  
15 the presentation of 282 pages, it was not mentioned by  
16 General Annandale, it was not mentioned by General Mpmembe,  
17 it was not mentioned by Colonel Scott and it was not  
18 mentioned in any of the Crime Intelligence shots we have  
19 been, - Crime Intelligence reports we have been given.  
20 Well, I am told Colonel Scott mentioned it, if so  
21 I am wrong, we will go and check that, but I do not recall any  
22 such, - I recall, my recollection is that there was  
23 evidence that there were strikers sleeping on the hill  
24 after the events on the 16th of August, but we will check  
25 that and we will see what Colonel Scott says.

1 **BRIGADIER CALITZ:** I cannot help you

2 in that regard.

3 **MR BUDLENDER SC:** Yes, but you say your

4 information you got from Crime Intelligence.

5 **BRIGADIER CALITZ:** It is not in my statement,

6 my evidence was that I would ask Crime

7 Intelligence regarding the information at that

8 stage and the reporting thereof.

9 **MR BUDLENDER SC:** When I asked you where

10 you got the information I thought you said you got it from

11 Crime Intelligence, have I misunderstood?

12 **BRIGADIER CALITZ:** I think you

13 misunderstood, I will have to find out from them, normally

14 we get the information from them. It can be

15 through the observation post at the Task Force, it can be

16 through the Roots information, there is various possibilities,

17 Mr Chairperson.

18 **MR BUDLENDER SC:** Alright, thank you. I

19 now want to move onto GGG13, which is the first statement

20 which you made. Do you have it?

21 **BRIGADIER CALITZ:** Correct, Mr

22 Chairperson.

23 **MR BUDLENDER SC:** Now I would like you to

24 go to page 3, to paragraph 11, this is the first, - there

25 are several issues I would like to raise with you about

1 this, let us go to page 3, paragraph 11, the first issue,  
2 and you will see the third sentence on the fifth line,  
3 well, let us take it from the beginning. "On Thursday,  
4 2012/08/16 at about 7:30, we had a meeting in the JOC. We  
5 were informed by Major-General Annandale that the meeting  
6 between the generals and the respective NUM and AMCU  
7 leadership resulted in AMCU President giving us the  
8 assurance that the members will in all probability lay down  
9 their arms at 09:00 on 2012/08/16." Now this is the part  
10 that I want to ask you about. "Further information  
11 suggested as per feedback received, that the group gets  
12 more agitated and that they seek confrontation with SAPS."  
13 Now is that correct? Is that correct what you said there?

14 **BRIGADIER CALITZ:** Mr Chairperson,  
15 it was my statement under oath, so it is Correct.

16 **MR BUDLENDER SC:** I would like you to go  
17 to TT4, which are the minutes of that JOCCOM meeting.

18 Let us read what that says. This is, paragraph 2.1 is the  
19 Crime Intelligence. Lieutenant-Colonel Isaacs informed the  
20 meeting on the following, the first bullet, "that there are  
21 currently about 3,000 mineworkers that are gathered at the  
22 hill. Many of these mineworkers are in possession of  
23 dangerous weapons, spears, assegai and pangas. According  
24 to information received the group will decline to surrender  
25 these dangerous weapons to the police. Information also

1 indicates that the mineworkers will not leave the hill  
2 and are prepared to fight if their demands are not met,  
3 which includes resisting the police.”

4 Now can I suggest to you that that is quite  
5 different. That does not suggest that they are going to seek  
6 a confrontation with the police, it suggests that they are  
7 going to resist the police, if the police take some action  
8 against them. Would you like to comment on that?

9 **BRIGADIER CALITZ:** Mr Chairperson,  
10 yes, definitely. If I inform you that I am going to  
11 fight with you and resist, the fact that I  
12 said that to you is a  
13 confrontation. That is how I understand it in my language.

14 **MR BUDLENDER SC:** Do you not see any  
15 difference between seeking a confrontation and resisting  
16 when somebody comes towards you?

17 **BRIGADIER CALITZ:** Mr Chairperson,  
18 no, when you make threats that you are going to fight  
19 and resist, that is typically how  
20 a confrontation starts.

21 The words “fight and resist” to me  
22 indicated confrontation.

23 **MR BUDLENDER SC:** Their demands were  
24 demands which were addressed to Lonmin, not addressed to  
25 the SAPS.

1 **BRIGADIER CALITZ:** Where are you now, sorry?

2 -

3 **MR BUDLENDER SC:** I am saying to you that

4 the demands which the strikers were making were at their

5 heart a demand addressed at Lonmin, not a demand addressed

6 at the SAPS, is that not correct?

7 **BRIGADIER CALITZ:** It is Correct, yes, the

8 demands were given and the police had to convey the

9 message to the mine.

10 **MR BUDLENDER SC:** Yes, I am just putting

11 to you that there is a difference between seeking a

12 confrontation and resisting, you do not see the difference?

13 **BRIGADIER CALITZ:** No, Mr

14 Chairperson, not at all. As I mentioned, if we go

15 outside and you say to me, you will fight me and resist,

16 to me that means we will go into

17 a confrontation.

18 **MR BUDLENDER SC:** Alright, so you stand

19 by what is in paragraph 11 of that statement.

20 **BRIGADIER CALITZ:** I stand by what I said,

21 Mr Chairperson.

22 **CHAIRPERSON:** May I ask you a question

23 about this? You are talking in paragraph 11, as I

24 understand it, about what happened at the JOCCOM meeting

25 early in the morning, is that correct?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **CHAIRPERSON:** Now the sentence that

4 counsel has put to you, Mr Budlender has put to you, the

5 information suggested, etcetera, that sentence, that is

6 your summary, I take it of what you understood to be the

7 information received at that meeting, is that correct?

8 **BRIGADIER CALITZ:** It is Correct, Mr

9 Chairperson.

10 **CHAIRPERSON:** It is not based on anything

11 that happened later, it is based upon the information given

12 by Lieutenant-Colonel Isaacs, I think it was the

13 representative of the Crime Intelligence people at the

14 meeting, based upon your summary of what you understood him

15 to have said, is that correct?

16 **BRIGADIER CALITZ:** It is Correct, Mr

17 Chairperson.

18 **MR BUDLENDER SC:** I would like you to

19 keep that paragraph 11 with you and now go to your

20 consolidated statement, JJJ107, paragraph 75, do you have

21 it? There it says –

22 **BRIGADIER CALITZ:** I have it, Mr

23 Chairperson.

24 **MR BUDLENDER SC:** “In that meeting Crime

25 Intelligence reported that the strikers were not prepared

1 to disarm and will resist any attempt by the police to  
2 disarm them." So you did not repeat what was in your  
3 original, the words, which were used in your original  
4 statement, is that correct?

5 **BRIGADIER CALITZ:** No, Mr  
6 Chairperson, it is not a replay. The  
7 Chairperson asked me, was  
8 paragraph 11 my conclusion or a statement made by Crime  
9 Intelligence – I refer to the  
10 paragraph, "In that meeting Crime Intelligence reported,"  
11 I use the words mentioned by  
12 Crime Intelligence. It differs from paragraph 11,  
13 which is a conclusion, or my own words.

14 **MR BUDLENDER SC:** What I want to know is,  
15 why did you change the account of it which you gave in the  
16 original statements to the version, the account which you  
17 gave in paragraph 75, if there was no difference between  
18 them?

19 **BRIGADIER CALITZ:** Mr Chairperson,  
20 nothing was changed. Paragraph 11 was done  
21 two or three days after the incident, when  
22 I made the statement for the purpose of the dossier.  
23 There would be a confrontation, that was my  
24 conclusion. This statement was done for the  
25 Commission, recently, and in my statement

1 I did say Crime  
2 Intelligence reported to me, and I did not  
3 come to my own conclusions, like in paragraph 11.  
4 **MR BUDLENDER SC:** That is what I want to  
5 know, I am asking you, why, why, you say in the original  
6 statement you referred to your own conclusions  
7 from the information, which you received from Crime  
8 Intelligence and then in paragraph 75 you did not say it in  
9 the same terms. If there is no difference why did you  
10 change it?

11 **BRIGADIER CALITZ:** Mr Chairperson,  
12 I see no change; your question to me was,  
13 paragraph 11, was it my interpretation on what was said to me,  
14 and I said, yes, and here is pertinently refer to  
15 what Crime Intelligence conveyed to us.

16 **MR BUDLENDER SC:** Can you see if there is  
17 a difference?

18 **CHAIRPERSON:** Sorry, you have answered  
19 counsel's question let him answer mine.

20 **MR BUDLENDER SC:** Can you see that the  
21 words used in the two statements are different?

22 **BRIGADIER CALITZ:** This one says  
23 confrontation, if that is what you refer to, and the other one  
24 says, "disarm, resist," etcetera –

25 **MR BUDLENDER SC:** The one say, sorry, but

1 the one says they will seek confrontation and the other  
2 says they will resist any attempt by the police to disarm  
3 them. You can see that that was changed.

4 **BRIGADIER CALITZ:** If I can

5 read paragraph 11,

6 after, "They will in all probability lay down arms," the

7 words say, "Further information suggested as per feedback

8 received that the group gets more agitated and they seek

9 confrontation with the SAPS." It is paragraph 11, "as per

10 feedback received," the more agitated the negotiation group

11 group was and other information came in. Here I did not quote

12 Crime Intelligence, that may be the difference, or

13 something you do not see. In paragraph

14 75 I do say, "The meeting with Crime Intelligence

15 reported," here we specifically referred to what Crime

16 Intelligence informed us, so if that is the difference

17 you are referring to, yes, but I did not quote Crime Intelligence

18 paragraph 11, as suggested.

19 **CHAIRPERSON:** Sorry, if I can ask a

20 couple of questions on the point, in the earlier statement,

21 I think you said you were giving your account of what

22 happened at the JOCCOM meeting in the morning, the early

23 morning of the 16<sup>th</sup>.

24 **BRIGADIER CALITZ:** Correct, Mr

25 Chairperson.

1 **CHAIRPERSON:** And the information  
2 received about the likely behaviour of the strikers was of  
3 course from Crime Intelligence. So it does sound as if you  
4 were summarising, I think you said that, summarising what  
5 you understood and remembered what Crime Intelligence had  
6 said. Now I must tell you there does appear to be a  
7 difference, I am not sure if it is a material difference.  
8 Confrontation by the strikers presupposes, I would have  
9 thought, some kind of proactive action by the strikers.  
10 They take the initiative, they come up and confront the  
11 police. Resisting attempts to disarm is more a reaction on  
12 the part of the strikers, so there is a difference, but I am  
13 not sure where it takes us because I suspect and I want to  
14 ask you, just to see if my suspicion is correct, I suspect  
15 that paragraph 75 of your latest statement was based upon  
16 looking at the minutes of the meeting, is that right?

17 **BRIGADIER CALITZ:** Correct, Mr

18 Chairperson, if I -

19 **CHAIRPERSON:** So what you were doing in  
20 75, you were trying to state as accurately as you could,  
21 what Crime Intelligence have said and the source you looked  
22 at to get the information was the minutes, is that right?

23 **BRIGADIER CALITZ:** Correct, Mr

24 Chairperson.

25 **CHAIRPERSON:** So you may have got it

1 slightly wrong in your earlier statement and you may have  
2 remembered more than actually was said, but here, at 75,  
3 you are stuck to what the minutes said they said and that is  
4 what you did, is that correct?

5 **BRIGADIER CALITZ:** Correct, Mr

6 Chairperson, if I may add a word, you mentioned the

7 word "resist," I just want to add the word,

8 fight"; "fight if their demands are not met,"

9 the word "fight" means there will be definite action

10 from their side toward us, to me it indicates

11 confrontation from their side towards us,

12 as the Crime Intelligence report indicated

13 that morning.

14 **MR BUDLENDER SC:** Well, I do not think

15 that is what the Crime Intelligence report said, that they

16 were going to go out and fight with you. I may be wrong,

17 but shall we have a look at the Crime Intelligence report?

18 **BRIGADIER CALITZ:** Mr Chairperson, -

19 **MR BUDLENDER SC:** I do not want to go on

20 with this issue forever, it seems to me it is a small point

21 but if you say the Crime Intelligence told you that they

22 were going to seek a fight -

23 **BRIGADIER CALITZ:** Mr Chairperson, -

24 **MR BUDLENDER SC:** Is that your answer?

25 **CHAIRPERSON:** Let us look at it quickly

1 and deal with the matter as quickly as we can?

2 **MR BUDLENDER SC:** Could we look at TT5?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 if I may assist, TT4, which you referred to, the last sentence,

5 "The information indicates that the

6 mineworkers will not leave the hill and are prepared to

7 fight if their demands are not met, which includes

8 resisting the police." The word "fight" is used

9 and in paragraph 2.1, next to it the

10 word "Crime Intelligence appears." That means their

11 input in the meeting of the morning.

12 **CHAIRPERSON:** Yes, fight could include

13 proactive action by the strikers, you know, so I think we

14 should possibly, probably move on, Mr Budlender.

15 **MR BUDLENDER SC:** The Crime Intelligence

16 report speaks for itself, Chairperson; I am not going to go there.

17 **BRIGADIER CALITZ:** It is indeed so,

18 Mr Chairperson.

19 **MR BUDLENDER SC:** Then the next issue I

20 would like you to clarify on that statement is in paragraph

21 18 –

22 **CHAIRPERSON:** Are you back at GGG13, are

23 you?

24 **MR BUDLENDER SC:** Yes, I am, Chairperson.

25 **CHAIRPERSON:** Have you finished with 11

1 or are you going to come back to it later?

2 **MR BUDLENDER SC:** Can I just check,

3 Chairperson? No, I was not planning to come back to it.

4 **CHAIRPERSON:** Alright. Well, perhaps I

5 can ask a question now while I remember it. You have

6 paragraph 11 of GGG13 in front of you, is it not?

