

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 163

Lukmos
—communications—

06 JANUARY 2014

TRANSCRIPT PAGES 18737 TO 18981

1 **[PROCEEDINGS ON 6 JANUARY 2014]**

2 **[09:33] CHAIRPERSON:** The Commission resumes.

3 Brigadier Calitz, you are still under oath.

4 **BRIGADIER CALITZ:** Thank you.

5 Thank you, Commissioner.

6 **CHAIRPERSON:** Mr Chaskalson, are you

7 ready to continue with your cross-examination?

8 **CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):**

9 I am, Chairperson. Good morning, Brigadier. Happy New

10 Year.

11 **BRIGADIER CALITZ:** Good morning.

12 Compliments to you as well, Advocate.

13 **MR CHASKALSON SC:** Brigadier, just to

14 recap where we were when we broke in December, we had been

15 dealing with the stage of the operation where the

16 dispersion line had formed up in front of hill 2. You

17 recall that?

18 **BRIGADIER CALITZ:** I think we ended up

19 there, yes, where we regrouped next to hill 2. I think

20 that is where we were.

21 **MR CHASKALSON SC:** And just to recap on a

22 couple of issues relating to the chronology, which we have

23 already traversed, but which will be context for where I am

24 going with questioning today, in terms of ETV time the

25 shootings were at 15:53:50 – 15:53:50; the dispersion line

1 was essentially formed up by 15:56:16 – 15:56:16 – and from
2 the point at which the dispersion line was formed up at
3 you were waiting for first both water cannons and
4 ultimately the North West water cannon to arrive because
5 you needed them for the dispersal action. You recall that?

6 **BRIGADIER CALITZ:** I recall.

7 **MR CHASKALSON SC:** And ultimately you
8 waited approximately seven and a half minutes before the
9 North West water cannon finally arrived at the dispersion
10 line at ETV time 16:03:51.

11 **BRIGADIER CALITZ:** I must take your word
12 for that, yes.

13 **MR CHASKALSON SC:** If there is a dispute
14 we can go to the –

15 **BRIGADIER CALITZ:** No, I take your –

16 **MR CHASKALSON SC:** - turn to the video in
17 due course. Now during this period, Brigadier, you will
18 recall that you did not move forward because you needed the
19 water cannons, so the picture that we see on slide 215 of
20 the presentation – maybe if we can call that up just to
21 refresh everybody's memory, slide 215 of exhibit L – that
22 picture of a dispersion line in front of hill 2 and the
23 line of strikers lined up behind hill 2, that situation
24 remained essentially unchanged for seven and a half
25 minutes. Do you recall that?

1 **BRIGADIER CALITZ:** Correct, Mr

2 Chairperson.

3 **MR CHASKALSON SC:** One last piece of

4 context was that your evidence was that when you reached

5 the dispersion line you noticed that the TRT were not where

6 they should be, but had remained behind in a sort of

7 cluster at scene 1, and if I can take you to your statement

8 at page 23, the statement is JJJ107, your consolidated

9 affidavit, page 23, paragraph 116 –

10 **COMMISSIONER HEMRAJ:** The dispersion line

11 or the regrouping line?

12 **MR CHASKALSON SC:** Well, I think that

13 they had been used interchangeably, Commissioner, but maybe

14 the Brigadier can clarify that for us. Are you referring

15 to the dispersion line – well, that line that we just saw

16 in slide 215, do you refer to that as the dispersion line,

17 the regrouping line, or both?

18 **BRIGADIER CALITZ:** No, no, I confirm that

19 that was the position where we regrouped because the Nyala

20 – I mean, the water cannons and those were not part of the

21 dispersion. The dispersion already took place at incident

22 2 and 3.

23 **MR CHASKALSON SC:** But there was going to

24 have to be a new dispersion, was there not?

25 **BRIGADIER CALITZ:** It is not a new

1 dispersion; it is just a follow-up of the dispersion that
2 already took place, but that is what we call the line that
3 was formed up there was the regrouping line.

4 **MR CHASKALSON SC:** Alright, well I had been
5 referring to the dispersion line. I am happy to refer to it
6 as the regrouping line. You understand that that is the
7 line I have been referring to in all of my earlier questions?

8 **BRIGADIER CALITZ:** I understand what you
9 mean.

10 **MR CHASKALSON SC:** Now if we go then to
11 page 23, paragraph 116 of your statement, "When I looked
12 through the back of the Nyala in which I was, I noticed the
13 TRT group was still at the back of the kraal in a cluster.
14 I contacted the TRT on the radio to enquire why they were
15 not following the POP action as per the briefing; I had
16 expected them to come with the sweeping action. When there
17 was no response from the TRT I contacted Lieutenant-Colonel
18 Vermaak on the radio and enquired from him why the TRT was
19 not following our dispersal action. Lieutenant Vermaak
20 said he will go and check and later reported the TRT
21 members were at the kraal and there were bodies lying on
22 the ground. This report did not conjure in my mind that
23 there were people who were dead, as we now know. I
24 thought, given my experience and the absence of such a
25 report to me, that the bodies was reference to people who

1 were injured by the dispersion action or lying down to be
2 arrested." Now in the seven and a half minutes while you
3 were waiting for the North West water cannon to arrive, did
4 you not try to contact the TRT again to get them to join
5 the operation as they were supposed to have done?

6 **BRIGADIER CALITZ:** As I said in my
7 statement - maybe I did not put the words in repeatedly
8 - I have contacted them and I could not reach them on the
9 radio. There was no response from them, if I can put it
10 that way, and then I contacted Colonel Vermaak who then
11 related to me what happened at the back.

12 **MR CHASKALSON SC:** And after you - well,
13 let us take this in stages. How many times did you try to
14 contact the TRT on the radio before you approached Colonel
15 Vermaak?

16 **BRIGADIER CALITZ:** No, I cannot recall
17 that. No, there was a few times. I think you played some
18 evidence by the end of last year where you -

19 **MR CHASKALSON SC:** Yes.

20 **BRIGADIER CALITZ:** - where we said the
21 TRT, listen to your radios, TRT -

22 **MR CHASKALSON SC:** Yes.

23 **BRIGADIER CALITZ:** So that is an
24 indication maybe, which you recall my voice to say and call
25 them to respond. However, there was no response from them. I

1 also did not hear any response when Colonel Vermaak spoke to
2 them, so it must have been the hand radios maybe that got a
3 problem.

4 **MR CHASKALSON SC:** So did Colonel Vermaak
5 independently try to contact the TRT, that you heard on the
6 radio?

7 **BRIGADIER CALITZ:** I cannot recall,
8 that is why I am saying I cannot recall any conversation
9 between the TRT and Colonel Vermaak. He just flew back and
10 give me a situation report from what he saw from the air.

11 **MR CHASKALSON SC:** But I just need to
12 clarify your previous answer. Even if you cannot recall any
13 conversation between Colonel Vermaak and the TRT, can you
14 recall Colonel Vermaak asking for a sit rep from the TRT?

15 **BRIGADIER CALITZ:** No, at this stage no.

16 No, I cannot recall that.

17 **COMMISSIONER HEMRAJ:** In your evidence-
18 in chief you say you tried to contact Loest. Did you try
19 and contact anyone else in the TRT?

20 **BRIGADIER CALITZ:** In general, yes. On
21 the radio I just said TRT came in. That was now Captain
22 Loest, but then after that I generally comment, as we heard
23 on the voice recording that I spoke in general to any TRT
24 at that stage, but there was nobody responding.

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

1 back a bit to a point that you made in paragraph 117 of
2 your statement, the last sentence. "I thought, given my
3 experience and the absence of such a report to me, that the
4 bodies was reference to people who were injured by the
5 dispersion action or lying down to be arrested." Now so
6 you thought that there was a possibility that the people
7 lying down had been injured. What could have caused the
8 injury as far as you thought at the time?

9 **BRIGADIER CALITZ:** Mr Chairperson,
10 it was exactly my evidence. There were a small
11 "dispersion action". A small action was lodged by
12 the –

13 **CHAIRPERSON:** Yes, I know that, but would
14 they have been injured, or did the possibility exist that
15 they had been injured by sharp ammunition?

16 **BRIGADIER CALITZ:** No, it is not
17 what I –

18 **CHAIRPERSON:** Well, how could they have
19 been injured by the dispersion action –

20 **BRIGADIER CALITZ:** It is –

21 **CHAIRPERSON:** - or what sort of injury
22 would they have sustained if sharp ammunition had not been
23 used?

24 **BRIGADIER CALITZ:** No, I was not aware of any
25 sharp ammunition. I can refer back to –

1 **CHAIRPERSON:** No, no, no, I am sorry, I
2 do not want us to not understand each other. I understand
3 your case is that you were not aware that sharp ammunition
4 had been used. I understand that. You have made that clear
5 in the earlier part of your statement, but you do say that
6 you thought when you heard that there were bodies lying on
7 the ground, that the possibility existed that they were
8 people who had been injured. What I am asking you is what
9 was the possibility - they had been injured by what?

10 **BRIGADIER CALITZ:** Commissioner, yes, that is
11 what I wanted to refer to. It is not the "dispersion" I
12 ordered, it was only by the POP members with
13 rubber bullets. If there were people lying in the
14 field - I also testified that on my previous experience, when
15 we disperse people with rubber, there are always people
16 hit by the rubber "balls", which will lie down with
17 injuries on their legs and bodies -

18 **CHAIRPERSON:** Thank you. Thank you, I
19 understand now.

20 **BRIGADIER CALITZ:** It is the rubber
21 "balls."

22 **MR CHASKALSON SC:** Well, can I just pick
23 up on the Chairperson's question, on your answer to the
24 Chairperson's question. You knew at the time that the
25 militant group passed you at scene 1 that the TRT was

1 likely to have been forming up behind you. That was your
2 testimony last year, if I can just ask for page 18185.
3 Maybe if I can read – well first, do you need us to go back
4 to 18185, or will you confirm that you knew that the TRT
5 would have been forming up in the position where they did
6 ultimately form up?

7 **BRIGADIER CALITZ:** I cannot recall on what
8 I said on that page, but I knew
9 the briefing was that the TRT
10 must stay in formation behind the Public Order Policing to
11 assist them if any
12 arrests occurred.

13 **MR CHASKALSON SC:** And you knew that if
14 the POPs action had not been successful, the next line of
15 defence was going to be the TRT?

16 **BRIGADIER CALITZ:** In the case where they
17 regrouped, that would be adequate.

18 **MR CHASKALSON SC:** And you knew that
19 while you had been watching and the militant group had
20 passed you heading in the direction of the TRT, teargas and
21 rubber bullets and stun grenades had appeared not to be
22 successful in making them change their direction?

23 **BRIGADIER CALITZ:** Yes, that was
24 my evidence. The small group moved passed me,
25 and I saw that it had no effect on them,

1 and I then instructed the vehicles
2 to move in between them, I saw
3 them turning around and moving away, I think in a
4 westerly direction.

5 **MR CHASKALSON SC:** But you also knew that
6 before you gave that instruction the lead group of the
7 strikers were heading in the direction where you expected
8 the TRT to be?

9 **BRIGADIER CALITZ:** Yes, remember I told
10 you that they regrouped. I was asked about their
11 position and I replied; No, I only knew that
12 they regrouped in order to follow the
13 Public Order Policing Line if the "dispersion"
14 would take place.

15 **MR CHASKALSON SC:** And your testimony in
16 December was also that if there was ultimately a
17 confrontation with the TRT, there would have been tragic
18 consequences, and maybe here we should go to your
19 testimony. That is page 18246. 18246. 3rd of December.
20 Can we call up the transcript of 3 December? Page 18246;
21 it is day 160.

22 **BRIGADIER CALITZ:** You say it is page
23 number, line?

24 **MR CHASKALSON SC:** 18246 is my question
25 at line 23. So my question was, "And if there was a

1 confrontation between the TRT and the strikers, there was
2 likely to be a high risk of loss of life at least on the
3 part of the strikers. Would you accept that?" Your
4 response, "Mr Chairperson, you can never really
5 predict what would happen. If the Public Order Policing
6 cannot prevent the attack, as in this case, en and we
7 already made use of our last line of defence, which is the
8 shotgun rubber, and it did not stop the protestors,
9 then they would have gone through to the
10 TRT line, it would be a confrontation with
11 tragic consequences. I cannot say it the way you put it.
12 It depends on the
13 circumstances and what transpired there."

14 **CHAIRPERSON:** Perhaps I should translate,
15 perhaps if we can go back, your answer was, "Mr Chairman,
16 you can never really predict what will happen. If the
17 Public Order Policing, as in this case, could not stop the
18 attack and there was no other method because our last line
19 of defence is shotgun rubber, and if it did not stop the
20 protestors and their choice was to attack further through
21 to the TRT line, as you put it, there would have been a
22 confrontation then with tragic consequences. I cannot just
23 say as you have put it, just only on the one side. It
24 depends on circumstances of what happened there." And then
25 Mr Chaskalson then says in English, "Well, at any rate that

1 was a consequence you wanted to avoid." I think that is a
2 correct translation of these, more or less correct, and
3 then you said, "Mr Chairman, therefore we plan the
4 dispersion action in such a way and therefore we would have
5 moved out, we would have warned the group so that there
6 would have been enough time for them to disperse. That is,
7 I think all those steps which we put in place was
8 to avoid," obviously you meant bloodshed. Is there
9 anything else you want me to translate, Mr Chaskalson?

10 **MR CHASKALSON SC:** No, Chairperson, I –

11 **CHAIRPERSON:** You are not going to have
12 difficulty with the Afrikaans.

13 **MR CHASKALSON SC:** Chairperson, I was
14 just interested in the Brigadier's response at the top of
15 page 18247. Now Brigadier, in your response you said that
16 it depends on the circumstances, but if we look at what
17 circumstances were relevant, what circumstances you cited,
18 you said "and there were no other means or method, as
19 our last means of defence is the shotguns with the rubber bullets, and
20 the protestors did not stop and if they pushed through to the
21 TRT line, the way you put it, there would
22 be a confrontation." Now was it not the case
23 that from your vantage point, at this stage shotgun rubber
24 had not stopped the protestors and they had continued to
25 proceed in the direction of where the TRT line was.

1 **[09:53] MR SEMENYA SC:** They proceed to attack,

2 not to proceed to the TRT line.

3 **CHAIRPERSON:** I am sorry, Mr Semenya, you

4 dropped your words; I did not hear the last sentence.

5 **MR SEMENYA SC:** The answer is, unless

6 they continued to attack, not continue to go to the TRT

7 line.

8 **MR CHASKALSON SC:** Well, did you perceive

9 them to be continuing to attack the police?

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

11 if I may refer back to my line. You are referring to the

12 suggestion you made, and in my answer I referred to

13 how you mention it in line 8, further attack towards the TRT,

14 there would be an confrontation. I think we must also

15 look at line 2, where I say, Mr

16 Chairperson, u you never really predict what will

17 happen and then in line 11, it depends on the

18 circumstances and what transpires. So -

19 **CHAIRPERSON:** That reference to the

20 concept to the circumstances from which everything depended

21 follows on the previous sentence, "I cannot say it the way

22 that you put it just from the one side," which means I

23 cannot just say as you put it only on the one side. So I

24 take it what you had in mind, there was the real

25 possibility that there might have been tragic consequences

1 for the police as well. There might have been casualties

2 on the police side, is that not what you were saying?

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

4 what I meant was that it depends

5 on the circumstances and what transpired at the back,

6 one can never really predict what will happen during

7 an incident, now with the benefit of hindsight, as we will say in

8 English, it is easy to say, this is what happened and that was the

9 result thereof. At the stage, I testified that I was under the

10 impression that the dispersion action worked,

11 I believed the people turned around and moved in a

12 westerly direction and I could not make contact with the TRT

13 at the back, I think you said the time was two minutes and 16

14 seconds later when I asked Colonel Vermaak where they are

15 and he then described to me what was going on from his position and

16 he told me about the people lying in the field. I further testified that

17 it was my belief that the people lying

18 in the field was wounded by the dispersion line, which was the

19 Public Order Policing with the rubber bullets. At that stage

20 I had not evidence nor did it occur to me that the

21 TRT acted at that scene.

22 No.

23 **MR CHASKALSON SC:** Brigadier, do you

24 accept that you understood that what was taking place at

25 the eastern side of the kraal was in your view an attempt

1 by the strikers to attack the police lines, is that what
2 your, is that what you understood to be taking place on the
3 east side of the kraal when that lead group of strikers
4 passed you?

5 **BRIGADIER CALITZ:** It was my evidence
6 that they attacked there, yes.

7 **MR CHASKALSON SC:** And you accept
8 that this attack was moving in the direction where the TRT
9 were?

10 **BRIGADIER CALITZ:** Again, I testified
11 that I was not aware of where they regrouped.
12 My evidence was that they moved passed me in front,
13 I think there was a white Casspir on my left-hand side,
14 and I said when I moved passed the front, I gave
15 the order for them to move forward with the
16 vehicles. Therefore, no, I did not see
17 in what direction they were running and if they did
18 turn around, I was also not aware if they dispersed.

19 **MR CHASKALSON SC:** Yes, but your
20 testimony also was that the TRT line ultimately formed up
21 in the position where you expected it to form up, do you
22 recall that?

23 **BRIGADIER CALITZ:** They were briefed
24 to form in line behind the Public Order Policing,
25 to assist them with the arrests and to provide

1 protection for the Public Order Policing.

2 **MR CHASKALSON SC:** So you could

3 anticipate where the TRT line was going to be even if you

4 could not see the TRT line?

5 **BRIGADIER CALITZ:** What I learned at

6 that stage is that they would follow as

7 we moved out with our vehicles and they would

8 then move with our vehicles and formed a line

9 behind the dispersion group. That is what I

10 predicted.

11 **MR CHASKALSON SC:** Brigadier, I am not

12 sure what you are saying. I mean when I, are you saying

13 that you were surprised to find out that the TRT line had

14 formed up in the position that it ultimately formed up?

15 **BRIGADIER CALITZ:** Mr Chairperson, at

16 that stage I was not aware of where they were.

17 I only saw them in hindsight and when the information

18 came under my attention.

19 **MR CHASKALSON SC:** That was not my

20 question, Brigadier. My question was when you were

21 ultimately informed where the TRT line had formed up did

22 that come as a surprise to you, did you expect them to have

23 formed up somewhere else?

24 **BRIGADIER CALITZ:** Mr Chairperson,

25 No, when I saw the footage on the TV and saw and heard

1 what happened, I was obviously in shock,
2 as I could not understand how it transpired, as
3 we were supposed to disperse them, the vehicles moved
4 forward and the whole group moved in a westerly
5 direction. So, no, not at all.

6 **MR CHASKALSON SC:** Brigadier, I am still
7 struggling to understand your answers because I am not
8 asking if it was a surprise to you that there had been a
9 shooting incident. I am asking whether it was a surprise to
10 you to see that the TRT line had formed up where it did in
11 fact form up. Did you expect them to form up somewhere
12 else?

13 **BRIGADIER CALITZ:** Mr Chairperson, I
14 think my answer was clear. I expected of them
15 to form a line behind the
16 Public Order Policing vehicles, which were moving
17 forward and they would then assist with
18 the arrests. I was not aware of the fact,
19 nor did I expect them to be in that straight line,
20 where they were. It was not part of the
21 briefing. No.

22 **MR CHASKALSON SC:** So you are now saying
23 that the TRT line in fact formed up in a position, which was
24 not where they were briefed to form up?

25 **BRIGADIER CALITZ:** I testified that

1 they had to follow the Public Order Policing Line, in
2 other words, they had to follow and as the dispersing action
3 occurred, there responsibility was to assist with the
4 arrests and the sweeping on hill 2, as
5 I testified.

6 **MR CHASKALSON SC:** Can I ask you to
7 answer this question with a yes or a no. Is the position
8 in which the TRT line ultimately formed up the position in
9 which they were supposed to form up, yes or no?

10 **BRIGADIER CALITZ:** Mr Chairperson,
11 No, I do not think it is just a question of yes and no. We know
12 that the plan was interrupted. The briefing
13 was for them to follow us and when we ultimately
14 moved out, they would be there. So, it is not a
15 simple yes or no. They reacted and that was my
16 last sentence, it depends on the circumstances which
17 occurred there. The circumstances sort of
18 forced them to stay there and act out of
19 self-defence, as we testified just now.

