

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 162

Lukmos
communications

05 DECEMBER 2013

TRANSCRIPT PAGES 18586 TO 18735

1 **[PROCEEDINGS ON 5 DECEMBER 2013]**

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

3 Brigadier, you are still under oath.

4 **BRIGADIER CALITZ:** Thank you, Mr

5 Chairperson.

6 **CHAIRPERSON:** Mr Ntsebeza.

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

8 Thank you, Mr Chairman. Mr Chairman, there is a clip that I

9 would like to be played, exhibit JJJ194.17.

10 **CHAIRPERSON:** Does the operator know

11 about it, and is the operator ready to play it?

12 **MR NTSEBEZA SC:** There was a prior

13 communication, that is what was –

14 **CHAIRPERSON:** Are you playing the whole

15 clip, or must we put on record which section of the clip is

16 being shown?

17 **MR NTSEBEZA SC:** I am not sure that,

18 whether we may have to give a warning here, Mr Chairman,

19 but I was – it is only, in fact –

20 **CHAIRPERSON:** If you are going to show a

21 portion of the clip, which does not require a warning, then

22 that is not a problem.

23 **MR NTSEBEZA SC:** Yes, yes.

24 **CHAIRPERSON:** But what we then have to

25 have is stated what section of the clip we are looking at

1 for the purpose of the record. That is all.

2 **MR NTSEBEZA SC:** It is the section where

3 the –

4 **CHAIRPERSON:** I just want into the clip

5 15 seconds to 25 seconds or something like that.

6 **MR NTSEBEZA SC:** I do not have that

7 detail, unfortunately, Mr Chairman.

8 **CHAIRPERSON:** When you start playing it,

9 when it starts being played I will then announce, or you

10 can announce, you can have the duty of doing it, it will be

11 on the corner of the screen somewhere I think. What is the

12 exhibit number again?

13 **MR NTSEBEZA SC:** JJJ194.17.

14 **CHAIRPERSON:** JJJ194.17. Alright, it is

15 starting now, it looks like. Okay. Must I give a warning?

16 Must I give a warning, Mr Ntsebeza?

17 **MR NTSEBEZA SC:** I do not think so.

18 **CHAIRPERSON:** Alright. Well, I take it

19 the clip can now be shown. When you have seen enough, when

20 you want it to stop indicate and the –

21 **MR NTSEBEZA SC:** Yes.

22 **CHAIRPERSON:** In fact, you said it would

23 start from the beginning and then when you stop we will

24 record, announce what the reading is at that point.

25 **MR NTSEBEZA SC:** Yes, Mr Chairman. Thank

1 you very much.

2 **CHAIRPERSON:** Sorry, before we see the

3 clip, did you want to say something before we start? Did I

4 remind you, you are still under oath? If I did not, you are

5 still under oath. Yes, did you want to say something?

6 **BRIGADIER CALITZ:** You did remind me.

7 Mr Chairperson, it is correct, I just wanted to ask

8 the reference number, they did give me a bundle, but

9 I do not get it in my bundle. I did not look at it

10 before. But I do not have

11 a problem with it. I will follow –

12 **CHAIRPERSON:** You will see it on the screen.

13 **BRIGADIER CALITZ:** I will follow,

14 thank you, Mr Chairperson.

15 **MR NTSEBEZA SC:** Right, can we have the –

16 I am told nobody has it. It is a clip that I have seen several

17 times and I can indicate to Brigadier what it is about.

18 **CHAIRPERSON:** Well, we saw something on

19 the screen a minute ago, so is that the clip? We saw the

20 beginning of it.

21 **MR NTSEBEZA SC:** Well, the part that I

22 really would like shown is where the mineworkers are

23 marching past the Nyalas and they are being shot at and I

24 think the particular – and if we can agree about it, I mean

25 I have no desire to show –

1 **CHAIRPERSON:** No, I would say it is
2 probably best for us to see it, if it can be found quickly.
3 The operator is nodding his head. Can you show it? He's
4 holding his hand up. Is that a sign of surrender? Perhaps
5 Mr Wesley can do the necessary. He is normally able to wave
6 some kind of magic wand in this area.

7 **MR NTSEBEZA SC:** Maybe we can – I am told
8 it is 20 seconds. Relying on those who know, I said point

9 17. Mr Chairman, can I –

10 **CHAIRPERSON:** It looks as if Mr
11 Chaskalson has put something onto a memory stick or
12 something that is being taken to the operator.

13 **MR NTSEBEZA SC:** Yes.

14 **[VIDEO SHOWN]**

15 Just there, okay. Can you just go back, can you
16 play it in slow-motion? Go back a little bit.

17 **[VIDEO SHOWN]**

18 Right, if you could go back again. Go back a few
19 seconds, please.

20 **CHAIRPERSON:** We are at the beginning of
21 it, are not we?

22 **MR NTSEBEZA SC:** Yes. From the
23 beginning, but that is the critical in relation to the
24 questions that I was putting to the Brigadier yesterday.

25 Can we ...

1 **CHAIRPERSON:** What we see on the clip
2 appears to be the persons who were at the front of this
3 advancing group, one of them being Mr Noki with his green
4 blanket. They in other words appear to be the very front
5 of the advancing group and there are a number of people
6 behind them, so they are coming into view in the gap
7 between these two Nyalas. Is that right, Mr Ntsebeza?

8 **MR NTSEBEZA SC:** Yes, Chairman.

9 **CHAIRPERSON:** So then you want to run it
10 slowly from there?

11 **MR NTSEBEZA SC:** In fact, I want the part
12 before that because what I am going to be concentrating on –
13 oh, by the way, you do not see where I am pointing with this
14 red – I am going to be concentrating on what comes out,
15 firstly I want some confirmation from the Brigadier that
16 that is a shotgun, if it is, and I will want confirmation
17 from him again that something is ejected out of that
18 shotgun, and that there is smoke that comes as the –

19 **CHAIRPERSON:** We did see him fire it, if
20 that is the right word – I suppose it is – on the little bit
21 that we saw. Therefore, I do not know that you have to go back. If
22 you go forward a couple of seconds I think you will see what
23 you want to see.

24 **[VIDEO SHOWN]**

25 **MR NTSEBEZA SC:** There is the smoke.

1 **CHAIRPERSON:** I think that is enough,
2 is it not? how far into the clip were we? 15 seconds? Is
3 that two seconds? Oh yes, yes, two seconds is in the
4 bottom left-hand corner. That is what is relevant. Is that
5 enough for your –

6 **MR NTSEBEZA SC:** By the way, I just also
7 wanted to point out, I think Mr Magidiwana, who testified
8 at length, is in this clip. Would that be him? You
9 would not know that, Brigadier?

10 **CHAIRPERSON:** I do not think the Brigadier
11 knows that, but I take it –

12 **MR NTSEBEZA SC:** Okay.

13 **CHAIRPERSON:** - the police
14 representatives may be able to – but anyway, let us proceed.
15 Have we now seen enough for you to make the point you want
16 to make?

17 **MR NTSEBEZA SC:** Yes. Yes, Mr Chairman.

18 **CHAIRPERSON:** Alright.

19 **MR NTSEBEZA SC:** Brigadier, as I
20 indicated, I do not know if –

21 **CHAIRPERSON:** Sorry, Mr Ntsebeza, forgive
22 my interrupting you. We have got another problem with the
23 air-conditioner that is leaking, so I do not think we need
24 stop, but perhaps the people in charge of these premises
25 can be told and possibly turn that air-conditioner off,

1 because it looks and sounds as if it is leaking to me. But
2 let us carry on in the meanwhile. I interrupted you; you
3 were saying something.

4 **MR NTSEBEZA SC:** Yes, thank you, Mr
5 Chairman. Now Brigadier, in the clip, is that a member of
6 the POP from your observation, who is firing that firearm
7 near the Nyala?

8 **BRIGADIER CALITZ:** It is a member of the
9 Public Order Policing, firing a shotgun.

10 **MR NTSEBEZA SC:** So you have also
11 answered the other question. So he is holding a shotgun.

12 **BRIGADIER CALITZ:** Yes, you just referred to
13 a weapon. I just said it was a shotgun,
14 on the question you asked earlier.

15 **MR NTSEBEZA SC:** Yes, and did you see
16 something being ejected from there?

17 **BRIGADIER CALITZ:** I did not see the
18 see the shell, but I can testify that if you cock the weapon,
19 one will pop out.

20 **CHAIRPERSON:** It looked like smoke coming
21 out.

22 **MR NTSEBEZA SC:** No, more than just –

23 **BRIGADIER CALITZ:** I think he talks about
24 the “ejection,” she shell casing –

25 **CHAIRPERSON:** Yes. No, no, no, I

1 understand that, but one of the other questions was smoke.

2 Did you see something looking like smoke?

3 **BRIGADIER CALITZ:** It is correct, Mr

4 Chairperson.

5 **MR NTSEBEZA SC:** Do you want us to –

6 **CHAIRPERSON:** Before that you did not see

7 the shell, I suppose, the empty shell? Shall we look at it

8 again?

9 **BRIGADIER CALITZ:** Mr Chairperson, I think if he

10 cocks the weapon there will pop out a shell casing, although I do not

11 know if you can see it here, but that is what

12 happens. Maybe I must go to this side –

13 **MR NTSEBEZA SC:** No, I just want you to

14 confirm this. If you do not see it, you do not see it.

15 **BRIGADIER CALITZ:** There he goes.

16 **CHAIRPERSON:** It looks as if there was a

17 projectile, does not it?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 yes, the screen, the big screen is not very clear.

20 When I saw it on the TV screen behind me, it was much

21 clearer, I could observe it clearly.

22 **CHAIRPERSON:** You saw the projectile?

23 **BRIGADIER CALITZ:** The shell casing that

24 popped out, it is correct.

25 **MR NTSEBEZA SC:** So you remember

1 yesterday because of my lack of knowing these things I
2 sought to find out whether after firing a shot from a
3 shotgun something gets ejected, and that would be the
4 cartridge. Is that what it will be called?

5 **BRIGADIER CALITZ:** The shell casing, yes.

6 **MR NTSEBEZA SC:** That is Afrikaans for
7 cartridge?

8 **COMMISSIONER HEMRAJ:** Cartridge case
9 actually.

10 **CHAIRPERSON:** "Doppie (Shell)" is a cartridge
11 case, as I understand it.

12 **BRIGADIER CALITZ:** Yes. I think they refer to
13 a shotgun casing as a "cartridge,"
14 but I think it is a "shell," so I think it is more a shell.

15 **MR NTSEBEZA SC:** It is a shell.

16 **BRIGADIER CALITZ:** Shotgun shell, and the
17 Afrikaans word for it is a "doppie (shell)".

18 **MR NTSEBEZA SC:** Okay. No, thank you,
19 Brigadier. Would that mean in order for another shot to be
20 fired from that shotgun after that projectile has been
21 ejected, that there is a mechanism that would reload the
22 area where – I do not know Afrikaans –

23 **BRIGADIER CALITZ:** No, I understand what you want to
24 ask, Advocate. It is indeed so. The shell is projected out
25 and then another one gets pushed from the

1 magazine into the loop of the weapon.

2 **MR NTSEBEZA SC:** And are you familiar

3 with what we see there? What we see there seems to be the

4 area around the kraal that we have been talking about.

5 **BRIGADIER CALITZ:** In this area I can see the

6 white Casspir, so it will be the group that,

7 as the nose of the white Casspir shows in front, are on

8 left-hand side between the Casspir and the kraal.

9 **MR NTSEBEZA SC:** Yes.

10 **BRIGADIER CALITZ:** The group in front,

11 moving there.

12 **MR NTSEBEZA SC:** Yes. Now if we went to

13 exhibit KKK11, which is what you have in your bundle,

14 KKK11, pages 30 and 31, now we have worked out that, on

15 page 31 for instance, that those are the relative positions

16 of those who were shot, the blues were those who were shot

17 with shotgun fire, pellets in particular. Do you see what

18 I am indicating?

19 **BRIGADIER CALITZ:** I see the blue marks

20 on the map.

21 **MR NTSEBEZA SC:** Yes, and our submission

22 will be that the spotted blues are indications - which is

23 why we made this presentation - of people who were shot

24 with shotgun pellets. Would you disagree with that?

25 **BRIGADIER CALITZ:** No, Mr

1 Chairperson, I think that is what you suggested yesterday.

2 **MR NTSEBEZA SC:** Yes.

3 **BRIGADIER CALITZ:** I understood it

4 that way.

5 **MR NTSEBEZA SC:** Yes, now we were hoping

6 we would have now post mortem results which would back up

7 what we have been putting to you, or what we put to you

8 yesterday, namely that the preponderance of injuries, some

9 of which were fatal, were on the left part of the bodies of

10 the victims, and we tried to show that yesterday, if you

11 remember.

12 **BRIGADIER CALITZ:** I recall we moved through

13 a lot of people, Mr Chairperson.

14 **MR NTSEBEZA SC:** We may have to come back

15 to that aspect later on, but you will recall that we

16 promised that there was a preponderance of injuries to some

17 of these people, also who died, where the shots appeared to

18 have been on the left part of their bodies. But we will come

19 to that when we have looked at the post mortem results and

20 when we have had them admitted as exhibits. Now just to

21 round off this aspect about shotgun victims, to your

22 knowledge none of the police officers in scene 1 or in

23 scene 2 was shot neither by high velocity ammunition, nor

24 by shotgun pellet fire.

25 **BRIGADIER CALITZ:** Mr Chairperson,

1 do I understand you correctly, are you asking if the police were shot at? Is that
2 what I – do I understand you correctly?

3 **MR NTSEBEZA SC:** Well, now I am putting it
4 to you and you can confirm or deny it –

5 **CHAIRPERSON:** Repeat the question, Mr
6 Ntsebeza.

7 **MR NTSEBEZA SC:** The question was, it is
8 common cause now that none of the police officers was ever
9 shot on that day, neither by high velocity ammo, nor by
10 shotgun pellet fire. There is no police officer who was
11 reported injured or fatally wounded by shotgun pellet fire.

12 **BRIGADIER CALITZ:** Mr Chairperson,
13 it is correct. If I understand the question correctly, then I can
14 say nobody was injured, but they were fired at,
15 they were however not hit.
16 It is correct, if that is your question.

17 **[09:36] MR NTSEBEZA SC:** Yes. I mean, let us tick
18 it off, everything that will make the - no police person
19 was ever in that by shotgun pellets or killed by shotgun
20 pellets on the 16th of August at scene 1 and at scene 2.
21 That is a fact.

22 **BRIGADIER CALITZ:** Correct, Mr
23 Chairperson.

24 **CHAIRPERSON:** Instances where – I am not
25 sure of the exact number, but we will leave that for the

1 moment – instances where someone or some people among the
2 strikers fired at the police, that firearm that was a used
3 and not shotgun. Is that correct? As far our information
4 goes. Is that right?

5 **BRIGADIER CALITZ:** Mr Chairperson, yes
6 that video they showed just now, on the second where you stopped,
7 you could clearly see the person shooting at the
8 police. It was a hand-weapon. I did not see
9 a shotgun.

10 **CHAIRPERSON:** No suggestion – it does not
11 mean it was not so - but there is no suggestion that the
12 police were fired at with shotgun by anybody. That is
13 correct, isn't it?

14 **BRIGADIER CALITZ:** The police never
15 alleged that we were shot at with
16 shotguns.

17 **CHAIRPERSON:** Yes, that is the point.
18 Yes, that is right. Do you agree with that?

19 **BRIGADIER CALITZ:** I agree with
20 that.

21 **MR NTSEBEZA SC:** And from the clip that
22 we saw, certainly members of the POP who were in Nyala –
23 what is this? – Pappa19, which I now understand to be the
24 same at Pappa10, those police officers had shotguns. We saw
25 it now in the clip. Do you agree with that?

1 **BRIGADIER CALITZ:** Mr Chairperson, your question
2 is very confusing. You referred to Pappa19, Pappa10,
3 and then you refer to what we saw in the clip. What we
4 saw in the clip, was a person between, Pappa 2 and the
5 Casspir.

6 **MR NTSEBEZA SC:** Okay.

7 **BRIGADIER CALITZ:** If you can maybe just
8 repeat the question?

9 **MR NTSEBEZA SC:** Okay, let me just un-
10 it is confusing.

11 **CHAIRPERSON:** You can speak some
12 Afrikaans, Mr Ntsebeza, oh, it is coming out now.

13 **MR NTSEBEZA SC:** No, just like the
14 witness can speak some English, very good English, but
15 anyway we all accept it, I understand, that members of the
16 POP had shotguns?

17 **BRIGADIER CALITZ:** I agree with you,
18 Mr Chairperson.

19 **MR NTSEBEZA SC:** Yes. And we know
20 there were Lonmin members, certainly in scene 2, were shown
21 the other day that I was here to be having shotguns.

22 **BRIGADIER CALITZ:** It is visible on the photo at scene 2,
23 Mr Chairperson, correct.

24 **MR NTSEBEZA SC:** Yes. And I would assume
25 that as officer commanding or operational commander you

1 were aware that there were these Lonmin members with
2 shotguns in what was a crime scene.

3 **BRIGADIER CALITZ:** Mr Chairperson, I testified
4 on that. I observed the people in civilian
5 clothes when I arrived at the scene. If you are referring to the
6 operational commander in the field, no, they were amongst
7 the group at forward holding area 1, and it was
8 General Naidoo, and they moved down from there. I saw them
9 for the first time when I reached
10 scene 2 – yes, scene 2, hill 3.

11 **MR NTSEBEZA SC:** Yes. And when you
12 became aware of them - and I do not know whether you have
13 testified about this already and you will pardon me if you
14 have, as operational commander, did you think that they
15 were lawfully there?

16 **BRIGADIER CALITZ:** Mr Chairperson, my
17 evidence was that I did see people in civilian clothes when I arrived at
18 the scene. I saw it on the photograph,
19 and that is where I observed it to be the people of
20 Lonmin – I think Lonmin admitted to it being their
21 security personnel. I never testified that I
22 observed the Lonmin security personnel with shotguns when
23 I arrived there, no. In my evidence I said,
24 I saw various people in civilian clothes when I was
25 shown the photograph, and it then was established that

1 it was those people.

2 **MR NTSEBEZA SC:** Is it your evidence that

3 you thought that these were ordinary civilians carrying

4 shotguns?

5 **BRIGADIER CALITZ:** No, Mr

6 Chairperson, I did not say that, I did not say I saw people

7 in civilian clothing with those weapons. I did say, when

8 I saw the photo, I said it must definitely

9 be – I think my words were, they were from the same

10 company, because of the red and blue and uniform they

11 were wearing. I do not think it came

12 from our side, but it came from Lonmin, which

13 then confirmed that it was their security personnel. That is where

14 we became aware of their weapons for the

15 first time.

16 **MR NTSEBEZA SC:** On the day, did you see

17 Lonmin security officers carrying shotguns?

18 **BRIGADIER CALITZ:** Not on the 16th,

19 which was the day of the incident, no, Mr Chairperson.

20 **MR NTSEBEZA SC:** So on that day you

21 did not see them. What you are testifying about, civilian

22 clothing and all of that, is as a consequence of having

23 seen the video – the photos?

24 **BRIGADIER CALITZ:** No, Mr

25 Chairperson, again, I testified, maybe I can try to

1 put it differently; I said I saw various people
2 with civilian clothes at the scene. Remember, we have
3 detectives, there are people from the criminal record centre,
4 we have various police officers working in civilian clothing,
5 for example, crime intelligence. It could a vast amount of
6 people wearing civilian clothes for a reason.

7 **MR NTSEBEZA SC:** Do you know how these
8 people got to scene 2?

9 **BRIGADIER CALITZ:** No, Mr
10 Chairperson.

11 **MR NTSEBEZA SC:** The people we now know
12 to have been security – Lonmin security people?

13 **BRIGADIER CALITZ:** just repeat the second part.
14 I did not hear you clearly?

15 **CHAIRPERSON:** Do you know how these
16 people got to scene 2 – the people, the Lonmin people whom
17 you saw there? You do not know how they got there? That is
18 the question.

19 **BRIGADIER CALITZ:** Not at all, Mr
20 Chairperson.

21 **MR NTSEBEZA SC:** As operational
22 commander, did not you want to know how these people, who
23 are armed with shotguns, which may even be having shotgun
24 pellets in their shotguns, did not you want to know who are
25 these and why are they here? This is a crime scene.

1 **BRIGADIER CALITZ:** Mr Chairperson, if I
2 saw them on that day, or if it was brought to my attention,
3 I would definitely have asked them.

4 **MR NTSEBEZA SC:** Are you saying you could
5 not – there is a likelihood that you did not see them on that
6 day?

7 **BRIGADIER CALITZ:** I already testified to that,
8 on that day I was not aware of them. If it was
9 brought to my attention, I would have definitely
10 enquired about the people with the weapons, and so forth.

11 **MR NTSEBEZA SC:** Now, when you say you
12 were not aware of their presence, I want to know that – I
13 want to be sure that you are not saying the same thing and
14 saying you did not see anyone there with shotguns, other
15 than the police. Is that your evidence?

16 **BRIGADIER CALITZ:** Mr Chairperson,
17 yes, I believe so. My evidence was that I saw
18 various people in civilian clothing. I never said anything about
19 blue uniforms or people with weapons, I did not
20 observe that on the day I was there, no.

21 **MR NTSEBEZA SC:** Okay. Let us start –

22 **CHAIRPERSON:** Sorry, can I just clarify
23 something? These security people, Lonmin security people,
24 they were not really in, they were not in “civilian clothing,”
25 as you put it? They were wearing a kind of uniform – not a

1 police uniform, but security officer uniform, is that

2 correct?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 yes, in police terms we refer to civilian clothing, if

5 you are wearing a denim and sneakers, or – that is

6 civilian clothing.