7 **BRIGADIER CALITZ:** Correct, Mr

8 Chairperson.

9 **CHAIRPERSON:** Alright, I think the

10 sensible thing to do is to read it and then take it

11 further. After the sentence that is, being debated which

12 begins with "Further information suggested that the group

13 gets more agitated," after that sentence, "A decision was

14 taken we must have a contingency to be in a position that

15 should the call from the AMCU President to lay down arms

16 has failed, if SAPS be in a position to disperse the crowd

17 and to disarm smaller groups and to effect arrests," that is

18 a reference to phase 3, I think, that if they do not lay

19 down their arms, if the AMCU President's call to them to do

20 so does not succeed, then the police must be ready to

21 proceed to phase 3, I think that is correct, isn't it?

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson, it includes phase 2.

24 **CHAIRPERSON:** Alright –

25 **BRIGADIER CALITZ:** The position portion.

1 **CHAIRPERSON:** Yes, yes, yes, phase 2 and

2 3.

3 **BRIGADIER CALITZ:** Correct, Mr

4 Chairperson.

5 **CHAIRPERSON:** Then you go on, "We were

6 given an operational overview of possible deployment of

7 SAPS members at the hill." I think the evidence is, or

8 certainly the minutes seem to indicate and even the rough

9 notes, the contemporaneous notes seem to indicate that

10 Colonel Scott set out, he only spoke about phase 2 as far

11 as I can recall, -

12 **BRIGADIER CALITZ:** It is Correct, Mr

13 Chairperson.

14 **CHAIRPERSON:** And there was going to be

15 later information about phase 3 if and when the need arose,

16 that is more or less correct, is it not?

17 **BRIGADIER CALITZ:** Phase 3 would have,

18 been communicated to us on a

19 later stage.

20 **CHAIRPERSON:** Yes, okay. Then it goes on,

21 "We also decided that razor wire trailer should be

22 positioned for later deployment in order to be used as a

23 force continuum as part of a show force and to protect our

24 forces." Now I take it that refers to two aspects, firstly

25 the putting of the Nyalas with the trailers in position and

1 when you moved over to protecting the, - the sentence goes

2 on, "It talked about protecting our forces," that I take it

3 refers to the actual uncoiling of the wire, is that right?

4 Is that correct?

5 **[12:18] BRIGADIER CALITZ:** Correct, Mr

6 Chairperson.

7 **CHAIRPERSON:** Right. Now the next

8 sentence, "should there be an attack it will put SAPS in a

9 position to delay the advancing group and the SAPS to

10 deploy less than lethal methods." That, I must tell you

11 creates an impression that you foresaw that when the wire

12 was uncoiled the strikers might attack the police.

13 **BRIGADIER CALITZ:** Mr Chairperson, I

14 think I referred to it in my consolidated statement,

15 the two differences,

16 if we rolled out the wire and gave the instruction to

17 disperse, we did anticipate

18 resistance or an attack.

19 **CHAIRPERSON:** So you thought they might

20 attack you if the dispersal and disarming operation

21 started?

22 **BRIGADIER CALITZ:** It is Correct, Mr

23 Chairperson.

24 **CHAIRPERSON:** But you did not think they

25 might attack you before that actually started, when they

1 could see you meant business of some kind and the wire  
2 were not totally uncoiled. You did not think at all that they  
3 might attack at that stage?

4 **BRIGADIER CALITZ:** Mr Chairperson, u

5 is Correct. It was discussed, but not anticipated at that  
6 stage, no.

7 **CHAIRPERSON:** I see.

8 **BRIGADIER CALITZ:** Thank you, Mr  
9 Chairperson.

10 **MR BUDLENDER SC:** Then, Brigadier, could  
11 we go to paragraph 13 of your first statement, GGG13. My  
12 apologies, not paragraph 13, paragraph 18. Do you have it?

13 **BRIGADIER CALITZ:** I have it, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** There you say "later I  
16 were informed that several of the attacking men were killed.

17 As we were advancing towards the crowd in the Nyala  
18 vehicles I instructed the members to disembark the vehicles

19 and to affect arrests on the men who were part of the  
20 crowd. I later found the arrested suspects at a nearby

21 hill where Major-General Naidoo was in command". Now is  
22 that correct that Major-General Naidoo was in command at

23 hill 3? I take it, sorry let me take a step back. I

24 take it the nearby hill is hill 3?

25 **BRIGADIER CALITZ:** I referred to

1 hill 3. Correct.

2 **MR BUDLENDER SC:** Was Major General

3 Naidoo in command at hill 3?

4 **BRIGADIER CALITZ:** Not according to the

5 plan, Mr Chairperson. However, I did find him there

6 on my arrival at hill 3; he was the most senior person and therefore took

7 command at hill 3.

8 **MR BUDLENDER SC:** Yes. I think you said

9 in your evidence-in-chief you in fact had not expected to

10 find him at hill 3 when you got there?

11 **BRIGADIER CALITZ:** Correct, Mr

12 Chairperson.

13 **CHAIRPERSON:** You mean he was, I take it

14 you mean he was factually in command, he was not just

15 standing there with his arm folded as a spectator, he was

16 functioning as the person in command when you arrived

17 there, is that correct, is that what you mean?

18 **BRIGADIER CALITZ:** Correct, Mr

19 Chairperson. He had the people of forward holding area 1

20 with him, the detective and the crime scene

21 managers, they were under his command and

22 busy at the scene.

23 **MR BUDLENDER SC:** That perhaps to avoid

24 any confusion, that was not mentioned in your final

25 statement, you do not refer to him being in command there.

1 There is no particular reason for that I assume?

2 **BRIGADIER CALITZ:** No, I have no knowledge of that,

3 I have to read it, I cannot recall

4 mentioning it, or leaving it out.

5 **MR BUDLENDER SC:** I do not think it is a

6 critical issue. Now I want to then turn to the third issue

7 arising out of these statements. Out of this statement the

8 GGG13 and I would like you to look at paragraph 17 on page 5

9 and you say "a group of members were also outside the

10 Nyalas. As the group of armed men –

11 **CHAIRPERSON:** I am sorry, Mr Budlender, I

12 think it would be helpful to everybody if we looked at the

13 previous sentence, the previous paragraph just to get the

14 context of this, because you have gone back now from the

15 previous, from paragraph 18, I think. We are now moving at

16 17, I think It is important for us to know where in the, in

17 the events of the afternoon what is described in paragraph 17

18 took place, I think. We will get that I think by looking at

19 16, will we not.

20 **MR BUDLENDER SC:** Thank you, Chairperson. So

21 at 16, paragraph 16 you say "that at about 15:40 the first

22 of the barbed wire were deployed." At the same time,

23 Chairperson, would you like me to read the whole thing out?

24 **CHAIRPERSON:** I think it might be helpful

25 to us.

1 **MR BUDLENDER SC:** "At the same time the  
2 person with the green blanket approached us, he was very  
3 aggressive and again said that we will die and that he is  
4 not returning again. While we were busy deploying the  
5 barbed wire the whole group, those that were on the ground  
6 and those on the hill moved in their identified  
7 formation. Bended closer to each with the leaders to the  
8 front towards the SAPS. The group moved in a closed  
9 formation directly to the last Nyala with the barbed wire  
10 trailer, not yet deployed. All the men were aggressive and  
11 were chanting as they moved towards the Nyala. I then  
12 informed the driver of the Nyala over the radio to close  
13 the doors" and then that provides the context for the  
14 passage which I was reading, where you then say, paragraph  
15 17 "a group of members were also outside the Nyala. As the  
16 group of armed men advanced towards the SAPS members the  
17 SAPS members got into the Nyala and the group attacked them  
18 moving in the direction of the cattle kraal. The plan to  
19 disperse turned into defensive actions in an attempt to  
20 preserve life. The group advanced towards members of POP  
21 and SAPS responded by spraying the group with the water  
22 cannons, stun grenades were thrown as well tear gas in an  
23 attempt to disperse the crowd. Some SAPS members fired  
24 rubber bullets at the crowd but they continued advancing  
25 towards the SAPS members. We then moved with the Nyala

1 vehicles in the direction of the cattle kraal in an attempt  
2 to block and divide the crowd and to disperse them into  
3 smaller groups in order to disarm and arrest them” and then  
4 the next paragraph you say “later I was informed that  
5 several of the attacking men were killed, as we were  
6 advancing towards the crowd in the Nyala vehicles, I  
7 instructed the members to disembark the vehicles and to  
8 affect arrests on the men who were part of the crowd. I  
9 later found the arrested suspects at a nearby hill where  
10 Major-General Naidoo was in command.”

11 **CHAIRPERSON:** Can I stop you, perhaps we  
12 can take a comfort break at this point but I just want to  
13 put something, make sure I understand. It looks to me as  
14 if 16 and 17 deal with what happened at scene 1 and deal  
15 effectively what happened before the shooting, right.

16 **BRIGADIER CALITZ:** Correct.

17 **CHAIRPERSON:** Is that right.

18 **BRIGADIER CALITZ:** Correct, Mr

19 Chairperson.

20 **CHAIRPERSON:** And then that is only on 16

21 but 17 as well. Then 18 jumps a bit because later I was

22 informed that several of the attacking men were killed.

23 Now we know that that is a reference to what you heard

24 about 16:47, I think, from Major-General Annandale, is that

25 correct?

1 **BRIGADIER CALITZ:** It was at hill 3,

2 paragraph 18, Correct, Mr Chairperson.

3 **CHAIRPERSON:** Yes and what then, you were

4 then continuing to narrate what happened after General

5 Annandale gave you that information at 16:47 is that right?

6 **BRIGADIER CALITZ:** Mr Chairperson, yes,

7 I think 18 is a summary.

8 **CHAIRPERSON:** Yes, yes, yes. So 17

9 effectively, if we were to write a time next to 17 I

10 presume we would write a time just before the actual

11 shooting incident at, Mr Budlender, 15:53?

12 **MR BUDLENDER SC:** 15:53.

13 **CHAIRPERSON:** 15:53, so it was before

14 that.

15 **BRIGADIER CALITZ:** Incident 1 and incident

16 2, if we -

17 **CHAIRPERSON:** Yes, yes, yes. So It is

18 before 15:50 because it had not happened yet.

19 **BRIGADIER CALITZ:** Correct.

20 **CHAIRPERSON:** And then if we were to

21 write it, a time note next to 18 we would write I take it

22 something like 16:47 would actually be your receiving

23 information that several of the attacking men were killed

24 and the rest of the, of what is in 18 would be what

25 happened thereafter, is that correct?

1 **BRIGADIER CALITZ:** No, Mr

2 Chairperson, if I may just -

3 **CHAIRPERSON:** Is that not right, okay

4 well let us clear that up before we take the adjournment.

5 **BRIGADIER CALITZ:** If I may just

6 assist -

7 **CHAIRPERSON:** We would be more comfortable if

8 you clear it up first.

9 **BRIGADIER CALITZ:** Sorry, Mr

10 Chairperson, after the first sentence, "later I was informed of

11 several attacking men," it was indeed, 16:47, the, "as we

12 were advancing towards the crowds with the Nyala vehicles,"

13 it was, as I explained, when we came from hill 2,

14 we regrouped, and followed up with

15 the arrests and the orders

16 I have to the members in the

17 Nyalas, are the different follow up actions.

18 **CHAIRPERSON:** But that is all after 16:47?

19 **BRIGADIER CALITZ:** No, no, Mr

20 Chairperson, 16:47 was the last incident.

21 **CHAIRPERSON:** I thought 16:47 was when

22 General Annandale told you that people had been killed, oh

23 I see, you say -

24 **BRIGADIER CALITZ:** It was -

25 **CHAIRPERSON:** These things that you

1 describe from as we were advancing -

2 **BRIGADIER CALITZ:** Between hill 2 and

3 hill 3.

4 **CHAIRPERSON:** What time would you, if you

5 were asked to write down a time estimate as to when that

6 happened, what would you tell us? What would you write?

7 **BRIGADIER CALITZ:** Mr Chairperson, if

8 I may, "as we were advancing towards the crowd," it

9 would be after the 7 tot 9 minute that we were standing static

10 at hill 2, where we waited for the persons to

11 come. I do not have a timeline -

12 **CHAIRPERSON:** This is the dry riverbed?

13 **BRIGADIER CALITZ:** Yes, It is Correct, Mr

14 Chairperson. From there -

15 **CHAIRPERSON:** Okay, I see.

16 **BRIGADIER CALITZ:** It is that

17 timeline.

18 **CHAIRPERSON:** For those who know all

19 about the time, the time line will tell us what that time

20 is. But we will take the comfort break and during that time

21 they can get that information for us.

22 **BRIGADIER CALITZ:** Correct, Mr

23 Chairperson.

24 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

25 **[12:42] CHAIRPERSON:** The Commission resumes.

1 Now, we have sorted out that little timing problem.

2 Brigadier, I remind you, you are still under oath.

3 **BRIGADIER CALITZ:** Still under oath.

4 **CHAIRPERSON:** Mr Budlender.

5 **MR BUDLENDER SC:** Chairperson, perhaps before

6 we get to that, can I just deal with one matter raised by

7 Commissioner Hemraj about the, and by you, Chairperson, also,

8 about the statement by Brigadier Pretorius. The position

9 is that the latest statement we have, latest signed

10 statement we have from Brigadier Pretorius is dated August

11 2013. It is an exhibit, it is JJJ187A. We do not yet have a

12 further statement arising from the examination of the cell

13 phone records, and perhaps I can just read for the sake of

14 convenience what she says about the IPID contact. This may

15 be helpful now.