20 **MR CHASKALSON SC:** Well let us put the
21 question slightly differently. You will recall we spent a
22 great deal of time analysing the position of the Nyalas to
23 the east of the kraal at scene 1 and you will recall there
24 was what I described as a passage or a channel between the
25 Nyalas and the kraal. Do you recall that?

1 **BRIGADIER CALITZ:** I recall you

2 suggesting it, and we discussed it, yes.

3 **MR CHASKALSON SC:** Do you, you know the

4 passage to which, the channel to which I am referring?

5 **BRIGADIER CALITZ:** I think we

6 disagreed on that point. But I know you said there

7 was a channel and I testified that we never saw

8 it as a channel, but a

9 dispersion line.

10 **MR CHASKALSON SC:** But there was a gap

11 between the crescent shaped line of Nyalas and the east

12 side of the kraal, a gap that of broadly the same distance

13 running down and around the east side of the kraal, do you

14 recall that?

15 **BRIGADIER CALITZ:** I think it is clearly

16 visible on the photos as well.

17 **MR CHASKALSON SC:** And you will recall at

18 the end of that gap there was no, there were no Nyalas

19 blocking, closing that gap. Therefore, that gap emptied out into

20 what was the police safe area?

21 **BRIGADIER CALITZ:** I think that is where

22 we disagreed. Mr

23 Chairperson asked for an explanation on the T and the parallel and

24 that is where I said there were Nyalas positioned

25 parallel in front of the TRT line. Therefore, I cannot

1 agree with you. There were Nyalas, Public Order Policing which
2 would have closed the gap you talked about and from there they
3 would lodge the dispersion action.

4 **MR CHASKALSON SC:** So you –

5 **CHAIRPERSON:** Is that in fact correct?

6 If you think if we go back to the videos, we saw of the fusillade,
7 the fatal few seconds when the shots were fired we see a
8 line of TRT people, we see them moving back slightly and
9 then firing, we see approaching them a group of strikers.
10 There is nothing between the TRT line and the strikers. You
11 can see them advancing, you can see those on the slides as
12 well. So the, in fact what we do know from some of the
13 other slides is that the Nyalas were in a line more or less
14 in -

15 **BRIGADIER CALITZ:** Parallel.

16 **CHAIRPERSON:** Opposite the kraal but in
17 line with that fence, you remember, but the point is there
18 was not a barrier of Nyalas and there was not a barrier of
19 POP members because we can see from the video here is this
20 group of strikers approaching, a bundle of them, probably
21 even count them if you stopped a couple of frames, and
22 there is nothing between them and the line of TRT people.
23 So surely, what Mr Chaskalson is putting to you are born out
24 by the videos we can see or am I misunderstanding.

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

1 I gave evidence with effect to the video. I think it is in the
2 transcript, I can revert and show you
3 where. If I recall my evidence, I said it was
4 Warrant Officer Kuhn that moved back and hooked the wire.
5 My words, I cannot recall my precise words, but
6 the transcription will prove that I said
7 the Nyala was in front of him and when the Nyala moved
8 away, they saw the group in front. So yes, according to my knowledge
9 there were Nyala vehicles. Those drivers then made the
10 decision to move forward, maybe on my instruction
11 when I said we must move the vehicles forward. So
12 there were Public Order Policing Nyalas in that
13 formation in the TRT line. My evidence was that when the
14 Nyala moved passed Warrant Officer Kuhn, and we could
15 clearly see him, I am not sure if it was E-TV
16 News or SABC, reiterating. He did not see them from a
17 distance of 100 meters and saw them coming.
18 No. That was my evidence at
19 that stage.

20 **COMMISSIONER HEMRAJ:** And now you are
21 saying, correct me if I am wrong that that TRT line formed
22 up because of the circumstances that played out, the
23 approach of the strikers?

24 **BRIGADIER CALITZ:** It is correct,
25 Commissioner, I testified that it depends

1 on the circumstances at that stage. Now in hindsight

2 one can say the line that they formed and the

3 action that occurred, was

4 not as per the original briefing.

5 **MR CHASKALSON SC:** But, Brigadier, that

6 answer is not correct because you will recall on the videos

7 that where we looked at the position of your Nyala when it

8 was stationary on the path adjacent to the kraal the TRT

9 line was already in the process of forming up immediately

10 behind your Nyala, do you recall that?

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

12 I think that is where we disagree. You said,

13 while I was static in the road, the people came around the

14 kraal, which I proofed to you, could not be possible.

15 I think we can refer back to that, and to where I told

16 you that I had to have seen them, I think I

17 said I sat on seat number 7, I sat at the back

18 on the right-hand side and looked to the front, the TRT formed

19 behind me on the left-hand side. I did testify, and my words were

20 that they had to form, but I did not see them in formation

21 in that position. No.

22 **MR CHASKALSON SC:** Yes, but that is not my

23 question. I recall, you are correct, your evidence was

24 that you had not seen them forming up behind you. But you

25 were answering a question of Commissioner Hemraj's by

1 saying that they formed up where they did because of the
2 circumstances which confronted them with reference to the
3 strikers coming down around the kraal. My point to you was
4 that is not correct because one can see them already
5 forming up there before the strikers have come down the
6 channel so to speak.

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 No, I disagree. Remember the plan,
9 maybe we must just look at the plan again, if they moved out
10 peacefully, they would have followed us and we would have
11 warned the group, gave them 20 to 30 minutes,
12 in order to move out and lay down their
13 weapons. This is where the TRT would form in line behind
14 us so that if we disperse and move closer
15 to make the arrests, to assist us, we were also instructed to
16 sweep hill 2. I said they moved into formation
17 due to the attack on the
18 police, or in the direction of the
19 direction of the police, it is incident 2 and incident
20 3. There were no time for us to move, due to the
21 interruption of the plan. I can definitely not see why you
22 can say it is not correct, because it was due to circumstances,
23 the attack on us and the fact that we
24 were not given a chance to move out,
25 and therefore could not do what we were briefed to do.

1 **MR CHASKALSON SC:** We have seen footage of
2 a number of the members of the TRT cocking their rifles and
3 their pistols at the point at which they form up while you,
4 while your Nyala, while and before your Nyala is on the
5 path to the south of the kraal. Would that be standard
6 practice if they were just preparing for the possibility of
7 having to sweep up behind a dispersion action?

8 **BRIGADIER CALITZ:** Again, you have to
9 listen to your own questions, with all due respect
10 cocking of firearms, pulling of firearms if they were to go
11 just do a sweeping action, indeed, no, but
12 if they were moving out to do a sweeping action behind us,
13 they would have moved out normally. Due to the
14 circumstances and the attack, they were forced into
15 that position, the
16 TRT and the police officers had to get themselves into
17 tactical readiness, if you had a R5, you would have that
18 weapons ready, if you had a pistol, you would have it ready,
19 there were also a film or video, capturing these
20 four members cocking their weapons, it is normal
21 procedure. That is how the TRT members are trained and
22 how you get yourself tactical prepared. If we near a house,
23 or a suspect vehicle, you will
24 be tactically prepared, 45 degrees towards the ground, and you will
25 then approach the vehicle, or the house, or the people like that. There

1 will not be time to leave you weapon in its holster and if there is
2 an attack, see who can
3 draw the quickest.
4 It would be senseless,
5 it is the procedure in the police and how they were trained,
6 there is nothing wrong in getting you weapon ready, which
7 they did.

8 **MR CHASKALSON SC:** Yes, although, that is
9 my point, Brigadier. At the time that the TRT were forming
10 up in a line just behind your Nyala which was stationary on
11 the path adjacent to the kraal they were already making
12 themselves tactically prepared. They were already
13 preparing to face a tactical encounter.

14 **BRIGADIER CALITZ:** Again, Mr
15 Chairperson, you said there were no circumstances,
16 incident 2, occurred at this stage. There were
17 dispersing. You can hear the shotguns
18 being fired, if there are shots fired,
19 what do you expect from the TRT, what do you think
20 they must do. They cannot just stand there and watch,
21 it is their duty to move and to protect the public order
22 policing. If rubber was already shot with the
23 shotguns to disperse,
24 then the logical next step for them to get themselves
25 ready for tactical response.

1 **MR CHASKALSON SC:** So you were expecting
2 the TRT to be in a state of tactical preparedness before
3 you even crossed the path alongside the kraal?

4 **BRIGADIER CALITZ:** No, it is
5 not what I said, Mr Chairperson.

6 **MR CHASKALSON SC:** But it is the only
7 inference to be drawn from what you did say?

8 **BRIGADIER CALITZ:** Maybe according to you,
9 but not according to my evidence.

10 **MR CHASKALSON SC:** Were you expecting the
11 TRT, when the TRT line was forming up behind you to the
12 east of the kraal, not to the east of the kraal, to the
13 south of the kraal and your Nyala was stationary on the
14 path behind the kraal, was that a situation in which you
15 would already have expected the TRT to be in a state of
16 tactical preparedness?

17 **BRIGADIER CALITZ:** As I testified,
18 I was not aware of the TRT line that formed.

19 We are now talking in hindsight, and it is
20 easy to talk about it now. At that stage, no,
21 I moved forward and it was still part of the
22 dispersion action.

23 **MR CHASKALSON SC:** Brigadier, I am talking
24 about before you moved forward. When your, when your Nyala
25 was stationary on the path was the situation that you saw

1 one in which you would have expected the TRT to be in a
2 state of tactical preparedness?

3 **BRIGADIER CALITZ:** At that stage I

4 believed that the dispersion action would still work,

5 as my testimony regarding incident 2, but when I got to the fence, which his

6 incident 3, I realised the dispersion action

7 did not work and that they attacked again.

8 The answer to your question is, no.

9 **MR CHASKALSON SC:** So your answer is no.

10 So if the TRT had put themselves in a state of tactical

11 preparedness either they were acting irregularly or they

12 were able to see something on foot, which you were not able

13 to see?

14 **BRIGADIER CALITZ:** Mr Chairperson,

15 No, I explained to you. If circumstances requires it,

16 due to what is happening in front of them, they will

17 prepare themselves tactically. Therefore, they did

18 not operate illegally -

19 **[10:13] CHAIRPERSON:** That is the second half of

20 the question. You said, they either acted inappropriately

21 or they were responding to something, which they could see,

22 which you could not see?

23 **BRIGADIER CALITZ:** Oh, sorry, I missed

24 the second part of the question.

25 **CHAIRPERSON:** The second part of the

1 question I think you are agreeing with?

2 **BRIGADIER CALITZ:** Yes.

3 **CHAIRPERSON:** Because they were in a
4 position to see aspects of this group who were approaching
5 which you could not see and if they saw these people acting
6 in a way which conveyed to them the clear impression that
7 they were proposing to attack the police, in fact implement
8 the threats that had been made earlier in the day then they
9 would have had to take appropriate action.

10 **BRIGADIER CALITZ:** You are correct, Mr
11 Chairperson.

12 **CHAIRPERSON:** Yes, I think that is the
13 second half of Mr Chaskalson's question.

14 **BRIGADIER CALITZ:** Yes, sorry, I missed
15 the second part of the question, I just answered the
16 first part of your question.

17 **CHAIRPERSON:** We are of course to some
18 extent engaged in a discussion of what this witness
19 realised with hindsight, possibly, what he should have
20 realised at the time, but he said he did not. I do not know
21 that there is much juice left in this lemon if there is any
22 at all, but anyway it is for you to decide.

23 **MR CHASKALSON SC:** I am happy to move on.

24 In fairness to the witness I was canvassing this because we
25 may end up making submissions that either that the witness

1 is not being truthful where he says he was unaware of what
2 was happening behind him, or that if he was being truthful
3 it was as a result of a deliberate attempt to look the
4 other way or gross negligence on his part. So I would like
5 to canvass this fully before making submissions of that
6 nature.

7 **COMMISSIONER HEMRAJ**: But the degree of
8 preparedness of the TRT line, surely that is something that
9 can with any value really be canvassed with the TRT
10 commanders, but this witness is being asked to use
11 hindsight and conjecture and the value of that –

12 **MR CHASKALSON SC**: With respect not,
13 Commissioner Hemraj. This witness has been asked questions
14 flowing from object of real evidence, video evidence of the
15 TRT line putting themselves into a state of tactical, doing
16 what he says is putting themselves into a state of tactical
17 preparedness, namely cocking their weapons and taking their
18 pistols out of their holsters at a point that we can fix in
19 time as before his Nyala was stationary on the path
20 alongside the kraal, so that is a full 90 seconds before the
21 shootings took place.

22 **COMMISSIONER HEMRAJ**: The reason for
23 that, surely that should best be canvassed with TRT
24 commanders.

25 **MR CHASKALSON SC**: Well, that was the

1 second half of my question which is that the TRT, either
2 the TRT could see something that he could not see from his
3 position in the Nyala, or they were acting irregularly.
4 Now if the TRT could see something from their position
5 which was adjacent to his Nyala and at ground level as
6 opposed to his elevated position and even more elevated
7 position of the driver and the people in the front seat,
8 that would be quite an extraordinary state of affairs but
9 that is something we can canvass with a TRT commander who
10 owns up to calling for the line to form up. We have not yet
11 found out who that TRT commander is. Well, let us get back
12 to what you did after you had formed up at the regrouping
13 line or the organisation line. You say you had previously
14 tried to contact the TRT on radio and when you got no
15 response you asked Colonel Vermaak for a report.

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

18 **MR CHASKALSON SC:** And you say that
19 Lieutenant-Colonel Vermaak reported to you that the TRT
20 members were at the kraal and that there were, I think 18
21 bodies down and you understood that to mean people who were
22 either injured from the POP's action or people, you say in
23 your statement, "lying down to be arrested." Now you had
24 seven and a half minutes at the reorganisation line in
25 which nothing, which time more or less stood still. During

1 the seven and a half minutes did you make any further
2 attempts to try to contact the TRT?

3 **BRIGADIER CALITZ:** I think I
4 already answered that question.

5 **MR CHASKALSON SC:** The answer that you
6 gave was in reference to a passage that can be timed to the
7 very beginning, two seconds into that seven and a half
8 minutes. Did you make any further attempts after that?

9 **BRIGADIER CALITZ:** You asked the
10 question previously, Mr Chaskalson, and I replied
11 that I cannot recall how many times I called them
12 in that short period and I said that
13 I had no radio feedback from any of the
14 TRT members.

15 **MR CHASKALSON SC:** Did you try to contact
16 anyone from the TRT on cell phone?

17 **BRIGADIER CALITZ:** No, Mr
18 Chairperson.

19 **MR CHASKALSON SC:** Why not?

20 **BRIGADIER CALITZ:** No, I cannot
21 say why not, at that stage
22 things were happening so fast around us,
23 I had to take note of where the people were moving that
24 was dispersed, I had to keep the vehicles in line,
25 I had to talk to the commanders next to me to

1 form a line, I had to get SITREPS from them, and call in
2 the water cannons. I also saw the field in front of me
3 being set on fire, which was part of the reason for
4 me calling in the water cannons. I tried to
5 observe in which direction all the people were running. No,
6 I had put my trust in Colonel Vermaak, which
7 was an experienced Public Order Policing officer for years,
8 to give me feedback and I was happy with it, as I knew
9 there is a capable commander to
10 deal with scene 1.

11 **MR CHASKALSON SC:** But what was going to
12 be necessary to handle at scene 1?

13 **BRIGADIER CALITZ:** I do not understand the
14 question, please repeat?

15 **MR CHASKALSON SC:** You said that you knew
16 that there was a commander capable of handling what is now
17 known as scene 1, but what was, in your mind what was there
18 to handle at scene 1?

19 **BRIGADIER CALITZ:** If you look at the statement,
20 you will see there were injured people, laying down
21 to be arrested. I knew there was a
22 commander at the back, which
23 would attend to those people, either by giving them medical treatment,
24 or arresting them. There was no need for the whole
25 operations to stop so that we can go back there.

1 No.

2 **MR CHASKALSON SC:** But, Brigadier, this

3 was not an issue of stopping the operation, for seven and a

4 half minutes the operation was stopped anyway, for seven

5 and a half minutes that scene that we saw with the

6 reorganisation line in front of K2 remained essentially

7 unchanged.

8 **BRIGADIER CALITZ:** Yes, I think if we

9 have a look at the timeline, I did not note on how

10 long it took every vehicle to get in line.

11 It was an active scene, and as I testified a

12 tough scene, the 2 x 4 water cannons struggled

13 to get to the top, so taken into consideration the

14 circumstances and the terrain, it was quite possible for

15 the members to form a line in seven minutes and

16 then wait for the water cannons.

17 **MR CHASKALSON SC:** Yes, but you had seven

18 and a half minutes in which you were stationary in the same

19 position, strikers were stationary in the same position and

20 you say in that seven and a half minutes you did not think

21 it was worth your while to try to contact the TRT to find

22 out what was, why they had not joined the operation.

23 **BRIGADIER CALITZ:** No, it was not

24 my evidence, I did not say the strikers was stationary

25 in their position. My evidence was that the

1 majority of the people, I think
2 you are referring to the smaller group, the 200
3 behind the rocks at hill 3. I also referred to the
4 majority, the 2 to 3,000, which he also had to
5 attend to, while they were moving in different
6 directions, which needed observation and I conveyed
7 it as such to my Pappa Nyalas on the sides,
8 to do the observation, we did not sit still,
9 with our hands folded, doing nothing for seven
10 minutes. No.

11 **MR CHASKALSON SC:** And did not you want to
12 try to get the TRT back with the troops so that they would
13 be there for the remainder of the operation as planned?

14 **BRIGADIER CALITZ:** As you said, I
15 made contact with the TRT, I cannot recall how many times,
16 after which we decided to proceed with the
17 dispersion action.

18 **MR CHASKALSON SC:** Well, for seven and a
19 half minutes after you had not received a reply from the TRT
20 you seem to have taken no further steps to try to get them
21 to join the operation as it had originally been planned.

22 Is there a reason for that?

23 **BRIGADIER CALITZ:** The TRT would never
24 be part of the dispersion. They would come up to
25 hill 2, where the people were already moving down,

1 from there we then lodged a
2 further dispersion towards hill 2, - I mean, hill
3 3, as well as in a westerly direction. Hill 2 was totally
4 safe at that stage. You can see where, I think it is
5 where the Task Force, Casspir or Scorpion is moving in,
6 and they would then sweep that part of the hill.
7 That was their purpose.

8 **MR CHASKALSON SC:** So then would it be
9 fair to say that the absence of the TRT at the
10 reorganisation line at hill 2 was not a serious issue for
11 the operation that you had to command?

12 **BRIGADIER CALITZ:** Will you just repeat it,
13 in order for me to understand it correctly, absence where?

14 **MR CHASKALSON SC:** The absence of the TRT
15 at the re, or behind the reorganisation line at hill 2,
16 was not a serious issue for the operation that you had to
17 command, it was something that you could comfortably cope
18 without?

19 **BRIGADIER CALITZ:** If you are talking about the
20 reorganisation line, that is where we regrouped,
21 from there I moved forward with the Public Order Policing
22 and continued with the dispersing. There were a small
23 group from the TRT, on the Nyalas.
24 I think it is clearly visible on some of the photos where the
25 arrests were made in the field.

1 **CHAIRPERSON:** In fact the deviation from
2 the original plan, the idea was, you would have a line of
3 POP people who would proceed to try and disperse the
4 strikers. If for various reasons that was not successful
5 and they themselves were in a dangerous position you needed
6 the TRT behind them to protect them. That was the plan,
7 was not it? Now, - is that right, you nod but the
8 microphone does not hear you nodding?

9 **BRIGADIER CALITZ:** Yes. No, I was the
10 plan before the dispersion action.

11 **CHAIRPERSON:** Alright, then, you know
12 you are now at the reorganisation line, you have the POP
13 people there, you are going to proceed with the dispersion.
14 Now what would have happened, you had a view TRT people
15 apparently and the Nyalas, that is all, and you were going
16 ahead with the dispersion. That was a deviation from the
17 plan, was it not, because the dispersion as planned
18 involved the POP people moving forward with the protection
19 if required of a line of TRT people behind, that is right,
20 is not it?

21 **BRIGADIER CALITZ:** The TRT had to
22 assist us with the arrests -

23 **CHAIRPERSON:** Yes, yes, -

24 **BRIGADIER CALITZ:** - if the groups would have
25 stayed in that formation.

1 **CHAIRPERSON:** Yes, but you did not have the
2 TRT people at the reorganisation line, you only had a few
3 of them and the Nyalas, so that was a deviation from the
4 operation as originally planned, is that correct?