7 **CHAIRPERSON:** Yes, no, I understand. If

8 you are not wearing police uniform, then you are in –

9 **BRIGADIER CALITZ:** Maybe it is their

10 uniform, Lonmin will be able to testify to that.

11 **CHAIRPERSON:** Yes, but what I want to

12 know is, if you had seen people wearing those uniform, will

13 you have described them as being in civilian clothing, as we

14 say in English, in mufti - civilian clothes? Do you

15 understand the point? I understand a detective is in

16 civilian clothes. He does not wear a uniform, is that

17 right? So when you talk about civilian clothes, you mean

18 people in civilian clothing, civilian clothing, you are

19 including detectives, right. And you are really drawing a

20 distinction between people in police uniform and people

21 who are not in uniform?

22 **BRIGADIER CALITZ:** It is correct –

23 **CHAIRPERSON:** Now, my question is, if

24 you'd seen someone in a security officer's uniform, would

25 you have regarded that person as being in civilian

1 clothing, or would you have said, "No, I saw someone in
2 uniform, but not police uniform?" Because you have been
3 constantly saying I saw people in civilian clothing, in
4 civilian clothing. I want to know whether that would
5 include, or could include these Lonmin security guards?

6 **BRIGADIER CALITZ:** I think at this stage, it will
7 include them, Mr Chairperson. I did
8 – if I may explain the difference between police uniforms and
9 non-police uniforms, if that might
10 help, I think what I – what I
11 observed, is that they might have been wearing, as I said, denim
12 and sneakers, or something like that – so yes, in that case
13 I agree with you, Mr Chairperson.

14 **MR NTSEBEZA SC:** So what is it,
15 Brigadier? Did you see people there in civilian clothing
16 who were not the people whom we saw in that clip, who had
17 some uniform with red stripes? Did you see people in
18 civilian clothing on that day in scene 2? Let us take it
19 step by step.

20 **BRIGADIER CALITZ:** I did observe people
21 in civilian clothing at the scene, correct, Mr
22 Chairperson.

23 **MR NTSEBEZA SC:** You saw people in
24 civilian clothing armed with shotguns?

25 **BRIGADIER CALITZ:** It is negative,

1 Mr Chairperson.

2 **MR NTSEBEZA SC:** Now, what do you mean -?

3 **CHAIRPERSON:** It means no. He did not see
4 people in civilian dress carrying shotguns.

5 **MR NTSEBEZA SC:** Now, my question seeks
6 to know whether, other than the police on the day, whether
7 you saw in scene 2, in particular, people other than the
8 police carrying shotguns?

9 **BRIGADIER CALITZ:** On that day, the same
10 question, no, Mr Chairperson.

11 **MR NTSEBEZA SC:** Did you see any people
12 there whom you recognised as Lonmin security police, or
13 security personnel, who were armed with shotguns?

14 **BRIGADIER CALITZ:** Let me say again, no,
15 Mr Chairperson.

16 **MR NTSEBEZA SC:** So is it safe to say,
17 according to you, on that day, the only people you saw who
18 were armed with shotguns, were police officers?

19 **BRIGADIER CALITZ:** Yes, some of them, Mr
20 Chairperson.

21 **MR NTSEBEZA SC:** Now, these people in
22 civilian clothing – I am asking you in your capacity as the
23 operational commander, did you say you thought they could
24 have been detectives? Did I hear that?

25 **BRIGADIER CALITZ:** They could have been?

1 **MR NTSEBEZA SC:** Detectives.

2 **BRIGADIER CALITZ:** I said various people in

3 civilian clothing. We had detectives there and people from the

4 criminal record centre, on the scene. I think some of the

5 dog handlers, the K9 unit, they also work in

6 civilian clothing. I can name quite a few people wearing civilian clothing, Mr

7 Chairperson.

8 **MR NTSEBEZA SC:** Detectives or spies – what

9 are detectives -

10 **CHAIRPERSON:** They are detectives.

11 **MR NTSEBEZA SC:** Yes, that is why I asked –

12 **BRIGADIER CALITZ:** Detectives, local

13 criminal record centre, K9 dog unit, maybe I must

14 explain it – in English.

15 **MR NTSEBEZA SC:** That is why I asked,

16 Brigadier, that is why I asked whether you thought those,

17 people in civilian clothing are detectives?

18 **CHAIRPERSON:** We have spent enough time on

19 that. I think you have established the point you wanted to

20 establish about three times over. Perhaps we could move on

21 to the next one.

22 **MR NTSEBEZA SC:** Yes, Mr Chairman, we

23 certainly are there now.

24 **COMMISSIONER HEMRAJ:** Brigadier, can I

25 just ask you? During the operation, did Lonmin vehicles

1 have free access to the entire area?

2 **BRIGADIER CALITZ:** Commissioner, I believe so,

3 except for the part that we said we were going to

4 block. In other words, I would not allow them to move through

5 in front – there were the wire vehicle of

6 Colonel Makhubela in position, next to the opening, because

7 that was the area we called the active neutral zone,

8 it was the safe area. I believe they would have been able to

9 get through to the back. The media were there – even the

10 media, used that area. In the Nkaneng road,

11 there were an open road and then also towards hill 3,

12 how will I put it, that road at the back, there were no

13 barriers on that road, no.

14 **CHAIRPERSON:** There was some evidence

15 that the carrier was restricted at the relevant time, and I

16 understood that evidence to relate not so much to the so-

17 called neutral area, but the area between the wire

18 barricade and the hill. As you say, there was no

19 physical obstruction, yet I mean technically, anyone who

20 was foolish enough to want to go there, could approach

21 there from behind the hill, but as far as you are aware,

22 apart from this neutral – the front part of the neutral

23 area, so that I take it the media people were at the back,

24 the front part of the neutral area, that was restricted.

25 That is right?

1 **BRIGADIER CALITZ:** It was calm,
2 Mr Chairperson. We know the AMCU leader
3 went there, we also allowed the media there, so
4 restricted – is referring to the
5 security personnel or personnel from the outside, which we then
6 – they would report to me as the commander on the front
7 line, if I may call it like that. I also believe the
8 same was applicable at forward holding area 1. It is a very
9 prominent crossing, if I may call the area that, under correction,
10 if you get there and turn left toward the hill, there
11 would be a type of a reporting point, or
12 a –

13 **CHAIRPERSON:** You see the question that
14 you were asked relates really to Lonmin's vehicles, whether
15 they had free access to the whole of the area, with the
16 exception of that section that you described as the police
17 neutral area. And the answer to that appears to be yes, is
18 that correct?

19 **BRIGADIER CALITZ:** Maybe if I understand you
20 correctly, partially, yes, Commissioner. The restricted
21 area, is the area before the area where we were busy with
22 the negotiations. There I would say, no,
23 there were none.

24 **CHAIRPERSON:** So will not we talk about the
25 front part of the restricted area, that was – the front

1 part of the neutral area, I mean, that would be restricted,

2 but for the rest could they have access?

3 **BRIGADIER CALITZ:** Correct, Mr

4 Chairperson.

5 **MR NTSEBEZA SC:** Can I just clarify

6 something on page 31 of this exhibit, KKK11? Now, we have

7 positioned Pappa19, which I understand is Pappa 10 as well,

8 there. Do you see that, Brigadier?

9 **BRIGADIER CALITZ:** Pappa19, the one at the

10 back, where we can see the red dot, that is Pappa10,

11 correct.

12 **MR NTSEBEZA SC:** Yes. Now that – there

13 were POP members there, isn't it? In Pappa19?

14 **BRIGADIER CALITZ:** I believe so, Mr

15 Chairperson.

16 **MR NTSEBEZA SC:** You believe so. And do

17 you know if they were armed with shotguns? With pellets?

18 **BRIGADIER CALITZ:** Mr Chairperson,

19 that can be established. At that stage, I was in front

20 with Pappa1, so I would not be able to tell you precisely

21 what happened there at the back, but it is very easy to

22 establish who was in that vehicle.

23 **MR NTSEBEZA SC:** Yes. Now, if you could

24 establish that, because we will be making a submission that

25 the POP members in Pappa 10 and Pappa 5, next to it, were

1 armed with shotguns?

2 **BRIGADIER CALITZ:** The public order members

3 were issued with shotguns, while on those

4 vehicles, sir.

5 **CHAIRPERSON:** Not pellets apparently, is

6 that correct?

7 **BRIGADIER CALITZ:** No, Mr

8 Chairperson, no pellets –

9 **CHAIRPERSON:** Well, that is your evidence

10 of yesterday,

11 **BRIGADIER CALITZ:** I beg your pardon, Mr –

12 **BRIGADIER CALITZ:** That is your evidence

13 of yesterday, they did not have pellets, they had stun

14 grenades and they had teargas canisters, and rubber balls,

15 that was your evidence.

16 **BRIGADIER CALITZ:** It is my evidence as far as

17 my knowledge goes on the matter, Mr Chairperson.

18 **[09:56] MR NTSEBEZA SC:** Now, the pellets are not

19 standard issue in the SAPS. In fact I believe they are no

20 longer used by the SAPS.

21 **BRIGADIER CALITZ:** It was withdrawn a

22 few years ago, -

23 **MR NTSEBEZA SC:** I see –

24 **BRIGADIER CALITZ:** - Mr Chairperson.

25 **MR NTSEBEZA SC:** Yes, that is the basis

1 that you say there were no pellets because as far as you
2 know –

3 **CHAIRPERSON:** I think the basis on which
4 he says that no member of the Police Service –

5 **MR NTSEBEZA SC:** Yes –

6 **CHAIRPERSON:** - as far as he was aware
7 and based on his knowledge could have fired those pellets
8 that are the subject of your cross-examination at the
9 moment.

10 **MR NTSEBEZA SC:** Yes.

11 **CHAIRPERSON:** So that is how he eliminates
12 members of the Police Service and I remember yesterday he
13 and I had discussed it and it is really the only two other
14 possible sources of pellets, that is either Lonmin people,
15 if they were there and have them or alternatively the
16 strikers. It looks as if it is one of the other or
17 possibly both, I suppose but –

18 **MR NTSEBEZA SC:** Or –

19 **CHAIRPERSON:** - his evidence is that
20 members of the Police Service, one can exclude and if the
21 reason he has given is correct, well, then he is right and
22 if it isn't it isn't, but we are not debating that at the
23 moment, I do not think.

24 **MR NTSEBEZA SC:** Yes, we are also not
25 wanting to encourage speculation, Mr Chairman, because I

1 could easily put to the brigadier whether it is possible if
2 we are talking in the realms of possibilities, that
3 rogue police officers could have had pellets and hidden
4 them and taken them into the scene.

5 **CHAIRPERSON:** - can see that that was a
6 possibility –

7 **MR NTSEBEZA SC:** Yes, -

8 **CHAIRPERSON:** - but he thought it was
9 extremely unlikely because he said the pellets had not been
10 around for many, many years, I think that is his evidence.

11 **MR NTSEBEZA SC:** Yes.

12 **BRIGADIER CALITZ:** It is correct, Mr
13 Chairperson, I did not say it was impossible, I said,
14 the way you put it, rogue, I presume that refers to a
15 not so good police offices, if anyone had
16 that in his or her possession,
17 it was not brought under the attention of the commander, nor
18 undermine as the operational commander,
19 I was not aware of that, not at all.

20 **MR NTSEBEZA SC:** They have just been
21 withdrawn from the SAPS as far as you know but as I
22 understand it anyone with a gun licence can go and get a
23 pellet or pellets from a gun shop, it is not as though they
24 are –

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

1 I do not owe a shotgun myself, but I believe the people
2 owed shotguns, I think you get a number 5 and a
3 number, they still use it for sporting purposes.
4 I am sure it is readily available.

5 **CHAIRPERSON:** You are agreeing with Mr
6 Ntsebeza that someone who has such a weapon, a shotgun
7 would be able from sport shops and gun shops and so on, to
8 purchase pellets, if he was so minded.

9 **BRIGADIER CALITZ:** Any person in the
10 country would be able to –

11 **CHAIRPERSON:** Yes –

12 **BRIGADIER CALITZ:** – purchase that, Mr
13 Chairperson.

14 **CHAIRPERSON:** That is Mr Ntsebeza's point,
15 you agree with it.

16 **MR NTSEBEZA SC:** It is not unlawful to
17 agree with me.

18 **BRIGADIER CALITZ:** I just agreed with you,
19 I said anyone could buy one, Mr

20 Chairperson, so –

21 **MR NTSEBEZA SC:** Thank you, Brigadier.

22 Now I just want to round off this line and say, is it so
23 that to date there is no mineworker who has ever been
24 arrested with a shotgun that is associated with the events
25 of the 16th of August 2012?

1 **BRIGADIER CALITZ:** Mr Chairperson, I have
2 to talk under correction and refer back to the head of detectives
3 leading the investigation, as far as it was reported to me,
4 the two shotguns that was stolen belonged to the
5 security personnel, and there was also a shotgun stolen
6 from a police officer on the
7 Monday, as far as my I am concerned, those three shotguns
8 were not found yet.

9 **MR NTSEBEZA SC:** So since, I mean since
10 that day on which you say shotguns were taken from police
11 officers, is that the 13th of August or the 12th, the 12th?

12 **BRIGADIER CALITZ:** The police officers were
13 the 13th -

14 **CHAIRPERSON:** The security people, the
15 Lonmin security people -

16 **MR NTSEBEZA SC:** Oh, yes.

17 **CHAIRPERSON:** The Lonmin security
18 people -

19 **BRIGADIER CALITZ:** The 12th -

20 **CHAIRPERSON:** - shotguns were taken on
21 the 12th and the policeman to whom he refers, his shotgun
22 was taken on the 13th.

23 **MR NTSEBEZA SC:** Yes, but what I just
24 want to clearly establish is that for about a year now
25 since that date you are not aware that any mineworker has

1 been arrested for being in possession of any of those
2 shotguns, which are allegedly taken from Lonmin –
3 **CHAIRPERSON:** Actually he puts the
4 proposition even more strongly, he says, as far as he is
5 aware the shotguns have not been recovered and the difficult
6 to see how anyone could be arrested for being in possession
7 of it if the shotgun itself had not been recovered. So he
8 puts it more strongly actually than you are putting it now,
9 so I think you can tick that box off and move to the next
10 one.

11 **MR NTSEBEZA SC:** Yes. The next box would
12 be, Mr Chairman, there have been a number of statements
13 that have been made by the police. Are you aware of any
14 statement by any SAPS officer that records seeing a striker
15 firing a shotgun at scene 1?

16 **BRIGADIER CALITZ:** Mr Chairperson,
17 no, I did not read all the statements I had with me,
18 so I am not testifying out of any
19 statements, I followed the Commission and what was
20 said here, but I do not think there was any evidence
21 thereto, at this stage.

22 **MR NTSEBEZA SC:** Now there has been, we
23 have seen in that clip for instance that, - or you have
24 testified that there is footage, which shows a mineworker
25 firing at the police but you have already said that that

1 was just from a pistol, not from a shotgun. The question I
2 want to ask, if there was a striker who had shot at the
3 members of either POP's or TRT with a shotgun, surely one
4 or more of the members of the POP or the TRT would have
5 seen that and would have reported about it.

6 **BRIGADIER CALITZ:** Mr Chairperson,
7 again, you are making extensive statement. I understand the
8 question to be, if someone saw that a person was
9 shot, depending on his or her circumstances,
10 would they report it –

11 **CHAIRPERSON:** No, no, no, that is not the
12 question, he did not talk about, –

13 **BRIGADIER CALITZ:** Sorry, Mr
14 Chairperson.

15 **CHAIRPERSON:** What he said was, if one of
16 the strikers had used a shotgun and fired in the direction
17 of the police –

18 **BRIGADIER CALITZ:** Yes –

19 **CHAIRPERSON:** – then he would expect and
20 he is putting it to you to see if you agree, he would have
21 expected that to have been seen and remember it is not this
22 one shot that was fired, a number was shot, so his point is
23 that if the number of times a shotgun had been used it is
24 overwhelmingly probable, he did not put it as strongly as
25 that but I am doing it for him, overwhelmingly probable that

1 one or other of, some member of the POP or the TRT would
2 have seen it and reported it. He asks if you agree with
3 that and if you agree with that he will then put it to you
4 that no one did report it and he would then ask you to agree
5 that it is therefore highly improbable that any striker had
6 a shotgun at that point. Those are the three questions, I
7 give it to you all together, I take it, and how do you answer
8 them?

9 **BRIGADIER CALITZ:** Thank you, Mr
10 Chairperson, yes, no, I know of no police officers that
11 saw someone with a firearm; let me put it this way,
12 that saw someone using a shotgun to fire at them. If
13 it happened in the vision of that
14 police officers, then I think it would be present in a statement,
15 I think you further made the statement that, there were various shots,
16 my answer on that being, it depends on the direction from where the
17 shot was fired and the circumstances
18 in which the firearm was used.

19 **CHAIRPERSON:** It is a different sound,
20 isn't it?

21 **BRIGADIER CALITZ:** Sorry, Mr
22 Chairperson?

23 **CHAIRPERSON:** A different sound, if a
24 shotgun is fired it is a different sound. I suppose there
25 may have been so much noise going on that it was difficult

1 to pick it up.

2 **BRIGADIER CALITZ:** I –

3 **CHAIRPERSON:** If it has been fired

4 several times, again we are looking at probabilities now and

5 the probabilities are that it would have been heard, we

6 think you know, is that right?

7 **BRIGADIER CALITZ:** I already

8 said that yesterday –

9 **CHAIRPERSON:** Yes –

10 **BRIGADIER CALITZ:** – I think the rubber bullets is

11 softer, that is why I say, Mr Chairperson, it depends on the

12 circumstances, if happened simultaneously with the

13 shots by the TRT, it would be impossible to hear the shotgun, so it

14 depends on the circumstances.

15 **CHAIRPERSON:** I never remember whether it

16 is 5 seconds or 8 seconds, but if it was during that

17 fusillade that is the subject really of this inquiry

18 obviously it wouldn't have been heard, that is right, isn't

19 it?

20 **BRIGADIER CALITZ:** That is what I say.

21 **CHAIRPERSON:** So if it was before or

22 after it might well have been.

23 **BRIGADIER CALITZ:** That is what I say, Mr

24 Chairperson, it depends on what the circumstances was and

25 from what direction as well, so there is factors to be taken

1 into consideration, if that may be my answer,

2 Mr Chairperson.

3 **MR NTSEBEZA SC:** Once again if you look

4 at the photo on screen and I am just relying on your

5 experience here for the question that comes, it would seem

6 to me that the number of the victims and the spread of the

7 victims is an indication that, a very strong indication I

8 have to say, that more than one shotgun shot was fired.

9 Would you agree with that?

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

11 not an expert, but if I may give my opinion,

12 shotgun pellets spread, so an

13 expert will easily determine the distance, especially the spread load

14 of a shotgun pellet. If you say the three in front,

15 if you are wounded with a pellet, the experts will be

16 able to tell you if you will still be able to move or run, maybe

17 two or three steps, so I cannot indicate

18 definitely, if they used two weapons, or more

19 than three weapons, it depends on the

20 direction –

21 **CHAIRPERSON:** Not firearms, you are

22 –

23 **BRIGADIER CALITZ:** I mean, shotguns –

24 **CHAIRPERSON:** - not talking, you are

25 talking about shotguns.

1 **BRIGADIER CALITZ:** Shotgun,

2 shotgun.

3 **CHAIRPERSON:** And I think he said more

4 than one actually, but you –

5 **MR NTSEBEZA SC:** No, one shot.

6 **CHAIRPERSON:** One shot?

7 **MR NTSEBEZA SC:** One shotgun –

8 **CHAIRPERSON:** One shot, you know one

9 shotgun shot –

10 **MR NTSEBEZA SC:** One shotgun shot.

11 **BRIGADIER CALITZ:** It can be possible,

12 I see Mr Mpfu, I hope that shot is not in my

13 direction, but I see that, - no, what did I say,

14 Mr Chairperson, if they took two shotguns, and

15 and each one fired

16 one shot, was it possible at the same scene, I

17 am not an expert, but it is possible. As the pellet

18 spreads, as you could see on the photo yesterday, if there were a person

19 on the left-hand side, the other pellet will pass him and

20 then it will hit the other person, so I think

21 we must try to establish it, if we will be able to do it.

22 **MR NTSEBEZA SC:** Would your proposition –

23 **CHAIRPERSON:** Mr Ntsebeza, I am sorry to

24 interrupt you, but what the witness has said seems to me to

25 make some sense, if I may say so and that is, is this not

1 really a matter for an expert to come and tell us how these
2 shotguns work, what happens when you fire pellets, what
3 directions they go and so on? It may well be that this
4 evidence would be of an uncontroversial nature, a statement
5 can be obtained from an expert, which would be accepted by
6 everybody and it could just go in, in affidavit form. This
7 witness is at a bit of disadvantage, he is not an expert on
8 shotguns, he says he does not have his own one, so –

9 **MR NTSEBEZA SC:** No, I –

10 **CHAIRPERSON:** His evidence is not
11 entirely without value but I do not intend to be unkind of
12 disrespectful to him, but I do not think his evidence on
13 this point is valuable anyway.

14 **MR NTSEBEZA SC:** Mr Chairman, that is why
15 I prefaced this question by saying from his own experience
16 he has indicated now that his experience is not much to
17 talk about relevant to this aspect.

18 **CHAIRPERSON:** I would suggest that you
19 and the representatives of the police get together and see
20 if we cannot get an affidavit from a shotgun expert dealing
21 with the matter that you are traversing in cross-examination
22 which can go in without oral evidence being given and which
23 clarify these points, which you want clarified.

24 **MR NTSEBEZA SC:** No, -

25 **CHAIRPERSON:** In other words it forms the

1 basis, I take it for the submissions, which you are hoping to
2 make at the end of the hearing on this topic.