16 **CHAIRPERSON:** Before you do that, let me

17 check with Mr Semanya, because Mr Semanya indicated a point

18 of principle really in respect of this kind of information,

19 but if he does not mind your reading it then obviously – no,

20 sorry, is it actually in the exhibits? Oh, sorry, I beg

21 your pardon. What you are reading is from the exhibit, so

22 the point I raise – I thought this was some extra

23 information you got from her since.

24 **COMMISSIONER HEMRAJ:** She deals in her

25 statement, as I recall, with having made contact with IPID,

1 reporting the deaths. Is that not so?

2 **MR BUDLENDER SC:** That is absolutely

3 correct, Commissioner.

4 **COMMISSIONER HEMRAJ:** But no reference to

5 the actual telephone, the contents of the telephone calls –

6 **MR BUDLENDER SC:** No, perhaps I can

7 read –

8 **COMMISSIONER HEMRAJ:** Yes.

9 **MR BUDLENDER SC:** Commissioner, you are

10 correct. She says paragraph 33 of her statement, I do not

11 think it is necessary to call it up, she says, "After I

12 received the report of casualties, I phoned Mr Molatsedi,

13 the acting Provincial Head of IPID, to inform him about the

14 incident. I am not sure about the time of this call. His

15 phone was on voicemail, but he later phoned me back and

16 promised to send Mr Motaung of the IPID office at

17 Rustenburg to attend to the scene," and then she goes on.

18 That would seem, although she refers to phoning and leaving

19 a message on the phone, it seems that it was in fact an

20 SMS, because she sent an SMS to him at 16:03, and that

21 presumably is the, that SMS one presumes corresponds with

22 what she says about phoning him. We have not found any

23 record of a phone call from her to him.

24 **CHAIRPERSON:** You understand the point,

25 Brigadier; what appears from this is that Brigadier

1 Pretorius in the JOC knew – what time was it? 16:03?

2 **MR BUDLENDER SC:** 16:03, Chairperson.

3 **CHAIRPERSON:** 16:03, she knew that there

4 were people killed, which is why she immediately contacted

5 IPID and one matter obviously we will have to investigate, I

6 hope without spending too much time on it, is how come the

7 people in the JOC knew at that stage, but you did not, and

8 you only knew substantially later. Anyway, I do not

9 think we need – unless Mr Budlender wants to take it

10 further, I do not think we need take it further now.

11 **BRIGADIER CALITZ:** Thank you, Mr

12 Chairperson

13 **CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):**

14 Right, Brigadier, and then we are now at paragraphs 17 and 18

15 of –

16 **CHAIRPERSON:** [Microphone off, inaudible]

17 I thought about it during the comfort break and I ask – not

18 to do with these paragraphs, it relates to something else.

19 It would appear from the mobile telephone information we have

20 been given that during the relevant time, you know from

21 round about 4 o'clock onwards to about 10 to 5, you were not

22 actually using your cell phone, your mobile phone at all.

23 Is that right?

24 **BRIGADIER CALITZ:** I can refer to my

25 records, but I do not think so –

1 **CHAIRPERSON:** Yes, well according to that

2 record, according to what we have, you were not.

3 **BRIGADIER CALITZ:** I do not believe I used it,

4 no.

5 **CHAIRPERSON:** It is the election. There

6 may be others, but as far as we can see, you did not, but if

7 I am wrong I will be corrected. So that means that your

8 mobile phone would not have been engaged. So if somebody

9 tried to get hold of you, would not have failed to get hold

10 of you because it was engaged.

11 **BRIGADIER CALITZ:** Oh, yes. No, no, no, I

12 understand. No, Sir, It is so.

13 **CHAIRPERSON:** Am I right?

14 **BRIGADIER CALITZ:** I agree with you,

15 Mr Chairperson.

16 **CHAIRPERSON:** Right, so the only reason

17 why they could not get hold of you, if they tried to get

18 hold of you – remember, because you do not know if they did.

19 They say they did, but we do not know whether that is true.

20 The only reason why they would not have been able to get

21 hold of you on your mobile phone would be that you were in

22 an area where the network facility was not available. I

23 do not know what the correct word is, but you know what I

24 mean. Very often when one drives a motor car and you go

25 around bends there are places where you have network

1 connectivity and other places where you suddenly lose it.

2 So I take it is a fair inference therefore that if people

3 tried to get hold of you and failed, it would have been

4 because where you were was a place where there was no

5 network connectivity. The other explanation that the phone

6 was engaged does not apply. That is correct, is it not?

7 **BRIGADIER CALITZ:** It is possible,

8 Mr Chairperson.

9 **CHAIRPERSON:** Are there any other –

10 **BRIGADIER CALITZ:** I agree with you,

11 Mr Chairperson.

12 **CHAIRPERSON:** There is no other

13 possibility. It is one or the other, and your phone was not

14 engaged, so it had to be, if they did phone – I mean you

15 do not know whether they did. Now while we are on that,

16 another point has been suggested to me, which I must deal

17 with. If your phone was not engaged and there was not a

18 network connectivity problem and someone had phoned or

19 tried to get hold of you, and then your phone might have rung

20 but because you were busy doing other things and there was

21 a lot of noise and activity going on, you might not have

22 realised it, but then later on you would have seen a missed

23 call. That is right, is it not?

24 **BRIGADIER CALITZ:** It is possible.

25 **CHAIRPERSON:** Well, I mean I am not

1 interested in possibilities. It is - so, is it not?

2 **BRIGADIER CALITZ:** If they phoned

3 I would have had a "missed call" on my phone.

4 **CHAIRPERSON:** Yes, that is the point.

5 **BRIGADIER CALITZ:** I cannot

6 recall that -

7 **CHAIRPERSON:** No, but I assume also -

8 well, I must not put it as strongly as that. Would it be

9 fair to assume that if later when all the trouble was over

10 you had looked at your phone and seen missed calls, you would

11 have noticed that and you, I imagine in all probability

12 might even have got hold of the people who tried to get

13 hold of you. Is that fair?

14 **BRIGADIER CALITZ:** It is "fair."

15 **CHAIRPERSON:** Yes, okay. Thank you.

16 **COMMISSIONER HEMRAJ:** Mr Budlender, there

17 was some evidence about the JOC trying to get hold of

18 various persons and that is when this whole issue of missed

19 calls being placed came up. I just cannot place my finger

20 on exactly where it was.

21 **MR BUDLENDER SC:** I cannot do better than

22 you, Commissioner.

23 **COMMISSIONER HEMRAJ:** But I will find it.

24 **MR BUDLENDER SC:** Of that I have no

25 doubt. Right, now Brigadier, we are then at your first

1 statement –

2 **CHAIRPERSON:** Can I just make one comment

3 before you carry on? I take it, it should be possible to

4 ascertain from the places where he said he was whether

5 there would be network connectivity at those places.

6 That is correct, is it? I am not an expert on mobile phones,

7 but I am asking you, is that so or not?

8 **MR BUDLENDER SC:** I assume so, Chairperson.

9 Perhaps with the help, if –

10 **CHAIRPERSON:** But anyway, this is a

11 matter that could possibly be looked into, unless it is a

12 “deceive” and a waste of time, but I mention it because

13 it arose following on various little bits of evidence that

14 he gave, and if there is no substance in the point then

15 obviously I would be grateful if I was told that, and if there

16 is some substance I would be grateful if the necessary

17 examinations and tests could be done.

18 **MR BUDLENDER SC:** We could certainly test

19 it, Chairperson. There is a difficulty I think, as Mr Semenya

20 remarked to me in passing as this was going on, that cell

21 phone networks, or connectivity is not always consistent.

22 Sometimes it comes and goes, so one would have to be

23 cautious about drawing any –

24 **CHAIRPERSON:** Well, I take it enquiries

25 could be made of the mobile phone companies who could tell

1 us, but if the answer is it comes and goes and you cannot  
2 test on Saturday whether there was connectivity at a place  
3 on Tuesday, if the answer is you cannot do that, well then  
4 the point I have raised is without substance.

5 **MR BUDLENDER SC:** Brigadier, we have read  
6 paragraphs 17 and 18 of your statement, GGG13. The only  
7 reference to shooting, or to killing of the protesters or  
8 strikers is the first sentence of paragraph 18. Correct?

9 **BRIGADIER CALITZ:** Correct, Mr  
10 Chairperson. It was the time, 16:47 that the Chairperson  
11 asked about.

12 **MR BUDLENDER SC:** Now of course when you  
13 arrived at the nearby hill, hill 3, you found that  
14 other people had also been killed. Is that correct?

15 **BRIGADIER CALITZ:** Correct, Mr  
16 Chairperson. The fourth sentence, in that  
17 paragraph, according to my statement I arrive at the hill, at, 16:55.

18 The sentences in between, which the  
19 Chairperson queried, was between hill 2 and 3.

20 **MR BUDLENDER SC:** And then at the end,  
21 the last sentence of paragraph 18 you say, "Later I was  
22 informed that 34 men that was part of the crowd  
23 were killed and that the others who were wounded were  
24 transported by ambulance to various hospitals in North West  
25 and Gauteng." You see that?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **MR BUDLENDER SC:** Now what puzzles me

4 about this is a person reading this would think there was

5 only incident at which people were killed. Can you see why

6 I think that?

7 **BRIGADIER CALITZ:** I already testified

8 that it was a summary of my statement, but it is

9 possible for you to make that conclusion.

10 **MR BUDLENDER SC:** Well, you did not say

11 there were two separate incidents in which people were

12 killed. It creates the impression there was one incident.

13 **BRIGADIER CALITZ:** I think if one reads from

14 paragraphs 16 to 18, one will see it talks about

15 different incidents and you will see at the end of

16 paragraph 17, I talk about,

17 "When we moved the Nyalas from the direction of the cattle

18 kraal and attempt to block/divide the group to disperse

19 them," I referred to an incident "Later I was

20 informed." According to me, it is a summary of

21 different stages and not one specific

22 place, no.

23 **MR BUDLENDER SC:** All I am suggesting to

24 you, Brigadier, is that anyone reading the statement,

25 taking it at face value, would think that there was only

1 one scene at which people were killed. Is there any  
2 suggestion in the statement that people were killed at a  
3 second scene?

4 **BRIGADIER CALITZ:** I have not referred to  
5 scene 1 or 2 in my statement, no  
6 Mr Chairperson.

7 **MR BUDLENDER SC:** Is there any  
8 suggestion, Brigadier, that – you have told us that the first  
9 sentence refers to what you were told by General Annandale;  
10 that is scene 1. Is there any suggestion anywhere in the  
11 statement where people were also killed at another scene?

12 **BRIGADIER CALITZ:** Mr Chairperson,  
13 Just where I referred to it. I was later informed of the  
14 34 people. It is the only two places I refer to it,  
15 not in scene 1 or  
16 scene 2 of my statement, no.

17 **MR BUDLENDER SC:** Brigadier, we will make  
18 quicker progress because I think we are not in dispute that  
19 you agree that There is nothing in the statement which  
20 suggests that there were two separate scenes at which  
21 people were killed. You agree with that?

22 **BRIGADIER CALITZ:** Mr Chairperson,  
23 I do not know if I express myself incorrectly.  
24 I did not refer to scene 1, nor scene 2, but  
25 my statement summarised what happened at

1 each scene –

2 **CHAIRPERSON:** I do not know, with respect,

3 if that is quite right, but maybe I am misunderstanding you

4 so I must – let us go through it together. I understood you

5 to say earlier that 17 deals essentially with, I think you

6 said incidents 2 and 3, deals with the cattle kraal and

7 round about scene 1. Is that right?

8 **BRIGADIER CALITZ:** Correct, Mr

9 Chairperson.

10 **CHAIRPERSON:** And 17 then ends at the,

11 effectively – more or less actually does before the

12 shooting happens I think, because remember you were around

13 the corner from the kraal, you gave instructions that they

14 must use the Nyalas to disperse the people, and then you

15 went off in another direction. You remember that evidence.

16 Now that is all –

17 **BRIGADIER CALITZ:** Correct, Mr

18 Chairperson.

19 **CHAIRPERSON:** That was actually I think

20 just before the shooting took place.

21 **BRIGADIER CALITZ:** Correct, Mr

22 Chairperson.

23 **CHAIRPERSON:** That is right. Then 18

24 starts off by telling us what you heard at 16:47, which is

25 what General Annandale told you, and then you talk about,

1 "As we were advancing towards the crowd," and you remember  
2 the – in fact we omitted to ask, we were going to be told  
3 by someone what the timeline tells us about that sentence  
4 beginning "As we were advancing towards the crowd," but it  
5 was actually after scene 2 as well, as far as I remember,  
6 where you were more or less at the riverbed at that point,  
7 were not you? Yes, that is right. Alright, then you are  
8 advancing towards the crowd and you instructed the members  
9 to disembark and affect arrests on the men who were part of  
10 the crowd, and then you went to the nearby hill after  
11 some time, later, and you tell us you found arrested  
12 suspects there and General Naidoo factually in charge of  
13 what was going on. That is right?

14 **BRIGADIER CALITZ:** Correct.

15 **CHAIRPERSON:** And then you talk about how  
16 the people had been told to lie on the ground and the  
17 Canters came and so forth. But when you got there to the  
18 place where General Naidoo was in charge, to what you call  
19 the nearby hill, were there dead bodies there as well?

20 **BRIGADIER CALITZ:** On hill 3?

21 **CHAIRPERSON:** Yes.

22 **BRIGADIER CALITZ:** It is Correct, Mr  
23 Chairperson.

24 **CHAIRPERSON:** But you do not mention that  
25 in the statement. I do not want to be critical, but I am

1 just –

2 **BRIGADIER CALITZ:** No, not at all. I did

3 not refer to that, no.