5 **BRIGADIER CALITZ:** Commissioner, yes, there were
6 an deviation in the plan. By deviation I mean
7 there were still some of the TRT members in the Nyalas,
8 which were moving forward,
9 at that stage they were enough to manage the scene with
10 the people running as they were dispersed into small groups.
11 We did not have to go and disperse of large groups,
12 it was a few.

13 **CHAIRPERSON:** How many TRT people were in
14 the Nyalas?

15 **BRIGADIER CALITZ:** I will –

16 **CHAIRPERSON:** Approximately?

17 **BRIGADIER CALITZ:** I do not have the
18 figure with me, I will have to find out.

19 **CHAIRPERSON:** Alright.

20 **BRIGADIER CALITZ:** I did observe it on the
21 photos of the arrests being made in the field,
22 and you could clearly see the TRT
23 assisting us.

24 **MR CHASKALSON SC:** Brigadier, you may
25 recall that on our last day of December when, of our

1 sitting in December when I was cross-examining you on how
2 you had regrouped after scene 1 and how or what followed
3 from the point of the regrouping line was not materially
4 different from what had been planned, you testified and I
5 quote your words, "The only difference is that we would
6 follow up and the TRT line would have followed us,
7 so that when the protestors broke into smaller groups and
8 encircled and arrested them, they
9 would then assist us with that." That is
10 from page 18716 of 5 December, lines 5 to 10. So you said
11 the only difference was that between what was planned and
12 what was reorganised at the reorganisation line was that
13 there should have been a TRT line following you, do you
14 recall that?

15 **BRIGADIER CALITZ:** Hmm –

16 **MR CHASKALSON SC:** Do you want to look at
17 the passage in the record at 18716?

18 **BRIGADIER CALITZ:** I did not
19 go to them, but remember we talked about it,
20 it will be the same answer as the one I gave you just now,
21 Mr Chairperson, their briefing was to follow up
22 after the dispersion. If there were
23 arrests, I am talking of mass arrests,
24 which resulted in a confrontation between us and them,
25 the TRT would assist us and

1 sweep and search hill 2. The

2 Public Order

3 Policing would still follow up on the dispersion line. They

4 were not briefed again, on where they should regroup.

5 It is a continuation of action, in other words, the

6 TRT members in the Nyala vehicles, did

7 assist.

8 **MR CHASKALSON SC:** So you did not regard

9 the absence of the TRT line behind the POP's vehicles at

10 hill 2 and for the remainder of the operation as a

11 material problem?

12 **BRIGADIER CALITZ:** If you can maybe just explain to

13 me what you mean by material problem?

14 **MR CHASKALSON SC:** As a problem that was

15 –

16 **CHAIRPERSON:** A significant problem, it

17 was not a problem that you were concerned about. It may

18 have been a problem at some, but it was not a problem that

19 gave you any concern, you know that would be a paraphrase,

20 I think of what Mr Chaskalson asked you.

21 **BRIGADIER CALITZ:** Yes, I just did not understand the

22 material part for being a significant problem. No,

23 I made the call at that stage that what we had to our

24 disposal and the Public Order

25 Policing, were enough to

1 handle what was going on in front of us and
2 that we would further disperse of the smaller groups and disarm them,
3 and arrest them with the manpower to our disposal.

4 **MR CHASKALSON SC:** So if the absence of
5 the TRT line was the only difference that was caused by the
6 disruption at scene 1, that is not a difference that can
7 explain what happened at scene 2, do you accept that,
8 because it was not huge difference?

9 **BRIGADIER CALITZ:** Mr Chairperson –

10 **MR CHASKALSON SC:** A significant problem?

11 **BRIGADIER CALITZ:** Maybe I just want to,
12 okay, yes.

13 **MR SEMENYA SC:** Chairperson, I do not follow the
14 question, can it be re-put to the witness?

15 **MR CHASKALSON SC:** So what happened at
16 scene 2 was not in any way linked to the absence of the TRT
17 line behind the POP's vehicles at scene 2?

18 **MR SEMENYA SC:** I still do not understand
19 what is it that happened at scene 2?

20 **CHAIRPERSON:** No, I think the problem, as
21 Mr Semenya says is, it is not clear what you mean by what
22 happened at scene 2. If you mean the deaths that occurred
23 at scene 2, the people who were injured at scene 2, if you
24 mean, is that what you mean then I presume the question is
25 more intelligible but if it does not mean that I am afraid I

1 join Mr Semenya in confessing an inability to understand
2 the question fully.

3 **MR CHASKALSON SC:** Sorry, that is what I
4 mean, the deaths and injuries that happened at scene 2, are
5 they something that in your opinion can be attributed to
6 the absence of the TRT line behind the POP's vehicles or
7 the deaths and injuries that were independent of the
8 absence of the TRT line.

9 **[10:33] MR SEMENYA SC:** We know that the TRT was
10 at hill 3, so I do not see how that question can be
11 formulated like that.

12 **MR CHASKALSON SC:** No, Mr Semenya's
13 objection is not well founded, Chairperson. The TRT that
14 was at hill 3 were the unsolicited TRT members of Captain
15 Kidd who came up from the southwest. The TRT who should
16 have been at hill 3 were the line that ought to have been
17 coming behind the POPS Nyalas, not an advance party that
18 ended up being the first people to engage with strikers at
19 hill 3 from the opposite direction to that which was
20 planned.

21 **CHAIRPERSON:** Mr Semenya, do you wish to
22 reply to that?

23 **MR SEMENYA SC:** Chairperson, we do know - and I
24 must repeat the objection - that there was never a
25 proposition that the TRT, only that TRT will form that

1 before the dispersion line goes to hill 3. This was an
2 ongoing episode from the dispersal at scene 1. We have just
3 given these issues labels about being hill 2, hill 3,
4 scene 1, scene 2, but it was one uniform action.

5 **CHAIRPERSON:** Alright.

6 **COMMISSIONER HEMRAJ:** Mr Chaskalson, is
7 your question that the injuries and deaths at scene 2 were
8 because the TRT got there ahead of POPS, as opposed to the
9 plan which would be POPS first and then TRT?

10 **MR CHASKALSON SC:** No, my question goes
11 somewhere else, Commissioner. My question – let me put the
12 end point to which, of the purpose for which I am asking the
13 question. It is been suggested that why there were deaths
14 on the day was because the plan was disrupted. The
15 attitude of the evidence leaders, which was made clear
16 during the cross-examination of Colonel Scott and was in
17 fact accepted by Colonel Scott, was that is possibly an
18 explanation for scene 1, but it is not an explanation for
19 scene 2 because well in advance of scene 2 SAPS had
20 reorganised and had reorganised in a manner that was not in
21 any material respects different from that which was
22 planned. So whatever disruption took place earlier did not
23 affect what happened at scene 2. When I question Brigadier
24 Calitz on this he pointed to one difference, which was that
25 there ought to have been a TRT line behind the POPS line.

1 So that was the one material difference that flowed from
2 scene 1 to scene 2, so to speak. Today he has suggested
3 that if it was a material difference it was not a
4 sufficiently important problem for the operation to proceed
5 and I just want to clarify that – maybe the question
6 does not, maybe it is a matter for argument at this point
7 because he’s clarified that he did not regard it as a
8 “significant problem” and maybe I should just leave it at
9 that point.

10 **MR SEMENYA SC:** And when that happens,
11 Chairperson, it is not our case that the deaths and injuries
12 occurred because of a disruption. The SAPS’ position was
13 all those injuries and the deaths were a result of self
14 and/or private defence.

15 **MR CHASKALSON SC:** We can hammer this out
16 when we have an argument and understand each other’s cases
17 clearer.

18 **CHAIRPERSON:** Part of the problem of
19 course is this witness does not know very much about what
20 happened at scene 2, as he concedes. Am I right,
21 Brigadier?

22 **BRIGADIER CALITZ:** I cannot provide any
23 more clarity on what happened during scene 2 of hill 3,
24 no. Where I went to and what my actions
25 were since 17:00, well –

1 **CHAIRPERSON:** Yes, but all the relevant

2 shots had been fired by then.

3 **BRIGADIER CALITZ:** I cannot – No,

4 other witnesses, General Naidoo and TRT will

5 have to testify on that.

6 **MR CHASKALSON SC:** Before we leave this

7 topic of your failure to make further attempts to contact

8 the TRT to establish what had happened with them –

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

10 – No, you are putting words in my mouth. “Failure to contact” – I

11 told you I cannot recall how many times

12 I contacted them. You say there were “failure to contact

13 them.” That was not my evidence.

14 **MR CHASKALSON SC:** Well Brigadier, we can

15 actually time that, we can periodically put it to be seven and a half

16 minutes because we have a transcript of radio

17 communications on the Protea Coin Security video and

18 there is nothing of that nature audible from you during that

19 period. We do have on the television footage that evidence

20 of your attempt to contact the TRT and that took place

21 seven and a half minutes before the water cannon reached

22 the dispersion line. So –

23 **BRIGADIER CALITZ:** No, all I said

24 was –

25 **MR CHASKALSON SC:** - seven and a half

1 minutes is what we are talking about.

2 **BRIGADIER CALITZ:** All I said,

3 Mr Chairperson, I did not say there were "failure" to

4 contact them. I did contact them and I tried to

5 contact the TRT, but there were no response from

6 their side and that is why I called them from the

7 helicopter and asked them to assist. That is

8 the point I want to bring forward.

9 **MR CHASKALSON SC:** Well, I still have

10 difficulties with your answer because if I look at

11 paragraph 117 of your statement where you report what

12 Lieutenant-Colonel Vermaak reported to you, and we know

13 from the radio, the record of the radio communications in

14 the JOC that what Lieutenant-Colonel Vermaak reported was

15 there were 18 bodies down at scene 1, your report is that,

16 "I thought, given my experience and the absence of such a

17 report to me, that the bodies" – and we know from what was

18 heard in the JOC that it was 18 bodies – "was reference to

19 people who were injured by the dispersion action or lying

20 down to be arrested." Now 18 injured or surrendering

21 strikers on the ground does not really explain why the

22 entire TRT detachment had to stay behind at scene 1, does

23 it?

24 **BRIGADIER CALITZ:** No, Mr

25 Chairperson, I never said that was the reason

1 why they stayed behind. I just said I

2 tried to contact them, and that was the information

3 conveyed to me.

4 **MR CHASKALSON SC:** Well, was any other

5 explanation offered to you as to why the TRT who should

6 have been sweeping up behind you had chosen not to do that?

7 **BRIGADIER CALITZ:** Not at that stage.

8 No, Mr Chairperson.

9 **MR CHASKALSON SC:** So the only

10 explanation that was given to you were that there were 18

11 people who were injured or possibly lying on the ground to

12 be arrested.

13 **CHAIRPERSON:** He was not given a number.

14 He was not given the number of 18. He was just told that

15 there were bodies on the ground which –

16 **MR CHASKALSON SC:** Well –

17 **CHAIRPERSON:** Oh, you said –

18 **MR CHASKALSON SC:** - 18 is what was

19 recorded on that radio communication in the JOC and I think

20 in your cross-examination by Mr Budlender you conceded that

21 what you would have heard is what they would have heard.

22 **CHAIRPERSON:** Yes, I think you are

23 correct. I am sorry.

24 **BRIGADIER CALITZ:** Yes, I think

25 I referred to Colonel Vermaak that counted, he told me

1 the number. I did not "concede" on 18. You said that
2 was what was standing in the incident book. I did say that
3 he counted more than that at one stage. I think you will
4 note that during his evidence and in his statement.

5 **MR CHASKALSON SC:** Well, whether it is 18,
6 19, 20, or even 30, that would not explain why the entire
7 TRT detachment had to stay behind, would it?

8 **BRIGADIER CALITZ:** Mr Chairperson,
9 operational, I do not know – I think it is unreasonable
10 of the Advocates to query about the background, but operational,
11 if things happen and people are
12 injured, then you handle it. It depends on the
13 circumstances and what happened there, the
14 reason can be endless on why they stayed behind. It
15 can be that the injured people were
16 in front of them and that they wanted to keep the area
17 safe. There can be various reasons. So the answer is no.

18 **CHAIRPERSON:** [Microphone off, inaudible]
19 have been injured, you thought some of them had been
20 injured, whose job would it have been to have attended to
21 them?

22 **BRIGADIER CALITZ:** If any
23 people were injured, then 'forward holding
24 area 1" would have contacted the paramedics, Mr
25 Chairperson, they were under the command of General Naidoo,

1 they would then be called in and brought to the
2 injured. What I mean with the TRT, normally we will make the
3 arrests, but if there were injuries,
4 what they do normally, and I think you can see it on some of the photos,
5 they sometimes assist with protection,
6 – keep in mind, it is still a hybrid active
7 scene, so it is not that the people will just leave and now
8 there is no one. There were still groups in the
9 area, even from the side of the settlements. So the presence of the
10 TRT, which is why I say there could be various reasons.
11 I believe Captain Loest, or whoever from the TRT, will be able
12 to testify on why they decided to stay and what their actions were,
13 regarding their assistance.
14 We did see on the “footage”
15 that the TRT was busy disarming
16 the people moving away, so there is, there
17 were various circumstances.

18 **CHAIRPERSON:** Mr Chaskalson, I was
19 proposing to take the tea adjournment at quarter to 11 or
20 thereabouts. If it is convenient to take it now we will do
21 so. If you want to ask a few more questions first, I am in
22 your hands.

23 **MR CHASKALSON SC:** Chairperson, now is as
24 good a time as any.

25 **CHAIRPERSON:** We shall adjourn for the tea

1 adjournment at this stage.

2 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

3 **[11:16] CHAIRPERSON:** The Commission resumes.

4 Brigadier, you are still under oath.

5 **ADRIAAN MARTHINUS CALITZ:** Still under oath

6 **CHAIRPERSON:** Mr Chaskalson. **[Microphone**

7 **off, inaudible]** you start, we are proposing to take the

8 lunch adjournment at 1 o'clock and to resume at quarter to

9 2 when we shall have a meeting with the evidence leaders and

10 others at half past 1. So the proposal from now on is to

11 have half an hour lunch but today will be an exception for

12 the reason I have indicated.

13 **CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):**

14 Brigadier, shortly before the adjournment you were asked a

15 question from the Commissioner about responsibility for

16 bringing in medics, medical attention to wounded persons.

17 I had just like to raise a couple of concerns I have in this

18 regard. As I understand your statement, you recognise that

19 there was a possibility that the people on the ground may

20 have been injured and awaiting medical attention.

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

22 Chairperson.

23 **MR CHASKALSON SC:** Now did you hear any

24 reports over the radio that medical personnel had been

25 called in to scene 1?

1 **BRIGADIER CALITZ:** Mr Chairperson,
2 No, not that I can think of. I know there is
3 statements, and that the people contacted the JOC
4 and that the JOC arranged for the medical personnel together with
5 General Naidoo, but if it was done via the radio,
6 that I cannot testify on. No.

7 **MR CHASKALSON SC:** No, I am not asking
8 whether it was or was not on the radio. I am asking whether
9 you heard anything on the radio calling medical personnel –

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

12 **MR CHASKALSON SC:** - to the JOC. You
13 did not. Did you not take any steps to clarify whether
14 medical personnel had been called to scene 1?

15 **BRIGADIER CALITZ:** Mr Chairperson, I
16 cannot recall – I cannot recall
17 who we contacted during the period we were standing there.
18 I think the chopper once said,

19 I – I will have to go back and look at the transcription.

20 I think Colonel Vermaak talked at one stage and said

21 there were people injured, but I am not sure if

22 it was him or the JOC that called in for the

23 medical personnel. I can almost recall something like that,

24 but I cannot say with certainty if I heard it.

25 No.

1 **MR CHASKALSON SC:** If you did not hear it
2 would it not have been your responsibility as overall
3 commander to ensure that medics were called in to scene 1
4 as part of your function of coordinating the various units
5 under your control –

6 **CHAIRPERSON:** Not the overall commander,
7 the operational commander –

8 **MR CHASKALSON SC:** Operational commander.
9 I am sorry. As part of your function of coordinating the
10 various units in the operation.

11 **BRIGADIER CALITZ:** Yes, that is why I said,
12 I believe if Colonel Vermaak told me that,
13 then I did hear it. The next question will be, by whom,
14 I cannot with clarity say who called them,
15 but I know the medical personnel were deployed to
16 scene 1.

17 **MR CHASKALSON SC:** Yes, but again I do not
18 want us to be at cross purposes. We know that ultimately
19 approximately an hour after the event medical personnel
20 made it to scene 1. My question is whether you heard an
21 instruction over the radio shortly after scene 1, calling
22 medics to scene 1.

23 **BRIGADIER CALITZ:** I have to testify under
24 correction, if I say I recall there were conversations on the fact
25 that people were injured and that the medics were deployed,

1 but I cannot recall who – I think it was Colonel Vermaak.

2 I did testify to that, but I cannot recall who

3 mentioned it. No.

4 **CHAIRPERSON:** As operational commander

5 was it one of your responsibilities to see to it that

6 persons injured received medical attention promptly?

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 as I said, part of the functions operational commander

9 was to coordinate all the different groups on the ground.

10 What I said is that I heard

11 somebody talking about it, and I know General

12 Naidoo and Colonel Vermaak responded. I know

13 about it now in hindsight, but I do not know

14 who called them at that stage. No.

15 **CHAIRPERSON:** You see, one can see

16 already that one of the points that is going to be dealt

17 within the argument is that there was a failure to give

18 medical treatment to the injured parties at scene 1 for an

19 hour and there will be criticism addressed to the SAPS on

20 the basis of that and we had have to deal with that in our

21 report. Now in view of the fact that you concede that

22 that is part of your, as I understood you, part of your

23 operational responsibilities, would you wish to respond to

24 any criticism based upon the fact that there was this delay

25 of nearly an hour, which may well, have contributed either to

1 the deaths of some of those who died or certainly perhaps
2 aggravated the injuries of those who were injured? I am not
3 saying you are responsible. I am just want that to be
4 clear. If the point is raised, as I think it will be, what
5 will your answer be to it?

6 **BRIGADIER CALITZ:** Commissioner, which is what
7 I said, I am not sure on who it was.

8 I believe it was Colonel Vermaak, but I say it under correction.

9 If I am wrong,

10 and it was not him, fact is that there was someone that organised
11 the medical personnel. Where they were deployed to,
12 which road they followed and how they got there,
13 that I cannot testify to. I believe

14 Captain Loest and JOC were informed and I believe

15 General Naidoo,

16 will know who communicated with him regarding this. I was asked
17 if I heard something, and I replied that

18 I am not sure, and the next question would be,

19 who reported it, but I cannot say with

20 certainty. There were communication on the fact that

21 medical personnel, yes.

22 **COMMISSIONER HEMRAJ:** Well, immediately

23 that you became aware that there might be injuries, should

24 you have tried to ascertain where the medical personnel

25 were and were they on their way to the scene?

1 **BRIGADIER CALITZ:** Commissioner yes, that
2 is what I am trying to say, maybe just in other words,
3 I heard that General
4 Naidoo who was in charge thereof, together with the JOC,
5 were responsible for it. From my side I did not confirm with him
6 on where they were at that stage.

7 No.

8 **MR CHASKALSON SC:** Brigadier, it goes a
9 little further than that because your coordinating role
10 is not just about ensuring that medics have been called;
11 it is also about coordinating the movement of the medics to
12 scene 1 with the rest of the operation and then in
13 particular what you do not want is a situation where the
14 medics come up on one route and you disperse the strikers
15 directly into the direction of the medics and so prevent
16 the medics getting to scene 1 through that problem. Would
17 you accept that?

18 **BRIGADIER CALITZ:** Mr Chairperson,
19 No, I disagree. Part of the coordinating is to brief
20 General Naidoo and the others, the
21 group commanders. There is no way that I can know
22 the whereabouts of each one all the time. As I said, they reported
23 and I heard that they were requesting
24 medical assistance. During the briefing,
25 every commander was

1 briefed on his or her roll and "responsibility"
2 what they would do, where they would be and
3 I believed that they would then report any problems
4 to me. At that stage no problems
5 were conveyed to me regarding a shooter or the fact that
6 the people took too long. I think you said that a hour past,
7 it was not reported to me. I was therefore under the
8 the impression that everything were going smoothly.

9 -

10 **CHAIRPERSON:** During that hour did you
11 hear anything on the radio or learn in any other way that
12 General Naidoo was busy at scene 2?

13 **BRIGADIER CALITZ:** No, Mr
14 Chairperson, I saw him for the first time at
15 around 5 o'clock.