3 **MR NTSEBEZA SC:** Well, Mr Chairman, I
4 mean from a lay person's point of view and I am a lay person
5 when these things come. When I look at 5 people and the
6 spread of those people it really challenges my own thinking
7 that –

8 **CHAIRPERSON:** No, if an expert could tell
9 us that and –

10 **MR NTSEBEZA SC:** No, no, –

11 **CHAIRPERSON:** – you know –

12 **MR NTSEBEZA SC:** I just wanted to put it
13 on record, which is what I thought I was going to debate with
14 the brigadier but he has already –

15 **CHAIRPERSON:** So shall we move on to the
16 next box, but I am not suggesting we must abandon this box,
17 I made a suggestion to you –

18 **MR NTSEBEZA SC:** No –

19 **CHAIRPERSON:** – of how you could put
20 something in it.

21 **MR NTSEBEZA SC:** Yes.

22 **CHAIRPERSON:** So we will move on to the
23 next point.

24 **MR NTSEBEZA SC:** Thank you, Mr Chairman,
25 we will move to the next point. Now we have already dealt

1 with the question of, you are not aware of any statements
2 made by any police officers in which they would be saying
3 that they saw anyone firing a shotgun at scene 1. Now
4 we have dealt with –

5 **BRIGADIER CALITZ:** Mr Chairperson,

6 yes, it was my evidence that I did not see any statement where
7 I saw that they were shot at. It was my evidence that
8 there were statements where they said they saw
9 long weapons, the media and the police, there were
10 various such statements, but if they
11 fired at the police, you are correct, I did
12 not see that.

13 **MR NTSEBEZA SC:** Were there any Lonmin
14 personnel that you are aware of which were in the Nyalas?

15 **BRIGADIER CALITZ:** It depends on what you are
16 referring to, Mr Chairperson, I testified on my first day
17 when I started with the –

18 **CHAIRPERSON:** I think he means on the
19 16th.

20 **BRIGADIER CALITZ:** On the 16th?

21 **CHAIRPERSON:** This is all the topic of
22 these people who were shot on the 16th.

23 **BRIGADIER CALITZ:** Oh, okay, it was –

24 **CHAIRPERSON:** So if he is wrong he will
25 correct me, but I take it what he wants to know is, as far

1 as you are aware on the 16th, at the time of the shooting,
2 particularly the time depicted on this slide that is on the
3 screen, which shows various Nyalas in position and Casspirs
4 and so on, were you aware whether any Lonmin staff member
5 were in any of those police vehicles, that is the question?

6 **BRIGADIER CALITZ:** It is correct, Mr
7 Chairperson.

8 **CHAIRPERSON:** Were they or were not they
9 or do not you know?

10 **BRIGADIER CALITZ:** There were
11 Lonmin personnel. If you look at my statement, the
12 interpreter was with me in my vehicle, it happened so fast,
13 we had to protect him in the vehicles.

14 **CHAIRPERSON:** I take it no one was in
15 your vehicle, no Lonmin person, staff member was in your
16 Nyala with the shotgun firing out of the porthole at the
17 relevant time, is that correct?

18 **BRIGADIER CALITZ:** It is –

19 **CHAIRPERSON:** Alright, so we can
20 eliminate the Lonmin interpreter who was with you.

21 **BRIGADIER CALITZ:** Definitely, Mr
22 Chairperson.

23 **CHAIRPERSON:** The question relates to the
24 other, I think relates, I do not want to usurp Mr Ntsebeza's
25 prerogatives but I take it the question relates to the

1 other Nyalas, particularly those close to the scene where
2 these people are depicted on the slide. Are you aware
3 whether any Lonmin staff member was in anyone of those
4 police vehicles?

5 **BRIGADIER CALITZ:** As the operational
6 commander, none of my commanders or section commanders
7 or section commanders reported to me,
8 that they had any Lonmin personnel with shotguns in
9 their vehicles, so no, Mr Chairperson, I
10 am not –

11 **CHAIRPERSON:** But what you are saying is,
12 you do not know yourself. What you were saying is if they
13 were in the other vehicles those members who were in charge
14 of the vehicles would know, they did not report it to you
15 but you from your own knowledge obviously cannot say they
16 were not there, that is fair, is it not?

17 **BRIGADIER CALITZ:** It is
18 correct, Mr Chairperson.

19 **MR NTSEBEZA SC:** Thank you, Brigadier.
20 Brigadier, I want to move on to something else and it
21 relates to, again to your position as operational commander
22 and I just want to take you through the medics, who arrived,
23 the medical personnel who arrived at the scene. Now at
24 scene 1 we have evidence from Mr Loest in his statement,
25 Loest, L-O-E-S-T. Mr Chairman, the exhibit number I have

1 been given is HHH44.

2 **[10:15]** I am sure you, I am made to believe that you did

3 get in your bundle this statement by Captain Loest.

4 **CHAIRPERSON:** I take it you are referring

5 to paragraph 8 -

6 **MR NTSEBEZA SC:** Paragraph 8 therein.

7 **CHAIRPERSON:** - of the affidavit.

8 **MR NTSEBEZA SC:** Yes.

9 **BRIGADIER CALITZ:** I got it in my

10 bindle. I just referred to, in my bundle I just referred to the

11 Loest statement HHH4", which was "incorrect", but I

12 have HHH44. I presumed that I will be asked about Loest, so

13 HHH4, as it was in the bundle, is wrong.

14 **CHAIRPERSON:** 44 is 4 and 4, and 4 and 4

15 are 8.

16 **MR NTSEBEZA SC:** Double 4.

17 **BRIGADIER CALITZ:** No, he just referred

18 to his bundle. I just answered him that I have 44. I

19 have the statement of Captain Loest in front of me.

20 **MR NTSEBEZA SC:** You are more alert than

21 I am, Brigadier. Now we merely to make the point there

22 that he says he called the JOC, requesting that medical

23 people should be brought in to assist the injured

24 protesters. Now the next exhibit we want to look at is

25 JJJ188.

1 **CHAIRPERSON:** I am sorry, forgive me, what
2 was the point you were seeking to make with paragraph 8 of
3 exhibit HHH44?

4 **MR NTSEBEZA SC:** Merely that after the
5 shooting at scene 1 Loest called the JOC and he was
6 requesting – “I then instructed the members present with me
7 to remove and search for all the weapons,” the third line,
8 “I called the JOC requesting” –

9 **CHAIRPERSON:** I know that. Somewhere,
10 hopefully Mr Chaskalson can help us, somewhere in one of
11 these exhibits that lists the telephone calls –

12 **MR NTSEBEZA SC:** There is, in this bundle
13 we have that –

14 **CHAIRPERSON:** Okay, alright. So you are
15 getting there. Alright, okay, sorry, forgive me.

16 **MR NTSEBEZA SC:** Yes. In JJJ188 we
17 record those telephone calls. Now Brigadier Pretorius, I
18 believe she was the operational room commander. Loest
19 phoned Brigadier Pretorius, the operational commander, at
20 16:05. You see that?

21 **BRIGADIER CALITZ:** Yes, I just
22 confirmed, the one that we have now, is it JJJ188?

23 **MR NTSEBEZA SC:** Yes.

24 **BRIGADIER CALITZ:** Okay, in my bundle
25 I asked for 1888, I was looking for 1888,

1 and could not find it, but I now see that it is 188.

2 Captain Loest did phone at 16:05, it is correct, Mr

3 Chairperson.

4 **MR NTSEBEZA SC:** Now if we went to

5 JJJ187A, which is Brigadier Pretorius's statement,

6 JJJ187A –

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

8 Chairperson.

9 **MR NTSEBEZA SC:** Paragraph 33, she says

10 there, "After I received the report of casualties, I phoned

11 Mr Molatedi, the acting provincial head of IPID, to inform

12 him about the incident. I am not sure about the time of

13 this call. His phone was on voicemail, but he later phoned

14 me back and promised to send Mr Motaung of the IPID office

15 at Rustenburg to attend to the scene." You see that

16 paragraph 33?

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

18 Chairperson.

19 **MR NTSEBEZA SC:** Now in exhibit, the

20 previous exhibit, JJJ188, we see that Brigadier Pretorius

21 sends an SMS at 16:03. You see that?

22 **BRIGADIER CALITZ:** If I go up, yes,

23 the SMS, Brigadier Pretorius to the member of IPID,

24 16:03 –

25 **MR NTSEBEZA SC:** Yes.

1 **BRIGADIER CALITZ:** I can see it, Mr

2 Chairperson.

3 **MR NTSEBEZA SC:** Yes.

4 **BRIGADIER CALITZ:** Correct.

5 **MR NTSEBEZA SC:** We also have – if we

6 could go to JJJ108; JJJ108 is a statement by Major General

7 Naidoo and in paragraph 60 and 61 there is the following

8 which I want to highlight. "My group and I were still at

9 IRA1 and at approximately 15:45 I heard Lieutenant-Colonel

10 Vermaak, who was in the police helicopter, indicate that

11 people were down at hill 1 and we should get medical

12 assistance for them. He added later that the veld was set

13 alight by the strikers and fire trucks should be deployed.

14 I immediately activated my reserve group to move towards

15 hill 1 as I had both medical and fire personnel in my

16 group." You see that?

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

18 Chairperson.

19 **MR NTSEBEZA SC:** Now in paragraph 65 we

20 notice that the General instructed the medical and fire

21 personnel to hold back behind the electricity substation.

22 Do you see that part? "I ordered the fire and medical

23 personnel and detectives to hold back behind the

24 electricity substation and that the K9 and the Public Order

25 Police personnel, in order that they should move forward in

1 a line to ensure the area was secure for the deployment of
2 emergency services personnel." You see that?

3 **BRIGADIER CALITZ:** I can see it, Mr
4 Chairperson.

5 **MR NTSEBEZA SC:** Now all of these
6 extracts and I am sure you will agree with me here,
7 indicate that at least Captain Loest, Brigadier Pretorius,
8 Lieutenant-Colonel Vermaak, and General Naidoo were at
9 least approximately at 16:05 on that day, they were all
10 aware that medics were required at scene 1. Is that a fair
11 conclusion of an examination of this statement?

12 **BRIGADIER CALITZ:** Correct, Mr
13 Chairperson.

14 **MR NTSEBEZA SC:** So we are at 16:05, very
15 high-ranking personnel are aware that there is a need for
16 medics. Now let us just look at what the evidence says
17 about when the first medics arrived on these two scenes
18 between 16:05 when major people became aware that they were
19 needed. Now I am made to understand that the first medics
20 who arrived at scene 1, arrived at 16:53. Do you know
21 anything about that?

22 **BRIGADIER CALITZ:** No, Mr
23 Chairperson. If you can show me the document, where it is stated,
24 and allow me to go through it. I cannot testify that I saw
25 that time, no.

1 **MR NTSEBEZA SC:** Yes, now –

2 **BRIGADIER CALITZ:** May I just – you are talking about

3 scene 1, okay, yes. No, it is correct, Mr Chairperson.

4 **MR NTSEBEZA SC:** Yes, I am going to – let

5 me just put the propositions to you, Brigadier, and then we

6 can get into the question of getting to objective evidence.

7 I am instructed that the objective evidence will show that

8 the first medics arrived at scene 2 at 16:31, that there is

9 reliance on a Johannesburg water cannon picture, which shows that

10 paramedics arrived at scene 2 at 16:31:42. Now there is

11 also with respect to scene 1 what in your bundle is called

12 the FLIR camera – F-L-I-R – which is exhibit CC38, the

13 picture of which you have in your bundle, agreed? If we

14 can have this video played –

15 **CHAIRPERSON:** Mr Ntsebeza, it is nearly

16 teatime. How long is this going to be? Should we not take

17 the tea adjournment now and look at it after tea?

18 **MR NTSEBEZA SC:** Yes, we can take the tea

19 now, Mr Chairman.

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

21 adjournment now, quarter of an hour.

22 **MR NTSEBEZA SC:** The exercise will not be

23 long.

24 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

25 **[10:57] CHAIRPERSON:** The Commission continues.

1 Brigadier, you are still under oath.

2 **ADRIAAN MARTHINUS CALITZ:** Thank you, Mr

3 Chairperson.

4 **CHAIRPERSON:** Mr Ntsebeza, we are now

5 going to see a video, are we? We now move to the next box?

6 **CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):**

7 Yes. Yes, Mr Chairman, we are about to play a clip, exhibit

8 CC3A, the –

9 **CHAIRPERSON:** Any warning required?

10 **MR NTSEBEZA SC:** No, no, Mr Chairman. I

11 do not think so. If we could go to 16:53, and we stop at

12 16:55:02.

13 **CHAIRPERSON:** Are we going to see 16:53?

14 We are looking at 16:11 at the moment, or is it 16:11:53

15 we have to see, or what exactly must we look at?

16 **MR NTSEBEZA SC:** 16:53.

17 **CHAIRPERSON:** Well, it is 16:20 at the

18 moment. We have a long time to go.

19 **MR NTSEBEZA SC:** We should have – okay,

20 I am sorry, Mr Chairman. Maybe let us start at 16:53 and

21 stop at 16 – I mean the whole point is just to show that

22 there are two Netcare 911 ambulances, which have just

23 arrived at scene 1.

24 **CHAIRPERSON:** You are still busy with the

25 delayed arrival of the medical personnel and the delayed

1 commencement of medical treatment –

2 **MR NTSEBEZA SC:** Yes.

3 **CHAIRPERSON:** - for the injured persons.

4 Is it at scene 1 or scene 2? Which scene are you busy

5 with?

6 **MR NTSEBEZA SC:** We will concentrate on

7 scene 1.

8 **CHAIRPERSON:** Okay, alright, so we now

9 know what the topic is that you are busy with.

10 **MR NTSEBEZA SC:** Yes, Mr Chairman.

11 **COMMISSIONER HEMRAJ:** Mr Chaskalson, what

12 does F-L-I-R stand for? I know I was told, but I have since

13 forgotten.

14 **MR CHASKALSON SC:** It is an acronym FLIR,

15 the I-R is infrared. I am not sure what the F-L is. It is a

16 type of a CCTV camera.

17 **CHAIRPERSON:** Perhaps Mr Van As who is

18 looking after the interests of Lonmin here, at the moment,

19 can tell us the answer.

20 **MR VAN AS:** I will try and ascertain, Mr

21 Chairman.

22 **CHAIRPERSON:** Mr Wesley apparently knows,

23 I think. Do you, Mr Wesley?

24 **MR WESLEY:** Sorry, I beg your pardon,

25 Chairperson, I did not hear the question.

1 **CHAIRPERSON:** It is believed that you may
2 know what the letters F-L-I-R stand for. We understand I-R
3 is infrared, but the question is what does the F-L stand
4 for?
5 **MR WESLEY:** It is forward looking.
6 **CHAIRPERSON:** Sorry?
7 **MR WESLEY:** Forward looking. Forward
8 looking infrared.
9 **CHAIRPERSON:** Thank you, Mr Wesley. We
10 are all much better informed than we were. This is the
11 forward looking infrared camera. We are looking forward in
12 the direction of some ambulances which we can see at
13 16:53:16.
14 **MR NTSEBEZA SC:** Can I get the education
15 too? Forward looking –
16 **SPEAKER:** Infrared.
17 **MR NTSEBEZA SC:** Okay.
18 **CHAIRPERSON:** Now we are all on the same
19 page. What we can see, is this scene 1, I take it? Yes,
20 Mr Wesley nods his head. Therefore, this is scene 1 and we can see
21 some ambulances have arrived and that is the basis of the
22 questioning which you are now going to have to deal with
23 from Mr Ntsebeza. Mr Ntsebeza, carry on.
24 **MR NTSEBEZA SC:** Now I do not know whether
25 we are able to show the time.

1 **CHAIRPERSON:** The time is in the bottom
2 right-hand corner. That says 16:53, I cannot see what the
3 other part is, but that is –

4 **MR NTSEBEZA SC:** Okay, alright.

5 **CHAIRPERSON:** - 10. It is either, or 16,
6 yes, 16:53:16. So according to the FLIR clock – is that
7 right? – The FLIR clock at 16:53:16 the ambulances we see
8 on the screen arrived, or had shortly before arrived. Mr
9 Chaskalson, is FLIR time the same as ETV time?

10 **MR NTSEBEZA SC:** No – or Mr Chaskalson,
11 can you please – you are more, Mr Chairman, can I ask him
12 to explain, because I am told that this FLIR camera –

13 **CHAIRPERSON:** Task him to explain. Mr
14 Chaskalson, can you explain to us what we can see here, and
15 can you – but the first question is, is FLIR time the same
16 as ETV time?

17 **MR NTSEBEZA SC:** It is five minutes later.

18 **MR CHASKALSON SC:** No, Chairperson, it is
19 not. If you bear with me for a moment I can give you the
20 conversion time.

21 **CHAIRPERSON:** The point of importance is
22 what is the ETV time of the clip we are looking at?

23 **MR CHASKALSON SC:** And what is – can I
24 just be given the FLIR time again?

25 **CHAIRPERSON:** It looks like 16:53:16.

1 **MR CHASKALSON SC:** 16:53:16 would be
2 16:47:54, but I think that the video should play because
3 what one sees if one follows the video, this FLIR video, is
4 that those Netcare 911 ambulances do not make their way
5 across the police line until about five minutes later.

6 **CHAIRPERSON:** Alright. Yes, well Mr
7 Ntsebeza asked you please to give us a commentary on what
8 we see, and all I wanted from you before you commenced with
9 your commentary was accurate time, but if you are prepared
10 to give the commentary and if no-one objects to that, then
11 it would help us, I think. This is obviously done on a
12 provisional basis because we have asked for – it will be
13 remembered – for agreed narratives of the various videos
14 and this is one of them. So this is a trailer, as it were,
15 to that agreed narrative we are going to get in due course,
16 but if you please could proceed with it.

17 **MR CHASKALSON SC:** Well, can we then – I
18 have not prepared to do this, so if I can just look at my
19 notes and see what of consequence –

20 **CHAIRPERSON:** I see Mr Ntsebeza did not
21 ask you beforehand.

22 **MR CHASKALSON SC:** No. Well, not more
23 than about five minutes ago.

24 **MR NTSEBEZA SC:** Chairman, I do have
25 something to work on, you know. I would rely on Mr

1 Chaskalson confirming it, if –

2 **CHAIRPERSON:** So Mr Ntsebeza, perhaps the

3 easiest way then is for you to tell us what you have been

4 instructed we could see, and then if there is any point you

5 want Mr Chaskalson to clarify you can do so. Let us move on

6 while we have the clip on the screen.

7 **MR NTSEBEZA SC:** Now my researchers tell

8 me that at 16:55:02 the FLIR camera shows two Netcare 911

9 ambulances having just arrived at scene 1. Can it be

10 played so that we – is this being played?

11 **MR CHASKALSON SC:** Can I suggest that we

12 pause, having said I did not want to intervene. One sees

13 the flashing lights of the ambulances approaching from a

14 distance, according to my note at 16:53:42. So at 16:53:42

15 look for red flashing lights.

16 **CHAIRPERSON:** [Microphone off, inaudible]

17 35 at the moment.

18 **MR CHASKALSON SC:** It is stuck –

19 **CHAIRPERSON:** Can we try?

20 **MR CHASKALSON SC:** Can we play?

21 Because -

22 **MR NTSEBEZA SC:** Where is the sound?

23 There is no sound. It shows how intelligent I am about

24 these things.

25 **CHAIRPERSON:** FLIR camera was too far

1 away to hear.

2 **MR CHASKALSON SC:** If we can just pause,

3 that is the second of the ambulances and they're on the road

4 in the direction, or I do not know if it is a road, or

5 they are driving in the direction of scene 1.

6 **CHAIRPERSON:** That is 16:53:50.

7 **MR CHASKALSON SC:** And it is now, it is

8 stationary at this point.

9 **MR NTSEBEZA SC:** I am told that this

10 camera is 5 minutes 22 seconds faster than the actual time,

11 than the time that we see there. Therefore, real time would be

12 16:49:40.

13 **MR CHASKALSON SC:** For what it is worth,

14 my next note is 16:55 where the cameras reach the police

15 line at scene 2 and stop.

16 **CHAIRPERSON:** At scene 2?

17 **MR CHASKALSON SC:** At scene 1. Scene 1.

18 Ambulances, not cameras. And if we can stop there.

19 **CHAIRPERSON:** 16:55, it looks like 00,

20 16:55:00 FLIR time.

21 **MR CHASKALSON SC:** A few seconds

22 previously I think we saw a paramedic get out of the first

23 vehicle and walk back towards the second vehicle. Then at

24 16:55:49 the ambulances are going to drive off to try to

25 get across the police line. Or around rather than across,

1 and we will then see them having made their way around the
2 police line next at 16:58:36. If I can just mark at that
3 point, if we can stop the video, take it back a couple of
4 seconds, that there is the first CCTV record of any
5 ambulance on the other side of the police line.

6 **CHAIRPERSON:** That is 16:58, is that 39 or
7 30?

8 **MR CHASKALSON SC:** In fact we see it a
9 couple of seconds earlier, but I think a couple of seconds
10 is neither here nor there.

11 **CHAIRPERSON:** So it is 16:58:30, is it?
12 Is that correct? That is the FLIR time.

13 **MR CHASKALSON SC:** My note was 36, but –

14 **CHAIRPERSON:** Oh, that could be a 6, yes,
15 36.

16 **MR CHASKALSON SC:** Chairperson, I am not
17 sure we are going to see much more of value going forward
18 from this point.

19 **CHAIRPERSON:** Is this all you want us to
20 see, Mr Ntsebeza?

21 **MR NTSEBEZA SC:** Yes, Mr Chairman. But I
22 also want us to play a clip from exhibit AAA, ZTS071VOB,
23 which I believe is an Al Jazeera bulletin of the 16th of
24 August.