4 **CHAIRPERSON:** You did not mention that,

5 and so the ordinary person who reads your statement

6 would not realise that there were people who were killed at

7 hill 3 because you do not mention any dead bodies there.

8 What you do mention of course is this incident near, just

9 before scene 1 happened, in the previous paragraph, and

10 then you talk about several people were killed, and then

11 later on - you do not give the number, and then later on you

12 give us the information you received by way of a summary

13 about the 34. Right?

14 **BRIGADIER CALITZ:** Correct.

15 **CHAIRPERSON:** So it does seem as if the

16 point Mr Budlender has put to you is right, that the

17 ordinary reader of this statement would not realise that

18 there were two killing scenes and would be under the

19 impression that there was only one because the second

20 scene, which is the nearby hill where you actually saw

21 dead bodies, you did not mention you saw the dead bodies.

22 **BRIGADIER CALITZ:** Not in this

23 statement, no, Mr Chairperson.

24 **CHAIRPERSON:** No, that I think is the

25 point being made. So it is right. Whether it is a point of

1 any substance is a matter that can be argued later, but  
2 that seems to be the point. Is that right, Mr Budlender?

3 **MR BUDLENDER SC:** That is so.

4 **CHAIRPERSON:** Right.

5 **MR BUDLENDER SC:** And Brigadier, you were  
6 never in any doubt that in fact there were two separate  
7 scenes some hundreds of metres apart from each other, at  
8 which strikers had been shot dead?

9 **BRIGADIER CALITZ:** It was conveyed to me  
10 at the first scene at around, 16:47 and the second one I observed  
11 myself when I came there at 5 to  
12 5 or 5 o' clock.

13 **MR BUDLENDER SC:** Thank you. Chairperson, I  
14 do not know what time the Commission is planning to take a  
15 lunch break. I am going on to a new subject.

16 **CHAIRPERSON:** I see it is 2 minutes to 1.  
17 If you have got a two-minute point you can bring it up, but  
18 if you have not, I am afraid we will have to take the  
19 adjournment.

20 **MR BUDLENDER SC:** I have no two-minute  
21 points, Chairperson.

22 **CHAIRPERSON:** We will take the lunch  
23 adjournment.

24 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

25 **[14:01] CHAIRPERSON:** The Commission resumes,

1 Brigadier, you are still under oath. Mr Budlender?

2 **MR BUDLENDER SC:** Thank you, Chairperson.

3 Could we have Exhibit GGG13 on the screen again and could

4 we go to paragraph 19? Thank you, you have it, Brigadier.

5 Now I want to read the passage, which I want to discuss with

6 you, from the beginning. "The crowd that assembled on the

7 hill was unruly and very aggressive. They were all armed

8 with extremely dangerous, homemade and bought weapons which

9 they clearly intended using to injure or kill SAPS members.

10 They acted as one group and all of them associated

11 themselves with the actions of each other. All of them had

12 the same intention and goal. Their actions threatened law

13 and order and constituted crime of public violence. They

14 disturbed public order and peace."

15 Alright, now if I understand your evidence

16 correctly, you say that when you made that part of your

17 statement you were referring to the smaller group at hill

18 3 and not the whole group of strikers, is that correct?

19 **BRIGADIER CALITZ:** It is Correct, Mr

20 Chairperson, indeed, the whole statement was

21 for the dossier for the people arrested.

22 **MR BUDLENDER SC:** Now I want to suggest

23 that there are three reasons why there are difficulties

24 with that explanation. The first difficulty is that, of

25 course we know that you were not at hill 3, you were about

1 a 100 or a 150 metres away until after the confrontation

2 and the shooting and the arrests, is that correct?

3 **BRIGADIER CALITZ:** It is Correct.

4 **MR BUDLENDER SC:** So you did not see what

5 happened at hill 3 in the confrontation and the shootings

6 and the arrests.

7 **BRIGADIER CALITZ:** I did see the

8 arrests, but the shootings, no.

9 **MR BUDLENDER SC:** You did not see the

10 confrontation, whatever confrontation there was between the

11 police and the strikers?

12 **BRIGADIER CALITZ:** if you refer to the shooting incident,

13 no.

14 **MR BUDLENDER SC:** And as a result,

15 because of the late stage at which you arrived you were not,

16 - Well, at the time when you arrived and that was, I think

17 16:55, correct?

18 **BRIGADIER CALITZ:** It is Correct, Mr

19 Chairperson.

20 **MR BUDLENDER SC:** By that time the

21 shooting was over, the confrontation was over and the

22 strikers were either dead or injured or arrested.

23 **BRIGADIER CALITZ:** It is Correct, Mr

24 Chairperson.

25 **MR BUDLENDER SC:** So you could not have

1 seen whether all of the strikers were using extremely  
2 dangerous homemade or bought weapons and what they were  
3 doing with them because you were not there at the time.

4 **BRIGADIER CALITZ:** It is Correct, Mr  
5 Chairperson, which is why he said, "They were all armed with  
6 extremely dangerous homemade weapons," and not what they  
7 did with it, no.

8 **MR BUDLENDER SC:** Well, you say they  
9 acted as one group and all of them associated themselves  
10 with the actions of each other. All of them had the same  
11 intention and goal, their actions threatened law and order  
12 and constituted the crime of public violence. You did not  
13 see that yourself?

14 **BRIGADIER CALITZ:** No, Mr  
15 Chairperson, this statement was made for a  
16 dossier of Public Violence.  
17 It was also reported to me. I think there is a  
18 A15, and various other statement sin the dossier,  
19 and that is how it was conveyed to me as  
20 operational commander.

21 **MR BUDLENDER SC:** Brigadier, that is not  
22 the question I am asking you. I am asking you, did you see  
23 the following, "They acted as one group and all of them  
24 associated themselves with the actions of each other. All  
25 of them had the same intention and goal. Their actions

1 threatened law and order and constituted the crime of  
2 public violence. They disturbed public order and peace.”

3 Did you see that?

4 **BRIGADIER CALITZ:** Like I said, no,

5 Mr Chairperson, which is what, was reported to me.

6 **MR BUDLENDER SC:** Now you are a very

7 experienced police officer, Brigadier Calitz, and you knew as

8 you have just said, that this statement was going to be used

9 in a criminal docket, correct?

10 **BRIGADIER CALITZ:** At that stage it

11 were reported to me like that, Mr Chairperson.

12 **MR BUDLENDER SC:** And the purpose of the

13 statements, which are collected for the criminal docket is

14 to lay the basis for the prosecution, which is to follow.

15 **BRIGADIER CALITZ:** Correct, Mr

16 Chairperson.

17 **MR BUDLENDER SC:** All of that evidence,

18 if it was referring to scene 3, would have been

19 inadmissible because it was hearsay.

20 **BRIGADIER CALITZ:** The Court will

21 have to decide, I cannot say at this stage.

22 **MR BUDLENDER SC:** No, no, you know that,

23 you know that if you give evidence about what you did not

24 see, if you give evidence about matters you did not see your

25 evidence about that is inadmissible; it is hearsay, not so?

1 **BRIGADIER CALITZ:** Mr Chairperson, if  
2 something was reported to me as the operational commander,  
3 I can only report on what was reported to me,  
4 if I understand the question correctly.

5 **COMMISSIONER HEMRAJ:** But, Brigadier, I  
6 have a difficulty with that answer that you did not see any  
7 of this, because as I understood your evidence earlier you  
8 were there, you saw the crowd, and you saw what they had in  
9 their possession, you have described to us how they behaved,  
10 so I am not sure I understand that answer of yours.

11 **BRIGADIER CALITZ:** Commissioner, maybe  
12 I misunderstood the question. I understood the question to be,  
13 if I saw the confrontation at hill 3,  
14 between the protestors and the police officers,  
15 I pertinently asked if it was in connection with the shooting and on  
16 that I based my answer.

17 **COMMISSIONER HEMRAJ:** I just understand  
18 your question to refer to hill 3, Mr Budlender, have I  
19 mistaken? Have I misunderstood something?

20 **MR BUDLENDER SC:** It is in relation to  
21 hill 3, Commissioner.

22 **COMMISSIONER HEMRAJ:** I beg your pardon.

23 **CHAIRPERSON:** Brigadier, your statement  
24 that you make here in paragraph 19 that Mr Budlender is putting  
25 to you, talks about the crowd, so as a matter of language

1 it appears to mean all members of the crowd. Now you are  
2 making a statement which on the ordinary meaning of the  
3 word used relates to the crowd that assembled on the  
4 hill. So anyone who could be shown to have been a member  
5 of the crowd who assembled on the hill, anyone of the  
6 3,000, could theoretically be arrested in the execution of  
7 a search warrant granted by a justice of the peace on the  
8 strength of your affidavit, is that not right?

9 **BRIGADIER CALITZ:** If I understand it correctly,  
10 Correct, Mr Chairperson.

11 **CHAIRPERSON:** And you did not say,  
12 I am informed that, I think elsewhere in your statement you  
13 say what you were informed, quite properly, and I  
14 understood you to say 19 was a sort of summary, a sort  
15 of a collection as it were, of all, a summary really of  
16 what had gone before, but it does not according to the  
17 information I received, I was informed as follows, these  
18 are plain direct statements, which purportedly reflect  
19 matters within your own knowledge, is that not correct?

20 **BRIGADIER CALITZ:** It is Correct, Mr  
21 Chairperson.

22 **CHAIRPERSON:** Yes, that was not right, was  
23 it?

24 **BRIGADIER CALITZ:** It was –

25 **CHAIRPERSON:** It would have been better

1 if you, it would have been correct actually to have  
2 qualified that by saying, this is the information I  
3 received, is that right?

4 **BRIGADIER CALITZ:** Now in hindsight, you are  
5 correct, Mr Chairperson.

6 **CHAIRPERSON:** Yes, well, what sort of  
7 hindsight does a brigadier need to know that when he makes  
8 an affidavit pertaining hearsay he should indicate it is  
9 hearsay? What is your answer to that?

10 **BRIGADIER CALITZ:** Mr Chairperson,  
11 yes, at that stage I did not think of referring to it  
12 as being reported to me, but you are  
13 correct, Mr Chairperson.

14 **CHAIRPERSON:** Thank you.

15 **MR BUDLENDER SC:** So if I understand you  
16 correctly you made the statements about all of the people  
17 on hill 3, but you accept that it was in fact not your  
18 personal knowledge and it was hearsay, is that correct?

19 **BRIGADIER CALITZ:** The incidents on hill  
20 3, Correct.

21 **MR BUDLENDER SC:** And you know from your  
22 years of experience as a police officer that warrants of arrest  
23 and search warrants are issued based on the sworn  
24 statements in the police docket, correct?

25 **BRIGADIER CALITZ:** Correct, Mr

1 Chairperson.

2 **MR BUDLENDER SC:** So people could have  
3 been arrested, searched or arrested, locked up, charged on  
4 the basis of a statement which you had made which was  
5 hearsay and inadmissible, correct?

6 **BRIGADIER CALITZ:** Mr Chairperson, I  
7 testified that there are various other statements in the  
8 in die dossier, which indicated that, so I do not think my statement  
9 alone would have been used in this regard,  
10 so - no.

11 **MR BUDLENDER SC:** That is not the  
12 question, Brigadier, the question is, when you made the  
13 statement you were asked to say what you knew and when you  
14 made it you must have realised that people could be  
15 arrested and locked up on the strength of the statement  
16 which you had made which was in fact hearsay.

17 **BRIGADIER CALITZ:** With the knowledge of the  
18 other statements, Mr Chairperson.

19 **CHAIRPERSON:** Have you read the other  
20 statements?

21 **BRIGADIER CALITZ:** No, Mr  
22 Chairperson, the detectives informed me that there was a  
23 dossier.

24 **CHAIRPERSON:** Yes, but you see if there  
25 were other statements in the docket that said these things

1 then why did you have to say them, because then your  
2 statement was not needed, is that right?

3 **BRIGADIER CALITZ:** Correct, Mr  
4 Chairperson.

5 **CHAIRPERSON:** Yes, and the problem I have  
6 got, it was put to you already, that the way it reads is  
7 that, "the crowd that assembled," and then you make  
8 statements about them, they were all armed, so the evidence  
9 there is, this particular accused was a member of the crowd  
10 that assembled and then in terms of what you said about  
11 him, he was armed with an extremely dangerous homemade  
12 weapon or a bought weapon and you know all the other things  
13 that follow. So that was inaccurate, was it, but in any  
14 way I think you have said that already, so there is no point  
15 in repeating it.

16 **MR BUDLENDER SC:** I want to, - well yes,  
17 so there is a problem with your explanation that this is a  
18 statement about hill 3 because it would be, if it was a  
19 statement about hill 3 it would be hearsay for the  
20 reasons we have discussed and I am not going to repeat all of  
21 that. We are agreed on that?

22 **BRIGADIER CALITZ:** I already gave the  
23 answer, Mr Chairperson.

24 **MR BUDLENDER SC:** Now I want to tell you  
25 why, or the second problem I have with your statement that

1 this is actually about hill 3, you will see in paragraph 19

2 that you say, you refer to the crowd that assembled on the

3 hill, alright, and you say that is a reference to hill

4 3, is that correct?

5 **BRIGADIER CALITZ:** Correct.

6 **MR BUDLENDER SC:** Now I want to take you

7 through the statement from the beginning and show you the

8 various times in which you refer to the hill. Can we go

9 to page 1, paragraph 4? On the third line you say, "At

10 this stage a large group of striking mineworkers are

11 gathered on a hill on the mine premises," and then a few

12 lines further down you say, four lines from the foot of

13 that, from the end of that paragraph, "The smaller group

14 that gathered along the pipeline near Karee was about 200

15 men and they were also armed with the same type of homemade

16 weapons as the large group that gathered on the hill."