16 **CHAIRPERSON:** You were not aware of that?

17 **BRIGADIER CALITZ:** No, not at all, Mr
18 Chairperson.

19 **CHAIRPERSON:** I take it you learned later
20 General Naidoo on his way I think to scene 1 somehow got
21 involved in various operations, engagements at scene 2. I
22 take it you heard that later, did you?

23 **BRIGADIER CALITZ:** In
24 "hindsight" I learned that an incident occurred while
25 General Naidoo was moving in and that he then proceeded to

1 hill 3, known as "scene 2."

2 **CHAIRPERSON:** Yes, scene 2.

3 **BRIGADIER CALITZ:** Yes, where he sent

4 the medical personnel to, that I cannot

5 say.

6 **CHAIRPERSON:** Yes, I see.

7 **MR CHASKALSON SC:** Well, Brigadier,

8 General Naidoo's version is that he was in the process of

9 bringing the medical personnel up around the western side

10 of the power station and bringing them up between hill 3

11 and, or planning to come up between hill 3 and hills 1

12 and 2 when his unit, or his members were engaged by the

13 strikers who were being dispersed out of the hill. If

14 that version is correct, whose responsibility was it to

15 ensure that the medics, either to avoid such a situation or

16 to ensure that the medics reach scene 1 notwithstanding

17 that situation? Was it yours as operational commander or

18 was it Major-General Naidoo's as section commander of the

19 medics?

20 **BRIGADIER CALITZ:** General Naidoo was still the

21 group commander of the

22 "medics", the detectives and K9 unit. He was in command

23 of that whole group. As they became aware

24 of what happened, they instructed the people on which

25 route to take. You asked me how they

1 they moved, I have no knowledge on that, I cannot
2 assist you with that, but General Naidoo will be
3 able to testify on where he sent the medical
4 personnel. I know the JOC, which is the "joint
5 operational centre", was immediately informed, that we
6 established. I believe from their side, the
7 overall commander in charge of all the action
8 on the ground, would communicate with the JOC
9 if there were any problem
10 anywhere.

11 **MR CHASKALSON SC:** So in terms of your
12 coordinating function as operational commander, are you
13 saying that it is not part of your responsibility to ensure
14 that the route taken by the medics is not a route that will
15 be interfered with by the playing out of the operation?

16 **BRIGADIER CALITZ:** No, it is not my
17 responsibility, Mr Chairperson.

18 **COMMISSIONER HEMRAJ:** General Naidoo's
19 version is that he told the medical personnel to stand down
20 because of the live ammunition being fired. Is not that so?
21 He told them to take cover.

22 **MR CHASKALSON SC:** He brought them up in
23 the direction of hill 3 and then they heard live
24 ammunition and thought they were coming under fire.

25 **COMMISSIONER HEMRAJ:** And then he

1 directed them to hold –

2 **MR CHASKALSON SC:** He directed them to

3 return.

4 **COMMISSIONER HEMRAJ:** - to hold back.

5 **MR CHASKALSON SC:** Yes. I think to

6 return. It may be to hold back, but it would have been to

7 return because they had come forward with him a little and

8 then were sent back.

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

10 when he comes. These questions I am sure will be addressed

11 to him.

12 **MR CHASKALSON SC:** Now Brigadier, just

13 before we adjourned you were giving a range of different

14 reasons why the TRT may have chosen to stay behind at scene

15 1. Now you were the operational commander and even if

16 there was a very good reason for the TRT to stay behind at

17 scene 1, was not it incumbent upon them to inform you first

18 of all that they would be staying behind at scene 1, and

19 second of all why they were staying behind at scene 1?

20 **BRIGADIER CALITZ:** Each

21 group commander is supposed to conveyed

22 any problems, regarding any problems during the

23 operation to me, which would include the TRT, yes.

24 **MR CHASKALSON SC:** And that presumably

25 would be a standard SAPS protocol?

1 **BRIGADIER CALITZ:** The operational
2 commander will not be able to take control of each
3 situation, for instance this area covers about 2 kilometres,
4 it is a large area – and therefore
5 group commanders are appointed. It is the general
6 rule, that if someone would move into an area, where
7 something occurred, then
8 the operational commander must be informed
9 of such immediately. If they did not inform me,
10 I cannot
11 react.

12 **COMMISSIONER HEMRAJ:** But Brigadier, what
13 is the protocol when there is been a shooting incident where
14 police officers have fired their firearms? Are they permitted to
15 leave the scene?

16 **BRIGADIER CALITZ:** General, no. The
17 crime scene management manual is clear; the people involved
18 there must stay at the scene. They must secure the scene
19 and as far as possible wait for the evidence, the Local
20 Criminal Record Centre, to come and handle the scene.
21 They had to come and make the scene safe and to
22 assure that the necessary people stayed behind. If they
23 left the scene, the question could arise as to who
24 was at the scene and what happened there.

25 **COMMISSIONER HEMRAJ:** Now would that

1 Standing Order apply only to those involved in the shooting

2 who actually fired shots, or would it apply to the entire

3 unit? Or the entire number of people deployed there?

4 **BRIGADIER CALITZ:** Yes, not only –

5 Commissioner, not just while they fired,

6 but as I testified, if something occurred here,

7 we would keep everyone in the room.

8 We would let no one out before we had everyone's

9 statements and contacted the IPID to come and investigate the

10 scene, query the witnesses, investigate what happened and

11 try to find out what happened. One tries to

12 to keep everyone part of such an incident, as close to the

13 scene as possible, until the detectives arrives.

14 **MR CHASKALSON SC:** But presumably that

15 would only emphasise the need for a report to the

16 operational commander because if the whole unit is going to

17 have to stay behind the operational commander needs to

18 know.

19 **BRIGADIER CALITZ:** I already confirmed that

20 and agreed on it with you; there was an instruction

21 that if anything happens on a scene,

22 not matter what the incident was, the

23 operational commander must be informed,

24 which will convey it to the overall commander,

25 who is responsible for the actions happening on the

1 ground.

2 **MR CHASKALSON SC:** So have you ever

3 raised with the TRT commanders on the day why they did not

4 report to you why they were staying behind at scene 1?

5 **BRIGADIER CALITZ:** Not then, but

6 in "hindsight," later during the day Captain

7 Loest informed me that they tried to contact me.

8 They had a hand radio system, and were unable to get

9 hold of us. I think that is why he said he

10 contacted the JOC, I think he contacted Brigadier Pretorius – I

11 may be corrected – and informed him of what

12 was occurring at the scene.

13 **MR CHASKALSON SC:** Is there any

14 explanation why neither you nor the TRT used your cell

15 phones to try to contact each other in these circumstances?

16 **BRIGADIER CALITZ:** I explained

17 earlier on what my circumstances were. Why they

18 did not try to get hold of me on the cellphone, that I cannot

19 answer. I can also not tell you why the JOC

20 did not contact me.

21 **MR CHASKALSON SC:** And if the JOC was

22 informed by the TRT of the incidents at scene 1 and that

23 the TRT had not been able to contact the operational

24 commander, would it have been incumbent on the JOC to

25 contact the operational commander to explain that the TRT

1 would be staying behind?

2 **BRIGADIER CALITZ:** Any report not conveyed to

3 the operational commander, must be conveyed to

4 the "joint operational centre",

5 because they have to write it in the incident report book.

6 It is also where the overall commander will be. As I mentioned

7 earlier, the "overall commander,"

8 is responsible for all the actions taking place

9 on the ground, it is his "job

10 description" his duty, so it is very important to inform

11 the JOC of any incidents occurring, as the overall

12 commander will take the appropriate actions and decisions on

13 who to inform and what the next steps would be, or

14 communicate with me in the field.

15 **MR CHASKALSON SC:** But presumably you

16 would expect the JOC to inform you if a unit has to stay

17 behind and is now going to be removed from the operation

18 because you can no longer depend on that unit.

19 **BRIGADIER CALITZ:** As I said,

20 I was not contacted by the JOC. Apparently

21 some people tried to get hold of me on

22 my cellphone. I think it was discussed

23 at the end of last year, where we confirmed that it

24 was a signal or "missed call" problem. I cannot comment,

25 but on the "transcript"

1 it is evident that no one tried to contact me on the radio

2 in this case. No.

3 **MR CHASKALSON SC:** My question was would

4 you have expected to have been contacted?

5 **BRIGADIER CALITZ:** I already answered,

6 I said yes, all the events on the ground but be reported to

7 the operational commander.

8 **[11:36] MR CHASKALSON SC:** If I can then take you

9 to another passage of your evidence at page 18113, it is,

10 sorry, 2 December and in fact if we can start at 1811 at

11 the foot of 1811, start at 18112 if we go up the page, line

12 18. So I put to you, you testified earlier that you saw

13 the lead group of the protestors pass you moving in a

14 direction where they were going towards the gap between the

15 kraal and the shack and you knew presumably that the police

16 were attempting to seal off that gap, did you? Your

17 answer, "I know there were vehicles, the

18 group in front moved past my Nyala on the left-hand side,

19 that was my evidence, sir". Chairperson should we

20 translate as we go along or at the end?

21 **CHAIRPERSON:** As we go along I think.

22 **MR CHASKALSON SC:** Then from line 24 "I

23 knew there were vehicles, I know –

24 **CHAIRPERSON:** "I know there were

25 vehicles and I know that front group went

1 passed my Nyala on the left hand side, that was my
2 evidence, sir”.

3 **MR CHASKALSON SC:** Then I proceed, “so
4 you could anticipate there was going to be a confrontation
5 between the lead group of the strikers and the police in
6 the gap between the kraal and the shack, do you accept
7 that”.

8 **CHAIRPERSON:** And the answer was “if you
9 refer to confrontation if it refers to the attack on police
10 in that event I agree with you”.

11 **MR CHASKALSON SC:** I then said “well
12 let us accept it on that basis for now because that is my
13 point. If you thought that the police were about to be
14 attacked in that location was it not crucial for you to
15 know exactly what happened with the attack as soon as the
16 attack took place and then your answer” and Chairperson
17 it is a lengthy answer, should we translate it sentence by
18 sentence?

19 **CHAIRPERSON:** I think so yes. “Mr
20 Chairman, that is exactly when I saw the second, that the
21 people moved passed me and I then testified, I saw that as
22 the attack, immediately I began to communicate with my
23 vehicles and I said to them move forward. That was not the
24 only communication I would also have talked with my
25 vehicles to make a line to say in which direction the

1 people are running and the first opportunity which I then
2 had were the person, I saw that they saw that they were
3 dispersing and they were not turning for a further attack
4 then I would have regrouped, I would have stopped and
5 ascertained what precisely was, I take it was happening
6 with all my commanders so that they could give a report to
7 me". There is some words missing from what he said but I
8 take it that is the gist of what he said.

9 **MR CHASKALSON SC:** I am interested in
10 those last few lines. Because what I understand them to
11 mean is that your intention when you moved away from your
12 position at scene 1 after the strikers passed you moving in
13 the direction of what we know now was where the TRT line
14 was, your intention then was that after you had regrouped
15 you would contact your commanders to get a report on what
16 had happened out of sight behind you. Is that correct?

17 **BRIGADIER CALITZ:** You are asking me the same question,
18 I stand by what I said -

19 **MR CHASKALSON SC:** Yes, do you stand by
20 what you said?

21 **BRIGADIER CALITZ:** In this context,
22 yes, sir.

23 **MR CHASKALSON SC:** Now do you recall that
24 in answer to Mr Ntsebeza on the 5th of December, day 162 at
25 page 18664 line 8 to 18665 line 13, so if we, maybe - I

1 do not think we need to call it up, let me put the question
2 to you and if you want to see the record you can. But in
3 answer to Mr Ntsebeza at that point you identified
4 Lieutenant Colonel Mere and Lieutenant Colonel Makhubela as
5 the two officers you would have contacted for a situation
6 report if you had been made aware that there had been
7 shootings at scene 1. Do you recall that?

8 **BRIGADIER CALITZ:** I do not have it
9 before me, but I recall that we decided that they
10 would be the two commanders staying behind, yes.

11 **MR CHASKALSON SC:** Would you like to look
12 at that section of the record because those are the two
13 officers you identify as the people you would have
14 contacted if anyone had informed you that there had been
15 shootings at scene 1.

16 **BRIGADIER CALITZ:** Yes, Colonel Makhubela
17 was briefed that he would be the
18 overall commander on that
19 scene. We knew that we were going to move out and there would
20 be a dispersion action and a follow up after the
21 dispersion and Colonel Makhubela would
22 stay behind.

23 **MR CHASKALSON SC:** That is in fact what
24 your testimony was and you also mentioned that Lieutenant
25 Colonel Mere was a commander who would be at the scene.

1 **BRIGADIER CALITZ:** He was part of the
2 Public Order Policing group during the dispersion.
3 **MR CHASKALSON SC:** The identification of
4 those two people was in response to a question about who
5 you would have contacted if you knew that there were
6 shootings. But presumably, those would have been the same
7 two commanders who you would have asked for a situation
8 report about what happened when the strikers moved down the
9 east side of the kraal out of your line of vision after you
10 had later regrouped, is that not correct?

11 **BRIGADIER CALITZ:** Colonel Makhubela was
12 the commander at that stage, yes.

13 **MR CHASKALSON SC:** Did you make any
14 attempt to contact either Colonel Makhubela or Lieutenant
15 Colonel Mere in that seven and a half minute period after
16 you had regrouped?

17 **MR SEMENYA SC:** Chairperson, Chairperson,
18 we have spent the morning dealing with aspects really that
19 Mr Budlender dealt with the witness. We were told then
20 that time that what Mr Chaskalson was going to handle was
21 the movements of the cars at scene 2. But we are at the
22 same spot again.

23 **CHAIRPERSON:** - about that, Mr
24 Chaskalson, you in fact you moved on to scene 2 when we
25 adjourned at the end of the year. You have now stepped

1 backwards and dealing with other aspects but what do you

2 say in response to Mr Semenya?

3 **MR CHASKALSON SC:** Chairperson, I am, what

4 I moved on to at scene 2 was the seven minute period in

5 which that reorganisation line was static in front of

6 hill 2, that is the only topic I touched on and that is

7 the only topic I am touching on now. There were seven and a

8 half minutes where nothing happened where the scene did not

9 change and my question is you said earlier that you would

10 have contacted these people once you had regrouped, you had

11 seven and a half minutes in which you had regrouped and no

12 further action was being taken, did you contact them.

13 **MR SEMENYA SC:** No, but still, Chairperson,

14 that is if he was made aware that scene 1 had happened.

15 **MR CHASKALSON SC:** No –

16 **CHAIRPERSON:** I do not think it is that

17 because he knew presumably that something was going to

18 happen because he saw the militant group marching off,

19 going off, marching onward, going off in the direction of

20 where we now know the TRT line was. He gave instructions

21 for certain action that was to be taken. He did not state,

22 see what the result of that action was. But he proceeded

23 elsewhere, so he may not have known, in fact I accept he

24 did not know what happened, that scene 1 had actually taken

25 place but I think the thrust of the question is he must

1 have known that something was, might well have taken place
2 and that is the purpose of the question, I shall allow it on
3 that basis.

4 **MR CHASKALSON SC:** Chairperson, I do not
5 want to be misunderstood about the thrust of the question
6 because it actually goes further than that. The thrust of
7 the question is when asked about whether it was important
8 for him to find out what had happened after the strikers
9 had passed him at scene 1 in an apparent attack on the
10 police his answer was yes it was important and this is what
11 my course of action would be. So the question is did you
12 at any stage contact either Colonel Makhubela or Lieutenant
13 Colonel Mere to find out what had happened after the
14 strikers passed out of your sight at scene 1?

15 **BRIGADIER CALITZ:** I think
16 Adv. Ntsebeza asked me if there were
17 communication between me and Colonel Makhubela, and I
18 answered, no, he was informed during
19 the briefing that we would move forward with the dispersion action,
20 and that he would take control of the scene behind.
21 No, at that stage it was not necessary for me to
22 contact him, as I knew he was on the scene and taking charge.
23 I also did not query the whereabouts of the water cannon,
24 or about this or that,
25 I knew that the commanders of each group would contact me,

1 if somebody did not happen according to plan.

2 Maybe I must just inform you of something,

3 you just read one

4 sentence of the report,

5 if we go down, I think the third sentence,

6 my answer there -

7 **CHAIRPERSON:** You mean you want to

8 proceed with some of the evidence?

9 **BRIGADIER CALITZ:** Yes, if we can -

10 **CHAIRPERSON:** 18114?

11 **BRIGADIER CALITZ:** Yes.

12 **CHAIRPERSON:** Mr Chaskalson asked you at

13 line 3 surely you needed to know immediately whether the

14 police had been successful or unsuccessful in repelling

15 this attack, that you be shown the rest of the evidence at

16 the moment. Could we please see the rest of page 18114

17 after line 5. We do not seem to have it on the screen.

18 Perhaps you can -

19 **BRIGADIER CALITZ:** Mr Chairperson, maybe

20 I can read my answer -

21 **CHAIRPERSON:** Yes, give us your answer

22 then.

23 **BRIGADIER CALITZ:** If it is not on the board,

24 "focus on the operation would have changed

25 immediately," sentence number 7 were left out,

1 where I said, "Mr Chairperson, I thought it was
2 successful, we talked about the dispersing.
3 As I moved forward with the Nyalas, I could see
4 the people on the left and the group at the back turning around
5 and running away. According to me,
6 the operation was successful, we dispersed the people and
7 forced them back to the vehicles, where they were also busy with
8 dispersing. That was what
9 I thought at that stage.

10 **CHAIRPERSON:** Line 8?

11 **BRIGADIER CALITZ:** Yes, there is the -

12 **CHAIRPERSON:** [Inaudible, microphone off]

13 once again, your answer, Mr Chaskalson's question was you
14 probably did not know immediately what happened because it
15 altered the focus of the operations. You said, "Mr
16 Chairman, once again in my thoughts it was successful, as I
17 said I moved forward with the Nyalas, I could see that the
18 persons, the people were moving to the left as well as the
19 big group and running away. So in my thought process the
20 operation was successful, we had begun driving the people
21 back to the vehicles where there were also dispersion
22 actions, that is what went through my mind at that stage."

23 **BRIGADIER CALITZ:** Yes, my answer

24 on what was previously mentioned,

25 I was of the impression that the dispersing was successful, the

1 people ran away, I saw the people on the left-hand side,
2 as well as the bigger group on the right-hand side, running
3 towards a westerly direction,
4 I was at no time made aware of any one dying.

5 Colonel Makhubela was tasks with the
6 dispersing action and if
7 there were any injuries, or any problems,
8 he would have reported it to me, but it was not done. If I
9 was informed, there were actions I could have
10 taken.

11 **COMMISSIONER HEMRAJ**: I am not sure I
12 understand that. The people that were on the left had
13 passed you already, gone towards the POPS and the TRT line
14 and the people that you saw dispersing were the groups that
15 were in front of you.

16 **BRIGADIER CALITZ**: Commissioner, yes what I said was,
17 the small group in front,
18 when the vehicles moved back, I instructed
19 all the Nyala Pappa vehicles to move forward
20 in between them. It was not just my vehicle in front,
21 but all the vehicles behind me too. When we moved
22 forward, I saw the people storming back.

23 I then thought, the group saw us all
24 8, 9, 10 Nyalas, moving in their
25 direction, so I had no reason to believe

1 that we would not be able to disperse of the people
2 running away. In my operational experience, it
3 never happened before, we always had the people dispersing 100%
4 into the direction that we were
5 dispersing them to.

6 **CHAIRPERSON:** Are you saying you thought
7 that the whole group had been effectively dispersed and
8 were retreating because of what was happening?

9 **BRIGADIER CALITZ:** I said that I thought
10 that the dispersing action of the Public Order was
11 successful, it is correct, Mr Chairperson.

12 **CHAIRPERSON:** And then when you got the
13 report from Vermaak, which you deal with in paragraph 117 of
14 your statement you must then have realised that what you
15 had assumed in that regard was not correct. That they all
16 had not been dispersed, in fact, some of them were now lying
17 down, either injured or waiting to be arrested?

18 **BRIGADIER CALITZ:** It was because of the
19 dispersion action, Commissioner, Mr Chairperson,
20 in any dispersing action where we use rubber, there is always
21 people being injured by the rubber balls,
22 they will then lay down and then
23 get arrested.

24 **CHAIRPERSON:** Mr Chaskalson, I am inclined
25 to think you have taken that point as far as you can take it.