25 **CHAIRPERSON:** Is that ready to be shown

1 to us?

2 **MR NTSEBEZA SC:** It should be. Well, if

3 it is what I know it to be, it will have sound.

4 **MR CHASKALSON SC:** I think we may need a

5 warning for this video. I am not sure, but I think we may.

6 **CHAIRPERSON:** I am informed that we are

7 going to see pictures, or images on the video screen, TV

8 screen, which may cause pain and grief to relatives and

9 loved ones of some of those who died on the 16th of August

10 at Marikana.

11 **MR NTSEBEZA SC:** Cannot we start –

12 **CHAIRPERSON:** I ask that this not be

13 shown until those who wish to leave the chamber, if there

14 are any, leave, because it is important that they be warned

15 that there is this danger that they will be exposed to

16 images which will cause them distress if they stay in the

17 chamber. But I will ask – I take it that is been

18 interpreted simultaneously to my speaking. No one appears

19 to be standing up, wishing to go, so I take it you can

20 proceed, Mr Ntsebeza.

21 **MR NTSEBEZA SC:** And Mr Chairman, if I

22 could also request that we start about 10 seconds before

23 01:18, because the clip is only significant for what is at

24 01:18 to 01:21, if we could start 10 seconds into that,

25 before that.

1 **[11:16]** Can we rewind 10 seconds?

2 **[VIDEO SHOWN]**

3 Okay, if you could just go back on that again?

4 Now, Brigadier, the point of this entire exercise

5 unfortunately has simply been to seek to establish and find

6 out whether you do agree that by all these accounts,

7 including the voice over from the Al Jazeera journalist, it

8 appears that it took a full hour from 15:53 to 16:53 to get

9 the medics to the scene, certainly scene 1 and particularly

10 when the SAPS knew at 16:05 that the medics were required

11 there. It seems to me, firstly, can we agree that all of

12 this footage shows that a period of about an hour elapsed

13 from 16:53 to 16:53 for the medics to get to scene 1. Do

14 you agree?

15 **BRIGADIER CALITZ:** I saw it on

16 the video, Mr Chairperson.

17 **MR NTSEBEZA SC:** Do you disagree with

18 what we have seen on the video?

19 **BRIGADIER CALITZ:** No, Mr

20 Chairperson, I said it is correct, that is what I saw on

21 the video.

22 **MR NTSEBEZA SC:** Okay, now of course the

23 SAPS on the evidence I established, you were aware from at

24 least 5 minutes past 4 that medics were required, you saw

25 the exercise that we did before this. Do you also confirm

1 that?

2 **BRIGADIER CALITZ:** I cannot confirm

3 the exact time, I am not

4 on that statement, but I take your word for it, the medics was

5 called in –

6 **MR NTSEBEZA SC:** Yes –

7 **BRIGADIER CALITZ:** - as you showed me

8 earlier, I just cannot confirm the time right now.

9 **MR NTSEBEZA SC:** Yes, do you remember

10 that when we did the exercise before tea we have established

11 that from the statements from what was, from the JOC, Loest

12 and what have you, that at least by 16:05 the police were

13 aware that there is urgent medical attention needed at

14 scene 1. Now how much of this delay would you as an

15 operational commander on the day be prepared to accept

16 responsibility for? I will put the same question

17 differently, as operational commander on the day are you

18 prepared to take responsibility at all for the delay that

19 took place, one hour's delay in getting medics to the

20 scene?

21 **BRIGADIER CALITZ:** Mr Chairperson,

22 I was never informed that the medics were not at

23 the scene, if I was informed that there was a problem, I

24 would have addressed the matter immediately.

25 **MR NTSEBEZA SC:** So you, do I understand

1 you to be saying you are taking no responsibility for this

2 even though you were overall operational commander?

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

5 the operational commander and the medics were not under

6 my command. As we already testified before, they

7 came from forward holding area 1, I cannot give evidence

8 on their communication, but as I said, if it was brought

9 under my attention, I would have acted and would then be able

10 to give evidence on my actions.

11 **MR NTSEBEZA SC:** Who was in command then?

12 **BRIGADIER CALITZ:** Forward holding area 1

13 where the medics were, it is General Major Naidoo.

14 **MR NTSEBEZA SC:** And we will come back to a

15 fair clear understanding and interrogation of exactly what

16 you are operational duties were as an operational commander.

17 Now are you saying that as operational commander you had no

18 say over medical treatment of victims of SAPS actions?

19 **BRIGADIER CALITZ:** No, it is not

20 what I said, Mr Chairperson.

21 **MR NTSEBEZA SC:** Are you prepared to take

22 any responsibility for the delay in getting medics there

23 and its consequences?

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 again, I said, no, if it was brought under

1 my attention.

2 **MR NTSEBEZA SC:** Perhaps we, - there is a

3 statement of one of your colleagues, Mr Hendrik, no, he is

4 a paramedic, he made a statement to the IPID. We would

5 like to make it an exhibit, Mr Chairman, I believe the

6 statement was handed up yesterday, I remember, or the day

7 before, I remember the brigadier wanted to -

8 **CHAIRPERSON:** Is it the statement, which

9 is -

10 **MR NTSEBEZA SC:** Hendrik -

11 **CHAIRPERSON:** - 000173, I take it that is

12 the police hard drive number, the statement of Hendrik, I am

13 not sure how you pronounce it, Legau?

14 **MR NTSEBEZA SC:** Yes, Mr Chairman, -

15 **CHAIRPERSON:** Is that the statement

16 you are referring to? That will be Exhibit KKK12. So it is

17 just Mr Legau, is it?

18 **MR NTSEBEZA SC:** Yes, Mr Chairman.

19 **CHAIRPERSON:** No, he is not a member of

20 the police force and it is KKK12, that is his statement.

21 **MR NTSEBEZA SC:** Now is it possible to

22 put it up? I think it was put up yesterday some time, but

23 you have a copy thereof, do not you?

24 **BRIGADIER CALITZ:** It is correct, Mr

25 Chairperson, I did.

1 **MR NTSEBEZA SC:** For ease of every one of
2 us following, Mr Chairman, it would be preferable if it
3 could be put up, if it is possible to do so? It is the
4 handwritten statement, two pages. I do not know why I think
5 that it was, we saw it up yesterday or the day before.

6 **CHAIRPERSON:** It would be enlarged.

7 **MR NTSEBEZA SC:** There it is, yes. Now
8 there is a passage there, it is the last paragraph but it
9 goes on to the next page and then it goes into the second
10 paragraph. Now I read it to be saying, "We then checked
11 them, some were badly injured, others were dead. We then
12 tried to group them according to their injuries and," I
13 suppose, "their seriousness, but then we were told not to
14 take or remove them from the scene, as they were crime
15 suspects. We were at the scene for some time, plus minus
16 30 minutes and some of the people died while we were at the
17 scene. After some time we were contacted by our team
18 leader to leave the scene, as it was not safe and we then
19 left to Marikana Hospital," do you see that?

20 **BRIGADIER CALITZ:** I can see it, Mr
21 Chairperson.

22 **CHAIRPERSON:** Then left to Marikana
23 Hospital?

24 **MR NTSEBEZA SC:** Yes, Mr Chairman, to
25 Marikana Hospital. Now do you know who it was who gave

1 instructions that the injured should not be removed from

2 the scene because they were crime suspects?

3 **BRIGADIER CALITZ:** No, Mr

4 Chairperson, I believe the person who made the statement will

5 be able to testify on who told him about it.

6 **MR NTSEBEZA SC:** Is it standard protocol

7 for people to be allowed to be treated as suspects because they are crime

8 suspects?

9 **BRIGADIER CALITZ:** I did not hear the last

10 part of your sentence; you are sitting a little too far from me, will you

11 just repeat, I could not hear what you said.

12 **MR NTSEBEZA SC:** No, is it standard

13 protocol by the SAPS to allow people to be treated as suspects when they are

14 injured on the basis that they are crime suspects?

15 **BRIGADIER CALITZ:** No, definitely not, Mr

16 Chairperson.

17 **MR NTSEBEZA SC:** Now, did you only get to

18 know for the first time when you got a copy of Mr Legau's

19 statement that someone had told Mr Legau and whoever else

20 was assisting him, that they should not remove injured and

21 dying people from the scene because they were crime

22 suspects?

23 **BRIGADIER CALITZ:** It is correct, Mr

24 Chairperson,

25 it came under my attention for the first time now.

1 **MR NTSEBEZA SC:** And have you followed it
2 up to establish how such a thing could have happened?

3 **BRIGADIER CALITZ:** No, Mr
4 Chairperson, I got it yesterday, I am still under
5 oath, so I do not discuss it outside the Commission.

6 **MR NTSEBEZA SC:** If Mr Legau is correct
7 in saying what he says he was told it would not be correct
8 for the image of the SAPS that people who are injured and
9 are dying should be left as they are because they are crime
10 suspects, I am sure you agree with me there?

11 **BRIGADIER CALITZ:** Mr Chairperson, I believe it,
12 the way I read it, it says, "We were told not to
13 take and remove the injured people from the scene." I cannot
14 tell you who told him that, if that is your question –

15 **CHAIRPERSON:** The words then appear, the
16 reason is given as they were crime suspects, but you heard
17 of this for the first time when you saw the statement
18 yesterday?

19 **BRIGADIER CALITZ:** That is what I say, Mr
20 Chairperson.

21 **CHAIRPERSON:** And you do not know who gave
22 that instruction to Mr Legau and the other paramedics who
23 were with him?

24 **BRIGADIER CALITZ:** I believe the person is the
25 only one that can testify to that, Mr Chairperson,

1 I am not aware of that.

2 **MR NTSEBEZA SC:** I am sure we all accept

3 that those instructions may have resulted in the deaths of

4 people who could have been saved, their lives, had they

5 been removed. I take that view, I am sure you take that

6 view as well, do not you?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 again, I was not there, I can only give you my opinion.

9 What I read here, "not to take and remove the people

10 from the scene," I do not know if they were refused

11 treatment, I know the

12 paramedics treated many people on the scene and some of them

13 died under treatment. I think it is also indicated that

14 way on the doctors or special report.

15 **CHAIRPERSON:** Mr Ntsebeza, I do not know

16 that this is, the line you are busy with at the moment is

17 one that can appropriately be pursued with this witness. I

18 understand where you are going, I would thought it is a

19 matter for expert evidence, based in particular on an

20 assessment of those who were lying injured on the scene at

21 the time and who died on the scene or died perhaps on the

22 way to hospital and who might not have died if they have

23 received earlier treatment, but this witness can only

24 speculate on the matter. Obviously, it is an important

25 matter, which I take it, will be investigated, but I see this

1 is an IPID statement, I do not know whether the IPID
2 investigators did further investigations in regard to this
3 issue, but that is something I take it we will hear about, I
4 would hope sooner rather than later.

5 **MR NTSEBEZA SC:** Yes, Mr Chairman, I was
6 actually going to explore with the brigadier –

7 **COMMISSIONER HEMRAJ:** Mr Chaskalson,
8 there is no date on this statement, can you perhaps assist
9 us?

10 **MR CHASKALSON SC:** I am afraid I cannot,
11 Commissioner.

12 **COMMISSIONER HEMRAJ:** And I have one
13 other query, the ambulances that we saw arrive on the video
14 CC38, are they the same that arrived from forward holding
15 area 1 or are there other ambulances?

16 **MR CHASKALSON SC:** I must confess that we
17 have not investigated that, it is obviously a very important
18 point to consider. We will do that.

19 **COMMISSIONER HEMRAJ:** Thank you.

20 **CHAIRPERSON:** One can read Major General
21 Naidoo's statement, which is before us as an exhibit. It
22 appears that he took, and it will obviously a matter be
23 dealt with when he gives evidence. He took the paramedics
24 who were with him at forward area A towards scene 1. He
25 went around hill 2 or hill 3 actually, he went around

1 hill 3 and because he heard firing and so on he stopped,
2 he appears to have not permitted those paramedics to
3 proceed to, for reasons that I am sure he'll explain, to
4 scene 1 until much later and this statement that we have just
5 looked at obviously deals with the people who were not at
6 Marikana at all, but the earlier paragraphs that have not
7 been read indicate that they were called up, or somebody
8 did explain it is actually, where they were, and they were
9 then told to proceed to Marikana and they did so. And the
10 witness does not say at what time he arrived at Marikana,
11 but it does appear as if assistance was sought from
12 elsewhere and paramedics, and I take it ambulances and so
13 forth came from elsewhere and whether the ambulances we see
14 on the video were those that had been stationary for some
15 time in the vicinity of scene 2, we do not know either but
16 all these are matters, which I take it, will be dealt with in
17 evidence later.

18 **COMMISSIONER HEMRAJ:** Under two of the
19 videos that Mr Ntsebeza has shown us there are two
20 different sets of ambulances arriving on the scene, Mr
21 Chaskalson, or do we not –

22 **MR CHASKALSON SC:** Well, the second
23 video, we have not been able to put a time to at this stage,
24 in the JJJ194 series we might well be able to find the
25 original clip from which it is taken which will then give

1 us a time. We cannot say that they are the same or
2 different ambulance people. What we, there is aerial
3 footage from Colonel Vermaak's camera that corroborates the
4 close circuit television footage from the FLIR camera, so
5 one can see approximately 20 seconds in ETV time after that
6 FLIR footage that we saw of the ambulances on the other
7 side of the police line. We have an aerial photograph of
8 Colonel Vermaak of the same ambulances and paramedics and
9 there is also ETV footage which we use to calibrate ETV
10 time of that precise moment. Those definitely appear to be
11 the first paramedics that were on the scene of scene 1.

12 **COMMISSIONER HEMRAJ:** Colonel Vermaak's
13 photograph shows the direction from which these ambulances
14 arrived.

15 **[11:36] MR CHASKALSON SC:** No, but that can be -
16 with proper analysis that ought to be capable of discovery
17 from the ETV footage and from the CCTV footage.

18 **CHAIRPERSON:** Look, I take it, it
19 probably will not be necessary for us to have oral evidence on
20 the point. I would assume affidavits from those on those
21 ambulances could be obtained and I would hope that they or
22 some of them would be able to indicate what time they
23 arrived at the scene.

24 **MR CHASKALSON SC:** Because so many
25 paramedics arrived ultimately -

1 **CHAIRPERSON:** The first ones that arrived
2 in those ambulances that we see on the video, I understand
3 – What is really important is who got there first and at
4 what time, and what the reason was for the delay. That is
5 really the issue Mr Ntsebeza is busy with, but I fear that
6 the Brigadier is probably not going to be able to help us
7 on that, but he put the issues on the table, as it were, to
8 the operational commander, and the matter must be proceeded
9 with from there. Am I correct in thinking you cannot help
10 us on this issue?

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

13 **CHAIRPERSON:** But I take it you will agree
14 that it is a serious matter that is got to be thoroughly
15 investigated?

16 **BRIGADIER CALITZ:** It is very serious,
17 Mr Chairperson.

18 **CHAIRPERSON:** And if it has not been
19 investigated earlier it should have been, but never mind,
20 if it has not been done, we will do it.

21 **BRIGADIER CALITZ:** I see it is a IPID
22 document, I believe the warrant officer of the IPID is busy
23 with the investigation, but I cannot help you with
24 that, Mr Chairperson.

25 **MR NTSEBEZA SC:** But what appears to be

1 beyond conjecture from this statement, exhibit KKK12, is
2 that Mr Hendrik Legau on the first page of the statement
3 appears to have been from Netcare Rustenburg. Do you see
4 that? Employed as a what? Basic something. Do you see
5 that?

6 **BRIGADIER CALITZ:** Basic life support,
7 Netcare Rustenburg.

8 **MR NTSEBEZA SC:** Yes.

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

11 **MR NTSEBEZA SC:** At Netcare Rustenburg.

12 **CHAIRPERSON:** Now Mr Legau says, again
13 one does not know how accurate these times are, but he
14 starts by saying "On 2012-08-16 at about 15:23 I was with
15 Ms Makau. We were from" - is it Wilgers? I am not familiar
16 with the - "Wilgers Hospital in Pretoria. We then received
17 a call" - and I am not sure whether then means at 15:23; I
18 suppose it does - "that we must go to Marikana Lonmin Mine
19 base." And then he says in the next paragraph, "On our
20 arrival at the base we then joined other paramedics from
21 other branches, that is Klerksdorp, Pretoria, etcetera, and
22 we were escorted to the scene where we found mineworkers."
23 Now, if it is correct that they received the message at
24 15:23, then it would indicate that as a precautionary
25 measure paramedics were summoned to the scene before the

1 operation was launched. Alternatively that time may be
2 wrong, but, or alternatively the statement is ambiguous and
3 the call that he refers to may have in fact been received
4 after the shooting took place. Therefore, these are all matters
5 that presumably will be fully elucidated in such
6 investigation as has either been done already or is going
7 to be done before we resume, I take it.

8 **MR NTSEBEZA SC:** I would assume so, Mr
9 Chairman, yes. It is a point well made. Now I accept
10 therefore what the Chairman, Brigadier, what the Chairman
11 has said, that without an investigation from, further
12 investigation from IPID as to who exactly said this, was he
13 a member of the police force, or service, etcetera. You
14 are not able to assist us further on this?

15 **BRIGADIER CALITZ:** Not as far as the questions
16 concerning that he asked just now, no, Mr
17 Chairperson.

18 **MR NTSEBEZA SC:** Now I was asking you
19 because you are aware that I represent 33 of the 34
20 families of the people who were killed on this day. You
21 are aware of that?

22 **BRIGADIER CALITZ:** I know you
23 represent, I do not know how much, but I am
24 aware of it.

25 **MR NTSEBEZA SC:** Yes, now they have been

1 here and they still have some representatives here. Part
2 of their story, they want to understand how and why their
3 people were killed. Do you understand that?

4 **BRIGADIER CALITZ:** Yes, Mr

5 Chairperson, I understand. I think everyone present here
6 want to know that.

7 **MR NTSEBEZA SC:** Now they have since

8 established that you were the operational commander of the
9 operation in which their loved ones were killed, because
10 that have now been common cause. You have said yourself.

11 **BRIGADIER CALITZ:** I was the operational

12 commander, on the day, correct, Mr

13 Chairperson.

14 **MR NTSEBEZA SC:** Yes, now they are

15 laypersons, unsophisticated people by a large measure.

16 They do not know what overall operational commander means,

17 they do not know what operational commander means, and all

18 of that. So you will bear with me if I put questions that

19 seek to establish what exactly your function was. For

20 instance, according to them you are the person who was in

21 command, or were supposed to be in command on the day. Are

22 they wrong there?

23 **BRIGADIER CALITZ:** Mr Chairperson, if

24 you are asking an explanation, there is a difference between an

25 overall commander, operational commander,

1 group commander and section commander. If you say in
2 command on that day, no, I was just an operational
3 commander that day.
4 **CHAIRPERSON:** I think you can tell us
5 shortly what your role as operational commander was, was
6 where your firstly authority, and secondly your
7 responsibility began and ended, because you can see the
8 questions that concern Mr Ntsebeza's clients and they want
9 to know what you were responsible for, what you had the
10 authority to do and not to do. Perhaps you can help us on
11 that shortly before he proceeds with his further questions.

12 **BRIGADIER CALITZ:** Correct. Thank you, Mr
13 Chairperson. You will see from our policies, that a
14 operational commander is the one in charge of the
15 commanders, group commander and the sectional commanders,
16 "the operational coordination," in other words, is the one
17 coordinating the
18 different commanders. My first task was to brief the
19 commanders as I got the instructions from the
20 - the overall commander - on what
21 their different tasks were. I had to give them instructions
22 which each commander had to take back to their
23 members, that will be the group commanders and
24 section commanders, and I had to make sure that they
25 conveyed their orders correctly. If we had sufficient time,

1 policy instructs me that the people on the ground, the
2 section commanders had to report back on how they
3 understood, the briefing, but in this case
4 it was not possible.

5 Fourthly we had to make sure that the
6 group commanders understood their orders,
7 we had to give them an opportunity and ask them if they
8 understand the reason for the order, and that is basically,
9 the five or six procedures as set out in our
10 policy document on the duties of an operational commander.
11 I do not know if you want me to explain the duties of an
12 overall commander as well –

13 **CHAIRPERSON:** If Mr Ntsebeza wants more
14 he will ask for it, but I am happy. Is that a description of
15 your authority and responsibility as operational commander?

16 **BRIGADIER CALITZ:** I quoted it
17 out of the procedures and policies document.

18 **CHAIRPERSON:** Now you have explained to us
19 that at forward holding area 1 was Major-General Naidoo.
20 He had various members of the service with him, including
21 paramedics, as I understand it. That is correct?

22 **BRIGADIER CALITZ:** Correct, Mr
23 Chairperson.

24 **CHAIRPERSON:** And his responsibility
25 clearly was to see to it that if there were any injuries,

1 that the paramedics proceeded to the scene as quickly as
2 possible so that they could give treatment to those who
3 were injured, and arrangements could be made to remove them
4 to hospitals and so on. Would that be correct?

5 **BRIGADIER CALITZ:** It is correct, Mr
6 Chairperson.

7 **CHAIRPERSON:** Now did you have any
8 responsibility for seeing that he carried out that task and
9 carried it out punctually and promptly?

10 **BRIGADIER CALITZ:** Mr Chairperson,
11 during the briefing, as I said, I had to ensure that
12 operational commander and commanders was properly
13 briefed, and take the order
14 to their members and to assure that they understand their
15 role. It was done,
16 and they indicated that they knew exactly what their
17 "responsibilities" and duties were on that day.

18 **CHAIRPERSON:** Yes, I am interested in the
19 situation as between you and Major-General Naidoo. Now we
20 know that Major-General Naidoo was your senior and did you
21 have any authority to tell him what to do?