17 Now when you are talking about the hill there you are

18 talking about hill 1, correct?

19 **BRIGADIER CALITZ:** Correct, Mr

20 Chairperson.

21 **MR BUDLENDER SC:** Then can we go to

22 paragraph 7 on page 2? You say, "On Tuesday, 2012/08/14

23 the police negotiated, Lieutenant Colonel Macintosh was

24 summoned to the JOC as it was decided that he must

25 negotiate with the strikers to lay down their weapons and

1 to end the violence. Later that afternoon when the  
2 negotiators arrived they were briefed and they went with us  
3 to the hill where the group was corrugated." That is  
4 hill 1?

5 **BRIGADIER CALITZ:** Correct, Mr  
6 Chairperson.

7 **MR BUDLENDER SC:** "There were  
8 approximately 4,500 armed men on the hill," that is hill  
9 1?

10 **BRIGADIER CALITZ:** It is Correct, Mr  
11 Chairperson.

12 **MR BUDLENDER SC:** Paragraph 8, "Whilst  
13 Colonel Macintosh was still busy negotiating with the men  
14 we were informed that an unknown male was attacked behind  
15 the hill," that is hill 1?

16 **BRIGADIER CALITZ:** It is Correct, Mr  
17 Chairperson.

18 **MR BUDLENDER SC:** And then down to the  
19 fourth line from the bottom of that, from the foot of that,  
20 from the end of that paragraph, "A car head skeleton was  
21 placed on his chest, later the crowd started to move from  
22 the hill," that is hill 1?

23 **BRIGADIER CALITZ:** It is Correct, Mr  
24 Chairperson.

25 **MR BUDLENDER SC:** Paragraph 9, "On

1 Wednesday, 2012/08/15 at about 10:00 the SAPS again went  
2 back to the hill," that is hill 1?

3 **BRIGADIER CALITZ:** It is Correct, Mr  
4 Chairperson.

5 **MR BUDLENDER SC:** Paragraph 10, the last  
6 sentences at the end of the paragraph, "Later the group  
7 started to leave the hill," that is hill 1?

8 **BRIGADIER CALITZ:** Correct, Mr  
9 Chairperson.

10 **MR BUDLENDER SC:** Paragraph 11, the ninth  
11 line, "We were given an operational overview of possible  
12 deployment on SAPS members at the hill," hill 1?

13 **BRIGADIER CALITZ:** It is Correct, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** Paragraph 12, "The six  
16 vehicles, Nyalas with the barbed wire trailers were  
17 positioned ready for deployments, about 80 metres away from  
18 the hill," hill 1?

19 **BRIGADIER CALITZ:** Correct, Mr  
20 Chairperson.

21 **MR BUDLENDER SC:** The last sentence at  
22 paragraph 12, at the top of the page, "The rest of the men  
23 remained," sorry, I take it a bit back, "These men were  
24 very aggressive and were waving their weapons at us. They  
25 were about 300 to 400 men. The rest of the men remained on

1 the hill from where they were chanting and waving their

2 weapons at us," correct, that is hill 1 too?

3 **BRIGADIER CALITZ:** Hill 1 and 2, yes.

4 **MR BUDLENDER SC:** I mean that is also

5 hill 1, hill 1?

6 **BRIGADIER CALITZ:** Hill 1 and 2, yes.

7 **MR BUDLENDER SC:** Well, I think it is

8 hill 1, is it not? I am sorry, I am confused here.

9 **CHAIRPERSON:** So it is one hill,

10 singular, so the hill referred to must the hill,

11 namely hill 1, is that not correct?

12 **BRIGADIER CALITZ:** We name it hill 1,

13 yes.

14 **CHAIRPERSON:** Yes.

15 **MR BUDLENDER SC:** Then paragraph 15, "At

16 about 15:10 I arrived back at the hill." That is hill

17 1?

18 **BRIGADIER CALITZ:** Correct, Mr

19 Chairperson.

20 **MR BUDLENDER SC:** Paragraph 16, the third

21 line, "While we were busy deploying the barbed wire the

22 whole group, those who were on the ground and those on the

23 hill," hill 1?

24 **BRIGADIER CALITZ:** Correct, Mr

25 Chairperson.

1 **MR BUDLENDER SC:** And then we come to  
2 paragraph 18, the next page, "Later I was informed that  
3 several of the attacking men were killed. As we were  
4 advancing towards the crowd in Nyala vehicles I instructed  
5 the members to disembark the vehicles and to affect arrests  
6 on the men who were part of the crowd. I later found the  
7 arrested suspects at a nearby hill," that is hill 3?

8 **BRIGADIER CALITZ:** Hill 3, yes.

9 **MR BUDLENDER SC:** You distinguished in  
10 other words between the hill which is where all of these  
11 events happened and hill 3, which was the nearby hill,  
12 correct?

13 **BRIGADIER CALITZ:** Correct, Mr  
14 Chairperson.

15 **MR BUDLENDER SC:** And then paragraph 19,  
16 "The crowd that assembled on the hill was unruly and very  
17 aggressive and I put it to you that it is impossible to  
18 read that as referring to hill 3, which must mean hill  
19 1, which is the hill which you have referred to throughout  
20 the statement, I think 14 times. I put that to you.

21 **BRIGADIER CALITZ:** Mr Chairperson,  
22 It is evidence that I already testified that paragraph 19  
23 was a summary on the people arrested, and therefore I referred  
24 to hill 3. It is pertinent about the  
25 arrests made, and that is why the dossier was compiled.

1 I did not refer to hill 3, but

2 just to the hill.

3 **MR BUDLENDER SC:** But in your statements

4 you distinguish clearly between the hills, which is hill

5 1 and the nearby hill, which is hill 3. If in paragraph

6 19 you were referring to hill 3 you would have said, the

7 crowd that assembled on the nearby hill was unruly and

8 aggressive, surely.

9 **BRIGADIER CALITZ:** That can be your conclusion,

10 it is my statement and I am telling you what I meant

11 with it.

12 **MR BUDLENDER SC:** Well, I put it to you

13 that it is simply not possible to accept that explanation,

14 Brigadier.

15 **BRIGADIER CALITZ:** Mr Chairperson,

16 that is your opinion, my evidence is that the

17 statement was given and it was a summary of the events

18 in my earlier evidence, it was regarding the arrests made

19 at hill 3.

20 **MR BUDLENDER SC:** Alright, Brigadier, let

21 me take you to the third reason why your claim that this is

22 hill 3 cannot be correct. I would like you to go to

23 paragraph 16. Perhaps we should read the whole of the

24 paragraph. "At about 15:40 the first of the barbed wire

25 was deployed. At the same, time the person with the green

1 blanket approached us. He was very aggressive and again  
2 said that we will die and that he is not returning.  
3 While we were busy deploying the barbed wire the whole  
4 group those that were on the ground and those on the  
5 hill, moved in their identified formation, bended closer  
6 to each other with the leaders to the front towards the  
7 SAPS. The group moved in a closed formation directly to  
8 the last Nyala with the barbed wire trailer not yet  
9 deployed. All the men were aggressive and were chanting.”  
10 Now when you say, “All the men were aggressive and were  
11 chanting,” you must be referring to the whole group, those  
12 on the ground and those on the hill.”

13 **[14:20] BRIGADIER CALITZ:** Mr Chairperson,  
14 the group in front definitely came towards us,  
15 the group on top moved down,  
16 and in the position I was in, I could see  
17 the group on top moving down toward the  
18 group in front, if you look at the  
19 aerial photo, it was not two to three hundred people  
20 coming toward the kraal, but a significant number  
21 more. Afterwards I could see in the photos  
22 that people also moved in a westerly direction,  
23 but that stage I could not see  
24 them.

25 **MR BUDLENDER SC:** You said under oath

1 that the whole group, those that were on the ground and  
2 those on the hill, moved in this formation towards the  
3 SAPS. You say you did not know on the 19<sup>th</sup> of August that  
4 in fact most of them moved off the hill and went to the  
5 settlement?

6 **BRIGADIER CALITZ:** Mr Chairperson,  
7 we saw it later in the photographs when we compiled exhibit L.  
8 That is when I saw the photographs,  
9 yes.

10 **MR BUDLENDER SC:** Brigadier, you were at  
11 – You were – at the time that the barbed wire was deployed,  
12 you were parked right in front of hill 1, observing what  
13 happened on the hill. We have seen where you were.

14 **BRIGADIER CALITZ:** It is Correct, Mr  
15 Chairperson.

16 **MR BUDLENDER SC:** And you say you did not  
17 see people moving of the hill away from the police line  
18 and down into the townships or elsewhere. You saw no  
19 dispersal?

20 **BRIGADIER CALITZ:** Mr Chairperson, I  
21 said I saw the group in front and I concentrated  
22 on that group coming toward my Nyala,  
23 but I could see the group on top moved down,  
24 and joined them.-  
25 I did not say I saw the group at the back, but I saw

1 them later in photographs.

2 **MR BUDLENDER SC:** Are you saying that

3 sitting there in front of hill 1, observing the

4 situation, you did not notice that a large number of

5 strikers left the hill and did not come down towards the

6 police line? You did not see that?

7 **BRIGADIER CALITZ:** Mr Chairperson, I

8 can only testify to what I observed out of my vehicle

9 at that stage. If you look at the scene, you will see the whole

10 area is not visible from where I was.

11 **MR BUDLENDER SC:** Well, we can all see the

12 photographs and we can make our own observations, but –

13 **BRIGADIER CALITZ:** It is Correct, Mr –

14 **MR BUDLENDER SC:** - but regardless of

15 whether what you said was true or not, the point that I

16 wish to make is that your concern in paragraph 16 was to

17 lump the whole group together, those on the ground and

18 those on the hill, to say they were moving as one

19 formation and they were acting together. Correct?

20 **BRIGADIER CALITZ:** The group I saw moved

21 toward Nyala 4, I referred to that

22 group, yes.

23 **MR BUDLENDER SC:** Those on the ground and

24 those on the hill all acted together in this manner – all

25 of those that you saw?

1 **BRIGADIER CALITZ:** That is what I observed

2 in that situation, yes, Mr Chairperson.

3 **MR BUDLENDER SC:** Well, I put it to you

4 Brigadier that that is simply not the evidence and we know

5 It is not the evidence and you know it is not the evidence.

6 **BRIGADIER CALITZ:** Mr Chairperson, I

7 think the photographs speaks for itself, it is clearly

8 evident that they joined the group in front,

9 the group grew from 200 to 300 when the group from the

10 back joined them. As you said yourself,

11 the photo speaks for itself.

12 **MR BUDLENDER SC:** Well, I want to put a

13 number of propositions to you, Brigadier, so that you can

14 deal with them. I want to put it to that your claim that

15 the statement in paragraph 19, about the crowd on the

16 hill, was a reference to hill 3 is simply unsustainable

17 in the light of the analysis, which you have just done.

18 Would you like to comment on that?

19 **BRIGADIER CALITZ:** No, I do not agree,

20 Mr Chairperson.

21 **MR BUDLENDER SC:** I have to put it to you

22 that you said this because you wanted – well, let me take a

23 step back. Of course, you know about the doctrine of

24 common purpose, do not you? You have heard of the doctrine of

25 common purpose?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **MR BUDLENDER SC:** And what you did was

4 you gave a classic statement in your affidavit of common

5 purpose. You said, "They acted as one group and all of

6 them associated themselves with the actions of each other.

7 All of them had the same intention and goal." That is an

8 attempt to create a situation of common purpose, is it not?

9 **BRIGADIER CALITZ:** Mr Chairperson,

10 I already gave evidence that what happened at hill 3,

11 was explained to me. The common purpose, the

12 people I saw moving from hill 1

13 and, 2 toward hill 3 toe, was a group moving in uniformity,

14 armed and their way to that hill, as well as the people

15 moving away from the hill in a westerly direction.

16 So there was a definite

17 'n common purpose.

18 **MR BUDLENDER SC:** We know that about – I

19 do not want to know the precise number, about 260 or 270

20 people were arrested – strikers were arrested that day.

21 Correct?

22 **BRIGADIER CALITZ:** The figure we have

23 is 259, Mr Chairperson.

24 **MR BUDLENDER SC:** I accept that. So 259

25 people arrested, they, of course, were not all arrested at

1 hill 3, as you have explained, people were arrested at  
2 various places?

3 **BRIGADIER CALITZ:** It is in  
4 my statement – the middle of the second sentence in  
5 paragraph 18, which Mr Chairperson referred to, where I  
6 said, “As we were advancing towards the crowd in  
7 Nyala vehicles, I instructed the members to disembark the  
8 vehicles and effect arrests.” I think it is  
9 clear in my conversation with Colonel Vermaak of the  
10 chopper, where we can clearly hear how the arrests were made  
11 in the field –

12 **MR BUDLENDER SC:** Yes, some –

13 **BRIGADIER CALITZ:** May I finish,  
14 please? The people were in groups and we  
15 isolated them, disarmed them and arrested them.

16 **MR BUDLENDER SC:** Some of those arrested  
17 were arrested at hill 3, as you say, and as you say, some  
18 of those arrested were arrested in the veld.

19 **BRIGADIER CALITZ:** They were  
20 loaded into the vehicle, all the people arrested were managed together  
21 at hill 3.

22 **CHAIRPERSON:** No, that is not the  
23 question. The question is that – is it correct – this is  
24 the question in my formulation, but I think it is the same  
25 as Mr Budlender’s – were some of the people who were

1 arrested, arrested in the veld?

2 **BRIGADIER CALITZ:** Correct –

3 **CHAIRPERSON:** I understand they may have

4 been taken to the vicinity of hill 3 to be processed and

5 so on and loaded into the Canters, but some of them were

6 arrested in the veld. Is that correct?