1 **MR CHASKALSON SC:** Yes.

2 **CHAIRPERSON:** But you have material –

3 **MR CHASKALSON SC:** There are a couple of

4 other issues I just briefly want to canvas, not on Colonel

5 Makhubela and Lieutenant Colonel Mere but during the seven

6 and a half minutes did you check your cell phone to see if

7 anybody had been trying to call you?

8 **BRIGADIER CALITZ:** No, I cannot tell

9 you that my cellphone rang, at that stage.

10 No.

11 **MR CHASKALSON SC:** Well was not the cell

12 phone supposed to be a backup form of communication during

13 the operation?

14 **BRIGADIER CALITZ:** Mr Chairperson,

15 during an operation we rarely communicate

16 with each other on a cellphone. We will communicate

17 on the radio and the other

18 commanders will report via the radio.

19 **MR CHASKALSON SC:** But in this case you

20 had a failing radio system. You knew that your

21 communications from the radio system were not being

22 answered.

23 **BRIGADIER CALITZ:** Yes, at that stage

24 I was not aware that they contacted me, as you said,

25 I was not aware of a failing radio system, I became

1 aware of that in hindsight.

2 **MR CHASKALSON SC:** Well you knew that

3 radio communications were not being answered because you

4 had called for the TRT to respond and they had not

5 responded.

6 **BRIGADIER CALITZ:** It is correct.

7 **MR CHASKALSON SC:** Can we look at KKK4

8 which is a list of cell phone calls and if we go to

9 15:53:31 - We shall see that Major General Naidoo attempted to

10 contact you at 15:53:31, which happens to be almost exactly

11 the moment of the shootings. When did you first become

12 aware of this call from Major General Naidoo that lasted 12

13 seconds and which we know from the Vodacom records went

14 onto your voicemail?

15 **BRIGADIER CALITZ:** I have no knowledge

16 that it went on to my voicemail, later that

17 evening, after everything settled down, I only

18 became aware that they tried to contact me on the cellphone.

19 **MR CHASKALSON SC:** So you did not see it

20 as a responsibility of yours to check your cellphone at

21 all during this operation?

22 **BRIGADIER CALITZ:** No, I am not

23 saying it was not my responsibility, I say I

24 did not hear my cellphone ringing,

25 and with everything happening and the signal,

1 I did not receive a phone call and I do not know why
2 it went directly to my voicemail.
3 General Naidoo will be able to
4 to testify if he left a voicemail, and what the message
5 was that he left.

6 **[11:56] MR CHASKALSON SC:** Well, you see,
7 Brigadier, on your version the noise inside the Nyala was
8 so great that you did not hear a volley of 300 shots in
9 eight seconds. Now in those circumstances you would not
10 hear a cell phone ringing, do you accept that?

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

13 **MR CHASKALSON SC:** So in those
14 circumstances would not it have been prudent to check your
15 cell phone from time to time to see if any of your superior
16 officers were trying to contact you?

17 **BRIGADIER CALITZ:** Mr Chairperson,
18 again, I explained
19 that the situation was a hybrid,
20 continues situation, which we constantly monitored, so I
21 was almost on the radio the whole time. I think the
22 transcript will prove that there were constant
23 discussions between me and Colonel Vermaak,
24 there were no time to sit still for
25 seven minutes, as you said, during which time nothing happened.

1 There is a lot that happened

2 in that seven minutes.

3 **MR CHASKALSON SC:** Well, maybe you can

4 explain to us what exactly happened in those seven and a

5 half minutes because the line-up of the vehicles did not

6 move, the line of the protestors behind hill 2 did not

7 move. What did move?

8 **BRIGADIER CALITZ:** I wish

9 to see the photo that you said was taken, to see what happened

10 before and afterwards. At this stage

11 I do not know if there are any video material or footage available,

12 which can demonstrate this. According to me

13 the vehicles moved forward by the time the photo was taken,

14 maybe you can provide me with some information regarding the timeline.

15 I can say that I had communication with all the other

16 vehicles. I tried to get my vehicles in a line on my

17 left-hand and right-hand side, we tried to observe

18 the community or strikers were doing at that stage.

19 We saw a group on the left-hand side, behind

20 the rocks, from where my position was, and

21 I saw a much larger group of about

22 2 to 3 000 on my right-hand side, moving in that direction.

23 I also saw groups gathering on the left-hand side of the

24 settlement, so all these communication was constantly

25 relayed between the Pappa vehicles on the radios.

1 **MR CHASKALSON SC:** Well, this group you
2 say of 2 or 3,000 on your right hand side, where were they
3 going, where were they moving?

4 **BRIGADIER CALITZ:** There were
5 various groups, there were a group standing at the
6 informal settlement, and there is also overall power cables
7 in a westerly direction of the
8 settlement and they grouped under these power
9 cables, and it was also the direction in which we
10 moved downwards to regroup, I think
11 three or four of my Nyalas moved with me in
12 that direction to continue the dispersing action and
13 to make arrests.

14 **MR CHASKALSON SC:** Are you aware of any
15 real evidence that shows 2 or 3,000 people gathered to your
16 right hand side, any video evidence, any photographic
17 evidence? We have got extensive photographic and video
18 evidence of the scene over this period and I have not seen
19 any evidence of 2 or 3,000 people on your right side, are
20 you aware of it?

21 **BRIGADIER CALITZ:** Mr Chairperson,
22 yes, all I can say, I was on the ground,
23 the people seen and I moved toward them with
24 three or four of my Nyalas. We would not
25 have moved in that direction,

1 to disperse or make arrests, if there were no people. The larger group
2 moved away and the smaller group was on
3 hill 2 on their way to hill 3 toe, but it was the
4 minority. The other 2 to 3,000, they did not
5 just disappear. At a later stage
6 they regrouped under the power cables.

7 -

8 **MR CHASKALSON SC:** How many people did
9 you end up arresting when you moved off to the north?

10 **BRIGADIER CALITZ:** I think in total, with
11 those at hill 3, about 259.

12 **MR CHASKALSON SC:** No, I am not talking
13 about "including hill," -

14 **BRIGADIER CALITZ:** I am still -

15 **MR CHASKALSON SC:** - I am talking about
16 the people to the right. Well, I would like you to answer
17 my question. How many people did you end up arresting when
18 you moved off to the north of this group of 2 or 3,000?

19 **BRIGADIER CALITZ:** Mr Chairperson, if
20 may continue, the whole group arrested,
21 together with those at hill 3 was 259 and I shall
22 have to go and check on how many were arrested in
23 that area. I cannot recall off the cuff.
24 I was personally involved in the arrests. At one stage,
25 I think we said 20 or 29 on the radio,

1 but I am talking under correction,
2 the people ran away from the Canters and
3 on the photos you can see them being
4 loaded on the different trucks.

5 **MR CHASKALSON SC:** So you ended up
6 arresting, you say you were up a limit of what you estimate
7 was 29, I think, to the north. How many did you end up
8 arresting inside hill 3?

9 **BRIGADIER CALITZ:** No, I said
10 towards the west, not north.
11 North is towards the village -

12 **MR CHASKALSON SC:** I am aware of that but
13 I am questioning you on this sort of group of 2 or 3,000
14 relative to the number of arrests that were made in the
15 different locations. You said there was a total of 295
16 arrests in all, - 259?

17 **BRIGADIER CALITZ:** 259.

18 **MR CHASKALSON SC:** 29 to the north and
19 the rest inside the hill?

20 **BRIGADIER CALITZ:** No, 29 to the west, in
21 that direction and the others towards the hill.
22 I will have to go and find out how many was at the hill,
23 on my arrival they were already there and
24 rest came there with the cantor vehicles.

25 **MR CHASKALSON SC:** So out of the 2 to

1 3,000 people that you saw you ended up arresting only 29?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 it is not to say that if the group is 2,000 – we have to make

4 2,000 arrests. If we disperse the crowd, and they run away,

5 those encircled, disarmed and arrested,

6 that is the figure. I know there were previous

7 evidence, I am not sure, I think it was the TRT under

8 Captain Kidd, or General Annandale, or someone testified

9 that about 500 moved pass them.

10 The previous indicates many people

11 running away from the scene as we

12 followed them.

13 **CHAIRPERSON:** What is the criterion for

14 arresting? I take it a number of the people who were on

15 the hill, even what we can call the non-militant group,

16 either had no weapons at all or just had sticks and so on,

17 is that correct?

18 **BRIGADIER CALITZ:** The non-militant

19 group?

20 **CHAIRPERSON:** Yes.

21 **BRIGADIER CALITZ:** Yes, they were armed

22 with traditional weapons. I cannot say just with that,

23 but –

24 **CHAIRPERSON:** Yes, presumably someone who

25 was just carrying a stick would not have been arrested,

1 would he, unless he did something he should not have done.

2 Is that right?

3 **BRIGADIER CALITZ:** Mr Chairperson,

4 we did not arrest them all,

5 the briefing was that if

6 we could get them

7 to lay down their weapons

8 and retreat, those doing that, would

9 not be arrested.

10 **CHAIRPERSON:** Did that happen, I am sorry

11 to interrupt you, but did that happen? Did anybody put

12 down his weapon in response to an invitation or a request

13 from the police that he should do so?

14 **BRIGADIER CALITZ:** There were

15 a lot of these incidents reported.

16 **CHAIRPERSON:** Yes, some people did that,

17 other people presumably did not have weapons, they only had

18 sticks and so forth.

19 **BRIGADIER CALITZ:** They would not be

20 arrested –

21 **CHAIRPERSON:** And they were not arrested

22 either?

23 **BRIGADIER CALITZ:** No, they were not.

24 **CHAIRPERSON:** So a substantial proportion

25 therefore of the 2,000 were not really candidates for

1 arrests, either because they had voluntarily put down their
2 weapons when requested or because they did not have
3 dangerous weapons to put down in the first place, is that
4 correct?

5 **BRIGADIER CALITZ:** It is correct, Mr
6 Chairperson, but we had to go ahead with
7 the dispersing action to prevent regrouping,
8 and according to me that was successful as they
9 scattered.

10 **MR CHASKALSON SC:** During the seven and a
11 half minute period where the line remained unchanged what
12 was your plan in relation to this group of 2 or 3,000
13 people that were apparently gathering to the north? What
14 were you hoping to do with them?

15 **COMMISSIONER HEMRAJ:** Can we just
16 establish if this group had gathered to the north or were
17 they part of the disperse of people being dispersed, can we
18 ascertain that please first?

19 **MR CHASKALSON SC:** Well, he talked about
20 people gathering under the power lines to the north.

21 **BRIGADIER CALITZ:** Yes, I am not sure
22 about the map, you keep on referring to the north, I said
23 more to the west.

24 **CHAIRPERSON:** You say the north and he
25 says the west.

1 **BRIGADIER CALITZ:** The north is where the
2 village is, the Nkaneng side, according to the map I am not
3 so sure if I am mistaken, I am under correction.

4 **MR CHASKALSON SC:** Maybe we should call
5 up, maybe we should call up that slide again so that we are
6 not at cross purposes.

7 **CHAIRPERSON:** You are at cross purposes
8 at the moment, but let us get clarity for the last time on
9 what the correct compass direction is. 

10 **MR CHASKALSON SC:** Can we have slide, I
11 think it is slide 215. Now, Brigadier, can you mark on
12 this map and maybe this is not the best slide to use, if
13 we, let me –

14 **BRIGADIER CALITZ:** This is fine, I think
15 on this map north is indicated to you on the top right hand
16 corner and that is why I am saying you keep on referring to
17 north, I am saying the sun is coming up to the right of
18 that arrow and that is the east. The south would be the
19 power station where Nyala 1 starts throwing out the barbed
20 wire and the west is towards the bottom left, if we can
21 indicate towards 215. So you keep on saying to the north,
22 we did not move the forces backwards. That means that I
23 must make an about turn all those vehicles and we must
24 drive into the village.

25 **MR CHASKALSON SC:** So where was this

1 group that had gathered?

2 **BRIGADIER CALITZ:** Can you see the white

3 chopper on the left of the screen, Mr Chaskalson?

4 **MR CHASKALSON SC:** I can.

5 **BRIGADIER CALITZ:** To the left of that, I

6 have said there is pylon, when we do the inspection *in loco*

7 you can go and see, there is a line of, what you call a

8 pylon, electricity posts going down from a southerly direction

9 into a westerly direction, and it was here where the

10 people regrouped, the groups

11 closer to the settlement and the groups that

12 stood under the power cables, in a westerly direction,

13 pass hill 3 and to get back to your

14 question, that

15 was why I communicated with

16 Colonel Vermaak to take the water cannons,

17 and to proceed

18 with the dispersing action

19 of the militant group,

20 and I then took

21 2 or 3 Nyalas with

22 me to the bigger group on the right-hand side,

23 here under the cables to disperse them and to make

24 sure they did not regroup. That is what

25 we wanted to prevent, regrouping,

1 to prevent a repeat of the situation.

2 **BRIGADIER CALITZ:** So your plan was to,

3 you understood the people behind hill 2 to be the

4 reformed militant group and you wanted them dispersed with

5 the water cannon and you also would then wanted the

6 apparently non militant people who had gathered further,

7 now we say to the west, sort of north-west I would –

8 **CHAIRPERSON:** Well, he is right, it is

9 more west than east, and if you look at the shadows of the

10 vehicles, the shadows presumably, the sun, it is now nearly

11 four o'clock in the afternoon in August, so the sun is

12 obviously on the western side of the sky and you can see

13 the shadows, as we look at the photograph, the shadows of

14 the vehicles are on the right, so that indicates to us

15 where the west is and that is confirmed by the arrow in the

16 top right hand corner to indicate the position north and

17 whether it is north-west or west is a point we do not have

18 to decide, but he is right in saying it is not north.

19 **BRIGADIER CALITZ:** No, I just wanted to make sure

20 that Mr Chaskalson did not mean we went north into the

21 direction of the settlement, because that is not how we

22 moved, I moved in a westerly direction.

23 **CHAIRPERSON:** Yes, the truth was, there

24 was a misunderstanding between the two of you but I think

25 that is now being sorted out and you were right, it was not

1 north, it was west or perhaps north-west but certainly not
2 north. Now that Mr Chaskalson and you are on the same page
3 and you are using the same compass directions you can now
4 proceed without misunderstanding.

5 **MR CHASKALSON SC:** So you thought that
6 the group up to the west or north-west was not a militant
7 group and could be dispersed with a few Casspirs but the
8 militant group you thought was the group gathered behind
9 hill 2, is that correct?

10 **BRIGADIER CALITZ:** It is
11 correct, the group behind hill 2,
12 is a more close formation group, which
13 we saw as a bigger threat than the
14 group that was -
15 scattered under the pylons, that
16 is why I instructed the water cannons
17 to go to this group, as I
18 saw them setting the field on fire and I did not

19 know in which direction the fire will spread. That is also
20 the reason we waited for the water cannon.

21 **MR CHASKALSON SC:** And did you want to
22 disperse this group behind hill 2 before you moved off to
23 the bigger group to the west?

24 **BRIGADIER CALITZ:** Mr Chairperson,
25 when we moved forward with the vehicles, the whole

1 group ran towards hill 3.

2 **COMMISSIONER HEMRAJ**: The larger group

3 that you talk about have they actually gathered or were

4 they in the process of leaving the scene?

5 **BRIGADIER CALITZ**: Commissioner, they

6 were not in such a tight

7 formation as these, but you could see groups

8 standing around, so it was easier moving in

9 between them with the vehicles. They were not in such a

10 tight formation, if I can call it that way,

11 as this group.

12 **CHAIRPERSON**: Were they standing or

13 moving?

14 **BRIGADIER CALITZ**: They were just

15 standing still, just like this group, maybe to see

16 what is going to happen next.

17 **CHAIRPERSON**: Okay, so these people here

18 that we see on slide 215, Exhibit L, in the vicinity of

19 hill number 2, they were standing.

20 **BRIGADIER CALITZ**: At that stage,

21 they –

22 **CHAIRPERSON**: And the other group you

23 refer to whom we cannot see on the slide but who are to the

24 left of the helicopter, were they moving or were they

25 standing also?

1 **BRIGADIER CALITZ:** No, some of them
2 were also standing still. There were movement behind me at the
3 settlement, they were in a group, but
4 they did not form such a tight group as the militant group,
5 they were more scattered.

6 **CHAIRPERSON:** It has been suggested to me
7 it might be appropriate for us to take a comfort break,
8 either at this stage of when it is convenient for you that
9 we should do so.

10 **MR CHASKALSON SC:** Chairperson, let us
11 take it now.

12 **CHAIRPERSON:** Let us take the comfort
13 break now.

14 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

15 **[12:25] CHAIRPERSON:** The Commission resumes.
16 Brigadier, you are still under oath.

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

18 **CHAIRPERSON:** Mr Chaskalson.

19 **CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):**

20 Brigadier, maybe if we can look at slide 218 of exhibit L,
21 you can explain to me where this group of people were.

22 **CHAIRPERSON:** You mean the larger –

23 **MR CHASKALSON SC:** The 2 to 3000.

24 **CHAIRPERSON:** The larger non-militant
25 group.

1 **MR CHASKALSON SC:** What we see in slide
2 218 is hill 3. There at the foot of the page in the
3 middle of the page are what I would imagine are the two
4 pylons to which you are referring. Is that correct?

5 **BRIGADIER CALITZ:** Yes, I just have to orientate
6 my direction. I see north is toward that side now,
7 so I must just, I do not know from which direction, but yes,
8 the overall power cables will be below, it
9 will basically be on the bottom of the page.

10 I do not know when this photo was
11 taken.

12 **CHAIRPERSON:** According to the note at
13 the top it was taken at 15:55.

14 **BRIGADIER CALITZ:** Yes, it will be,
15 that direction, the
16 "pylons" is now to the northern side, but we now agreed that
17 north is towards the "village", so more
18 North West. I did – yes.

19 **CHAIRPERSON:** Do you want to say
20 something, Brigadier?

21 **BRIGADIER CALITZ:** Commissioner, during
22 the break I just paged through also exhibit, maybe if we
23 can – I do not know if he is finished with this page. Are we
24 – Can I go to another one maybe just to indicate –

25 **CHAIRPERSON:** Yes, tell us what page you

1 want us to look at.

2 **BRIGADIER CALITZ:** 205. I was just

3 paging through exhibit L because the Advocate said there

4 was no footage of any persons of this 2 to 3000. So that

5 is the nearest that I can maybe get –

6 **CHAIRPERSON:** Are we now going to see –

7 **BRIGADIER CALITZ:** - at this stage.

8 **CHAIRPERSON:** - 205?

9 **BRIGADIER CALITZ:** Same exhibit –

10 **CHAIRPERSON:** Now we have 205, yes.

11 **BRIGADIER CALITZ:** Yes, if you see the

12 people, the – well, this is a photographs of what we call

13 now incident, I think 3, but the people moving here

14 downwards, those are those that we referred to, the bigger,

15 the larger group, and they moved. Some of them had moved

16 parallel to the village of those groups as we start moving,

17 and then the rest of these people that you see basically in

18 this photograph ran towards the northwest that we agree

19 upon the direction. So that is basically, what I am –

20 **CHAIRPERSON:** This is a photograph taken

21 according to the note at the top at 15:50. It shows the

22 protesters approaching, third approach, what is described as

23 the protesters' third approach to the police line. It

24 effectively shows them going down on the northern side of

25 the small kraal. That is the tightly packed group, and then

1 lower down on the slide we see people scattered virtually
2 all over the page. Those you say are the people who
3 were not so closely packed in formation.

4 **BRIGADIER CALITZ:** Yes.

5 **CHAIRPERSON:** The non-militant group –

6 **BRIGADIER CALITZ:** The non-militant
7 group, yes.

8 **CHAIRPERSON:** - who were moving, you say,
9 in the direction you have described, and certainly if north
10 is correctly depicted on this slide then the majority of
11 these people would be –

12 **BRIGADIER CALITZ:** In the west –

13 **CHAIRPERSON:** - on the western side.

14 **BRIGADIER CALITZ:** It is correct, Mr
15 Chairperson. It is maybe just the group
16 that moved further away and not toward the
17 Nkaneng “village” – but more in a
18 westerly direction and there was not a settlement

19 in that – that is where we would then

20 continue to “disperse”

21 them.

22 **CHAIRPERSON:** I take it those people

23 would not have been seen as a source of much threat.

24 **BRIGADIER CALITZ:** No.