22 **BRIGADIER CALITZ:** Mr Chairperson, if
23 it was reported to me,
24 and there were no medical personnel at "scene" 1, then
25 I would have contacted him on the radio, or by any

1 other means of communication.
2 'General, I was informed there is no medical personnel,'
3 detectives, or any personnel on the scene, is
4 there any reason for that, and then I would requested it. No,
5 I will not instruct him, because he is my senior,
6 but I will request him to get the personnel on the scene
7 as quickly as possible. It is correct,
8 Mr Chairperson.

9 **CHAIRPERSON:** What I am trying to
10 ascertain is that if there is criticism – I do not say there
11 is, but if there is criticism to be addressed to the South
12 African Police Service for the delay in bringing paramedics
13 onto the scene and giving injured people or dying people
14 treatment, is it a matter which could be laid at your door,
15 or is it a matter for Major-General Naidoo to answer
16 because he was in charge of the forward holding area 1
17 where the paramedics were?

18 **BRIGADIER CALITZ:** Mr Chairperson,
19 yes, I do not want to sound as if I want "to pass
20 the ball", but it was the function and the task of the
21 "forward holding area 1 commander" to arrange and regulate
22 the medical personnel. He would then be the link
23 between the different medical organisations,
24 as well as tasking them with where they were
25 needed.

1 **CHAIRPERSON:** And of course, I take it
2 there were certain residual obligations on those at the JOC
3 and we know that Brigadier Pretorius, according to her
4 statement, when she realised that there were people
5 injured, shortly after 4 o'clock, I think, she picked it up
6 according to her statement from what she heard on the
7 radio. She did then a number of things, including
8 reporting the matter to IPID. That is correct?

9 **BRIGADIER CALITZ:** I understood it like
10 that out of her statement.

11 **CHAIRPERSON:** And I think she was also in
12 contact with Captain Loest.

13 **BRIGADIER CALITZ:** I saw that he
14 reported to her at that stage, and there were an
15 interaction between him and her. I understood it
16 to be a way of establishing exactly what happened.

17 **CHAIRPERSON:** Yes.

18 **COMMISSIONER HEMRAJ:** And would it be
19 within General Naidoo's discretion as to when to proceed to
20 the scene and which route to take, or could you have
21 suggested what he should do?

22 **BRIGADIER CALITZ:** No, Commissioner, no,
23 it will be General Naidoo and he knew where
24 "forward holding area" 1 is, and he would then
25 establish the route they would take. It was the task

1 of the group commanders.

2 **CHAIRPERSON:** Sorry, please carry on.

3 I –

4 **MR NTSEBEZA SC:** I was going to make a –

5 **CHAIRPERSON:** I asked a few questions

6 which I hoped would clear the ground so that you could then

7 proceed with your cross-examination.

8 **MR NTSEBEZA SC:** Mr Chairman, I was going

9 to make an age-related request.

10 **CHAIRPERSON:** [Microphone off, inaudible]

11 we were so absorbed with this very important aspect

12 actually –

13 **MR NTSEBEZA SC:** It is.

14 **CHAIRPERSON:** - that we overlooked the

15 fact that the time for a comfort break had arrived, so I

16 hasten to remedy that omission. We will now take a comfort

17 break for 10 minutes.

18 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

19 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

20 **[12:09] CHAIRPERSON:** The Commission resumes,

21 Brigadier, you are still under oath. Mr Ntsebeza?

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

23 Chairperson.

24 **MR NTSEBEZA SC:** Thank you, Mr Chairman.

25 Brigadier, I was just exploring or explaining to the

1 difficulty those that I represent have in understanding
2 your position as operational commander and what your
3 responsibilities are. For instance, they have been seeking
4 to understand how you did not witness the shootings at
5 scene 1, because that is how they understood your evidence
6 to be. Can I confirm that you did not witness the shootings
7 at scene 1?

8 **BRIGADIER CALITZ:** It is correct, Mr
9 Chairperson.

10 **MR NTSEBEZA SC:** If we could put up,
11 again just for a moment, KKK11, page 31? Alright, now as I
12 understand your evidence and we are not going to go where
13 you say this, but my understanding is that you were
14 watching the protestors as they came around the kraal. Now
15 in relation to this sketch where were you, were you there?
16 Were you there?

17 **BRIGADIER CALITZ:** Mr Chairperson, I think
18 it was Pappa1.

19 **MR NTSEBEZA SC:** Yes.

20 **BRIGADIER CALITZ:** I handled it
21 extensively during my previous questioning.

22 **MR NTSEBEZA SC:** Okay.

23 **CHAIRPERSON:** Mr Ntsebeza, there is a P1,
24 I do not know if that is –

25 **MR NTSEBEZA SC:** P1, yes.

1 **CHAIRPERSON:** So there is a P1 on the
2 slide at the top there, is that correct more or less? I

3 think there is an argument about that.

4 **MR NTSEBEZA SC:** In relation to the

5 kraal.

6 **CHAIRPERSON:** Somewhere in that vicinity,

7 is that right?

8 **MR NTSEBEZA SC:** You were in that

9 vicinity?

10 **BRIGADIER CALITZ:** In that vicinity

11 against the fence to the nose -

12 **MR NTSEBEZA SC:** Yes -

13 **BRIGADIER CALITZ:** - of the vehicle.

14 **MR NTSEBEZA SC:** Now that is what the

15 families have understood your evidence to be saying

16 and when you say you were watching the protestors as they

17 came around the kraal would it have been here that you saw

18 them coming around the kraal or elsewhere?

19 **BRIGADIER CALITZ:** Mr Chairperson,

20 no, I already gave evidence on this.

21 **MR NTSEBEZA SC:** Yes.

22 **BRIGADIER CALITZ:** My position at Pappa, -

23 Mr Chairperson, I was on the top with Pappa1, -

24 **MR NTSEBEZA SC:** Yes?

25 **BRIGADIER CALITZ:** If you look that the photograph

1 that was taken, the protestors, came in on a 45 degree
2 angle, by that I mean toward the
3 north-westerly corner of the kraal, I observed them
4 when they moved passed Pappa11 and it was
5 approximately at this stage that I gave the instruction,
6 –

7 **CHAIRPERSON:** "At this stage" is

8 immediately below the Special Task Force –

9 **BRIGADIER CALITZ:** That is what I could see in front

10 of me, Mr Chairperson, if I can put it this way,

11 it was in my line of vision from where my vehicle was, it was

12 in line with the wire, but I may be corrected. This is

13 then where the group came from,

14 a westerly direction.

15 **CHAIRPERSON:** I am sorry to interrupt you,

16 I just want to get clarity on it. It is in the gap between

17 the corner of what we call the large enclosure and the

18 corner of the Special Task Force Casspir closest to it, is

19 that correct?

20 **BRIGADIER CALITZ:** Mr Chairperson,

21 yes, I am cautious to create a passage, or to agree on a certain direction,

22 yes, that is why I said they came from a

23 westerly direction and moved in a eastern direction.

24 **CHAIRPERSON:** Not passage, I mean gap, in

25 the gap, as you were looking forward you saw the fence on

1 one hand, on the right I take it, the corner of the fence
2 of this large enclosure and there was a gap through which
3 you could see and then there was the Special Task Force
4 Casspir and that is where you could see them. Is that what
5 you said?

6 **BRIGADIER CALITZ:** That is where they
7 moved through, it is correct, Mr Chairperson, from
8 a westerly direction between the
9 the Casspir and the kraal. The protestors
10 then came from a westerly
11 direction.

12 **MR NTSEBEZA SC:** I understand you say,
13 correct me if I am wrong, I am sorry about that, I understand
14 that you were not aware of the members of the TRT line
15 there when you saw these protestors going around the kraal?

16 **BRIGADIER CALITZ:** No, Mr
17 Chairperson, it was my evidence that when I moved,
18 I cannot recall who asked me the question if I was aware that
19 they formed a line and I then said, no, I
20 knew they were forming a line, but
21 not in the way that we know now.

22 **MR NTSEBEZA SC:** Yes, and let me tell you
23 what the difficulty is for the families. They say you then
24 testify that having seen these groups of armed workers
25 going this way, you decided to drive off in the direction

1 of the mountain, is that your evidence?

2 **BRIGADIER CALITZ:** No, definitely not, Mr

3 Chairperson, I never gave evidence that I decide to

4 turn or to drive away. My evidence was that when I

5 saw that the

6 "dispersion action" had no effect, it was my evidence at

7 incident 2, where you see this Casspir, and

8 with this Casspir I am referring to Nyala 4 next to the wire,

9 there was already a dispersing action here and the group at the top

10 were moving around. When I arrived at the scene,

11 I saw that the people did not disperse or moved away,

12 as was originally anticipated,

13 but the protestors regrouped and were on their way to the

14 Public Order Policing vehicles line,

15 which included the Casspirs.

16 When I saw them not reacting to the dispersing,

17 due to various reasons, as the

18 double clothing and the blankets around them, the rubber

19 bullets, which was our last resort, had no effect on them,

20 I gave the instruction and referred to the

21 CALS, which stipulates that,

22 during the

23 "volley of fire," Pappa1 and

24 another vehicles moved through the line with me, and I

25 ordered the Public Order Policing vehicles to move

1 into the crowd with their vehicles,
2 and make sure that they break up in smaller groups,
3 in order for the protestors to move in a westerly
4 direction, away from the police line. That was my evidence and also the
5 the reason for moving in that direction, to
6 continue with the dispersement.

7 **MR NTSEBEZA SC:** No, I mean, I know that
8 you made certain choices. When you saw, these miners go
9 around the kraal you did not wait to see what would happen
10 to them, given what you saw, and the direction in which
11 they had been going. They had been here, they found that
12 there was this Nyala here closing their way to go through,
13 because they were coming to the road here, they had gone
14 around the kraal. You did not then wait to see what would
15 happen to them, did you?

16 **BRIGADIER CALITZ:** If you say, no,
17 I did not wait to see what happened to them, no.

18 **MR NTSEBEZA SC:** That is the difficulty
19 that my clients have and that is why they want me to put to
20 you that you did not want to know what would happen to them
21 and that is why in the end, whatever you have just been
22 saying, you decided to drive off in a direction away from
23 where they were eventually shot.

24 **BRIGADIER CALITZ:** Mr Chairperson, you
25 are using those words again, although I explained it to you,

1 again you say, I decided to drive off, and I want to place it
2 on record, which is not what I have said.
3 What I said was that I made a decision and gave orders to the
4 vehicles, the Pappa Nyalas had to move into the people
5 because the dispersion action did not work,
6 and use "less lethal
7 force" against the protestors. When the dispersion did not work, I
8 instructed the vehicles to move and I
9 saw it worked,
10 the people turned around and moved into a
11 westerly direction.

12 **MR NTSEBEZA SC:** Now the point is,
13 whatever it was the fact of the matter is from where you
14 were you did not go in the direction of where you had seen
15 these people, you drove off from there eventually towards
16 the other hill.
17 **BRIGADIER CALITZ:** No, Mr
18 Chairperson, it seems to me that you still do not understand
19 what I am trying to explain. I did not wait, the people
20 turned around and moved away from the kraal, I then observed
21 from the back as they moved toward the TRT line,
22 no. I explained to you, they moved passed Pappa11
23 and I then realised the dispersion action is not working,
24 and the Public Order Policing line will not be able
25 to block the people,

1 I instructed the Public Order Policing vehicles,
2 to move forward and to
3 continue with the dispersing action to try and
4 disperse the people. I think about
5 90% of the bigger group
6 did react. I only became aware of the smaller group
7 moving forward at a later stage, with the vehicles moving
8 forward, toward the hill
9 and toward the crowd and the protestors,
10 to try to disperse of
11 them.

12 **MR NTSEBEZA SC:** Now I believe you were
13 with Colonel Macintosh in the Nyala and the interpreter.

14 **BRIGADIER CALITZ:** Macintosh?

15 **MR NTSEBEZA SC:** Macintosh.

16 **BRIGADIER CALITZ:** It is correct, Mr
17 Chairperson.

18 **CHAIRPERSON:** He said you were with
19 Colonel Macintosh and the interpreter in the Nyala.

20 **BRIGADIER CALITZ:** Oh, I did not hear
21 the second part, it is correct.

22 **CHAIRPERSON:** That is the second, but you
23 did not hear it?

24 **BRIGADIER CALITZ:** It is correct, Mr
25 Chairperson.

1 **MR NTSEBEZA SC:** Now do you know if

2 Colonel Macintosh saw anything or heard anything?

3 **BRIGADIER CALITZ:** Mm –

4 **MR NTSEBEZA SC:** Of what happened here?

5 **BRIGADIER CALITZ:** No, I will not be

6 comment, Colonel Macintosh will come and give evidence if he

7 saw the whereabouts of my vehicles at that stage.

8 **MR NTSEBEZA SC:** There was no

9 conversation between you and the colonel and the

10 interpreter about what had happened here?

11 **BRIGADIER CALITZ:** No, no, I think the

12 interpreter kept his head quite low, he definitely did

13 not communicate with us and Colonel

14 Macintosh was on the left-hand side in front. At that stage I

15 was shouting orders, I think it was

16 in my evidence in chief, and it was also in the

17 cross-examination by the evidence leaders, and I gave

18 various reason to why we did not have any knowledge

19 about the incident.

20 **MR NTSEBEZA SC:** Yes, yes. Now let me

21 understand this, do I understand, I just want to understand

22 the extent of your powers as operational commander, let us

23 assume for one moment that from that position you followed

24 what, the direction of those miners was taking them to and

25 you had actually witnessed what happened there as you now

1 know. Would the extent of your command have been that you
2 would have said in the light of these deaths the operation
3 must stop now, as an operational commander? Did you have
4 the power?

5 **BRIGADIER CALITZ:** Am I understand you correctly,
6 was it before, or as we see it now, afterwards,
7 if the people –

8 **MR NTSEBEZA SC:** No, on that very day if
9 you had seen that 16 people or thereabouts had been killed
10 at scene 1, would you as operational commander on that
11 basis have been able to say, we have seen enough carnage
12 now, let us stop this operation?

13 **BRIGADIER CALITZ:** Mr Chairperson,
14 thank you, I was asked this question before. My
15 evidence was, and I am talking under correction, but my
16 evidence was that if I was informed about the
17 shooting incident behind me,
18 what would my actions be, I think that is what you are asking. I
19 would acquire about what was going on,
20 in other words, as the operational commander, I would
21 contact my group commanders, the group
22 commander at the back and the group commander of the
23 the Nyala vehicles, Nyala 1 to 6 was Colonel Makhubela.
24 I testified that he had 20 to 30 years' experience in the
25 Public Order Policing, I would consult with him, as well as with

1 Luitenant-Colonel Mere, if my notes are correct,
2 he was the group commander of one of the teams on the
3 scene.
4 I would establish from them what the
5 circumstances was and access the situation with the
6 people moving away, I am talking about the 2,000 to 3,000
7 and not just the 16 you referred to just now.
8 I would place Colonel Makhubela in
9 charge and I would move on to forward holding
10 area 1 where General-Major Naidoo was, which included all the detectives,
11 the PKRS and the medical personnel, and I could then
12 order or request them
13 to come and assist at scene 1. Myself, as the
14 operational commander, I would then use my
15 experience as Public Order Policing, and
16 continue with the operation, I would not stop
17 the operational.
18 My policy and procedure document says that if
19 an action is lodged, we must take action to prevent
20 them from regrouping and we must
21 then also make arrests where possible. There is no purpose in
22 dispersing people and then
23 just let them be, or to shoot at them and then just let them be.
24 My evidence was that, no, in my experience as
25 operational commander, I would have continued with

1 dispersing action, and then follow up
2 on the 2,000 to 3,000, making sure they are
3 disarmed, isolated and arrested.
4 I mentioned that if I did not do that, the consequences
5 could be worse, I know of a small
6 that broke away, I think I referred thereto in Exhibit L,
7 page 259, the small
8 group that broke away, moved directly towards the Wonderkop
9 premises, and they then set five vehicles on
10 fire and lodged another attack.
11 Therefore, it would have been very dangerous just to
12 let this group be. I would give
13 attention to scene 1, which was a static scene, it
14 already happened; we would have put someone in
15 charge and I, as the operational commander,
16 would then move forward with the experience
17 I had.

18 **MR NTSEBEZA SC:** No, I know you have
19 given extensive evidence on this aspect and I am not going
20 to take you through it, I just thought it was fair for you
21 to know that I am instructed to put it to you that the
22 families do not accept your evidence on this aspect.

23 **CHAIRPERSON:** Do not they accept, do they
24 –

25 **MR NTSEBEZA SC:** They do not accept –

1 **CHAIRPERSON:** Do they accept that he left

2 and do they criticise him for that?

3 **MR NTSEBEZA SC:** Hmm - hmm -

4 **CHAIRPERSON:** Or do they say that they

5 do not accept that he left?

6 **MR NTSEBEZA SC:** No, they do not accept

7 that he did not see the shootings at scene 1.

8 **CHAIRPERSON:** If I may ask you a

9 question, you say you left effectively just before the

10 shootings and you have explained the circumstances, we will not

11 go into that again. Who was in charge, you were in charge

12 presumably at the scene when you were there.

13 **[12:29]** You then went off, and you have explained that, but

14 whom did you leave in charge, or I will put the question more

15 accurately, who was in charge at scene 1 when you left?

16 **BRIGADIER CALITZ:** The people in charge of

17 scene 1, after I left, was Colonel Makhubela, he is

18 the unit commander of the Johannesburg Public Order

19 Policing, with 25 to 30 years' experience under his belt,

20 as well as, Luitenant-Colonel Mere, which was the group commander of

21 the Public Order Policing of one of our

22 lines. So he did -

23 **CHAIRPERSON:** Remind us which vehicle was

24 Colonel Makhubela in?

25 **BRIGADIER CALITZ:** No, he physically

1 moved with each vehicle, when Nyala 4 was
2 rolling out, he did, as I understand it from him,
3 he moved with each vehicle on foot. So he
4 would then physically be on the scene, in the field.

5 **CHAIRPERSON:** He was on foot somewhere on
6 the scene?

7 **BRIGADIER CALITZ:** It is correct, Mr
8 Chairperson.

9 **CHAIRPERSON:** And Colonel Mere?

10 **BRIGADIER CALITZ:** I can establish
11 what the number of his Nyala was and what his position was. I know he
12 stayed behind at scene 1.

13 **CHAIRPERSON:** He was in one of the
14 Nyalas, and you can find out what it was?

15 **BRIGADIER CALITZ:** I can establish for you –

16 **CHAIRPERSON:** And you can do it quickly?

17 If it will take long, we can get it later.

18 **BRIGADIER CALITZ:** May I get

19 back to you, Mr Chairperson? I know it is –

20 **CHAIRPERSON:** After lunch, perhaps.

21 **BRIGADIER CALITZ:** I think it is Exhibit

22 L.

23 **CHAIRPERSON:** Well, after lunch you can

24 tell us. You do not have to worry about now. Let Mr – I am

25 trespassing on Mr Ntsebeza's time. He would like to ask

1 you the next question. Would you not, Mr Ntsebeza?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 it is on page 137 of exhibit L, Colonel Mere, and it is

4 Pappa10. It is indeed the Nyala that took the

5 position at the back. What we see now is,

6 Pappa19, which in fact is Pappa10. So it is Colonel Mere that

7 took in the position at the back. He was therefore physically

8 – One can say, at the scene. He will be able to describe it best himself.

9 **CHAIRPERSON:** Yes, thank you. Yes, Mr

10 Ntsebeza.

11 **MR NTSEBEZA SC:** Just one question

12 regarding this. When you left - I know you do not want the

13 word, "you drove off," but when you left for the hill,

14 did you leave anyone in charge? In other words, did you

15 say to anyone here who would have been left in charge, that

16 I am following these people who are going towards the

17 mountain, because I have heard A, B, C, D? Now, did you tell

18 anyone there, look, I am going away from here? I am going

19 in the – to where we now know was scene 2.

20 **BRIGADIER CALITZ:** Mr Chairperson,

21 it was discussed during the briefing.

22 If we moved out and started the dispersing action,

23 Colonel Pitsi and the members of the Public Order Policing

24 would move out with us, as well as the others that

25 would take command, as was discussed during the briefing,

1 because we knew that we would move toward
2 hill 1 and 2 and then in a westerly direction,
3 during the dispersement.

4 **MR NTSEBEZA SC:** The question more direct
5 than that. I just want to know if you told anyone that you
6 were now leaving?

7 **BRIGADIER CALITZ:** On the radio I have the
8 order that I am moving forward and the Pappa
9 Nyalas must follow me with the dispersing action. Correct,
10 Mr Chairperson.

11 **MR NTSEBEZA SC:** Who the Pappa Nyalas, as
13 I said, they were my responsibility. During the
14 the briefing, I instructed the Pappa Nyalas to follow me
15 and that we would move on with the dispersing action.

16 **MR NTSEBEZA SC:** Who are the people that
17 you were telling who were in charge? Who were officers?

18 **BRIGADIER CALITZ:** As I already told you,
19 Colonel Makhubela, was instructed during the briefing session that he
20 would be in charge there. When I then moved forward, I had no need,
21 at that stage – I cannot
22 testify under oath that I said to him, “I am reminding you again,
23 you are in charge here?” I cannot recall my exact words
24 at this stage.

25 **MR NTSEBEZA SC:** Yes. Well, I mean, I

1 have told you what the families have instructed me to put
2 to you and you have given your answer.

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

5 **MR NTSEBEZA SC:** You see the – you also
6 testified that you did not see anything or put it you did not
7 see people being shot at, at scene 2. That was your
8 evidence.

9 **BRIGADIER CALITZ:** Been shot at, at scene
10 2?