7 **BRIGADIER CALITZ:** Correct, Mr

8 Chairperson.

9 **CHAIRPERSON:** Thank you.

10 **MR BUDLENDER SC:** And this statement of

11 yours, I put it to you, was intended to cover all of those

12 who were arrested, because it was to cover all of those who

13 were assembled on the hill, hill 1 – who had been

14 assembled on hill 1.

15 **BRIGADIER CALITZ:** Do you refer to

16 hill 1 – can you repeat the question?

17 **MR BUDLENDER SC:** Let me put it

18 differently. Your – the statement in paragraph 19 is a

19 statement which is intended to cover everyone – all the

20 protestors who were involved in the protest and who had

21 been on hill 1.

22 **BRIGADIER CALITZ:** If I understood the question

23 correct, no, Mr Chairperson.

24 **MR BUDLENDER SC:** But – and it was

25 certainly not intended to be apply – apply only to those

1 who were arrested on the hill, it was intended to apply  
2 to all of those who were arrested – sorry, let me ask the –  
3 take the question back. The statement was not intended to  
4 apply only to those who were arrested at hill 3, it was  
5 intended to apply to all of those who were arrested.  
6 Correct?

7 **BRIGADIER CALITZ:** It is correct,

8 Sir.

9 **MR BUDLENDER SC:** And they were all  
10 governed by that first sentence of paragraph – that first  
11 passage of paragraph 9, “The crowd that assembled on the  
12 hill was unruly and very aggressive. They were all armed  
13 with extremely dangerous, homemade, and bought weapons,  
14 etcetera.” That was intended to apply to all of those who  
15 were arrested?

16 **BRIGADIER CALITZ:** The people arrested  
17 on the hill, yes, Sir.

18 **MR BUDLENDER SC:** No, all of those who  
19 were arrested, whether at the hill or in the veld?

20 **BRIGADIER CALITZ:** Mr Chairperson,  
21 again, in this specific statement I neglected to refer to it,  
22 in paragraph 19, we did not pertinently referred to the  
23 people arrested in the field, no.

24 **MR BUDLENDER SC:** - refer to those who  
25 are arrested at the hill? It refers to those who were

1 assembled on the hill?

2 **BRIGADIER CALITZ:** Correct, Sir.

3 **COMMISSIONER HEMRAJ:** I would at some

4 stage like to have you draw our attention to those

5 photographs that you say support the version that you were

6 putting, even if it is not today, perhaps tomorrow morning, if

7 you have time to go through them overnight and draw our

8 attention to that. I would like to be referred to those.

9 **MR BUDLENDER SC:** If I can help? Those

10 are the photographs which show that at the time of the

11 rollout of the barbed wire, one would not expect to see

12 from where Brigadier Calitz was parked, that some people

13 were dispersing and were not coming down towards the police

14 line. Is that correct, Commissioner?

15 **COMMISSIONER HEMRAJ:** Yes, but he is – I

16 think he is referring to something else, but perhaps we

17 should give him the opportunity, to be fair to him –

18 **CHAIRPERSON:** - he referred to

19 photographs, did not specify exactly what they were, but he

20 obviously knows the ones he has in mind, so he can bring

21 for us to see, as Advocate Hemraj has requested.

22 **BRIGADIER CALITZ:** Mr Chairperson, may

23 I – we referred to that,

24 Colonel Vermaak, the group moving was more than

25 two to three hundred that was there. My evidence will

1 be, the photographs we saw yesterday,

2 we can show it again, but that was what I was referring to.

3 **COMMISSIONER HEMRAJ:** Well, take your

4 time and put them together and we will have a look at them

5 when you are ready.

6 **BRIGADIER CALITZ:** Thank you, Commissioner.

7 **MR BUDLENDER SC:** And to conclude on

8 this, Brigadier, this is why I spent some time this morning

9 addressing the question of what you said in your statement,

10 that the information at the JOCCOM was that the group were

11 seeking confrontation with the police. I want to put it to

12 you that that was an overstatement, just as what you say in

13 paragraph 19 is an overstatement, and that it was not

14 a responsible thing for a responsible thing for a Brigadier

15 to do.

16 **BRIGADIER CALITZ:** I do not agree with you,

17 Mr Chairperson.

18 **MR BUDLENDER SC:** Chairperson, I have no

19 further questions for this witness.

20 **CHAIRPERSON:** I would just like to ask you

21 one question. I may ask you questions later on too, but

22 just while we are busy with paragraph 19. You say that this

23 paragraph relates to the crowd assembled on hill 3. Now,

24 you say in the third sentence, "They acted as one group and

25 all of them associated themselves with the actions of each

1 other. All of them had same intention and goal." Now,  
2 what facts were those statements based on? What did they  
3 do to make it clear that they were acting as one group and  
4 they were all associating themselves with the actions of  
5 each other?

6 **BRIGADIER CALITZ:** Commissioner, as  
7 testified earlier, that was what was conveyed to me,  
8 by some of the people busy at hill 3 and  
9 that were the facts conveyed to me. I believe  
10 some of the people in command at the hill will  
11 come and give evidence.

12 **COMMISSIONER HEMRAJ:** Brigadier, what -  
13 the command basic line with TRT, exactly what does that  
14 mean?

15 **BRIGADIER CALITZ:** Commissioner, it is when  
16 when they are activated at a scene,  
17 it just means, "keep the basic line." In other words,  
18 they have to keep a straight long line, one person must not  
19 pass another. They move as a line,  
20 and if they need to act, they will be in  
21 formation. Firstly as a show of force, their uniforms  
22 and equipment is different, and I think secondly,  
23 they get their orders while in that line.

24 -

25 **CHAIRPERSON:** I understood that Adv.

1 Chaskalson was going to be the next cross-examiner. So

2 perhaps we can take a short adjournment.

3 **MR BUDLENDER SC:** Yes. The proposal,

4 Chairperson, if it suits the commissioners is that the next step

5 should be to lay out that aerial photograph of the area and

6 for the brigadier to be asked to demonstrate where the

7 various vehicles are to which he refers.

8 **CHAIRPERSON:** There are two points about

9 that. The first is this table in front of us, the

10 microphones have to be removed, and the second point is, I

11 understood that arrangements are going to be made to film

12 the demonstration. I do not know whether we are ready to do

13 that. Perhaps we can take a short adjournment and that

14 matter can be sorted out. As soon as you are ready to

15 proceed, then you will tell us and we will come back. Yes.

16 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

17 **[15:14] CHAIRPERSON:** The commission resumes. We

18 have in the interim while we were outside had an enlarged

19 photograph of the area put on the table in front of us

20 together with wooden blocks, which represent various

21 vehicles and I understand it is being, is it being shown

22 behind me, also on the screen in front of me. So everyone

23 in the chamber can follow and we are going to ask the

24 Brigadier to demonstrate to us movements and positions of

25 various vehicles and so on during the incidents at hill

1 1, scene 1. Mr Budlender, you are going to ask him to  
2 follow or Mr Chaskalson is going to do it, is he? It is not  
3 really going to be cross-examination yet. It is going to  
4 be, as I understand it effectively a demonstration by the  
5 Brigadier explaining what exactly happened and where and  
6 then he will be questioned I think tomorrow further on it. I  
7 must remind you, you are still under oath, Brigadier. Mr  
8 Chaskalson?

9 **MR CHASKALSON SC:** Chairperson, I have a  
10 range of scenes or moments and vehicle movements that I  
11 would like to see the Brigadier describe. It may be that  
12 at a certain point in my questioning SAPS feels that  
13 There is something in between that they would also like to  
14 point out I invite them to do so if that is the case. This  
15 is really to almost to amplify the Brigadier's testimony  
16 that is already been given.

17 **CHAIRPERSON:** Yes.

18 **MR CHASKALSON SC:** With the visual aid.

19 **CHAIRPERSON:** Yes, Brigadier, I take it  
20 you will have to stand up next to the table will you, you  
21 cannot do it by remote control from where you are.

22 **MR CHASKALSON SC:** Chairperson, my  
23 proposal is that we should start this demonstration at the  
24 point at which the rollout begins. It, that point is  
25 described in slide 191 of the, of exhibit L and I would

1 propose that we start there but I do not know if SAPS would  
2 refer to start earlier. No, SAPS are indicating they are  
3 happy with that as a starting point. So maybe if we could  
4 ask the Brigadier to take his exhibit L and briefly set up  
5 all of the blocks so that we can recreate that picture on  
6 this chart and can I ask the camera operator just to zoom  
7 back so that we can see the whole chart in shot.

8 **MS LE ROUX:** Chairperson, just as a point of  
9 clarity I assume for purposes of what the Brigadier is  
10 about to do we disregard the photographed vehicles, we  
11 should only be taking his demonstration to include wooden  
12 blocks that he moves around, is that -

13 **CHAIRPERSON:** I think that is correct  
14 except if you look at 191 it does look as if the  
15 photographed vehicles, which I think, were the horseshoe to  
16 which Mr Mpofu referred they may be in the right position  
17 but maybe Mr Chaskalson or the Brigadier could help us on  
18 that.

19 **MR CHASKALSON SC:** No, Chairperson, there  
20 are very material differences. The shot is taken I would  
21 estimate round about 10:30 in the morning. So for instance  
22 Nyala 6 is in its original position and the exact  
23 configuration of the support vehicles and for instance the  
24 water cannons which are not visible on this chart has  
25 changed quite dramatically by -

1 **CHAIRPERSON:** So Ms Le Roux is right  
2 then, we ignore the photographed positions of the vehicles  
3 on this enlarged photograph. We just have regard to the  
4 physical features of the terrain as depicted on the  
5 photographs, is that correct? Alright, so, Brigadier, now  
6 you have to set out your toys in the right position for  
7 us please.

8 **BRIGADIER CALITZ:** Thank you, Chairperson. May  
9 I just request to remove my jacket, please, I think it will  
10 be – Chairperson, if we go to I think what Mr Chaskalson referred  
11 to 191, I just heard 197 but I think it is the same picture  
12 and just orientate myself quickly. This is the morning  
13 around about before Nyala 6 were moved. So now, I do not know  
14 how I am going to indicate with a pointer or –

15 **CHAIRPERSON:** I think you can take the  
16 toys [inaudible, microphone off].

17 **BRIGADIER CALITZ:** At this stage, Chairperson,  
18 if they can zoom in there, that was Nyala 6, Nyala 5, Nyala  
19 4. The rest of the Nyalas are out of picture on this map  
20 that they provide me here.

21 **CHAIRPERSON:** So we cannot see the power  
22 station?

23 **BRIGADIER CALITZ:** The power station will  
24 be behind Nyala 4.

25 **CHAIRPERSON:** Yes, yes. It is to the left

1 really off picture.

2 **BRIGADIER CALITZ:** To the back of Nyala

3 4, yes.

4 **MR CHASKALSON SC:** Chairperson, I think

5 the Brigadier and I may be at cross-purposes. What the

6 Brigadier is doing is recreating the scene that we have in

7 the photograph. I think it may take quite a lot of time

8 and take us, not be a useful, a sensible use of time I

9 would prefer to start at the beginning of the rollout which

10 is 191.

11 **CHAIRPERSON:** Well all he is got to do

12 surely is to move Nyala 6 to the correct position where it

13 was at the rollout stage, is it not?

14 **MR CHASKALSON SC:** There are other

15 movements as well but we have the photograph.

16 **CHAIRPERSON:** Brigadier, happy with that,

17 to show us position as it was just before, just before the

18 rollout, around about what 15:40 round about there.

19 **COMMISSIONER HEMRAJ:** Brigadier, have you

20 got photograph 191, Brigadier?

21 **BRIGADIER CALITZ:** It is here with me,

22 Commissioner, yes. Therefore, that will be the position

23 where Nyala 6 went to, that is slide 191, 197 is the same

24 except that the distances is not indicated in that picture.

25 So Nyala 5 moved to the, what they call the footpath and

1 Nyala 6 moved to the outside in the direction of the

2 small kraal. Is that what you want -?

3 **MR CHASKALSON SC:** Thank you, Brigadier,

4 yes. However, can we show the positions of the other vehicles

5 including the Pappa Nyalas as well because they are going to

6 start moving once things happen.

7 **BRIGADIER CALITZ:** It is Correct, Mr

8 Chairperson. The one marked Pappa1, It is my

9 vehicle. The others are in these

10 blocks, and it is the

11 five Nyalas as they stood in front of the

12 TRT, although the TRT is standing on a block, this is

13 the TRT vehicles that stood there at this

14 stage. If we look at the back, it is not on the

15 photo, if we go to the back from the TRT line and we look at

16 slide 197, I do not know if you have it in front of you,

17 but it will be easier to follow, Mr

18 Chairperson. We then have four Nyalas and a Casspir we

19 called in to monitor the northern side, I just

20 want to see where they are, there was also a

21 a Casspir, a white Casspir, it is the wooden block, which says

22 Casspir. He was on the right-hand side of the four

23 Nyalas, this group was Luitenant Colonel Pitsi, myself in

24 negotiators Nyala and Luitenant Colonel

25 Mere with the Public Order Policing, and

1 Nyala 4, Nyala 5 and Nyala 6 moved  
2 inward. Behind the TRT, line the contingent of  
3 riot trucks and water cannons were stand, if I can  
4 can put them out of sight, but that was the positions of all before  
5 the roll out.

6 **MR CHASKALSON SC:** And, Brigadier, to  
7 assist us once we get to pictures that start moving, I  
8 wonder if we can try to agree on the numbering of the  
9 various Nyalas in, first in the POPS line and then from the  
10 reserves that were called up facing north.

11 **CHAIRPERSON:** He is got pens so perhaps he  
12 can, I do not know if they can be marked. It might help if  
13 they were.