25 **CHAIRPERSON:** So they were taking

1 themselves off really and although you say at one point
2 some of them were, a number of them were standing, they
3 were stationary, but you would not have seen them as a
4 threat, or certainly not as much of a threat as the more
5 militant group. Is that correct?

6 **BRIGADIER CALITZ:** Mr Chairperson,
7 correct. The problem is that we did not know I the whole
8 militant group was with the group behind hill 2, or of some of
9 them were with the other groups too. The option was to
10 disperse them and break them up in
11 smaller groups, disarm them and
12 arrest them.

13 **MR CHASKALSON SC:** Can we go back to 218,
14 because I just want to get clarity on where you say
15 relative to 218 this group was.

16 **CHAIRPERSON:** 218 of course is a picture
17 of hill 3. We see some pylons. I take it we can see
18 pylons near the top of the picture.

19 **MR CHASKALSON SC:** That is correct,
20 Chairperson.

21 **BRIGADIER CALITZ:** At the bottom there is
22 one, it is at the bottom, Mr Chairperson.

23 **CHAIRPERSON:** And we see some at the top,
24 we see some at the bottom.

25 **BRIGADIER CALITZ:** Yes.

1 **CHAIRPERSON:** So the ones you were

2 talking about, they are the ones at the bottom?

3 **BRIGADIER CALITZ:** At the bottom, yes.

4 More to the west. If you see, where the north arrow is

5 pointing now, I think those group, people grouping there, I

6 think that is maybe those that went into the hill, or

7 some of them might move back towards the pylons. I am not

8 sure – when is your previous photograph taken, the one that

9 you say the nine minutes, that one that showed the

10 grouping?

11 **MR CHASKALSON SC:** Sorry, which grouping

12 are you referring to?

13 **BRIGADIER CALITZ:** When we had the – when

14 I formed the regrouping line, what is the time on that

15 photo –

16 **MR CHASKALSON SC:** 215, but that –

17 **BRIGADIER CALITZ:** I just want to know

18 when the photo was taken.

19 **MR CHASKALSON SC:** The ETV time of that

20 photograph is 16:00:19, 215.

21 **BRIGADIER CALITZ:** Okay,

22 it would mean that this group was still standing, after

23 that photo was taken.

24 **MR CHASKALSON SC:** Yes, the ETV time of

25 this photograph 218 is 15:56:31.

1 **BRIGADIER CALITZ:** Okay.

2 **MR CHASKALSON SC:** So it is –

3 **BRIGADIER CALITZ:** It can mean that

4 I – my conclusion is that this is

5 groups moving more west from the

6 hill and did not go directly to the hill with the

7 militant group. As we “dispersed” then in the field,

8 these groups moved further away. It was before

9 that photo was taken. It is also proof

10 of the people that moved further away.

11 **MR CHASKALSON SC:** Yes, but from your

12 position sort of watching people disperse in the distance

13 in the west, it is not something that is going to prevent you

14 making a cell phone call, is it?

15 **BRIGADIER CALITZ:** I do not

16 understand your question.

17 **MR CHASKALSON SC:** If in the seven and a

18 half minutes when the vehicles did not move, what you were

19 watching was people under the pylons dispersing further

20 west or gathering somewhere that we have never seen, why

21 would that be a particular significance for you?

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

23 do not know, Mr Chaskalson do I not know,

24 what is your experience with Public Order Policing, or

25 if you have been involved in these matters previously.

1 When you disperse groups, there must always be a follow up
2 action. In other words, if you disperse,
3 you cannot leave the group after dispersing of one group.
4 Say for instance they cordon off a road with
5 stones and other obstructions,
6 one cannot say the police will fire 15, 20 rubber shots and
7 leave the people.

8 There must always be a follow up action, it is stated in our
9 "policy" document, I think in paragraph 5.2.8 of
10 our "policy" document, where it clearly states
11 where any "offensive action" is taken,
12 we have to follow up from preventing them from
13 regrouping. I think we previously testified that the group
14 that came during
15 incident 2 at hill 3, moved toward Wonderkop
16 Hostel where they set on fire 3, 4 or 5 vehicles, I may be corrected,
17 and they also lodged an attack against Lonmin.
18 That proves that the small group that got away,
19 still had to intention to continue with
20 offenses.

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

22 of them, I take it. Not all 2000 or 3000.

23 **BRIGADIER CALITZ:** That is why we have
24 to disperse them as far as possible, Mr
25 Chairperson, to assure that those with the intention to commit offences,

1 and keeping their weapons and who "resist," they
2 will be arrested. Those leaving peacefully,
3 in my 20 years' experience we came across it a lot where
4 they leave peacefully and return to their houses,
5 we do not arrest them, as they
6 obeyed with the dispersing.

7 **MR CHASKALSON SC:** So are you saying that
8 keeping an eye on this group of people that you say was 2
9 to 3000 people, but of which we cannot see any photographic
10 evidence, was sufficiently important that in seven and a
11 half minutes you did not have the time to look at your cell
12 phone to make a call to find out why the TRT had not
13 responded to you, to find out from Lieutenant-Colonel
14 Makhubela and Colonel Mere what had happened when the lead
15 group of the strikers had passed you at scene 1 because you
16 were preoccupied with the group, with monitoring the
17 movements of that group somewhere out in the west?

18 **BRIGADIER CALITZ:** Mr Chairperson, I
19 do not know if I have to answer the question again. You
20 asked the same question again, so I –

21 **CHAIRPERSON:** He is trying to sum up your
22 evidence, as I understand it. He wants to know whether
23 he is summing it up correctly. Do you say that the reason
24 that you did not make follow-up cell phone calls and so on
25 during the seven and a half minutes was because you were

1 concentrating on keeping an eye on these people who had
2 gone off to the west and were in a stationary position more
3 or less by the pylons? He says is that what you say.

4 **BRIGADIER CALITZ:** Mr Chairperson,

5 yes, that is what I said, but I also said that there were

6 constant communication between me and the other

7 vehicles. I tried to get them in a line. I

8 communicated with the helicopter. I got feedback from

9 the ground. You talk to the vehicles on your left-hand side and

10 your right-hand side. Those vehicles do not just

11 end up in a straight line by accident.

12 It takes coordinating, and that is what

13 I was busy with,

14 placing the vehicles,

15 and depending on where they were placed,

16 we decided on whom will go in which direction.

17 There were constant communication.

18 Seven minutes in operational time, flies by.

19 It may sound like a lot of time, but during an operation

20 it is not.

21 **MR CHASKALSON SC:** Brigadier, in relation

22 to the movement of vehicles that is not an answer because

23 the line that we see was formed up for that whole seven

24 minutes, with the exception of the two water cannons. The

25 only two vehicles that were not there in that position where

1 we see them now over the entire seven-minute period were
2 the two water cannons.

3 **BRIGADIER CALITZ:** Mr Chairperson,
4 no, I communicated with the commanders to
5 get them in line, and from there with the
6 different vehicles, on who will go where,
7 so communicated with them continuously
8 what the next steps would be.

9 **CHAIRPERSON:** I may be misunderstanding
10 you, or I maybe misunderstand the evidence, but am I
11 correct in thinking the seven and a half minutes you are
12 talking about, Mr Chaskalson, is seven and a half minutes
13 of which we have a sound track available through the
14 helicopter? Is that correct?

15 **MR CHASKALSON SC:** For all but about 15
16 or 20 seconds. I can give you the exact –

17 **CHAIRPERSON:** Alright, let us take the 15
18 seconds out, so we have seven and a half minutes minus 15
19 seconds, so you are really talking about what you say is
20 seven and a quarter minutes of radio silence as far as the
21 sound track – of that is the right word – of the, I think it
22 was the Coin helicopter, is concerned. Do I understand
23 it correctly?

24 **MR CHASKALSON SC:** Chairperson, let my
25 look at my note, because I do not want to put something that

1 is not accurate.

2 **CHAIRPERSON:** This is the longest seven

3 and a half minutes that we have ever had in the Commission,

4 but I understand why.

5 **BRIGADIER CALITZ:** Mr Chairperson,

6 the transcription – I do not know if it will assist –

7 but my conversation with Colonel Vermaak starts at 000 to 01, the

8 first male "Male Voice" faintly says, water cannons go

9 forward, go straight, go towards the hill." That is where

10 the transcription of the video begins where

11 water cannons move towards the hills. I

12 just like to –

13 **CHAIRPERSON:** Okay, and I am grateful, but

14 you see I understood the point to be that there is seven and

15 a quarter minutes of radio silence. If that is correct,

16 that of course contradicts your statement that you were

17 busy doing all these other things during that time, but if

18 of course my basic assumption was wrong then that point

19 falls away and it is important I think before we move away

20 from this point just to get clarity on that point. You

21 referred to the transcript, but Mr Chaskalson is looking at

22 his notes and if he cannot give us the answer immediately,

23 perhaps we shall have to move on to something else and come

24 back to it later if it is necessary.

25 **MR CHASKALSON SC:** No, Chairperson, it is

1 certainly not an issue of seven and a half minutes of radio

2 silence. There is radio communication. Some of it is not

3 audible. Some of it is audible.

4 **CHAIRPERSON:** Sorry, when I said

5 "silence," I meant seven and a half minutes of what we can

6 call "Calitz silence." You say there is dealing with the

7 water cannons. That takes up about a quarter of a minute.

8 Is that right? 15 to 20 seconds, but the remainder of that

9 time, is that what one can call "Calitz silence" on the

10 radio? If you understand what I mean.

11 **MR CHASKALSON SC:** The problem with that

12 period on the radio is that the communications are very

13 muffled, so making them out is difficult. One can make out

14 some of them and one cannot make out all of them. One knows

15 that one can establish that there is radio communication

16 taking place over that period. What is clear over the

17 seven and a half minutes is that the reorganisation line

18 has moved up and does not move from its position from the

19 start of that seven and a half minutes to the end of the

20 seven and a half minutes. So directions about the movement

21 of vehicles in the reorganisation line –

22 **CHAIRPERSON:** Those would be over?

23 **MR CHASKALSON SC:** Those would be over.

24 **CHAIRPERSON:** Alright.

25 **MR CHASKALSON SC:** The only two vehicles

1 that were not in the reorganisation line are the two water

2 cannons which –

3 **CHAIRPERSON:** That is dealt with in the

4 first quarter of a minute.

5 **MR CHASKALSON SC:** No, the Johannesburg

6 water cannon reaches the dispersion, the reorganisation

7 line relatively quickly. The North West water cannon

8 vehicle reaches it only at the end of the seven and a half

9 minutes. It is at the point that the North West water

10 cannon reaches the dispersion line that the operation moves

11 back into action. So for seven and a half minutes what we

12 see is that line formed as we saw it on slide, I think it

13 was 213, with at a certain point the Johannesburg water

14 cannon joining and at a later point the North West water

15 cannon joining. There is one piece of movement from within

16 the line, and maybe that should be canvassed with the

17 Brigadier now because at a point four minutes into the Coin

18 Security chopper we see the Brigadier's Nyala reverse out

19 of the line to a position a little bit behind the line

20 alongside the Johannesburg water cannon. Do you recall

21 that, Brigadier?

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

23 Chairperson.

24 **MR CHASKALSON SC:** And do you remember

25 why you did that?

1 **BRIGADIER CALITZ:** They indicated to us that
2 they had radio problems,
3 Colonel McIntosh had an extra hand radio and I instructed the
4 driver to go to the water cannon, that was
5 close to the rock at hill 2 and Colonel
6 McIntosh jumped out to hand the hand radio to
7 them and you will see somewhere in the
8 "transcript" I informed the chopper that the
9 hand radio of the water cannon is working again, they can
10 now be communicated with again.

11 **MR CHASKALSON SC:** Yes, that is at 5:55
12 into the transcript, 5 minutes and 55 seconds into the Coin
13 Security transcript you say, "Chopper, water cannon has got
14 a radio. You can talk to him now." Were you aware that up
15 until that point the Johannesburg water cannon did not have
16 a radio inside it?

17 **BRIGADIER CALITZ:** No, it was reported
18 to me that they had problems with their radio,
19 that is why I said they had to take a radio to them,
20 not due to the fact that there were no radio. It was not
21 reported to me.

22 **CHAIRPERSON:** Let me ask this question.
23 Someone told you that they had a problem with their radio.
24 So you then asked Lieutenant-Colonel McIntosh to take them
25 his spare radio so that you could communicate with them.

1 Is that correct?

2 **BRIGADIER CALITZ:** Yes, we first drove to

3 them and then –

4 **CHAIRPERSON:** Yes, so you received a

5 report that there is a problem with the water cannon's

6 radio. You then drive near them, McIntosh then leaves your

7 Nyala, goes across to the water cannon, gives them the

8 radio and comes back. Is that right? And you then say you

9 can communicate with them now, they have a radio. Now

10 how long did that whole process take from the time you were

11 told that they had a problem with the radio to the time

12 when McIntosh came back and you said you could now

13 communicate with the water cannon? Because that would

14 account, that period that I have sketched to you would

15 account for some at least of the seven and a quarter

16 minutes that we are talking about.

17 **BRIGADIER CALITZ:** Mr Chairperson, I wish

18 I could be of assistance. I do not know if there is photos or videos,

19 which can shed light on some evidence. I see they indicate,

20 "radio inaudible," but it was reported to us that the

21 water cannon had a problem. I instructed the

22 driver of the Nyala to move toward the water cannon. If we

23 can refer back to the photo where we as a group were standing

24 in a line, we can maybe see when the

25 water cannon reached the hill. I presume there is

1 photos, so maybe –

2 **CHAIRPERSON:** McIntosh has to get

3 out –

4 **BRIGADIER CALITZ:** It will be –

5 **CHAIRPERSON:** Sorry to interrupt you.

6 McIntosh then has to get out.

7 **BRIGADIER CALITZ:** Yes.

8 **CHAIRPERSON:** He has to go across to

9 them, give them the radio.

10 **BRIGADIER CALITZ:** Yes.

11 **CHAIRPERSON:** And then come back.

12 **BRIGADIER CALITZ:** That is right.

13 **CHAIRPERSON:** And all that seconds of

14 time which goes into explaining some at least of the seven

15 and a quarter minutes, so what I am interested in, can we

16 work out – you suggested a way of reaching some kind of

17 approximation, can we work out with a fair degree of

18 accuracy what time was spent in that particular activity

19 that I summarised?

20 **[12:45] BRIGADIER CALITZ:** Mr Chairperson, I

21 cannot tell you right now, but I want to say between seven and

22 seven and a half minutes, but –

23 **CHAIRPERSON:** Yes, but I do not think you

24 can - but let us see how much of it is reasonable.

25 **BRIGADIER CALITZ:** Closer to

1 a minute, the Nyala had to drive to the vehicle,
2 Colonel Macintosh, which was the shortest person,
3 got out, moved to the water cannon, got back into
4 the vehicle and we returned to my position, so
5 it will probably be in the region of a minute.

6 **CHAIRPERSON:** I think –

7 **MR CHASKALSON SC:** Chairperson, I can be
8 of some assistance here, sorry to interrupt.

9 **BRIGADIER CALITZ:** Maybe, yes.

10 **MR CHASKALSON SC:** The Nyala starts
11 moving at about 3:55 on the video. The report starts
12 moving reversing to the water cannon, the report on the
13 arrival of the radio is at 5:55, so this took approximately
14 two minutes from when the Nyala started moving to the point
15 at which it reported on the radio that it had now –

16 **CHAIRPERSON:** And there is little time
17 before that when he got the report that the water cannon's
18 radio was not working and something had to be done about it.

19 So it looks as if we are looking at, is it two and a half
20 minutes at least, explain?

21 **MR CHASKALSON SC:** Possibly, yes.

22 **BRIGADIER CALITZ:** Yes.

23 **CHAIRPERSON:** So we have two and a half
24 minutes for you, Brigadier.

25 **BRIGADIER CALITZ:** Thank you, I –

1 **CHAIRPERSON:** You can find –

2 **BRIGADIER CALITZ:** I will buy it.

3 Thank you Mr Chairperson.

4 **MR CHASKALSON SC:** Well, the main, I mean

5 the main reason for the seven and a half minute delay was

6 that the north-west water cannon could not make its way

7 through to the reorganisation line, it was driving around

8 in circles behind the barbed wire, so that is why the

9 operation was stalled. Would you accept that, Brigadier?

10 **BRIGADIER CALITZ:** Mr Chairperson,

11 no, not at all. I think you have to refer back to the statement

12 of the driver and if you do not have it with you,

13 you will see that they were driving around in circles.

14 He had difficulty in getting out. Bear in mind,

15 the water cannon could see the bodies, it was a

16 crime scene. How many was at the scene 1,

17 I think 16, under correction, and they were all at the kraal,

18 and this is the only road where he could move through. The caution

19 they took were very important,

20 because you can have the

21 problem of stepping the shells into the ground,

22 you can destroy evidence, there is various

23 reasons why he drove in circles,

24 but that was not the problem.

25 It was a 2 x 4 vehicle

1 and it had to move out between the people lying in the field,
2 remember at the back of the kraal there were also people
3 lying, so it was not a question of –

4 **CHAIRPERSON:** Now we know why he took
5 time to get there.

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

8 **CHAIRPERSON:** There was a very good
9 reason.

10 **MR CHASKALSON SC:** Well, Chairperson, we
11 do not know, we have Brigadier Calitz' commentary –

12 **CHAIRPERSON:** Yes, well, –

13 **MR CHASKALSON SC:** – on that, we also
14 have video footage, which shows the driver struggling to
15 find the gap to the west of the kraal and driving around in
16 circles looking for it.

17 **CHAIRPERSON:** Well, driving around in
18 circles is maybe geometrically an accurate description but
19 of course he may not have, the innuendo of driving around
20 in circles, he did not know where he was going, he may well
21 have deliberately gone around in circles, trying to avoid
22 driving over dead bodies because there may be allegations
23 about that in the inquiry otherwise, but anyway we have
24 accounted it for something like probably two and a half
25 minutes, is that right?

1 **BRIGADIER CALITZ:** The water cannon before

2 it reached us –

3 **CHAIRPERSON:** Yes, firstly you have to be

4 told that they do not have a radio, right.

5 **BRIGADIER CALITZ:** Yes.

6 **CHAIRPERSON:** You then have to decide how

7 to deal with the problem. Then you tell your driver to

8 drive towards the water cannon so that they can be given

9 the radio and then these other things happen and then you

10 go back to your original position. So we know that the

11 movement of the Nyala from the beginning of that activity

12 to return to its original position are about two minutes.

13 We got a CD in some time before that when you got the

14 report about the defective radio and that gives us, I would

15 reckon around about two and a half minutes, would you agree

16 with that?

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

18 Chairperson.

19 **CHAIRPERSON:** Alright.

20 **COMMISSIONER HEMRAJ:** Mr Chaskalson,

21 which video is reliance being placed upon to establish that

22 that reformed line of Nyalas was stationary for seven

23 minutes? I have missed it.

24 **MR CHASKALSON SC:** Well, it is a

25 triangulation of several videos, it is the Botha video. It

1 is some of the Botha aerial photos and it is the Coin

2 Security video. It is also the aerial photographs of

3 Captain Nel.

4 **CHAIRPERSON:** It sounds as if we knocked

5 some of your seven and a quarter minutes out of the way and

6 the question is and I think we have taken, we are

7 substantially more than seven and a half minutes on this

8 problem, but to sum up shortly, how do you explain what

9 happened in those seven and a quarter minutes? You have

10 explained now the question of getting the radio. Mr

11 Chaskalson says and if you do not agree with that, well,

12 that is another matter. He says that the line was more or

13 less reorganised before the clock started ticking on those

14 seven and a half minutes. So what else were you doing

15 during that period which would explain the delay?

16 **BRIGADIER CALITZ:** Mr Chairperson,

17 remember, maybe we have to refer back to the original

18 plan. The plan was that we

19 would move through to the "river

20 bend" where we would have regrouped. It was the

21 prerogative of the operational commander to

22 coordinate and observe.