11 **MR NTSEBEZA SC:** Yes.

12 **BRIGADIER CALITZ:** Hill 3. It is
13 correct, Mr Chairperson.

14 **MR NTSEBEZA SC:** Yes. Now, I will just put
15 it to you as my instruction. My instruction is that as an
16 operational commander, for you not to have seen the
17 shootings in scene 1, not to have heard them occurring, for
18 you not to have seen the shootings in scene 2, not to have
19 heard them occurring, according to my clients, this is
20 consistent with what they perceive as your attempt to seek
21 to evade taking responsibility, as operational commander,
22 of what happened on that day.

23 **BRIGADIER CALITZ:** Is that a statement or
24 the question? Must I –

25 **CHAIRPERSON:** It is a proposition to you.

1 I think - to say whether you agree or do not agree, and if

2 you do not, why?

3 **BRIGADIER CALITZ:** No, I do not agree. I

4 think my position and the photographs will indicate where I

5 am when certain incidents took place and those photographs

6 can be explained and even showed to the families. So I

7 think they can get a better picture there.

8 **MR NTSEBEZA SC:** No, they have been here,

9 they have been following your testimony, and yesterday,

10 their instruction was clearly that I should convey it to

11 you, that they do not -

12 **CHAIRPERSON:** You have conveyed it, Mr

13 Ntsebeza. Perhaps we can move on now.

14 **MR NTSEBEZA SC:** Yes, Mr Chairman. I was

15 just revisiting the -

16 **CHAIRPERSON:** No, no, I understand.

17 **MR NTSEBEZA SC:** Now, there is also an

18 aspect that I just want to explore, not at any length, but

19 from the point of view of my client's instructions, and

20 that is relevant to your briefing to the parade on the 18th

21 of October 2012. Now, you will know that you were

22 extensively asked about this, I believe by Advocate

23 Budlender, but I would love if you could put up exhibit

24 JJJ82, which I believe is here, the transcript of your

25 briefing to the troop on 18 August 2012. Now, if we turn

1 to page 3807, I am sure this was –

2 **CHAIRPERSON:** Of course, this was very

3 fully canvassed in cross-examination –

4 **MR NTSEBEZA SC:** Yes, yes –

5 **CHAIRPERSON:** I hope that you are not

6 going to repeat what is been put before –

7 **MR NTSEBEZA SC:** No, no, not at all, Mr

8 Chairman. Now, I understood your evidence, especially

9 yesterday, that you yourself, as a witness, cannot say,

10 because you did not see it happen, that the miners were

11 attacking the police. Is that right?

12 **BRIGADIER CALITZ:** I disagree with you,

13 Mr Chairperson.

14 **CHAIRPERSON:** I thought you said

15 yesterday that you – yesterday you said you could not, from

16 your own knowledge, say they were attacking. You did not

17 see the attack. You saw them shortly before they went out

18 of your line of sight, and I suggested to Mr Ntsebeza that

19 that might constitute circumstantial evidence from which

20 certain inferences can be drawn, and you agreed with that

21 and you said you could not go any further than that. That

22 was your evidence yesterday.

23 **BRIGADIER CALITZ:** It was my –

24 **CHAIRPERSON:** I assume you are still

25 saying the same today?

1 **BRIGADIER CALITZ:** Yes, yes, it was my

2 evidence, Mr Chairperson.

3 **MR NTSEBEZA SC:** Yes. Maybe it is

4 inelegant of expression – inelegance of expression on my

5 part. Now, are we on the same page? On your own, as a

6 witness, because you did not see what happened, you are not

7 in a position to say that the police came under attack from

8 the mineworkers? Do you agree?

9 **BRIGADIER CALITZ:** Mr Chairperson,

10 are you referring to JJJ82 and if I said that on that day,

11 or, Mr Chairperson, I just said that I was informed

12 about it and that was my evidence? I just want to know

13 at what stage we are now – if you mean what

14 is in my statement, then I disagree with you.

15 **CHAIRPERSON:** Brigadier, I think if you

16 look at JJJ82, the third page that you are looking at, the

17 paragraph beginning 8.53. That is indicated where it is

18 found on video tape. If you look at the sixth line from

19 the top of that paragraph, just shortly after the reference in

20 9.20, you are reported as having said this, "Therefore," –

21 just before 9.20, "Therefore we got over to the second

22 phase." Then you get the 9.20 reading. "And that is where

23 TRT line and the NIU line was formed," and then comes this

24 phrase, which I think is what Mr Ntsebeza, is talking about,

25 "And when you become – when they become under attack, that

1 is where the command was given by the commanders, as well

2 as some of them act in self-defence," alright. I think

3 that is passage Mr Ntsebeza is referring to.

4 **MR NTSEBEZA SC:** Now, you do not know

5 that to have been a fact, because you did not see them being

6 attacked and - yes.

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

8 it is the question, on that day, the 18th, that is what we

9 - what was reported to me. You will recall that the group

10 spoke to us, and what the reasons for that was. So yes, it was

11 everything that was reported to me, which I then

12 conveyed to the others who were not at the scene at

13 that stage.

14 **MR NTSEBEZA SC:** Now, I just want to

15 establish whether you were saying that on the 18th on the

16 strength of what you had been told by your colleagues?

17 **BRIGADIER CALITZ:** Yes, it is correct, what

18 I just told you, Mr Chairperson.

19 **MR NTSEBEZA SC:** And that was in relation

20 to an operation in which you were a commander?

21 **MR SEMENYA SC:** Chairperson, we must move on,

22 really. These questions are repetitive and at least it is

23 nothing that you do not know already.

24 **CHAIRPERSON:** - earlier say to Mr

25 Ntsebeza that I hope he was not going to repeat material,

1 because this passage had been dealt with fully already and
2 he assured me he was not, but yes. Look, I do not think I will
3 be asking – reminding him he was in command, you have covered
4 that point already. So I think you must move on.

5 **MR NTSEBEZA SC:** Mr Chairman, with the
6 greatest respect, I am not seeking here to cover ground
7 that was covered by Mr Budlender, however extensively, but
8 I have a mandate – I have a mandate from families to
9 interrogate Brigadier Calitz, when he says, when 34 people
10 have been killed, two days from the day on which he is
11 making this triumphant speech, “I have to congratulate
12 him.” That I have to put to him.

13 **CHAIRPERSON:** But whether you have been
14 instructed to ask certain questions, does not take the
15 matter any further. If you have been instructed to ask
16 questions that have been asked already, I will not allow you
17 to ask them, and you can tell your clients that the reason
18 why I am not allowing you to ask those questions, because
19 they have already been asked, do not have to be asked again.
20 So the instructions from your client, with respect, do not
21 take the matter any further, but if there is a new angle on
22 this point, if there is a point, which you feel, has not been
23 brought out adequately to do justice to your cause,
24 obviously you can do it, but do not just repeat questions
25 we have had already even though you were instructed to do

1 that.

2 **MR NTSEBEZA SC:** No, Mr Chairman, with a
3 great respect, I accept your ruling. I always do. What
4 I am saying is that the questions may have been put. I
5 would assume that I am permitted, on this day, because this
6 is another day, to find out from the brigadier whether he
7 still stand by that. It may well be that today he has a
8 thought about what he said, and that is all I want to put to
9 him.

10 **CHAIRPERSON:** Do you stand by what you
11 said before, or today, have you come to other insights and
12 you have something different to say?

13 **BRIGADIER CALITZ:** Mr Chairperson,
14 it was what I said on the 18th of the eight month last year,
15 and I stand by what I said, word by word.

16 **MR NTSEBEZA SC:** Now, I do not know if
17 this question was put to you and I will get guidance from the
18 Chairperson if it was. We are talking here about the largest
19 number of people were killed in one scene with police
20 operations since Sharpeville.

21 **BRIGADIER CALITZ:** Sorry, I did not hear the
22 last –

23 **MR NTSEBEZA SC:** Since Sharpeville.

24 **BRIGADIER CALITZ:** Oh, Sharpeville.

25 **MR NTSEBEZA SC:** Since the police killed

1 people in 1963.

2 **CHAIRPERSON:** No, it was before 1963.

3 **MR NTSEBEZA SC:** 1960.

4 **CHAIRPERSON:** Yes.

5 **MR NTSEBEZA SC:** My liberation history -

6 Now, is it something that you can congratulate people for?

7 Let us assume everything is as you see it today. You

8 followed prescripts as they should be followed. Is it

9 something you felt compelled to congratulate your members

10 for? Killing 34 people -

11 **BRIGADIER CALITZ:** I am sorry, Mr

12 Ntsebeza, I want to intervene at this stage. When you said

13 I have to congratulate you, what were you congratulating

14 them on? Were you congratulating them on killing 34

15 people, or were you congratulating them on something else?

16 **BRIGADIER CALITZ:** Mr Chairperson,

17 yes, thank you, very much. I want to - it would be my response

18 now as I said earlier, I never

19 said anything about the shooting,

20 or the attack.

21 I thanked the people and the commanders with me on that day,

22 for the way they held the line,

23 and the way they responded to the plan, in the circumstances.

24 I specifically referred to - I think it is there

25 at 807, "Exactly how we planned it and we briefed the

1 commanders, exactly, we executed that in that line." I
2 think on that day, I referred to the strategic plan or the
3 strategic points in the planning. We had to disperse,
4 which we did. We had to isolate the people,
5 which we did. We had to disarm the people,
6 which we did and we had to make arrests,
7 which we did. So it is on these
8 strategic points of the plan, Mr Chairperson, that
9 I congratulated my people, if I may put it that way. I
10 had at no stage referred to the death of
11 the families or any other person. I think everyone of
12 us in this room, had at one or other stage lost someone
13 to death, and it is not something
14 taken lightly, nor something on which you congratulate someone.
15 I therefore disagree, very strongly, with what you – with the
16 statement.

17 **MR NTSEBEZA SC:** Now, you were referring
18 here to a big action – somewhere there. Remember after any
19 big action, there is now a board of inquiry that will sit
20 and then take it frame by frame, minute by minute of what
21 happened, alright. A board of inquiry.

22 **[12:48] Clearly,** and obviously the purpose of the
23 constitution in relation to the police is to determine
24 whether the police acted lawfully and justifiable when it
25 killed 34 people. Was your statement that the police acted

1 110% correct made in that context?

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

3 did not follow what he was reading, but I can give you my
4 answer on the 110% -

5 **CHAIRPERSON:** What Mr Ntsebeza was doing,

6 he was reading from the top of page 3, but perhaps to get

7 it in context we should look at the bottom of page 2. He

8 says, this is against 7:50, "Then he announced there will

9 be a board of inquiry. Some of you might wonder what is

10 now going to happen. Remember after any big action" - this

11 is the piece he read - "Remember after any big action

12 there is now a board of inquiry that sits and then take it

13 frame by frame, minute by minute as to what happened,

14 alright." Then you go on to say, "The police, we will

15 give 100% full cooperation." So you are referring to, as I

16 understand it, 100% full cooperation to this Commission.

17 **BRIGADIER CALITZ:** It is the Commission we are

18 currently busy with.

19 **CHAIRPERSON:** That is the context in which

20 the passage, which Mr Ntsebeza has read to you, appears.

21 **BRIGADIER CALITZ:** That is what I meant.

22 It is correct, Mr Chairperson.

23 **MR NTSEBEZA SC:** Now there is another

24 passage, "and that is where the TRT line and the NIU line

25 was formed and when they come under attack, that is where

1 the command was given by their commanders, as well as some
2 of them act in self-defence, alright. So on that, nothing,
3 nothing, nothing was wrong, okay. You acted. It was
4 justified and that is exactly the commitment and the
5 cooperation that we are going to give the people. So those
6 people that still need to fill the 15s and say how many
7 rounds," you were referring to the killings?

8 **BRIGADIER CALITZ:** Mr Chairperson,
9 I explained to the people,
10 as I said, there were people not at the scene on that
11 day, and I explained to them. I think we are going back
12 into my explanation – but if I have to do it again,
13 there were a lot of people receiving SMS messages and
14 WhatsApp messages, with allegations and
15 threats, and, and, and that is where the 110%
16 motivation from myself came. The sentence that you
17 referred to, is "That is where the command was given by the
18 commanders." I there referred to the "basic line". If
19 we look at the video, we will hear the words "Basic line,
20 basic line," that was the "command," and some of them
21 acted in self-defence, and I testified thereto, "some of
22 them," is because everyone did not use their weapons. Those
23 who did, acted in "self-defence".
24 I then said, "Alright," which meant that
25 there were new personnel that were not aware of what occurred.

1 "So on that nothing, nothing, nothing was wrong, okay. You
2 acted, it was justified and that is exactly the commitment
3 and the cooperation that we are going to give the people."
4 "The people" – I referred to the Commission that would be appointed,
5 at that stage I was informed that the
6 members were attacked and acted in "self-defence," and that
7 is why I said,
8 "you acted correctly and I referred to
9 "exactly that commitment and cooperation we
10 will give to the people." It was for the Commission, so that
11 they knew that what happened would be tabled in front of the
12 Commission. Just after that, "So those people that still need to
13 fill the 15s and say how many rounds," there we referred to
14 the, what we call the,
15 "hot debriefing" and "second debriefing." There we
16 informed the people that we need to consolidate so that we
17 can put all the facts forward.
18 It was in that light, which I said that. I never congratulated
19 anyone for shooting anyone, or causing the death of anything,
20 not at all. I am a professional and my rank as
21 Brigadier in the South African Police Services, does not
22 allow me such actions.
23 **MR NTSEBEZA SC:** I will just put one
24 proposition to you, and that will be the end of it. You
25 see, Brigadier, when you say this, both on the 18th and in

1 your testimony to questions put to you by Mr Budlender, and
2 now even to questions put to you by me, you see there is a
3 sense here, which I want to put to you, you do not seem to
4 appreciate and it is this; what you are saying here is
5 well, 34 people were killed by the police, but what were
6 the police expected to do? The police were justified, they
7 acted in self-defence. Now is that how you want to express
8 what happened, that when those people were killed, the
9 police were justified and therefore you are 100%, 110%
10 correct? It does not matter that 34 people were killed in
11 one day. Is that how you want to be perceived? Because
12 that is how it comes across.

13 **CHAIRPERSON:** That is the proposition
14 that is been put to you. Do you want to be perceived in
15 that light, is what Mr Ntsebeza says. What answer do you
16 give to that proposition? He says this is the last
17 question he is asking on this point and he is giving you an
18 opportunity to deal with the proposition he is put.

19 **BRIGADIER CALITZ:** Mr Chairperson,
20 no, I totally disagree with what you said now.

21 **CHAIRPERSON:** It is not Mr Budlender
22 **[microphone off, inaudible], it** is Mr Ntsebeza.

23 **BRIGADIER CALITZ:** Yes, the Advocate.

24 **CHAIRPERSON:** Mr Budlender – but maybe
25 I heard incorrectly.

1 **BRIGADIER CALITZ:** No, no, no, with what the
2 Advocate just said, no, I do not agree with
3 that at all. I think we have mentioned this on many
4 previous occasions that everyone in the room and not just
5 these
6 34 families, lost someone to death,
7 not on that day,
8 but at some stage.
9 Under no circumstances,
10 Mr Chairperson, I want to be depicted as
11 as someone that congratulated people on shooting people dead. I want
12 to strongly deny that.
13 If it seems that way, I can testify that it was
14 never said. It was not the statement. We feel very sorry
15 for the people, especially going into the festive
16 season. It is absolute – I am looking for a better word for
17 “rubbish,” No, I totally disagree with
18 you.

19 **MR NTSEBEZA SC:** Yes well –

20 **CHAIRPERSON:** I think you have stated your
21 attitude. Mr Ntsebeza, you put the proposition to the
22 witness; he gave the answer. I would imagine as far as
23 this part of the case is concerned it is really a matter for
24 argument. What he said on the 18th is on record. The
25 explanations he is given are on record. The contrary

1 contentions are on record, and these are matters that can
2 be taken further in argument. I do not know if there is any
3 point at this stage in probing it further.

4 **MR NTSEBEZA SC:** Just one point, Mr

5 Chairman, it is not even a proposition. I would like the

6 Brigadier to think about this, and it is this; when the

7 families came here because the President had indicated that

8 they are necessary parties to this, part of what they came

9 here to find is not necessarily that their loved ones were

10 injured, if that is the evidence that is going to be shown.

11 Part of their being here is to find whether there is a

12 basis for them to be reconciled to the reality of what

13 happened on the 16th, and I just want to put to you that

14 when they see an operational commander, and they hear an

15 operational commander two days after the killings, where no

16 inquiry had happened, where no sides of the story were

17 given, when they hear that he went on to say, "34 people got

18 killed. You were 100% correct in killing them," that for

19 them –

20 **BRIGADIER CALITZ:** Mr Chairperson –

21 **CHAIRPERSON:** That is not what he said.

22 It is not entirely accurate, but in fact, it is inaccurate on

23 a material point. But you have heard the point he is made.

24 There had been no formal inquiry yet. You accepted on the

25 basis of information you had received that the shootings were

1 justified because the doctrines of private defence and
2 self-defence applied. Part of his, the thrust of what he
3 says to you is there was no inquiry yet. So you want to
4 deal with that part of the point before we take the lunch
5 adjournment?

6 **BRIGADIER CALITZ:** Mr Chairperson, I
7 cannot agree with you. It was the
8 circumstances. I think, with all respect, Adv. Ntsebeza
9 is trying to mislead the people and put words in my
10 mouth –

11 **CHAIRPERSON:** No, no, no –

12 **BRIGADIER CALITZ:** No, I am just saying
13 what he said, I said, Mr Chairperson.

14 **CHAIRPERSON:** No, no, no, I do not agree,
15 and I said –

16 **BRIGADIER CALITZ:** I did not say
17 that –

18 **CHAIRPERSON:** - with his summary of what
19 you said.

20 **BRIGADIER CALITZ:** Sorry, I did
21 not hear that.

22 **CHAIRPERSON:** But I do not think we must
23 accuse Mr Ntsebeza – he is a much-respected practitioner –
24 of doing anything like that deliberately, and if anyone
25 suggest it, then I would leap to his defence.

1 **BRIGADIER CALITZ:** Thank you.

2 **CHAIRPERSON:** But anyway, I think you have

3 expressed your attitude to what was put. Mr Ntsebeza has

4 had a chance to put what his clients feel on the matter,

5 and I think on this note we can take the lunch adjournment.

6 **MR NTSEBEZA SC:** And I can promise you,

7 Mr Chairman, after lunch it will be just one item and we will

8 be done.

9 **CHAIRPERSON:** Thank you, Mr Ntsebeza. On

10 that promising note we will take the lunch adjournment.

11 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

12 **[14:04] MR NTSEBEZA SC:** Thank you, Mr Chairman.

13 Mr Chairman, my learned junior Adv. Gotz is going to

14 continue with the Brigadier.

15 **CHAIRPERSON:** Yes, Mr Gotz?

16 MR GOTZ: Chairperson, I am not intending

17 to put any questions to the Brigadier. I simply wanted to

18 place something on record. Chairperson, perhaps we can for

19 that purpose have a look at exhibit KKK11. It is the

20 presentation in relation to the shotgun victims, and to

21 turn to the last page of that presentation, page 32 –

22 **CHAIRPERSON:** It is the document headed

23 “Others.”

24 **MR GOTZ:** It is indeed, Chairperson.

25 Chairperson, the document was prepared at a time and on the

1 basis of certain information that was available to us, we
2 believed that all of the people listed on this page had
3 been injured with shotgun pellet injuries on the 16th. As a
4 consequence of further investigation it now appears that we
5 had made a mistake in three respects. Mr Joseph Mooketsi,
6 Mr Daniel Tshwana, and Mr Phuka Ramapapu, the last name on,
7 it now transpires were not in fact injured on the 16th, and
8 we simply wanted to place on record those facts, lest that
9 we thought that we were attempting to misrepresent the
10 position to the Commission.

11 **CHAIRPERSON:** I understand.

12 **MR GOTZ:** Chairperson, we also do though
13 wish to note that further analysis may well reveal, and we
14 think we have identified at least one other person who may
15 have been injured with shotgun injuries, and we also
16 believe that the Mr Phatsha who gave evidence in the
17 tribunal at quite an early stage –

18 **CHAIRPERSON:** Commission; we are not a
19 tribunal.

20 **MR GOTZ:** - the injury to his toe in fact
21 may have been caused by a shotgun on the basis of the
22 hospital records.

23 **CHAIRPERSON:** Alright. Well, may I say
24 this to you; if this information is readily available and
25 I have overlooked it, I would be grateful to be told. I would

1 like to be told each of these blue circles here on page 31
2 represents a shotgun victim. I would like to know who they
3 were and I think it would be helpful for us – you can give
4 it to me when we resume next year. I take it we – I am not
5 sure if we have the medical reports in respect of them, but
6 if we have not I would like them, and if we have I would like the
7 reference. That is the first thing I want to say.

8 Secondly, I understand that the evidence leaders
9 have asked one of their investigators to specifically
10 investigate this whole shotgun question and it may well be
11 that he will be able to elicit a number of facts, which will
12 be placed before the Commission and will have a bearing on
13 this whole matter. But thank you for the correction that
14 you have given us. That then concludes the participation of
15 the representatives of the families as far as Brigadier
16 Calitz is concerned. Thank you, Mr Ntsebeza and Mr Gotz.
17 Mr Chaskalson, you are going to continue now. As was
18 indicated for reasons that were explained, I think the
19 presence of the families for most of the time, Mr Ntsebeza
20 was sandwiched in as it were in the middle of your cross-
21 examination. May I ask you whether you have a discrete
22 topic, which you should be able to finish by about 3
23 o'clock?