14 **MR CHASKALSON SC:** I am just looking at my  
15 notes now. I had assumed that they would be numbers on it.  
16 But on my notes, I have in your negotiation Nyala line of  
17 five, on the far left is Pappa11, I do not know if you can  
18 confirm this at this stage or if we need to refer you to –

19 **BRIGADIER CALITZ:** I must take your word  
20 for it. So I thought we would mark as I said, I know where  
21 I moved the other vehicles, you will tell me, the call  
22 signs according to the photographs or the zooms that you  
23 have.

24 **MR CHASKALSON SC:** Pappa11 on the left.

25 **BRIGADIER CALITZ:** This one?

1 **MR CHASKALSON SC:** That is correct, yes.

2 **BRIGADIER CALITZ:** Next thing.

3 **MR CHASKALSON SC:** Pappa9.

4 **CHAIRPERSON:** The next one is marked

5 already that is P1.

6 **MR CHASKALSON SC:** To your right is Pappa7

7 and the last is Pappa3. Now if we look at exhibit L191

8 again you will see There is one Nyala that is still in reserve

9 back where the water cannons and the, you may not see it

10 but you will have to trust me that when you zoom in you will

11 see it. Back where the water cannons and behind the TRT, I

12 think it is in fact next to the two water cannons. That was

13 Pappa2. If we then go to the four Nyalas that have been

14 brought up from reserve, on the left is Pappa5. Then –

15 **CHAIRPERSON:** The numbers of the other

16 three?

17 **MR CHASKALSON SC:** I do, the next one had

18 a call sign on its roof Pappa19 but it was actually referred

19 to as Pappa10. So the, that should be, call it Pappa10/19

20 because when one looks at aerial photos what one sees is

21 Pappa19 although the actual Nyala I understand was known as

22 Pappa10.

23 **BRIGADIER CALITZ:** Correct.

24 **MR CHASKALSON SC:** To its right was

25 Pappa18 and on the far right was Pappa 4.

1 **COMMISSIONER HEMRAJ:** Just before you  
2 continue, Brigadier, when, in the line-up with you in the  
3 middle was Pappa11 on your right or your left? Pappa11 was  
4 on your right or on your left in the line up?

5 **BRIGADIER CALITZ:** To my left, on the far  
6 left. Here is Pappa1.

7 **COMMISSIONER HEMRAJ:** Yes.

8 **BRIGADIER CALITZ:** You are asking on this  
9 line it was to my far left.

10 **COMMISSIONER HEMRAJ:** Alright.

11 **CHAIRPERSON:** As you were facing the  
12 hill?

13 **BRIGADIER CALITZ:** As I was facing the  
14 hill 1.

15 **MR CHASKALSON SC:** Then the Casspir that  
16 you called Casspir is the POPS Casspir, is that correct?

17 **BRIGADIER CALITZ:** It is Correct, Sir.

18 **MR CHASKALSON SC:** There is also the STF  
19 Casspir and the STF Scorpion and the STF Casspir was back  
20 in the reserve area facing north with a pretty clear run of  
21 the kraal, that may be visible in this photograph.

22 **BRIGADIER CALITZ:** Can I mark it for this  
23 purpose Casspir 2?

24 **MR CHASKALSON SC:** Maybe Casspir S.

25 **BRIGADIER CALITZ:** Casspir?

- 1 **MR CHASKALSON SC:** Casspir S for STF.
- 2 **BRIGADIER CALITZ:** Let us put it –
- 3 **CHAIRPERSON:** You can put it on the side,
- 4 I think you have written Casspir on the whole of the top but
- 5 you can put an S on the side.
- 6 **BRIGADIER CALITZ:** I will just put it in
- 7 another colour. You said in your zoom it was –
- 8 **MR CHASKALSON SC:** Alongside it was the –
- 9 **CHAIRPERSON:** No, he wanted to know where
- 10 it was in the zoom?
- 11 **MR CHASKALSON SC:** I have notes and I am
- 12 trying to see off a high resolution photograph.
- 13 **BRIGADIER CALITZ:** I see it on slide 193
- 14 of the exhibit L you can see them almost to the nearest to
- 15 the footpath if I am not mistaken behind the, it seems
- 16 There is a line there, there is two vehicles there. One is a
- 17 Scorpion then the one is the Casspir.
- 18 **MR CHASKALSON SC:** So the Scorpion is
- 19 inside the Casspir both of them have a free ride north
- 20 towards the kraal, they are at the northern edge of what you
- 21 got as the TRT line. Our problem is that this picture is
- 22 not quite to scale really, because the TRT line ought to be,
- 23 you know maybe 10 centimetres further south and off the,
- 24 further south and off the, yes, because if you look at 193
- 25 you will see that the white Casspir, the end of the TRT line

1 is roughly parallel to your, should be roughly parallel to  
2 your Nyala if you, Pappa1, yes. So you take it down, down,  
3 take it down the line of white vehicles and, to a point  
4 roughly parallel to where your vehicle is.

5 **BRIGADIER CALITZ:** That is correct, if you  
6 look at the Nyalas facing, can I say the kraal you will see  
7 that the middle one is actually in front of the vehicle of  
8 TRT. If you look at -

9 **MR CHASKALSON SC:** Yes, but the TRT  
10 personnel who are out of their vehicle are in fact to the  
11 east of that line of vehicles parallel, in a line parallel  
12 with you. So drop that down so that the edge of that, the  
13 edge of what you say is TRT line is parallel to Pappa1, is  
14 on the line with Pappa1. So pull that almost off the, off  
15 the chart, down, down, down, no towards you. Come down,  
16 come down a bit further, no in still, yes, that is about  
17 where the TRT line was and then the Scorpion and the  
18 Casspir were, the Scorpion is roughly, bring it a little  
19 bit closer to the TRT line and a little bit down a bit. If  
20 you look at 193.

21 **BRIGADIER CALITZ:** I just want to  
22 position, they were close to this.

23 **MR CHASKALSON SC:** But you have them  
24 facing the wrong way. They are pointing up to the north.  
25 Yes, the Casspir is actually pointing almost due north, the

1 Scorpion is still a bit, if you look at 193. That is  
2 broadly, we do not need that level of detail. So that is  
3 when things were when the rollout started and it may be  
4 useful to follow what we are doing with the assistance of  
5 the human rights commissioner annexure GW6B because they  
6 have a series of shots, which chart the movement going  
7 forward and the next movement is the start of the rollout  
8 when Nyala 1 reaches Nyala 2 but that is not on our screen.  
9 So we cannot see that. That is behind us. To the best of my  
10 knowledge the only change from this picture that we see  
11 once the rollout begins, Nyala 1 reaches Nyala 2, which is  
12 what is described on 193 and PW6B, page 6, is that Nyala 6,  
13 - Sorry Brigadier, you have moved Nyala 2 to Nyala 3, Nyala 2  
14 hasn't got there yet, so if you can just retreat Nyala 2  
15 back to its starting position.

16 **[15:34] BRIGADIER CALITZ:** No, I indicated here  
17 is Nyala 3, it is out of the picture and it is just  
18 indicated, it was off the picture, Nyala 1 to Nyala 2.

19 **MR CHASKALSON SC:** Yes, okay, so again  
20 we are not - that should be a little bit further to our  
21 left?

22 **BRIGADIER CALITZ:** Yes, 3 is out of the  
23 picture.

24 **MR CHASKALSON SC:** So 6 has come now down  
25 to the south of the path. Now the Human Rights Commission,

1 - So we now have 6 a little bit south of the path, the TRT,  
2 everything else is more or less unchanged. I do not know at  
3 this stage if it would be helpful to the commissioners, I  
4 must ask your, I must take instruction from you,  
5 Commissioners, if we should try to go through this process  
6 literally, you know stage by stage right through the  
7 rollout, if that would be helpful. It will be laborious  
8 but it may be a helpful way of visualising what was  
9 happening.

10 **CHAIRPERSON:** Well, how long will it  
11 take, you say it will be laborious, and how long will it take?

12 **MR CHASKALSON SC:** We probably will not get  
13 to the shootings today, if we do that, but what it will do  
14 at the end of it all is give us a visual representation  
15 slide by slide of what is happening. The alternative is to  
16 ask the brigadier at this point to describe his movements  
17 as he recollects them at particular times and then we can  
18 possibly do that exercise off photographs at a later stage.  
19 It probably does not even have to be done in open  
20 Commission, it can be done by the parties and filmed. I  
21 do not know if we need to use open Commission time with the  
22 witness for that purpose.

23 **CHAIRPERSON:** - views on the point, which  
24 of the two we should do, after all it is your evidence?

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 yes, I think in my evidence I already referred to the photos of

2 CALS and I indicated where I was, so I think

3 we went through the photos, so if Mr Chaskalson can

4 inform me how they have it; I can tell them that,

5 for example, Pappa9 was in this direction, I was

6 here and this is where I am moving to –

7 **CHAIRPERSON:** Are you suggesting that his

8 second alternative proposal is the one we should take

9 because you cannot from your own knowledge –

10 **BRIGADIER CALITZ:** If they can indicate to

11 where Pappa9 was at that stage, where Pappa10 moved

12 to, so we will not get a clearer picture as what the

13 photo is indicating. I can give evidence from

14 Pappa1, but –

15 **CHAIRPERSON:** Alright –

16 **BRIGADIER CALITZ:** - Will you help me

17 to see where the other vehicles were?

18 **CHAIRPERSON:** Alright, so we will use Mr

19 Chaskalson's second proposal, which I think is essentially

20 the one you prefer because you can speak to where you were,

21 you cannot speak to where the others were, that is got to be

22 derived from photographs, is that right?

23 **BRIGADIER CALITZ:** Correct, Mr

24 Chairperson.

25 **MR CHASKALSON SC:** Sorry, Chairperson,

1 I am not sure what the first was and what was the second,  
2 are we going to jump to a point –  
3 **CHAIRPERSON:** The first one was  
4 everything, you know movement by movement, and you said we  
5 would not get to the shooting by the end of the day. The  
6 other one was just that he concentrates on his movements  
7 because that is what he know about. The others he will be  
8 dependent on you to some extent, to tell him where the  
9 other vehicles were and the suggestion was that the first  
10 process could be done later by the parties out of the  
11 chamber and that could be filmed or something. That is, I  
12 think the second one seems better for the moment, because  
13 that is something he can deal with to some extent, or to a  
14 substantial extent from his own knowledge.

15 **BRIGADIER CALITZ:** Mr Chairperson,  
16 yes, I can indicate where Pappa1 was during the roll out,  
17 up to incident 2 where I was moving toward, as Mr  
18 Chaskalson can help my saying, move the  
19 vehicle in that direction, so, so, so, just to complete  
20 the rest of the picture, then we can have a combination of the  
21 two.

22 **COMMISSIONER HEMRAJ:** But Mr Chaskalson,  
23 won't it depend on what it is that you want to put before  
24 us as regards to the movement of the vehicles?

25 **MR CHASKALSON SC:** Ultimately, what I

1 would like to put before the Commission is the complete  
2 picture.

3 **COMMISSIONER HEMRAJ:** Yes.

4 **MR CHASKALSON SC:** But I do not think we

5 need to waste time in open Commission and in particular

6 with Brigadier Calitz who will not be able to speak to 90% of

7 what I would want to put to the Commission from the

8 photographs. I think that is an exercise that would more

9 helpfully be done by the parties out of Commission time

10 with a series of photographs, possibly filmed so that the

11 Commission can then see slide, you know the first position

12 at whatever, 15:43, the position at 15:43 and 30 seconds

13 and so on at a later stage. I do not think it would be a

14 productive use of time to do it in open Commission time,

15 unless –

16 **CHAIRPERSON:** - the second way, but still

17 doing the other thing later out of the Commission, out of

18 the Chamber and have it being filmed and so, having it

19 filmed thereafter, so we will still get that information but

20 we are not going to get it today and we are going to spend

21 the time largely on things the brigadier knows about

22 himself.

23 **MR CHASKALSON SC:** And if I understand

24 the brigadier's evidence correctly, the first point of

25 interest at which the brigadier can testify is really

1 incident 1. So, Brigadier, if you can describe the  
2 situation, if you can move the blocks to where they should  
3 be, accepting of course that you won't aware of the  
4 movement of any Nyalas behind you and so on, but I presume  
5 that you were aware of the position of the barbed wire  
6 Nyalas at incident 1, so –

7 **BRIGADIER CALITZ:** Correct.

8 **MR CHASKALSON SC:** If you can now take us  
9 through the movement of the Nyalas up to the point at which  
10 you say incident 1 took place?

11 **BRIGADIER CALITZ:** Mr Chairperson,  
12 Thank you, at about 15:40, my time, I ordered Nyala 1  
13 to move to Nyala 2. At that stage, I do not know if I have to  
14 go through all my evidence, but Mr  
15 Noki moved forward toward my Nyala. We had the  
16 conversation, he moved back, Nyala 2 moved to Nyala 3 and Nyala  
17 3 moved to Nyala 4. I think it was Nyala 4 on  
18 this picture, and as Nyala 3 reached Nyala 4, Nyala 4  
19 started with the militant group, the group in front moved  
20 closer. I think this is what we call,  
21 the post, the pole mast.

22 **CHAIRPERSON:** The pole mast, I think it  
23 is called.

24 **BRIGADIER CALITZ:** That appears on the photo,  
25 yes.