23 I therefore established

24 which vehicles were around me, the

25 Nyalas, the Pappa vehicles. We established

1 that some of the vehicles had TRT members with them,
2 which we had to confirm. We then had to give a
3 briefing to the other vehicles,
4 as everyone could not just move in any direction,
5 they had to get an indication,
6 and we said the two water cannons will go with the
7 armoured vehicle and Colonel Vermaak will then
8 accompany them to where that group were running to.
9 That group moved directly toward hill 3,
10 the rest is in the transcription where Colonel
11 Vermaak saw where the one group
12 moved around to the left took them to the right . That was the
13 armoured vehicles, as the water cannons are not armoured
14 vehicles, but only 2 x 4, therefore they are not able to drive
15 on any terrain. We had to brief the others that
16 we were going in a westerly direction, we saw the
17 people there, they had to proceed with caution,
18 and we communicated with the members still at the kraal. I think it
19 was Nyala 6, the wire vehicle that moved out. You will recall
20 there were a body lying further away. At one stage
21 they reported to me, and we had to secure the area,
22 as it was close to the public,
23 so we had to send vehicles there and also
24 in a westerly direction where the larger group were present,
25 we then told them where to move,

1 we are proceeding with the dispersing and
2 I think you can see in the transcript, that
3 is what I said.
4 I think after about six minutes, when
5 we started with the dispersing, and it was also, where I was
6 miss-quoted in the media, where I said, "not
7 necessary to shoot unless a target" I meant,
8 the Nyalas that followed up,
9 those Nyalas could not just shoot at the
10 people running away, as it was useless,
11 just once we got out and there were an confrontation and
12 attack they can disperse by means of
13 rubber bullets. The communication had to be
14 conveyed to all the members before we proceeded, to assure
15 that the operation is a success at the
16 end of the day, and according to me the
17 dispersing was successful, arrests were made
18 and weapons were confiscated,
19 so yes, that was the whole
20 discussion around this matter.

21 **MR CHASKALSON SC:** Brigadier, you
22 mentioned a body that was found in a far out position or a
23 further away position and that presumably was one of the
24 victims at scene 1.

25 **BRIGADIER CALITZ:** No, we just said

1 that a vehicle informed us of bodies lying in that
2 area, I believe it was someone that was
3 at scene 1.

4 **CHAIRPERSON:** I think that is what Mr
5 Chaskalson put to you, that was one of the people from
6 scene 1, I think that is right, Mr Chaskalson?

7 **MR CHASKALSON SC:** Yes, but your noun was
8 injured, your noun was body. You were told about a
9 body in, I forget what your adjective was, but it was
10 something along the lines of a far flung position, a
11 position further away.

12 **BRIGADIER CALITZ:** It is correct, it was
13 also what Colonel Vermaak reported to me,
14 it was bodies lying there.

15 **MR CHASKALSON SC:** No, Colonel –

16 **CHAIRPERSON:** But there was one other,
17 there was one body specifically which was some distance
18 away from the other bodies at scene 1, is not that correct?

19 **BRIGADIER CALITZ:** It is correct.

20 **CHAIRPERSON:** Is this the body you are
21 talking about?

22 **BRIGADIER CALITZ:** That is where I
23 saw Nyala 6, which was a wire vehicle,
24 with injured people behind it,
25 and it was very close to the Nkaneng

1 settlement.

2 **MR CHASKALSON SC:** But you referred to a
3 body, not to a range of people who were injured, you said a
4 body. What did you understand by that?

5 **BRIGADIER CALITZ:** It was the same
6 report I got from Colonel Vermaak, which
7 the others also reported to me.

8 **MR CHASKALSON SC:** So it would either be
9 someone lying on the ground to be arrested or it would be
10 someone who was injured?

11 **BRIGADIER CALITZ:** By the dispersion
12 group, the rubber, yes.

13 **MR CHASKALSON SC:** Now it could not have
14 been someone who was lying on the ground waiting to be
15 arrested because that would not have posed a problem at that
16 stage, they had just been arrested, do you accept that?

17 **BRIGADIER CALITZ:** Mr Chairperson, I
18 can only testify to what was reported to
19 me at that stage.

20 **MR CHASKALSON SC:** And what instruction
21 did you give in response to this communication about a body
22 a distance away from scene 1?

23 **BRIGADIER CALITZ:** No, I do not think the
24 conversation was around the body, but about the
25 commanders and where to place the vehicles.

1 I said we looked back and saw Nyala 6
2 standing at the back,
3 and that there were also a grouping,
4 which we discussed and I told Mr Chairperson
5 that is where we saw the body later on.
6 It is all about the positioning of the
7 vehicles and where they have to move to and that
8 we would move forward from the regrouping line.

9 **MR CHASKALSON SC:** I would like to listen
10 to the tape of what you said in that regard because that
11 was not my recollection of it but I may be incorrect. I shall
12 do that over the lunch break and maybe we can come back to
13 this after lunch.

14 **CHAIRPERSON:** Should we take the lunch
15 break?

16 **MR CHASKALSON SC:** Can we, Chairperson,
17 thank you.

18 **CHAIRPERSON:** Very well, we shall take the
19 lunch break until quarter to two as I have explained.

20 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

21 **[14:17] CHAIRPERSON:** The commission resumes. I
22 did indicate before we adjourned for lunch that there was
23 some housekeeping matters which we would keep us, I thought
24 for a quarter of an hour, I am afraid as so often is the
25 case my estimate of time was wrong. I apologise to those

1 who came here at quarter to 2 and waited in vain.
2 Brigadier, I am going to remind you in a moment that you are
3 still under oath but I want to say something that arises
4 from our housekeeping discussion and that is I am not sure
5 at this stage whether any of the parties wishes to call
6 evidence from any witness in respect of whom a statement
7 has not yet been provided. If that is the case, I can
8 understand of course that it may be that points may arise
9 later in respect of which it will be possible for and more
10 desirable for a party to lead rebutting evidence. But
11 absent that something which is not foreseeable, absent that
12 if there are witnesses whom any of the parties are
13 proposing to call in respect of whom statements have not
14 yet been provided I want to say that the time has come for
15 me to say that those statements must be made available to
16 us within the next two weeks otherwise we will not be able to
17 receive that evidence. That is obviously subject to the
18 fact that there may be an unforeseeable factor, which arises
19 and rebutting evidence is desirable but we are as you know
20 under severe time constraints and it is very important that
21 we should be able to plan our work very precisely for the
22 time that is available to us and knowledge of which
23 witnesses are still to be called, what they will say and
24 whether in fact it will be necessary for them to give oral
25 evidence or whether if they do give oral evidence the

1 evidence be confined to certain issues, that information is
2 necessary for us. So by the end of next week I would
3 expect any statements that are going to be produced to be
4 produced and the consequences of not producing them by then
5 I have made clear. Brigadier, you are still under oath.

6 **BRIGADIER CALITZ:** Thank you.

7 **CHAIRPERSON:** Mr Chaskalson?

8 **MR MPOFU:** Chairperson, I am sorry for
9 clarification on the consequences part. Are you saying
10 that the door will be closed or that there will have to be
11 applications, what are the consequences?

12 **CHAIRPERSON:** The application, you might
13 come along and say look we did not, we intended calling
14 witnesses A, B, C and here is their statements. We did not
15 realise that an issue would arise which has now arisen in
16 respect of which witness D can give direct evidence of a
17 rebutting nature or an explanatory nature. We cannot be
18 prevented from presenting this evidence because we did not
19 realise that the problem would arise until now. So you can
20 apply because you know the attitude up to now has always
21 been a flexible one because we realised we have only one
22 purpose in this commission and that is to find the truth and
23 you do not find the truth by having technical rules and
24 being inflexible. On the other hand, an element of realism
25 and practicality is also relevant and I am sure all the

1 parties here present will agree with that approach.

2 **MR MPOFU**: Thank you, Chairperson, yes.

3 **CHAIRPERSON**: Of course and there is a

4 further point that Commissioner Hemraj reminds me of and

5 that is the latter the affidavit comes of course the

6 greater the risk that there will be issues which really

7 require to be interrogated which will not be able to be

8 interrogated or not be able to be interrogated properly and

9 that includes, I am not only referring to oral evidence,

10 there are a mass of statements, which have to be worked

11 through which may well contain information which will

12 assist us even though the deponents of the statements will not

13 necessarily have to give oral evidence and of course

14 there is also issues which may well be able to be solved by

15 a careful study of the video material or the photographic

16 material but, unless one knows what to look for you will not

17 realise the answer to the issue because it will not be an

18 issue until perhaps at that stage that the answer to the

19 issue may be found on a video clip. So I am sure you will

20 agree with that.

21 **MR MPOFU**: Thanks, Chairperson.

22 **CHAIRPERSON**: Mr Chaskalson?

23 **MR BIZOS SC**: Mr Chairman, the question –

24 **CHAIRPERSON**: Sorry.

25 **MR BIZOS SC**: The question of the calling

1 of the forensic experts that has not been resolved because
2 it was suggested that there might be admissions in relation
3 to it. I do not know whether the state or the other parties
4 have made up their minds as to what is going to happen.

5 **CHAIRPERSON:** Have the forensic experts
6 yet had a conference? By forensic you are referring to the
7 –

8 **MR BIZOS SC:** We have not been invited to
9 any conference, I do not know that we should have taken the
10 initiative.

11 **CHAIRPERSON:** I did not ask the question
12 in the critical sense. May I suggest, this is a matter
13 which could be discussed outside the chamber with the
14 evidence leaders and the other parties, particularly the
15 representatives of the police. It may well be that if a
16 meeting is arranged between the various pathologists they
17 may well be able to reach a substantial degree or perhaps
18 total unanimity, if they cannot substantially agree

19 unanimity and if oral evidence is required can be really
20 confined focused issues. But I suggest you raise that with
21 Mr Chaskalson and he will then take it further with the
22 others. But certainly an issue that we have to bear in
23 mind. We understand that Mr Wesley has been involved in
24 correspondence with pathologists, is that correct, Mr
25 Wesley?

1 **MR WESLEY:** Chairperson, yes, the position as
2 at it presently stands is that we have, we have the state
3 pathology reports, which are, exhibit A, the private
4 pathologists from the Legal Resources Centre have submitted
5 pathology reports as well of their own. We have now then
6 received follow-up reports if I can use the loose term,
7 from the state pathologists. At this stage we have
8 identified where these differences are and the next step is
9 in fact to have a conference where we can have the parties,
10 the pathologists together where they can either sort out
11 their issues or agree to disagree as it were. So the
12 matter is at hand.

13 **CHAIRPERSON:** Thank you, Mr Wesley. The
14 problem obviously was that Mr Bizos who had tried be
15 involved in that he was not aware of that. But anyway
16 perhaps you and he can discuss the matter afterwards, after
17 we have adjourned.

18 **MR WESLEY:** We shall do so, Chairperson.

19 **CHAIRPERSON:** It is important that he
20 and his, and those instructing him and his clients be in
21 the loop on the whole issue and of course I also hope it
22 will be possible for the public order policing experts to
23 be in communications as well to see whether they cannot
24 narrow the area of dispute, but that is something also that
25 we do not have to discuss here in the chamber now. Mr

1 Chaskalson, are you now ready after that –

2 **MS LE ROUX:** Chairperson, could I just ask one

3 –

4 **CHAIRPERSON:** Oh sorry, Ms Le Roux, I

5 beg your pardon.

6 **MS LE ROUX:** A further point of

7 clarification. Does the two week deadline apply to the

8 statements that the SAPS have said they are in the process

9 of preparing even though some of those people may not be

10 called?

11 **CHAIRPERSON:** They have been told that

12 that applies to them as well. I understand you might well

13 wish or some parties may, I do not want to extend things

14 unnecessarily but again I do not want to be unfair, it may

15 well be that on the last day for filing a statement SAPS

16 for example, and I merely put that as an example, that is

17 not intended necessarily to be correct, may produce a

18 statement, which may then provoke one of the other parties

19 to then say well we had like to answer that statement to deal

20 with it and obviously that will be dealt with in a flexible

21 way but I would like the end of next week really to be the

22 time by which we know which witnesses are going to be

23 called and what they are going to say. But subject to the

24 sort of furry edges which one will have to face as well.

25 Yes, Mr Mpofu?

1 **MR MPOFU:** Chairperson, I do not want to

2 be difficult.

3 **CHAIRPERSON:** Why are you being

4 difficult?

5 **MR MPOFU:** Or anticipate problems which

6 may not arise. But from our side I can certainly say that

7 the two weeks will not be sufficient. But maybe let us

8 cross that bridge next Friday if we want more time because

9 I am anticipating having to convene meetings, which would

10 only happen the weekend after. At the same time I also

11 might have to have certain consultations with SAPS. Then

12 example is the simple, I shall just make an example with some

13 of the evidence that was given now, that people were

14 arrested had arms on them. I know a specific witness who

15 is depicted on the video having been arrested with his

16 hands up and so on, that is a small thing which between

17 myself and Mr Semenya, we can just watch the video and get

18 an admission. On the other hand there might be bigger

19 controversies, which might not be, resolved that easily. But

20 maybe let us leave that until next Friday.

21 **CHAIRPERSON:** It sounds as if the date

22 I have fixed is not going to work but anyway, well if you

23 do not have your statements ready by next Friday you may

24 have to explain to me why that was so and I will deal with

25 the matter as I consider it appropriate then. Very well, I

1 think we have now disposed of housekeeping both in chambers
2 and in the chamber and, Mr Chaskalson, would you care to
3 continue with your cross-examination?

4 **MR CHASKALSON SC:** Thank you,
5 Chairperson. Brigadier, we broke early for me to listen to
6 the tape and I have taken a verbatim note of what your
7 testimony was on the tape. I had like to read it out and
8 then, so that everyone can hear it. Maybe the
9 Commissioner, can translate as I go along, the Chairperson.

10 **CHAIRPERSON:** You can interpret.

11 **MR CHASKALSON SC:** I can try to
12 interpret, if any one wants to correct my interpretation
13 please do and then I will raise individual passages with
14 you and where I would like to ask a question or two. The
15 passage that I transcribed starts as follows. "We have
16 have communicate with the people at the back where the
17 settlement was. We had to and if I translate that, we had
18 to communicate with the people at the back who were at the
19 scene," scene 1 I take that to be. Then you said, "I think it
20 was Nyala 6
21 barbed wire Nyala which moved out. You will recall
22 there were a body,
23 which laid further away.
24 At a point
25 they reported this to me."

1 **CHAIRPERSON:** Stage.

2 **MR CHASKALSON SC:** "At a stage they

3 reported this to me, they reported back to me. That person

4 had to make sure that they were safe

5 to the public, now I was trying to

6 catch your words I think that, I played it again and again

7 and again and I think this is what you said, "that

8 person had to make the are safe for the

9 public. So that person must, was around for

10 their protection, sorry, protection for the public,

11 there were many of the public, sorry the public was very

12 near to it, the public was near the scene."

13 **CHAIRPERSON:** Close to it, I suppose.

14 **MR CHASKALSON SC:** "Close to it. They had

15 to send

16 vehicles there.

17 Now that as –

18 **CHAIRPERSON:** Is that as you remember

19 what you said? Are you happy with the translation?

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

21 take his word for it. We will have to look at the

22 transcript tomorrow,

23 I can only comment on

24 his words.

25 **MR CHASKALSON SC:** So to start with, you

1 said we had to communicate with the people at the back near the
2 settlement. You had to communicate with people
3 back at the scene.

4 **CHAIRPERSON:** It is the
5 settlement, it is not the scene.

6 The settlement, I take it
7 it is Nkaneng, if he used the word settlement.

8 **MR CHASKALSON SC:** It was
9 settlement. So at the settlement did you in fact
10 communicate with your members who were near Nkaneng at
11 scene 1?

12 **BRIGADIER CALITZ:** Mr Chairperson, yes
13 I tried to explain that we
14 communicated with our commanders.

15 It is all about the grouping of the people near
16 the settlement and therefore we made a point
17 of it to communicate with the commanders
18 and the next point,

19 the grouping at the settlement,
20 it was one of the tasks I gave to the vehicles, to move
21 in, and back in that
22 direction and to disperse of the people
23 there.

24 **MR CHASKALSON SC:** Now everyone who was
25 still at scene 1 and who was close to Nkaneng would have

1 known about the dead and the wounded, do you accept that?

2 **BRIGADIER CALITZ:** I presume the people,

3 especially the TRT had to know about the

4 injured people, I do not know

5 if they were aware of the dead people

6 at that stage.

7 **MR CHASKALSON SC:** Do you recall who you

8 communicated with in relation to the people at the back,

9 people behind?

10 **BRIGADIER CALITZ:** No, I cannot recall,

11 it was one of the commanding vehicles in my

12 line, I said we will have to go back and

13 look at the group that was being

14 formed.

15 **MR CHASKALSON SC:** Sorry so you say that

16 a vehicle in the reorganisation line moved back to look at

17 the people who were forming up near the settlement?

18 **BRIGADIER CALITZ:** The task was

19 to group

20 and to move on, and the vehicles had to give

21 attention to that.

22 **MR CHASKALSON SC:** I just need to clarify

23 this because I am not sure I understand you correctly.

24 Was the communication with people who were in your

25 reorganisation line already or with people who were back at

1 scene 1?

2 **BRIGADIER CALITZ:** No, it will be my

3 Pappa vehicles that were with me in the front.

4 **MR CHASKALSON SC:** And did, are you

5 suggesting that one of those vehicles then undertook to

6 move back to the area near the settlement?

7 **BRIGADIER CALITZ:** I will have to

8 go and look if there is a photo and who the photographer is,

9 I cannot recall right now who

10 moved there and what happened. I went in an

11 western direction.

12 **MR CHASKALSON SC:** Now my, again we are

13 possibly not on the same page. You said you had to

14 communicate with the people at the back.

15 Okay those were your words, the people at the back, "we had to

16 communicate with the back that were near the

17 settlement." Now who were those people with whom you had to

18 communicate?

19 **BRIGADIER CALITZ:** That is what I

20 referred to earlier on. The same applies to the TRT,

21 why were they still there,

22 I think you asked me what happened

23 during those seven minutes. That is the

24 different people we tried to contact

25 to establish what was going on. I never said

1 there were feedback from the TRT or -

2 **MR CHASKALSON SC:** Well who other then

3 the TRT did you communicate with back at the scene?

4 **BRIGADIER CALITZ:** I called in the Pappa

5 Nyalas commanders and requested their whereabouts,

6 the members also gave me their call signs and we then

7 established which vehicles were where.

8 At that stage I came to realise that Colonel Mere

9 and Colonel Makhubela was at the back with the TRT group.

10 **MR CHASKALSON SC:** But you did not speak

11 to Colonel Mere or Colonel Makhubela?

12 **BRIGADIER CALITZ:** There were no

13 communication from their side, during my

14 communication, no.

15 **MR CHASKALSON SC:** Did you try to

16 communicate with them?

17 **BRIGADIER CALITZ:** That is what I -

18 **CHAIRPERSON:** When he says he

19 communicated with them, he means he sent a communication to

20 them as it were but he says he did not hear a response. So

21 in the sense of communication there was not communication

22 but there was an attempt by him to communicate with them,

23 he, did you speak to them?

24 **BRIGADIER CALITZ:** Commissioner, maybe -

25 **CHAIRPERSON:** How did it work, explain to

1 us.

2 **BRIGADIER CALITZ:** Maybe I need to sketch an operational

3 picture. If you put yourself where I was,

4 and you look around, you will see there is various places where the people

5 were gathering. What I referred to here is

6 the group of people at the back of the settlement,

7 and the fact that I wanted communication with them on why

8 they formed a group there. Therefore I

9 instructed the Pappa vehicle to say, when we go and

10 disperse, one vehicle must give attention to them

11 so that we can be sure of which group are where,

12 because I could see a concentration of vehicles,

13 that is why I said I think it is Nyala 6 on the photos,

14 I do not know where, but I think

15 I saw it on one of the photos and that is why

16 I looked at the chairperson and said that is where we found the body.

17 Maybe if I can "clarify" it

18 like that.

19 **[14:36] CHAIRPERSON:** They did not respond. Is

20 that right? Do you –

21 **BRIGADIER CALITZ:** There were no –

22 **CHAIRPERSON:** I take it they must have

23 got, they had to have heard you, but they did not reply and

24 presumably they went off where you asked them to go, but

25 you never got "feedback," you never got report back from

1 them as to what happened –

2 **BRIGADIER CALITZ:** It is correct, yes. I never
3 made any contact with the vehicle at the back then.

4 **MR CHASKALSON SC:** But Brigadier, that
5 is not what your evidence was earlier, because you said “I
6 think it was Nyala 6, the wire vehicle, which moved out. You will
7 recall there was a body lying a little further. At one stage
8 they reported it to me.” So somebody
9 did report to you that there was a body lying further away.