24 **MR CHASKALSON SC:** Chairperson, you put
25 me in a very difficult position. Do I have to be sworn in

1 before I answer this question? I must concede,
2 Chairperson, there is unfortunately at least one topic I
3 can deal with in a discrete form.
4 **CHAIRPERSON:** May I suggest that you
5 embark upon that topic and if you finish it before 3
6 o'clock we will stop, and if you only get to 3 o'clock and
7 you have not finished it, we will stop anyway. So that is a
8 gesture which is made very reluctantly to deal with the
9 pressures to which I have been unfairly and totally
10 unjustifiably exposed. Alright, Mr Budlender. Brigadier,
11 you are still under oath.

12 **BRIGADIER CALITZ:** Thank you, Mr
13 Chairperson.

14 **CHAIRPERSON:** Mr Chaskalson.

15 **CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):**

16 Chairperson, as my learned friend Mr Budlender has
17 previously said, I have been called worse before. Brigadier,
18 I would like us to start with slide 215 of exhibit L, so if we
19 can get slide 215 of exhibit L, and Brigadier, you will
20 recall that your testimony was that after you drove through
21 the fence you drove towards, with the intention of
22 reforming a dispersion line, where the protesters, where
23 you ultimately found the protesters. Is that correct? Or
24 let me not put that question, because it may take us down
25 side alleys, which are not germane to my cross-examination.

1 Does this slide depict the point at which you and your
2 fellow POPS members stopped after you had left the kraal
3 area?

4 **BRIGADIER CALITZ:** It is correct, Mr

5 Chairperson, this is where we referred to where we
6 regrouped. I think, Mr Chairperson, the "dry
7 riverbed" but it is just a little bit before that, yes.

8 **MR CHASKALSON SC:** But Brigadier, if I
9 can just take you up on that answer; the dry riverbed
10 itself was in fact a little bit to the west of this
11 picture. The dry riverbed, what we see in this slide is,
12 what I am indicating now, is that is hill 2. Will you
13 confirm that? And what I am marking with my slide is the
14 rocky outcrop essentially at the centre of the slide.

15 **BRIGADIER CALITZ:** Mr Chairperson,
16 if we go back to the previous question; I agreed
17 with you. I said we earlier referred to that as the "dry
18 riverbed", but it is the position where we stopped at that stage.

19 **MR CHASKALSON SC:** Yes.

20 **BRIGADIER CALITZ:** Therefore, I agreed
21 with you.

22 **MR CHASKALSON SC:** Thank you.

23 **BRIGADIER CALITZ:** Just to shorten
24 it.

25 **MR CHASKALSON SC:** But I think for the,

1 so that we can orient ourselves, let us just identify the
2 landmarks. That is hill 2 that I am pointing out at the
3 centre of the picture. Will you confirm that is correct?

4 **BRIGADIER CALITZ:** Where the pointer is now,
5 that is hill 2. It is correct, Mr Chairperson.

6 **MR CHASKALSON SC:** This is sort of half
7 of hill 1. Hill 1 stretches off the slide to the
8 right-hand side. Will you confirm that is correct?

9 **BRIGADIER CALITZ:** It is correct, Mr
10 Chairperson.

11 **MR CHASKALSON SC:** Hill 3 we cannot see
12 on this slide, but where it would be is to the base of the
13 slide approximately, where I think I am indicating now.
14 We will show another photograph shortly, which will fix it
15 precisely, but without wanting to pin you down to an exact
16 position, would you agree that this is broadly where hill
17 3 will be, towards the bottom right-hand corner of the
18 slide, but actually off what we can see on the slide?

19 **BRIGADIER CALITZ:** It is a west, southwest
20 direction, it is correct, Mr Chairperson.

21 **CHAIRPERSON:** Just for the sake of the
22 record, on slide 215 exhibit L what is being shown firstly
23 is hill 2, which is more or less in the middle of the
24 slide. It is almost, virtually a semi-circle with a fair
25 amount of green at one end and some in the middle. Then

1 from it is what looks like a column of people stretching
2 down towards the, in the direction of the bottom right-hand
3 corner of the slide, and then more or less in the middle of
4 the right-hand side of the slide is half of hill 1, which
5 as Mr Budlender said extends to the right beyond the edge
6 of the slide, and then hill 3 is at a spot, as the
7 Brigadier put it, more or less in the southwest corner, or
8 actually slightly beyond the bottom right-hand corner of
9 the slide, which is to the southwest of the scene as
10 depicted on the slide.

11 **MR CHASKALSON SC:** Then if I can ask us
12 to go to JJJ178.3, which is an annexure to Mr White's
13 statement, JJJ178.3, annexure GW6C to that statement at
14 page 12, and that is a page on which the South African
15 Human Rights Commission have identified, this in fact
16 reproducing this slide and on that page the South African
17 Human Rights Commission have identified each of the Nyalas
18 and other armoured vehicles in this line that we see on the
19 slide. So can I ask if that page gets called up, GW6C.
20 That is correct, page 12. That is correct, and if we could
21 zoom it up a little bit so that we can see the
22 identifications, thank you. Now Brigadier, I am not
23 interested in the identification of any of the armoured
24 vehicles that are remaining behind at scene 1 at this
25 stage, but for present purposes if we focus on the line

1 that is formed up in front of hill 2, are you in a
2 position to confirm the identification of the South African
3 Human Rights Commission on this slide?

4 **BRIGADIER CALITZ:** It is correct, Mr

5 Chairperson. I can indicate my position, which was
6 Pappa1.

7 **MR CHASKALSON SC:** And can you confirm
8 the correctness of the identification of the other armoured
9 vehicles in this line?

10 **BRIGADIER CALITZ:** I will not be able to say
11 if it is correct. I think the
12 evidence that you have shown us, I will take you
13 word for that, but –

14 **MR CHASKALSON SC:** From our perspective
15 we are satisfied that it is correct, but there will
16 certainly be some identifications that you are able to
17 confirm. That for instance is the POPS Casspir –

18 **BRIGADIER CALITZ:** Yes.

19 **MR CHASKALSON SC:** - that I am pointing
20 to, what is marked as Casspir A on the diagram. What is
21 marked as Casspir B on the diagram is the STF Casspir.

22 **BRIGADIER CALITZ:** It is correct.

23 **CHAIRPERSON:** And the Scorpion is the
24 vehicle that is marked as Scorpion on the Casspir. That is
25 the STF Scorpion.

1 **BRIGADIER CALITZ:** And the water cannon on top of
2 it, yes. No, it is correct. What I referred to was
3 the Pappa calling signs of the Nyalas –

4 **MR CHASKALSON SC:** I understand,
5 Brigadier –

6 **BRIGADIER CALITZ:** But the rest, I can
7 point it out for you.

8 **MR CHASKALSON SC:** And you identified,
9 you confirmed that this was in fact the water cannon, but
10 there were two water cannons. Can you confirm that this
11 was the Johannesburg water cannon?

12 **BRIGADIER CALITZ:** Unfortunately, I cannot
13 tell you which one is Johannesburg. The other one we see
14 at Nyala 5 to the northern side on top, that is the
15 other side. I see it indicated "North West" –

16 **CHAIRPERSON:** That is the North West one,
17 yes.

18 **BRIGADIER CALITZ:** But I cannot confirm if
19 it is Northwest or Johannesburg at this stage.

20 But I can testify that it is definitely two water cannons.

21 **MR CHASKALSON SC:** Thank you, Brigadier.

22 Now from the video footage that we have, we can show that
23 this line had formed up by 15:56:16 – 15:56:16 – ETV time,
24 which is two minutes and 26 seconds after the shootings,
25 and where we get that time from is 12 seconds into Colonel

1 Botha's video, which has been shown in the Commission and I
2 must just get the exhibit number. Would you accept that
3 that is correct? It may have been formed up in fact a
4 little earlier, because what one sees on Colonel Botha's
5 video is Pappa4, which is the last vehicle in the line,
6 moving into position –

7 **CHAIRPERSON:** So when you talk about the
8 line, you are referring to the line of vehicles stretching
9 from Pappa4 to the left to Casspir A?

10 **MR CHASKALSON SC:** That is correct,
11 Chairperson. Also including Casspir B, although Casspir B
12 is not positioned in the line. Casspir B is part of the
13 same function that the line is performing. Would you
14 accept that timing, Brigadier, or would you want to see the
15 clip from Colonel Botha?

16 **BRIGADIER CALITZ:** No, Mr
17 Chairperson, if we look at the "exhibits" we can
18 look at it and if there are any differences, we can get
19 back to it. I do not think it is necessary to show the "clip"
20 at this moment. It is thee line where we
21 stopped. I think the time you referred to was, 2:26, and it
22 coincide with something I showed yesterday or the day before yesterday. If
23 I recall correctly, that same time was referred to.

24 **MR CHASKALSON SC:** It was, I gave a
25 similar time in relation to when the radio call to the TRT

1 was. I think that is what you are referring to.

2 **BRIGADIER CALITZ:** It is correct. That is why

3 I say that we will not disagree on that time,

4 it is correct.

5 **MR CHASKALSON SC:** And when I say the

6 line was formed up, maybe I am overstating it because in

7 fact the Johannesburg water cannon that we see there came

8 in a little later and there was a lengthy delay before the

9 North West water cannon that is marked in the top of the

10 screen made its way to the line. Do you confirm that?

11 **BRIGADIER CALITZ:** Mr Chairperson,

12 yes, there was a time mentioned to me. I now have to talk

13 under correction; I had to wait quite a few minutes for

14 the water cannons to reach me. The definite

15 time I cannot recall.

16 **MR CHASKALSON SC:** Look, I can help you

17 there, Brigadier. We see the North West water cannon,

18 which is the second water cannon to come onto the, to reach

19 the line, the last water cannon to reach the line, which is

20 still behind the barbed wire on this slide, being marked

21 now with water cannon North West. We see that water cannon

22 reaching the line at ETV time 16:03:51 – 16:03:51 – and we

23 see that on the Protea Coin helicopter video at the

24 corresponding time to 16:03:51.

25 **CHAIRPERSON:** I do not think that makes

1 sense, because presumably if the North West water cannon
2 was where it was initially, as we see on this slide, it
3 could not have gone – unless it went through the barbed wire
4 fence. It would have had to go around, is that correct?

5 So it would have taken some time to get to this line that
6 we are now talking, the reorganised line. Is that correct?

7 **BRIGADIER CALITZ:** Correct, Mr

8 Chairperson.

9 **MR CHASKALSON SC:** So this line in the
10 form that we see was essentially static in that form - I
11 say essentially; there were one or two slight movements
12 that we might discuss - for a period of seven and a half
13 minutes.

14 **BRIGADIER CALITZ:** Maybe – I did not
15 estimate the time, but it may be correct.

16 **MR CHASKALSON SC:** Now Brigadier, if we
17 keep this image in mind, and I would ask the video operators to
18 hold, to have this slide accessible so that we can put it
19 back up, and look for a moment at what the original plan
20 was, which is set out at slide 181 of exhibit L, so let us
21 look at slide 181 of exhibit L, and if I can just identify
22 certain landmarks on slide 181. Where the T for target is,
23 is hill 1. Can you confirm that, Brigadier?

24 **BRIGADIER CALITZ:** Correct, Mr

25 Chairperson.

- 1 **MR CHASKALSON SC:** The darker coloured
2 patch to the north of the T for target is hill 2.
- 3 **BRIGADIER CALITZ:** The one just north of the
4 the blue arrow, it is correct, Mr Chairperson.
- 5 **MR CHASKALSON SC:** North of the –
- 6 **BRIGADIER CALITZ:** North –
- 7 **MR CHASKALSON SC:** - second blue arrow.
- 8 **BRIGADIER CALITZ:** It is correct, Mr
9 Chairperson.
- 10 **[14:24] MR CHASKALSON SC:** The area, as we look
11 at the slide, to the left of the first blue arrow with the
12 dark colouring is hill 3, the darker colouring.
- 13 **BRIGADIER CALITZ:** It is correct, Mr
14 Chairperson.
- 15 **CHAIRPERSON:** Just to the right of the
16 big white box with phase 2 in it?
- 17 **MR CHASKALSON SC:** Yes, that is possibly a
18 better way of describing it, Chairperson, and the orange
19 line that runs through the arrows at the end of the box
20 describing phase 1 is the barbed wire line running up to
21 and in fact on the plan a little bit past the small kraal.
- 22 **BRIGADIER CALITZ:** Up to the corner of the
23 small kraal.
- 24 **MR CHASKALSON SC:** Yes, Chairperson, yes,
25 Brigadier, and the little kraal is what we see just to the

1 left of the icon of the blue man at the top of the four
2 blue men, I am trying to describe it in terms that will make
3 sense on the record, but you can see what I am identifying,
4 Brigadier.

5 **CHAIRPERSON:** Well, what you are
6 identifying is a red vehicle at the corner of the small
7 kraal. What I suspect actually happened was that if Nyala
8 6, - sorry, Nyala 4 had to accelerate and advance towards
9 the small kraal that I suspect cut the corner there, did not
10 go through the position indicated for Nyala 5. The one
11 next to the kraal is supposed to be Nyala 6, if one counts
12 it. We know that is not the one that reached the corner of
13 the kraal, so I suspect that, if I am wrong I hope I will be
14 corrected, that the line of the fenced area was in fact
15 from where, close to where the fourth Nyala is depicted on
16 this image through to the corner of the little kraal, is
17 that right? In other words that corner was cut?

18 **MR CHASKALSON SC:** Yes, Chairperson and
19 Brigadier, would you confirm that too?

20 **BRIGADIER CALITZ:** I think there are photographs
21 which indicates the direction of that wire, Mr
22 Chairperson.

23 **MR CHASKALSON SC:** I merely wanted to
24 identify the position of the small kraal but we are all on
25 the same page now. Now if one looks at this picture and

1 compares it with the picture on slide 215, sorry, before we
2 leave slide 181, these Nyalas, the blue vehicles with a
3 sort of brown/green coloured vehicle in the middle, a line
4 of five of them, represent the POP's armoured vehicle line.

5 **BRIGADIER CALITZ:** It will be correct,
6 it is the first line, "dispersion line".

7 **MR CHASKALSON SC:** Yes, Chairperson, thank you,
8 Brigadier, and behind is the second line of, which was
9 supposed to be TRT, NIU and STF. I understand that the, -
10 well, Specialised, let us call them the Specialised Forces,
11 the line of Specialised Forces with armoured vehicles on
12 the outside.

13 **BRIGADIER CALITZ:** It is correct, Mr
14 Chairperson, it is the TRT line, if you are referring to
15 the red, which had to sweep hill 2 and then the
16 Specialised Forces, NIU, STF, on hill 1.

17 **MR CHASKALSON SC:** If we now move back to
18 slide 215 or even, - sorry, either that or the page of
19 Exhibit JJJ1783, whichever is the quickest, here we are,
20 slide 215. What I would like to put to you is that in
21 broad terms the picture that we see here broadly
22 corresponds to what the plan was and what I want to put to
23 you on that basis is that by this stage SAPS had put the
24 plan back on track, so let us start with the second
25 question. Would you accept that by this stage SAPS had put

1 the plan back on track in broad terms?

2 **BRIGADIER CALITZ:** The "back on track"

3 I would say, Mr Chairperson, was because we already

4 started with the "dispersion action", so there were already

5 started with action against them. I would say this is a follow up,

6 and what I earlier referred to as,

7 "follow up in that line," that is what

8 I referred to and told the members that they followed up.

9 This is a

10 follow up action, if I can put it that way.

11 **CHAIRPERSON:** But, Brigadier, could we

12 put it this way? If what happened with the shooting at

13 kraal 1, scene 1 –

14 **BRIGADIER CALITZ:** Yes –

15 **CHAIRPERSON:** - scene 1, is described as

16 a disruption of phase 3, then phase 3 got back on track at

17 the point which is depicted on this slide, would that be

18 right?

19 **BRIGADIER CALITZ:** It is correct, Mr

20 Chairperson, which is where we followed up. There were

21 a dispersing action, from

22 incident 3 up to where he was here,

23 we were dispersing of the crowd, the protestors.

24 **MR CHASKALSON SC:** And, Brigadier, if we compare

25 this slide with the previous slide we see that it shares a

1 lot of the peaches at the pan, so the barbed wire is in
2 position, the safe area has been enclosed and I am marking
3 the line from the barbed wire Nyala trailer on the right
4 hand side of the slide, which is in fact Nyala 2, through to
5 Nyala 3 which is stopped by the mast, through to Nyala 4 at
6 the corner of the kraal. On the plan the barbed wire was
7 supposed to look a little bit different, as the chairperson
8 pointed out but nothing really is going to turn on it at
9 this stage, would you agree with that?

10 **BRIGADIER CALITZ:** Yes, no, I think
11 that position is correct, Mr Chairperson. On the plan we
12 might be at this bush, or Nyala 5 would be there, at
13 stage, but we can see what we discussed
14 previously, the corner was a little,
15 cut, as we call it, yes.

16 **MR CHASKALSON SC:** And when the plan was
17 taking place, if we can go back to 181 quickly, there was
18 going to be a line of POP's vehicles to the north of hill
19 2, if we go back and if we slip back to 215 we will see that
20 that is in fact what we see there. So this line of POP's
21 vehicles was formed up in pretty much the position that the
22 plan had contemplated relative to hill 2.

23 **BRIGADIER CALITZ:** I think that was how we
24 briefed the people, to move out in that
25 line, it is correct, Mr

1 Chairperson.

2 **MR CHASKALSON SC:** There was a slight

3 change in that the plan contemplated that there would be

4 people on, that there would be strikers on hill 1 but by

5 the time the, after scene 1 there were no longer strikers

6 on hill 1, they had all left hill 1 and if they had not

7 dispersed entirely they were congregated in this line,

8 leading up the back of hill 2.

9 **BRIGADIER CALITZ:** No, Mr

10 Chairperson, you said, "entirely dispersed",

11 "entirely" moved out, this was only a small part of

12 the group. I am talking about the people

13 that moved in a southerly direction, or south and then

14 back north, that direction. That is the small

15 group we are referring to, the rest of the people were

16 not captured in the footage, here was a big group, and by here I mean

17 on the western side, under the helicopter,

18 moving to the eastern side, the 2,000 to 3,000,

19 they did not disperse here. They were still

20 static in the field, if I may put it

21 that way.

22 **MR CHASKALSON SC:** Brigadier, maybe if we

23 can go to another picture, a photograph that might help us

24 to see what you are describing.

25 **CHAIRPERSON:** The point is, it is clear

1 is it not, that this group we see on this slide are not

2 3,000 people?

3 **MR CHASKALSON SC:** No.

4 **CHAIRPERSON:** I do not know how many

5 people are there but an exercise may have to be performed

6 or may not have to be performed, but clearly a significant

7 number of people are now gone from the 3,000, that must be

8 right?

9 **BRIGADIER CALITZ:** Yes, I am just

10 cautious on the term "gone", they were still

11 at the scene -

12 **CHAIRPERSON:** Gone from the scene, gone

13 from the picture we see.

14 **BRIGADIER CALITZ:** "Gone from the picture

15 we see," to put it that way -

16 **CHAIRPERSON:** You say there were many of

17 them to the left of the slide -

18 **BRIGADIER CALITZ:** The western area -

19 **CHAIRPERSON:** - which is the western side

20 area below the helicopter.

21 **BRIGADIER CALITZ:** Maybe in the region of

22 page number 215, Mr Chairperson, as well as the white

23 helicopter, if you look you will see there are electric cables,

24 overhead cables from the

25 north to the west, out of picture,

1 left of; west of the white helicopter which
2 you can see in the picture, straight down in the direction of
3 page number 215. So that is where a large number of people
4 moved to in small groups.

5 **COMMISSIONER HEMRAJ:** Mr Chaskalson,
6 please assist me with something, perhaps I misunderstand.
7 This line of vehicles that you have been referring to on
8 slide 215, you are not suggesting that that is the initial
9 dispersion line up as it appears on the plan in the
10 previous slide that you showed?

11 **MR CHASKALSON SC:** No, I am suggesting
12 that it is broadly similar, it is very similar to the
13 initial dispersion line. What it does not have, it is the
14 POP's dispersion line, it is the line of POP's vehicles
15 which, as the brigadier testified, had been previously at
16 the briefing instructed that this was the point at which
17 they would form up.

18 **COMMISSIONER HEMRAJ:** But on the plan
19 this POP's line is before any dispersal takes, before
20 dispersion action takes place. This is a regrouping as I
21 understand, after a dispersal action has already taken
22 place, or am I mistaken, am I missing something?

23 **MR CHASKALSON SC:** Well, there has been a
24 confrontation at scene 1 already by the time we see this
25 picture, which was not part of the plan.

1 **COMMISSIONER HEMRAJ:** And according to
2 the brigadier, I beg your pardon, and according to the
3 brigadier he already drove across the fence, etcetera, to
4 disperse, so this is a regrouping after some sort of action
5 have taken place?

6 **MR CHASKALSON SC:** Yes, yes.

7 **COMMISSIONER HEMRAJ:** Yes.

8 **MR CHASKALSON SC:** Yes, absolutely but
9 the point that I was putting to the brigadier is that the
10 regrouping is in broadly the same position and the same
11 form that the plan contemplated that the dispersion line
12 would initially have formed up if there had not been any
13 interference with it.

14 **COMMISSIONER HEMRAJ:** Is there not also
15 provision on the plan for a regrouping of a similar sort in
16 the riverbed for them to reassess their position?

17 **MR CHASKALSON SC:** Yes, Chairperson, and
18 according to Exhibit, the riverbed I am marking now is an
19 indentation that runs about, roughly a third of the way up
20 the page that one can see on the slide 215. According to
21 the presentation there was after this group that we see on
22 slide 215 was dispersed, there was thereafter a regrouping
23 on the dry riverbed. We can get to that point in due
24 course with the brigadier but I do not need to get there
25 yet.