1 **MR CHASKALSON SC:** Brigadier, if I can  
2 just interrupt, before we get to incident 1 there are two  
3 issues about which I would like to question you. The first  
4 relates to a video which shows Nyala 4 moving quite a long  
5 time before its rollout takes place and maybe if I can ask  
6 for that video to be played? Sorry, Brigadier, having  
7 stopped you I have now lost my notes. Yes, and I know  
8 exactly what I am looking for, I just cannot find my note of  
9 which video it is, it is in the JJJ194 series, so if I can  
10 ask the video people to get the JJJ194 series out. It is  
11 JJJ194.10, if we can just show 10 and the time, if I can  
12 contextualise this, the ETV time at which this video starts  
13 is 15:47:50 and if we can just play this video, sorry,  
14 again if I can contextualise, the rollout has proceeded so  
15 that Nyala 2 has reached Nyala 3, but Nyala 3 has not  
16 started moving off yet, and what we are seeing is Nyala 4  
17 and if we can just play the video?

18 **[VIDEO SHOWN]**

19 If we can just pause it at this point, if you can  
20 just go back because I will ask the brigadier just to  
21 identify it as Nyala 4, can we go back to the start of the  
22 video?

23 **[VIDEO SHOWN]**

24 Brigadier, do you see that sort of, what look  
25 like either dirt or rust marks running down the back right

1 hand side of the Nyala?

2 **BRIGADIER CALITZ:** I see it, Mr

3 Chairperson.

4 **MR CHASKALSON SC:** Those identified as

5 Nyala 4, I am not sure if you are able to confirm that, but

6 they do, that is what Nyala 4, - that Nyala 4 is the only

7 vehicle with those marks on it.

8 **BRIGADIER CALITZ:** I will take your

9 word, Mr Chairperson.

10 **MR CHASKALSON SC:** And if we –

11 **CHAIRPERSON:** We are now going to see the

12 video again with the Nyala moving forward but the wire not

13 being yet uncoiled?

14 **MR CHASKALSON SC:** And again that Nyala

15 that we can see, the BHR134 is Pappa9, that is Pappa9's

16 registration number, so if we go back now to where we are

17 on the chart we can locate what we are looking at and we can

18 see where Nyala 4 is edging forward.

19 **[VIDEO SHOWN]**

20 That is it, so Nyala 4 is starting to move forward

21 past Pappa9 and were you aware of this, was this something

22 that you instructed? It was during the rollout.

23 **BRIGADIER CALITZ:** No, Mr

24 Chairperson, like I said, Colonel Makhubela was in charge of the

25 roll out of the wire, so he would have communicate with

1 his people.

2 **MR CHASKALSON SC:** Then before you get to

3 describe what, - you say you saw at incident 1, when,

4 sometime after this, Nyala 3 reaches Nyala 4 they moved off

5 in tandem together and then stopped at the mast, so Nyala 4

6 eventually stopped at the mast with three behind it, do you

7 recall that?

8 **BRIGADIER CALITZ:** Mr Chairperson,

9 yes, as I said, when 3 reached 4, 4 started to deploy,

10 and I said this is where the people were moving down the hill.

11 **MR CHASKALSON SC:** And that would have

12 been right in front of you, if we look at these blocks.

13 Can you just point out where you are for the purposes of

14 the Commission? Of course the blocks are not to scale, so

15 it may be that Nyala 3 and 4 together with their barbed

16 wire would not have stretched, as far back, you know

17 potentially obstructing your viewers as we see here, but

18 that is broadly where it, given the scale, save for the

19 scale consideration that is where it happened. Now,

20 Brigadier, incident 1 is described in Exhibit L at slide

21 196, and it says, "Nyala 1 to 3 deployed without any

22 interference, but before Nyala 4 started deploying its wire

23 a group of armed protestors' formation moved forward and

24 tried to enter the police enclosure in front of Nyala 4."

25 Do you confirm that that is correct, before Nyala 4 started

1 deploying its wire?

2 **BRIGADIER CALITZ:** It is Correct, Mr

3 Chairperson.

4 **MR CHASKALSON SC:** But I am now asking you

5 about what you remember seeing yourself, not what is sitting

6 in Exhibit L.

7 **BRIGADIER CALITZ:** This –

8 **CHAIRPERSON:** Carry on, Brigadier?

9 **BRIGADIER CALITZ:** I think the formation

10 did not move in front of them at that stage,

11 as they deployed the formation came

12 closer.

13 **CHAIRPERSON:** Well, that is something

14 that does waive my question, because we were told that

15 Nyala 4 moved forward for a distance without uncoiling any

16 wire at all, you know with three behind it and then it, -

17 and I think it went up to the mast, is that right?

18 **MR CHASKALSON SC:** That is correct,

19 Chairperson.

20 **CHAIRPERSON:** Presumably started

21 deploying, started uncoiling its wire at the mast. Now you

22 say this group of armed strikers in formation moved

23 forward, tried to enter the police enclosure in front of

24 Nyala 4. Was this before Nyala 4 got to the mast or when

25 it already got past the mast and was already uncoiling

1 wire?

2 **BRIGADIER CALITZ:** Mr Chairperson, I cannot recall

3 exactly if the moved pass the

4 post, I think if there is a video,

5 I might be able to describe it better. What I said is

6 that when Nyala 4 started to move, I could see the group

7 coming down and then I told the group of Nyala 4

8 to pull back, so I presume when I talked to them

9 they already started to roll out their

10 wire.

11 **MR CHASKALSON SC:** And, Brigadier, can

12 you tell the Commission exactly what you saw? First of all

13 where were you seated inside the Nyala? I was not there for

14 the exhibition, I was told by people at the exhibition that

15 you were sitting at the back –

16 **CHAIRPERSON:** I think demonstration is a

17 more accurate word.

18 **MR CHASKALSON SC:** Demonstration, that

19 you were at the back of the Nyala next to the radio, but

20 were you on the left or right hand side?

21 **BRIGADIER CALITZ:** If you look at the photo,

22 right-hand side at the back, the Nyala is positioned toward the hill,

23 there are three seats, right at the back.

24 **MR CHASKALSON SC:** So you were at the

25 back right of the Nyala and were you on a bench at the back

1 right or a seat or, - you gesture to your seat, is there a  
2 seat there?

3 **BRIGADIER CALITZ:** It is normal rubber  
4 seats, yes, not comfortable ones but normal seats.

5 **MR CHASKALSON SC:** And were you seated on  
6 that seat through this whole period that were you going to  
7 are describing what happened at incident 1?

8 **BRIGADIER CALITZ:** Mr Chairperson,  
9 no, I think at a stage, if you  
10 want to see what is going on,  
11 you have to lift yourself quite high, then you can look  
12 through the position of the driver and commander at the left, at  
13 that stage my right-hand side door was open, so  
14 I could easily see the Nyala 4 and  
15 and that is where I yelled at them,  
16 where they were outside the vehicle.

17 **MR CHASKALSON SC:** And while we are on  
18 your positions inside the Nyala and what you can see from  
19 the Nyala, you have got a window to your right, you have got a  
20 window to your left, but that is on the other side of the  
21 Nyala. There is also a window at the back, obviously it is  
22 not going to be relevant for now but it may be relevant  
23 later. Did you have any vision out of the window at the  
24 back from your position?

25 **BRIGADIER CALITZ:** If you turn around

1 you can see, restricted, but you can see, yes.

2 **MR CHASKALSON SC:** Now when you saw Nyala

3 4 at incident 1, do you recall whether you were looking

4 through the windscreen in front, past the Bakkie Botha like

5 frame of Colonel Macintosh or through your right hand

6 window or open door?

7 **BRIGADIER CALITZ:** I think it is more

8 as the blocks are moved now, Nyala 4

9 move passed the post,

10 and was more to my right-hand side. So I

11 looked out of my window at a stage and communicated

12 with them.

13 **MR CHASKALSON SC:** So you communicated

14 through your open door and they were on a line where you

15 could do that, talking through your open door you would be

16 talking at them?

17 **BRIGADIER CALITZ:** It is Correct, Mr

18 Chairperson.

19 **[15:53] MR CHASKALSON SC:** And what exactly did

20 you see? Was there any - what is described in exhibit L is

21 "A group of armed protesters in formation moved forward and

22 tried to enter the police enclosure in front of Nyala 4."

23 And then if we go back, or if we go forward to the next

24 slide we see an arrow, which is I presume designed to

25 depict the movement of the strikers forward in that

1 direction. Is that what you saw?

2 **BRIGADIER CALITZ:** It is about the  
3 direction of the group in front that moved  
4 there, Mr Chairperson.

5 **MR CHASKALSON SC:** And while we have  
6 197 up, if you can just mark your position on 197? Maybe I  
7 can point it out for you. That is Pappa1.

8 **BRIGADIER CALITZ:** It is Correct, Mr  
9 Chairperson.

10 **MR CHASKALSON SC:** I am circling the Nyala  
11 that is at the end of the shadow of the mast.

12 **BRIGADIER CALITZ:** On this photo, yes.  
13 It was, it was before – oh, I see the time,  
14 yes. It was before Nyala 1 was deployed.

15 **MR CHASKALSON SC:** Yes, yes, It is an  
16 earlier photo, but your position has not moved by the time  
17 that incident 1 allegedly happened.

18 **BRIGADIER CALITZ:** It is Correct, Mr  
19 Chairperson.

20 **MR CHASKALSON SC:** Now you said that you  
21 were looking out the right-hand side, or the open right  
22 door to where Nyala 4 was essentially at the mast and you would  
23 be looking broadly down the line of the shadow of the mast.  
24 Is that correct?

25 **BRIGADIER CALITZ:** It is in approximate

1 direction, yes, Mr Chairperson.

2 **MR CHASKALSON SC:** And my question was,

3 did you see people on the hill in formation moving down

4 in the direction of the arrow, trying to get into the

5 police enclosure at that point?

6 **CHAIRPERSON:** So are you deliberately

7 asking from the hill, because what we can see now, I mean

8 of course -

9 **MR CHASKALSON SC:** Yes.

10 **CHAIRPERSON:** - It is a picture from a

11 different time, but the evidence has been there were people

12 on the hill and then on the sort of flat area in front of

13 the hill there were other people.

14 **MR CHASKALSON SC:** Thank you,

15 Chairperson, my question was wrong.

16 **CHAIRPERSON:** Which are you referring to?

17 **MR CHASKALSON SC:** What I understand

18 incident 1 to be describing is - or let us ask; is this

19 group that I am circling with my pointer just behind the

20 arrow on slide 197 what you would describe as the militant

21 group?

22 **BRIGADIER CALITZ:** Yes, your direction was a bit

23 too large. It is that group in front of the second

24 - Not the whole group, just the group in front there.

25 My pointer is behind the yellow arrow, the smaller group of

1 200 to 300.

2 **MR CHASKALSON SC:** And Brigadier, did you

3 see that group then move down in the direction described by

4 the arrow and attempt to get into the police enclosure just

5 north of the mast?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 yes, not just that group. When they started moving,

8 as I testified before, I saw some of the people

9 in the bigger group with them,

10 they were moving down in the same direction,

11 but the militant group in front had the specific formation

12 I testified to.

13 **MR CHASKALSON SC:** But I am interested in

14 where you saw them move. Did you see them move along the

15 arrow that we see on slide 197?

16 **BRIGADIER CALITZ:** Mr Chairperson,

17 yes, I saw

18 Nyala 4 started to moved and they were coming directly toward

19 Nyala 4 and I told the Nyala 4 members to

20 get back in their vehicles. If they were in front of the post,

21 or pass the post, that I cannot recall,

22 at this stage.

23 **MR CHASKALSON SC:** And did you see any

24 movement before Nyala 4 had reached the mast?

25 **CHAIRPERSON:** By whom? Movement by whom?

1 **MR CHASKALSON SC:** Movement by the  
2 protesters, or by the militant group.

3 **BRIGADIER CALITZ:** Do you talk of "the  
4 mast," the post?

5 **MR CHASKALSON SC:** Yes.

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 I just testified that I cannot recall if the

8 Nyala was in front or passed the post.

9 I did not specifically look at the post at that stage,

10 no. I just saw the group moving in the direction

11 of the wire we were rolling out. So sorry, I cannot

12 assist you with that.

13 **COMMISSIONER HEMRAJ:** But that group of

14 people would have had to traverse that area where the

15 yellow arrow is to reach the Nyala at the pole.

16 **BRIGADIER CALITZ:** It must have been in that

17 direction. They came directly down the hill, directly

18 toward the vehicle, Commissioner.

19 **MR CHASKALSON SC:** Chairperson, I have

20 noticed it is now 4 o' clock. I am about to move on to ask

21 the Brigadier to describe what he saw at incident 2, but

22 that is going to –

23 **CHAIRPERSON:** It sounds a logical point

24 to take the adjournment. He is got the group moving forward

25 towards the, in the vicinity of the pole. The Nyala 4 is

1 around, also in the vicinity of the pole. They are going  
2 towards the pole. The Nyala is more or less at the  
3 position of the pole, and it is shortly going to accelerate  
4 towards the small kraal, but that is something you can tell  
5 us about tomorrow morning, if you are prepared to do so.

6 **BRIGADIER CALITZ:** Any time,  
7 Commissioner.

8 **CHAIRPERSON:** So we will adjourn now until  
9 9 o'clock tomorrow morning. Mr Chaskalson, unless There is  
10 something you want to say before that?

11 **MR CHASKALSON SC:** Chairperson, just to  
12 help proceedings tomorrow, can we ask the camera operator  
13 just to take a picture of the map with the blocks on it now  
14 so that we can recreate it tomorrow morning and pick up at  
15 that point and – we will leave it, but we do not know who is  
16 going to be in this room overnight and whether someone  
17 might helpfully sort of tidy it all up and put it back in a  
18 corner.

19 **CHAIRPERSON:** Well, your request has been  
20 heard, I trust, and I am sure it will be complied with. We  
21 will adjourn now - unless there is some other housekeeping  
22 we have to attend to - adjourn now until 9 o'clock tomorrow  
23 morning.

24 **[COMMISSION ADJOURNED]**