1 **COMMISSIONER HEMRAJ:** Are you saying
2 there is a further regrouping after this line on 215?

3 **MR CHASKALSON SC:** That is what the
4 presentation says, I do not know what the brigadier's
5 evidence is in that regard, but the only proposition I want
6 to put to the brigadier is that the original plan
7 contemplated a POP's line to the north of hill 2 prior to
8 the dispersal action of the protestors that remained at
9 hill 2 and hill 1. What we see now is a POP's line to
10 the north of hill 2 after some of the protestors have
11 been dispersed following the events at scene 1, but there
12 remains a congregation of protesters behind hill 2 and
13 that broadly the arrangement of vehicles that we see is in
14 accordance with what the plan contemplated.

15 **CHAIRPERSON:** - the witness to agree that
16 this was in effect more or less a resumption of phase 3,
17 that is what he said earlier. Did I understand correctly?

18 **BRIGADIER CALITZ:** I am just trying to
19 understand, Mr Chairperson, sorry. I already testified
20 that after we gave the
21 order to
22 disperse; it was the closest and most accessible place
23 where we could regroup, to get our
24 forces back on track. If I moved through to
25 for example, the river bend, after

1 we saw the group standing static, it would
2 be hopeless to then try and regroup.
3 We would then try to move this group back in a
4 north-eastern direction, which was not the purpose at all,
5 the purpose was to
6 "disperse", everyone down to the direction of the
7 field fire, in a westerly direction.
8 -
9 Although it looks the same, what we did here was
10 a plan we wanted to re-start again,
11 the "dispersion" took place, this was a
12 a follow up action and I had to get my vehicles back in line, make
13 sure that my
14 commanders knew what was going on,
15 you referred to it yourself, Mr Chaskalson, where
16 I looked back, in if I can explain,
17 this is my vehicle and when I looked back,
18 I saw that the TRT was not following up. If
19 you refer to slide 181, the intention was that, after the
20 "dispersion" they had to come out and sweep this
21 hill to come and make sure
22 what was ling at the back.
23 **CHAIRPERSON:** This hill, being -
24 **BRIGADIER CALITZ:** Hill 2 -
25 **CHAIRPERSON:** Hill 2?

1 **BRIGADIER CALITZ:** Hill 2, Mr
2 Chairperson. The group that were dispersed, they
3 could have left something behind.
4 "The TRT was
5 instructed during the briefing to sweep this hill and the
6 the NIU, as well as the
7 special force and the SDF, they would sweep the bigger hill,
8 which are hill 1. That was the plan
9 because on, hill 1 en hill 2,
10 they could have left some dangerous weapons behind,
11 and the reason for the follow up.
12 Secondly the TRT
13 and the Public Order Policing vehicles would then
14 make arrests, as we followed up, which might have been
15 too short or too long.
16 **COMMISSIONER HEMRAJ:** And on this slide
17 where would that line of POP be that is shown on slide 181
18 as the initial dispersion line?
19 **BRIGADIER CALITZ:** Commissioner, it will
20 be more to the back, if you look at where the kraal is,
21 kraal 1, 45 degrees, if we move out
22 there, there might have been a space
23 where we would have given the warning with the
24 the water cannons in front and the TRT at the back, and the warning
25 would be in this direction. We would not

1 get, as close to them, according to the plan they would still be
2 on hill 2 and hill 1, and here was a large group, which
3 we referred to as the militant group. So the
4 whole area –

5 **CHAIRPERSON:** You must give me a chance
6 to put some of that on record. What you are indicating was
7 the line where you intended to form up according to the
8 original plan, where you would have given the warning,
9 would it stretch more or less from under that helicopter as
10 we see at the left hand side of the page, –

11 **BRIGADIER CALITZ:** To the small –

12 **CHAIRPERSON:** – across to, more or less

13 the small kraal?

14 **BRIGADIER CALITZ:** Yes, a little away from
15 the small kraal, but in that direction.

16 **CHAIRPERSON:** A bit below the small kraal
17 as we see it on the picture, right?

18 **BRIGADIER CALITZ:** Yes, yes, it is –

19 **CHAIRPERSON:** Alright that is the first
20 thing you said. Then you pointed to hill 2, I think?

21 **BRIGADIER CALITZ:** Yes.

22 **CHAIRPERSON:** You referred to that, that
23 is essentially what you said, was there anything else that
24 you said, while pointing to something on the screen?

25 **BRIGADIER CALITZ:** No, I just wanted to explain

1 the purpose of the TRT,
2 which I referred to when I looked back and asked them
3 where they were, because they had to
4 follow up, specifically on this hill, with
5 what we call, a "sweep" action,
6 according to the plan –

7 **CHAIRPERSON:** What you showed was the
8 Tactical Reaction Unit still in position, more or less at
9 scene 1.

10 **BRIGADIER CALITZ:** It is correct, Mr
11 Chairperson.

12 **CHAIRPERSON:** In the vicinity of that
13 small corrugated iron shack and you have indicated they were
14 supposed to come around, to the left on the slide –

15 **BRIGADIER CALITZ:** The only –

16 **CHAIRPERSON:** Around the small kraal and
17 then proceeded in the direction of the line that you
18 referred to, is that right?

19 **BRIGADIER CALITZ:** It is correct, Mr
20 Chairperson.

21 **CHAIRPERSON:** In order to sweep hill 2?

22 **[14:44] BRIGADIER CALITZ:** "To sweep" and other

23 one I referred to was the NIU line,

24 which was on the western side of Nyala

25 3, the static position of Nyala 3, on its western side there is

1 line of people. It is the NIU line.

2 **CHAIRPERSON:** Yes, you point out the NIU

3 which are more or less in the middle of the picture below

4 the barbed wire barricade that had been erected, and below

5 the barbed wire Nyala which is the, I think is number 3,

6 but it is the second one which we can see here moving from

7 the right of the picture, more or less in the middle of the

8 picture. That was the NIU group.

9 **BRIGADIER CALITZ:** Correct.

10 **CHAIRPERSON:** And they were supposed to

11 move forward to sweep hill 1. Is that correct?

12 **BRIGADIER CALITZ:** Hill 1, together with the

13 STF, the Special Task Force.

14 **CHAIRPERSON:** Okay, together with the

15 Special Task Force.

16 **BRIGADIER CALITZ:** Correct.

17 **CHAIRPERSON:** So I think we now have on

18 record all the things you have pointed out.

19 **BRIGADIER CALITZ:** That was the plan,

20 yes, thank you, Mr Chairperson.

21 **MR CHASKALSON SC:** Brigadier, let us start

22 with hill 1. Or let me start somewhere else. Let us

23 assume - and I am going to put a hypothetical scenario to

24 you - let us assume there had been no disruption at scene 1,

25 that the barbed wire had rolled out as planned, that you

1 had come out and given a warning and that in response to
2 your warning there had been a partial dispersion and the
3 scene that remained in terms of the position of the
4 protesters was what we see here, that some of the
5 protesters had dispersed west, others had congregated in a
6 line that we see. All of the protesters had left hill 1.
7 Assume that had happened. How would the layout of your
8 vehicles and the positioning of your vehicles at that point
9 have differed from what we see now, based on that
10 hypothetical scenario?

11 **BRIGADIER CALITZ:** If I understand the
12 the question, we would be in formation between the white
13 helicopter and the small kraal. From there I would
14 have warned the crowd and given them
15 20 to 30 minutes to disperse. We would
16 direct them to move out in a westerly direction,
17 because the wire was closed off, and on the southern side of
18 hill 1, we had the power station. The only
19 possible opening in which they could move was
20 in a westerly direction. We would then use the
21 "interpreter" and from the position we were in,
22 informed them about it in their language,
23 if they reacted –

24 **CHAIRPERSON:** That is the position I
25 indicated previously where you –

1 **BRIGADIER CALITZ:** That is the position as in the
2 original plan, Mr Chairperson. The
3 TRT line would form behind us and then
4 react. The question was, if they would react,
5 and then
6 hill 1 en hill 2 were empty, but we were still in formation,
7 would that have been my warning. My warning would be,
8 and I think I told you that at one stage,
9 Mr Chairperson said, if you do not disperse
10 and lay down your weapons, we will act against
11 you, and we would then explain the force continuum to them
12 and how there would be acted against them, and we would
13 then inform them that those not leaving the scene
14 will be acted on by means of
15 the "dispersion action," and ultimate
16 arrest. We would have explained that it is
17 a "illegal gathering" and so forth, if you are asking me if that
18 is how the people dispersed,
19 that group, that small group,
20 the vehicle line with the
21 water cannon would have come forward and continued with the "dispersion,"
22 "encircling," and isolating and we
23 would have disarmed and arrested these people.

24 **CHAIRPERSON:** You indicate first it was
25 hill 1 which is now, which has been vacated presumably by

1 the people, and you then indicated that this line is the
2 line we can see on the slide, of people, it is a line or
3 column almost stretching from hill 2 to the bottom right-
4 hand corner of the slide.

5 **BRIGADIER CALITZ:** Yes, the only difference
6 is that we would have followed up, the TRT
7 line would be there in case the people formed smaller
8 circles and then encircled and arrest them.
9 They would assist us
10 with that.

11 **MR CHASKALSON SC:** So Brigadier, if I
12 understand your answer correctly, the most important
13 difference, or let me put it this way, the only material
14 difference between what would have happened on my
15 hypothetical scenario and what actually happened, which is
16 seen in an earlier stage here and then would also involve
17 of course what happened when the water cannon finally came
18 around and you proceeded to disperse this line, the only
19 material difference is that you did not have a TRT line
20 behind you to act as a protection line for the POPS. Would
21 you accept that that is the only material difference?

22 **BRIGADIER CALITZ:** On this stage and where were
23 earlier on?

24 **MR CHASKALSON SC:** Sorry, Brigadier, I am
25 not sure I am understanding.

1 **BRIGADIER CALITZ:** Okay, the "material
2 difference" is, if we formed our formation between
3 the white helicopter and the corner of the
4 small kraal and the TRT
5 formed behind us, the first difference is that we
6 would have been given the opportunity to
7 warn the people. I have set out
8 the warning in a good manner. That is the first
9 difference.
10 In this case TRT acted at the back, so they
11 could not follow up and assist with the arrests,
12 although there were TRT with us, but the bigger
13 group stayed behind, and they could not assist with
14 the arrest techniques. That is the first difference,
15 and we already started with the
16 dispersing.
17 The second difference was – yes, it is
18 about how the line would have formed with the
19 Scorpion "vehicle" toward hill 1, because the STF might
20 sweep that side. That is the differences,
21 if I understand your propositions correctly.
22 **MR CHASKALSON SC:** Okay, you see what I
23 want to put to you in this regard is that whatever
24 disruption was caused to the plan at phase 1 in relation to
25 scene 1 by the advance of the strikers at scene 1, by this

1 stage that disruption was no longer exercising a material
2 impact on the police operation, that the police had
3 essentially recovered their position and were in a position
4 that they would broadly have been in had the plan not been
5 disrupted. Would you accept that?

6 **BRIGADIER CALITZ:** I cannot recall,
7 but I am willing to listen and hear where you are going to,
8 but no, not totally, as to the reasons I already
9 gave you. We already started
10 dispersing and after dispersing the
11 whole scenario changes. Before the warning, you would
12 be calm. I would warn you, and then
13 – but as soon as we “disperse” the
14 whole dynamic of the area will change, in other words
15 the people moving away in a westerly direction, they
16 formed new groups. If we look at the people moving away,
17 they set the field on fire,
18 changing the dynamics. The group reacted
19 differently. Therefore, the whole scenario, picture and circumstances
20 changed and would not have been if we had the
21 chance to warn them,
22 to move out peacefully and lay down their
23 weapons, they would still go through the
24 filter line and we would just search the people and
25 no incidents would have occurred at

1 that stage.

2 **CHAIRPERSON:** In paragraph 119 of your

3 statement, JJJ107, you say this, "While waiting next to

4 hill 2 for the water cannons to join the line," you are

5 obviously talking now about the situation where you were

6 waiting in that line which we see in slide 215. I take it

7 that is right, is it not? Sorry, you want to catch up first,

8 sorry. It is page 24 of your statement, paragraph 119.

9 Okay, "While waiting next to hill 2 for the water cannon

10 to join the line," that is presumably the situation as we

11 see it here on this slide, "we saw several people running

12 in northerly and westerly directions." So those running in

13 the northerly direction were going to the left of the slide

14 as we saw it, in the direction of the area under the

15 helicopter effectively, and those going in the westerly

16 direction were the ones running more or less parallel with

17 that line of people we saw stretching out from hill 2. I

18 take it that is right. "I instructed the water cannons to

19 move with some of the Nyalas in order to continue with the

20 dispersal action as per their briefing received." So "as

21 per their briefing received" obviously relates back to the

22 plan and the briefing they received at about 2:30 that

23 afternoon. Is that right?

24 **BRIGADIER CALITZ:** Correct, Mr

25 Chairperson.

1 **MR CHASKALSON SC:** Well, you talk about
2 people dispersing in a westerly direction. Can I ask you
3 to look at a different slide, or a different photograph?
4 It is Captain Nel's aerial photograph 1178, JJJ6.1178, and
5 can we call that photograph up?

6 **BRIGADIER CALITZ:** Was that a new
7 request?

8 **MR CHASKALSON SC:** Yes, yes, Brigadier.

9 **BRIGADIER CALITZ:** Okay, they will be
10 on the front of my – are we done with the –

11 **MR CHASKALSON SC:** Mark it, because we
12 may have to come back to it.

13 **CHAIRPERSON:** [Microphone off, inaudible]
14 back to 215 later, I think.

15 **BRIGADIER CALITZ:** Let me take it out,
16 otherwise I am –

17 **MR CHASKALSON SC:** Maybe, not later today
18 though, if I look at the time. While the Brigadier is
19 finding his photograph, can I ask that we zoom in a little
20 bit on hill 3, which is the rocky outcrop around the
21 middle of the picture. Can we scroll down so that we see
22 the bottom half of the picture? All the way down to the
23 bottom half of the picture, and what we want is the bottom
24 left quarter of the picture.

25 **CHAIRPERSON:** Is that hill 3?

1 **MR CHASKALSON SC:** Brigadier, will you
2 confirm that what we see in the foreground of this picture
3 is hill 3, the sort of bushes and rocks that we see in
4 the foreground of this picture?

5 **BRIGADIER CALITZ:** I am trying to
6 compare it to page 12 of the previous one. I see the
7 the Casspir and the water cannon, so the, the bottom
8 right-hand side must then be hill 3, on page 12, if
9 hill 3 is in front of me, do you follow? The photo
10 was taken – just look on page 12, we do not need to –
11 on the far right-hand side at the bottom, the one you referred to.

12 **MR CHASKALSON SC:** No, Brigadier, what –

13 **BRIGADIER CALITZ:** It will be the hill.

14 **MR CHASKALSON SC:** No, Brigadier, maybe
15 to orient yourself, look at the line of people behind
16 hill 2 and you will see that the hill that I identified
17 on page 12 to the right of that line is hill 1, whereas
18 on this picture if we zoom back out, can we zoom back out?

19 **BRIGADIER CALITZ:** Okay, I see it –

20 **MR CHASKALSON SC:** I am marking the line
21 over here.

22 **BRIGADIER CALITZ:** I see it now,
23 yes. No, sorry. Yes, now that I move out a little further,
24 yes.

25 **MR CHASKALSON SC:** Yes, so this is hill

1 3. You confirm –

2 **CHAIRPERSON:** What you are showing is an
3 area to the left, as one looks at the photograph, of the
4 sort of hump on which one sees people, various colour T-
5 shirts. That is correct, is it not?

6 **MR CHASKALSON SC:** Yes, Chairperson. Now
7 Brigadier, just to orient yourself, again I am marking the
8 position of your Casspir there, which is – and the easy way
9 of identifying the position of your Casspir is there is this
10 dark – sorry, Nyala, there is this dark patch of ground just
11 in front of hill 2 and yours is, there is one Nyala in the
12 dark patch and yours is always to the left of the – well,
13 to the left of the dark patch as we face it, to the right
14 as you face it in your Casspir. So that is your Casspir,
15 Pappa1.

16 **BRIGADIER CALITZ:** It is correct, Mr
17 Chairperson.

18 **CHAIRPERSON:** Of course another way of
19 doing it, is to say it is the fifth Nyala in that line,
20 counting from the left. Is that correct? Or have I got it
21 wrong?

22 **BRIGADIER CALITZ:** As we look at –

23 **MR CHASKALSON SC:** Chairperson, there is a
24 Scorpion and a water cannon and a Casspir –

25 **CHAIRPERSON:** Oh, sorry, okay. I take

1 the correction. The fifth vehicle counting from the left
2 of that line.

3 **MR CHASKALSON SC:** There is in fact an STF
4 armoured vehicle there as well, so I am not sure if you are
5 counting both it and – you seem not to be counting both it
6 and the water cannon behind it.

7 **CHAIRPERSON:** [*Microphone off, inaudible*]

8 **MR CHASKALSON SC:** Fifth white vehicle
9 from the left, I will settle for, Chairperson. Brigadier,
10 when you talked about people dispersing to the west, from
11 your Casspir here did you see people disperse – sorry, as
12 Commissioner Hemraj points out, it is a Nyala – did you see
13 people dispersing into this hill where we see people
14 gathered on the rocks at the top of the hill, hill 3?

15 **BRIGADIER CALITZ:** Mr Chairperson,
16 no, I can really not tell if I saw the
17 the people in this photograph, at this stage,
18 no. I could see those from my Nyala, if we
19 look at the other photo, you can see the line. I can see part
20 of the people, which I testified earlier to be the
21 group that looked as if they were standing still.
22 I could see a part of them. That rock- if I say
23 “that rock” I am referring to hill 2 – is quite high and
24 block the visibility of the Nyala. When I talk about the
25 people in the west that moved away,

1 if we look at the photo,
2 if we look at the left-hand side of this photo, they did not move toward the hill,
3 they moved toward the "village", and toward the field,
4 but that you cannot see on the photo.

5 **MR CHASKALSON SC:** I think the reason for
6 our misunderstanding, Brigadier, is in fact if one draws a
7 line due west from hill 2 over here, one gets into hill
8 3. The line west is from hill 2 through towards the
9 bottom of hill 3. So you are talking about people who are
10 dispersing northwest in some cases there, and southwest in
11 some cases here. Is that correct?

12 **BRIGADIER CALITZ:** Maybe not
13 "southwest". I would say "northwest." If I look at
14 "slide" 181 I will know as it has a an indicator to where
15 north is. Therefore, I would say north-west and more west pass
16 3, in other words to the left bottom corner of this
17 photograph.

18 **CHAIRPERSON:** Northwest would be parallel
19 with this line of white vehicles, towards the bottom of
20 the, closer to the bottom of the picture than – in other
21 words on the lower side of the picture rather than the
22 upper side of the picture, but parallel with the line of
23 white vehicles, that is northwest, and the westerly moving
24 ones –

25 **BRIGADIER CALITZ:** North-west.

1 **CHAIRPERSON:** - are people breaking off

2 at an angle I suppose of about 45 degrees from that column

3 of people proceeding to the right side of the picture,

4 breaking off at an angle of about 45 degrees and moving

5 down towards the bottom of the picture. Is that right?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 what they indicate to me is that the direction from the kraal the Nkaneng

8 toward the Nkaneng "village", is northerly. So, if we take that

9 as north, and the hill is west, then in between will be

10 North West. So in line with the police vehicles,

11 if you take a ruler and draw a line, you will see the people on the

12 far northern side of this photo, the bigger

13 part -

14 **CHAIRPERSON:** Those are the ones parallel

15 with the line of Nyalas that I talked about, and then the

16 other lot -

17 **BRIGADIER CALITZ:** Parallel.

18 **CHAIRPERSON:** - are the people in line

19 with -

20 **BRIGADIER CALITZ:** Yes, yes-no.

21 **CHAIRPERSON:** The other lot are the ones

22 moving from that line of people going to the right of

23 hill 2 on the picture, going away at an angle of about 45

24 degrees from the line of that column of people. Would that

25 be right?

1 **BRIGADIER CALITZ:** I believe they
2 passed hill 3, on the left-hand side to
3 the bottom corner.

4 **CHAIRPERSON:** Alright. Okay.

5 **MR CHASKALSON SC:** Chairperson, I see
6 I have reached my cut-off time.

7 **CHAIRPERSON:** Well if you can wrap the
8 point up in a minute or two, you can do it, but if it is
9 going to take a bit of time then I fear it is going to have
10 to wait until after the New Year to reach its conclusion.
11 What is the position? Have you reached a point which you
12 can sum up very quickly?

13 **MR CHASKALSON SC:** I think I must wait
14 until the New Year at this point.

15 **[15:03] CHAIRPERSON:** There is a sort of end of
16 term atmosphere, the school is just about to breakup, which
17 I find inappropriate. Very well, Brigadier, I am afraid we
18 cannot excuse, - we are excuse you for the moment but you will
19 have to come back on the 6th of January when we resume at
20 nine o'clock in the morning here, when your evidence will
21 continue. I want to say that we are not sitting on the 8th
22 of January, that is the Wednesday, because that is the day
23 when this Chamber will be required by the municipality, but
24 the evidence leaders inform me that they're very keen to
25 organise another inspection in loco so that we can

1 familiarise ourselves with the position and the brigadier
2 can in fact show us some of the things on the ground that
3 we have been trying to see on these various slides.
4 So we will resume on the 6th of January with the
5 inspection on the 8th of January. So it remains for me to
6 say that we are going to adjourn then until the 6th. We wish
7 you all a very happy festive season and a prosperous and
8 successful new year and thank you for your participation
9 and contributions to the Commission that we have received in
10 the course of this year. We will now adjourn.

11 **[COMMISSION ADJOURNED]**