10 **BRIGADIER CALITZ:** It was the inured,
11 or the “bodies down,” which
12 Colonel Vermaak reported to me. I cannot
13 recall if it was Colonel Vermaak that said it to me,
14 but it was later said that there were people
15 gathering in that direction.

16 **MR CHASKALSON SC:** Brigadier, remember
17 where this line of questioning started. You were
18 explaining what you were doing in the seven and a half
19 minutes while the line, the reorganisation line at hill 2
20 did not move and you said, “At one stage they
21 reported it to me.” So in that context I understood that you
22 were saying in that seven and a half minutes somebody
23 reported back to me that there was a body that lay further
24 away. Have I misunderstood you?

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

1 do not how to explain it better than I did just now.

2 I can only say what was

3 reported to me. I do not know how –

4 **CHAIRPERSON:** What was reported to you?

5 So what was reported to you?

6 **BRIGADIER CALITZ:** Mr Chairperson,

7 it is difficult. I cannot recollect those

8 seven minutes minute by minute.

9 There were communication with the commander,

10 and they reported to me that there were people on the western side,

11 at the back of Nkaneng. There were also

12 injured people. That was the conversations communicated on the

13 radio. That is where I tasked

14 the vehicles to move in a

15 westerly direction and one vehicle have to move past me

16 to the back; two armoured vehicles have to move with the

17 water cannons; Colonel Vermaak, had to take

18 command and that was the crux of the conversation.

19 **MR CHASKALSON SC:** So somebody reported

20 to you that there were people who had been injured.

21 **MR SEMENYA SC:** Chairperson, maybe if I may –

22 the evidence which Mr Chaskalson is referring to, if I

23 recall it, the witness is describing where those people

24 were behind him and then says that is where the body was

25 later found, not that the report, that is where it was

1 reported a body was found.

2 **CHAIRPERSON:** Mr Semanya, I think you are

3 right. In other words he is giving parenthetically, as it

4 were, he is giving extra information about the position at

5 the back, but the bit in parenthesis is not what he was told

6 at the time, it is what he was told later, but he's

7 mentioning it to describe perhaps more precisely the area

8 that is being talked about. Is that correct?

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

10 u –

11 **CHAIRPERSON:** Have I got it right?

12 **BRIGADIER CALITZ:** If you look at the words,

13 "You will recall," I looked at you and said "You will recall

14 that, that 'body' was there." That occurred in

15 "hindsight," yes, because you were also not at the

16 scene, so I agree with you.

17 **MR CHASKALSON SC:** No, but Brigadier,

18 when I asked you before the break, before we had actually

19 looked at verbatim what you had said that somebody reported

20 to you that there was a body lying further away, your

21 response to that was not any, no, they did not report that to

22 me, that is something that I learned with hindsight much

23 later. Your answer was yes, those were the words they

24 used, body, and I understood that to mean someone who was

25 lying down or injured. That was the tenor of what you

1 answered to me.

2 **BRIGADIER CALITZ:** Maybe we rectified
3 the matter, if there was a misunderstanding.

4 **MR CHASKALSON SC:** Well, I am not sure
5 that we have put it right now. I think we may be trying to
6 clear up what was an error the previous time in disclosing
7 what had actually happened.

8 **BRIGADIER CALITZ:** No, I do not
9 agree, Mr Chairperson.

10 **MR CHASKALSON SC:** Well, the record will
11 speak for itself in this regard, but are you saying now
12 that nobody from the scene spoke to you in those seven and
13 a half minutes?

14 **BRIGADIER CALITZ:** I communicated with
15 the Pappa vehicles that were in front with me and came
16 from the back, from the side of the TRT. There were no
17 communication in front regarding what occurred there.
18 That information only came under my attention at a later stage.

19 **MR CHASKALSON SC:** Yes, but it was not
20 just the TRT who had stayed behind. There were Pappa
21 vehicles that had stayed behind as well. Are you saying
22 that none of those spoke to you during the seven and a half
23 minutes?

24 **BRIGADIER CALITZ:** It is correct.

25 **MR CHASKALSON SC:** I want to put to you

1 that the record suggests something other than that in
2 relation to your answers earlier, but I will not take that
3 further now.

4 **BRIGADIER CALITZ:** Mr Chairperson, again

5 if you misunderstood,

6 the way I testify now,

7 it is the correct way.

8 If I see the "transcript" tomorrow, I shall

9 look for my exact words, but that is my

10 evidence now.

11 **MR CHASKALSON SC:** If we can now turn to

12 your movements after the reorganisation line breaks up,

13 I have put to you earlier that the reorganisation line stayed

14 broadly in a stationary and unchanging position for seven

15 and a half minutes until the North West water cannon joined

16 the line. We can see from the Protea Coin video that the

17 North West water cannon finally sprayed the crowd. It

18 did not actually stop at the reorganisation line; it went

19 straight through the reorganisation and sprayed the crowd

20 when it reached the crowd. That was at ETV time 16:04:18 –

21 16:04:18, and just to contextualise it, it was 10 minutes

22 after, more than 10 minutes after the shootings at scene 1,

23 more than eight minutes after you'd formed up the

24 reorganisation line.

25 Now like I say, I want to canvass with you your

1 movements after the North West water cannon broke up that
2 line, and you have dealt with them in your statement, JJJ107,
3 from pages 24 to 26, paragraphs 120 to 130. Now can you go
4 to those pages, 24 to 26, and maybe if we can call them up
5 so that people inside the room can see them too. Now when
6 I read the statement it reads to me like a sequential
7 narrative, by which I mean a description of events in the
8 order that they happened. Can you read paragraphs 120 to
9 130 and tell me whether to the best of your knowledge and
10 recall there are any events that are described in those
11 paragraphs that are out of sequence in the statement, that
12 did not happen in the order that they are described, or is
13 that sequential narrative correct?

14 **BRIGADIER CALITZ:** Mr Chairperson,
15 no, I will not be able to testify regarding the
16 timeline here. It is a statement and it is
17 how the information was presented,
18 after the statement things were mentioned under "miscellaneous"
19 and so forth. I therefore do not think it was done
20 on a specific timeline, but I can read it and
21 describe to you what I meant.

22 **MR CHASKALSON SC:** Well, I am interested
23 in chronology really, so is there – I mean maybe we shall get
24 there on the same basis if you read and tell me what you
25 had in mind, but my first question is – and it is not, I

1 mean it is less than two pages – is there anything in there

2 that strikes you as being out of sequence? Because I am

3 trying to understand –

4 **BRIGADIER CALITZ:** No, let us –

5 **MR CHASKALSON SC:** - what triggered your

6 movements and why you moved when you did at a particular

7 time.

8 **BRIGADIER CALITZ:** I think we have

9 to go through the paragraphs as you requested. If we read, "As

10 we moved, Lieutenant-Colonel Vermaak was directing the

11 water cannons towards what we know now as hill 3 where

12 the strikers were regrouping. The voice of Colonel Vermaak

13 and the instructions that he and I were given is captured

14 on the recordings and was played in the Commission

15 hearings." That refers to Colonel Vermaak talking with

16 the water cannons. "There was still a large" –

17 **MR CHASKALSON SC:** Well Brigadier, maybe

18 if we can do it this way; let me put to you what I had just

19 like clarified, which may speed it up. If we start with

20 120 to 124, what I see there is that after the dispersion

21 some strikers regrouped to hill 3 and some moved off to

22 the north. Were you aware of that at the time that there

23 were some who had regrouped in hill 3 and some were –

24 sorry, you say to the north; we have now clarified that we

25 think that what you mean is west.

1 **BRIGADIER CALITZ:** No, I think when the

2 Commission started there were some rectifications made to

3 my statement and that was one of them.

4 **MR CHASKALSON SC:** Okay.

5 **BRIGADIER CALITZ:** It was to the

6 northwest, if the notes were taken.

7 **MR CHASKALSON SC:** Okay, so it is the

8 northwest.

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

10 Chairperson.

11 **MR CHASKALSON SC:** At the time were you

12 aware that some of the strikers had regrouped inside hill

13 3 and others had moved off to the northwest?

14 **BRIGADIER CALITZ:** I saw the

15 group on my left-hand side. It is the next

16 paragraph, "There was still a large group of strikers on

17 the northwest" – that is what I referred to, the 2 to

18 3000 standing under the cables as well as at the back,

19 close to the settlement - "where we were positioned. I instructed the

20 Nyala to move in that direction." To get back to you

21 earlier question, if we talk about "sequence,"

22 Colonel Vermaak took charge shortly after I instructed the Nyalas.

23 Already there is no "sequence",

24 That is why I said the statement was not done in

25 "sequence" – "Some of the Nyalas

1 accompanied the water cannons" – again I refer to
2 Colonel Vermaak – "and that were under the command of
3 the instruction of Colonel Vermaak," 121 refers back to
4 120, which I already referred to as when he instructed the
5 the water cannons and then the Nyalas, "About three of the Nyalas" -
6 I say "about," as I am not sure - "which I was moved to
7 the north-westerly direction" – that was also corrected –
8 "where several arrests were affected." That is the people
9 that I saw under the cables and which
10 were further dispersed of. "Warrant-Officer Nong
11 came in," there I just describe on how the photos was taken and
12 how the people were loaded into the Nyalas and then in
13 paragraph 127 –
14 **MR CHASKALSON SC:** Can I just stop you as
15 you are going through, Brigadier, because I want to raise my
16 concerns with you as we do that. In your evidence-in-chief
17 you touch on the arrests that were made. That is page
18 17348, and if I can just read what you said, "Various
19 arrests were made as we moved further up
20 into the field, by my group – I think, I am talking
21 under corrections – something like 20, 29 arrests. I think
22 I mentioned six arrests on the radio at one stage.
23 That is where we got out, arrested the people and
24 waited for the Canter vehicles and riot trucks to come
25 and to load them into the vehicles,

1 as we moved through the field various arrests
2 were made as people laid down their weapons and
3 lay on the ground." I have got a couple of questions
4 about that. You say, "It is where we got out
5 ourselves." Did you yourself get out of the Nyala to make
6 arrests or to observe them, or was it only other members of
7 the SAPS who left the Nyala?

8 **BRIGADIER CALITZ:** No, at that
9 stage all the Nyalas were together. The members got
10 out; I, myself got out of the Nyala
11 at one stage to have a proper look at what was happening. The
12 members yelled at the people to lay down their weapons. Some of them
13 through down their weapons and ran away. Some of them
14 just lay down with their weapons next to them,
15 until we arrested them.

16 **MR CHASKALSON SC:** And how long were you
17 out of the Nyala?

18 **BRIGADIER CALITZ:** No, I cannot
19 recall, it is –

20 **MR CHASKALSON SC:** An estimate. Couple
21 of minutes? 15 seconds? 10 minutes?

22 **BRIGADIER CALITZ:** No, I cannot recall.

23 If you tell me what time we left

24 hill 2, and I arrived at hill 3

25 at 16:55, in the period between that I was in and out,

1 to see what was happening. Most of the time,
2 if I should say – it was seconds. I was physically
3 standing in the door and closed it again. Remember,
4 at that stage we were not aware of who
5 the people were and if they still had the
6 weapons in their possession. The members had to move
7 in tactical formation behind the vehicles.

8 **MR CHASKALSON SC:** So you are saying you –
9 I still do not understand that just in terms of time and
10 occasions. You were just in and out of the door, but I
11 mean how many times were you in and out of the door? About
12 how much time were you out of the Nyala?

13 **BRIGADIER CALITZ:** Mr Chaskalson, I cannot
14 recall. It was an operational area,
15 I did not keep record of how many times I got out of
16 the vehicle and what I –
17 **MR CHASKALSON SC:** No, but it is an

18 important question because it goes to what you could and
19 could not see, and that is relevant to your testimony here
20 today. So in broad terms, was most of your time spent
21 inside the Nyala or was it roughly evenly split inside and
22 outside the Nyala while the Nyala was stationary?

23 **BRIGADIER CALITZ:** No, I will say 95, 98%
24 inside the Nyala, if I must make an estimate, because when
25 your members are jumping out and they are chasing after

1 suspects, you just peek out, see what is happening, they are
2 busy arresting, then I shout to them "Just keep under
3 cover; just keep under cover." We then made contact with the
4 chopper and requested the Canters to
5 come closer.

6 **MR CHASKALSON SC:** But there was a period
7 that we can see from the photographs that things were
8 fairly relaxed at that scene, a fairly lengthy period where
9 you had arrested strikers lying on the ground and being
10 moved towards the Canters and photographed by Warrant-
11 Officer Nong where there seemed to be very little apparent
12 threat to you. Were you still in the Nyala during that
13 period?

14 **BRIGADIER CALITZ:** It is correct, yes. I would
15 like to recall what you mean by "relaxed"
16 circumstances as it was all but "relaxed"
17 circumstances on the day.

18 **MR CHASKALSON SC:** Well, "relaxed" is
19 possibly the wrong word; where there did not seem to be much
20 threat to you. Maybe we can show some of the photographs
21 to –

22 **BRIGADIER CALITZ:** But again you said –
23 you said
24 "relaxed" and now you want to change your words. Maybe we
25 should not concentrate on what is said, but what we mean.

1 **MR CHASKALSON SC:** You are the witness,

2 Brigadier, not me.

3 **BRIGADIER CALITZ:** With all due

4 respect, Mr Chairperson. You just did it with me about

5 10 minutes ago.

6 **CHAIRPERSON:** Both of you are using

7 language –

8 **BRIGADIER CALITZ:** That is why I –

9 **CHAIRPERSON:** - as a means of

10 communicating information and language is a very imperfect

11 way of communicating information, but it is the main way we

12 have. So we have to do our best, but I am trying to think

13 of what he was saying and I suppose he meant, he did not

14 mean “relaxed” but he meant not “tense,” if you know

15 what I mean.

16 **BRIGADIER CALITZ:** I will answer the

17 questions with the greatest respect, Mr Chairperson.

18 **MR CHASKALSON SC:** Well, let us see some

19 of these pictures. Can we go to Colonel Botha’s photograph

20 5134? 5134.

21 **CHAIRPERSON:** Is this an exhibit?

22 **MR CHASKALSON SC:** It is already an

23 exhibit. It –

24 **CHAIRPERSON:** Alright, give us the

25 exhibit number, please.

1 **MR CHASKALSON SC:** It was, the Botha
2 photographs were an annexure to Colonel Botha's statement.
3 They have not been given a JJJ exhibit like everybody else's
4 photographs. Maybe we should give them an exhibit number
5 in their own right. Can I suggest that we just make it the
6 latest KKK?

7 **CHAIRPERSON:** According to my notes the
8 latest one is KKK12, so unless I am wrong, the next exhibit
9 will be KKK13.

10 **MR CHASKALSON SC:** We are without Ms
11 Pillay, so I am afraid – we are apparently at, the next one
12 is 16 now.

13 **CHAIRPERSON:** Well, my notes are very
14 defective then. Alright, KKK16, what is it?

15 **MR CHASKALSON SC:** And will be Colonel
16 Botha's photographs and –

17 **CHAIRPERSON:** How many photographs are
18 there?

19 **MR CHASKALSON SC:** There are photographs
20 that run from 5108, 5108 to 5157.

21 **[14:56] CHAIRPERSON:** That looks like 49
22 photographs but we are not going to look at all of them, so
23 perhaps you should identify the particular ones you want to
24 rely on and we can then call it KKK16.1 and 16.2, etcetera.

25 **MR CHASKALSON SC:** No, Chairperson, we

1 are going to, we probably will be using all of them, and it is

2 like the sequence that we, - when I took Colonel Scott

3 through each one of those series of photographs, -

4 **CHAIRPERSON:** Well, okay, -

5 **MR CHASKALSON SC:** - so if we can just

6 call them KKK16.5108 to 51 -

7 **CHAIRPERSON:** 57, well, certainly it

8 would mean it is easier to deal with it now, yes, alright,

9 let us do it that way.

10 **MR CHASKALSON SC:** 5134, if we can call

11 that up, yes, 5134, and if we can zoom in on the scene in

12 the bottom right hand corner of this photograph, that scene

13 which we have zoomed into now is the scene of your Nyala Pappa

14 5, some Canters, a Casspir and Pappa 4 in the area where you

15 were making these arrests to the north-west of hill 3.

16 Do you see any threat to any of your people at that point?

17 **BRIGADIER CALITZ:** Mr Chairperson,

18 again, what does Advocate Chaskalson understand under the word "threat"

19 then I can maybe answer him. I can see a lot, the

20 grass is burning, the people arrested had

21 weapons with them, the group were still in possession of the

22 three shotguns and a R5, there were

23 various threats. That is why I instructed the

24 people to stay between the vehicles and

25 not move away, I talked to them the whole time.

1 In the transcript you will see I said,

2 "under protection, under protection

3 of the Pappa Nyalas."

4 **MR CHASKALSON SC:** So you thought that

5 there may be an imminent threat to some of your members in

6 the scene.

7 **BRIGADIER CALITZ:** Mr Chairperson,

8 during any operational action, there is the

9 possibility of threats against your members, and as the

10 operational commander you have to implement every

11 caution possible to protect their safety. It will be very

12 irresponsible to let your members get out, let them move

13 through the field and instruct them to handle each matter they come across.

14 I have 20-years' experience with Public Order Policing

15 in dispersing people. It is what I do every day

16 and I also believe that safety is the most important aspect. We therefore

17 used the safest possible way for my

18 personnel.

19 **MR CHASKALSON SC:** At 5139 in the series

20 -

21 **CHAIRPERSON:** I do not know how many

22 photographs you want to show, Mr Chaskalson, but when you

23 reach an appropriate stage we will take the tea adjournment

24 but I leave it to you to determine when that will be.

25 **MR CHASKALSON SC:** It may be more

1 efficient if we take the break now and then we can line up

2 all of those photographs.

3 **CHAIRPERSON:** In the interest of

4 efficiency we will take the tea adjournment now.

5 **[COMMISSION ADJOURNS/ COMMISSION RESUMES]**

6 **[15:18] CHAIRPERSON:** The Commission resumes,

7 Brigadier, you are still under oath. Mr Chaskalson, you

8 were taking us through some of Colonel Botha's photographs?

9 **MR CHASKALSON SC:** I am going to shift

10 from Colonel Botha to Captain Nel now, Chairperson. These

11 are JJJ6 and the first one is 1245.

12 **CHAIRPERSON:** But we only looked at the

13 one, you were going to show us more than one of Colonel

14 Botha or did you change your mind? Well, you are entitled

15 to it.

16 **MR CHASKALSON SC:** Well, I shall confine

17 myself to the one from Botha, there are several that show

18 more or less the same scene. 1245, JJJ6, Captain Nel,

19 first of all can we zoom in on the Nyala in the top left of

20 the picture? Do you recognise that as the Bakkie's Botha

21 like frame of Colonel McIntosh?

22 **BRIGADIER CALITZ:** Luckily for you, he does

23 does not hear you. It is Colonel McIntosh with the white shirt

24 and khaki pants, indeed, Commissioner, - Mr

25 Chairperson.

- 1 **MR CHASKALSON SC:** I think the phrase was
2 yours, Brigadier, I have only borrowed it from you.
- 3 **BRIGADIER CALITZ:** We can debate that.
- 4 **MR CHASKALSON SC:** He is standing outside
5 your Nyala Pappa1. If we go down to Pappa 5 We shall see the
6 arrested strikers and if we can zoom in you will see that you
7 have the arrested strikers all lying face down. Can we
8 zoom back out? Sorry, do you agree with that?
- 9 **BRIGADIER CALITZ:** Yes, it is normal
10 arresting procedure, if I may put it that way. I cannot say
11 that everyone is face down as you put it, but
12 it is our normal arrest procedure,
13 they lay down and it seems like their hands are tied with a
14 cable tie.
- 15 **MR CHASKALSON SC:** Can we just zoom out
16 again to the full photograph, and you will see there seemed
17 to be some SAPS members walking in the direction of your
18 Nyala from the direction of either Pappa5 or the line of
19 arrested strikers, at least one SAPS member, possibly two.
- 20 **BRIGADIER CALITZ:** Yes, maybe if we can
21 zoom in again to the top left hand corner, you can see the
22 Nyala door is closed. If you say to me, do you mean to my
23 Nyala?
- 24 **MR CHASKALSON SC:** To your Nyala, yes.
- 25 **BRIGADIER CALITZ:** Oh sorry, sorry, I

1 thought you said to me, because I presume I was inside.

2 **CHAIRPERSON:** The –

3 **BRIGADIER CALITZ:** The other two, sorry,

4 Chairperson?

5 **CHAIRPERSON:** The driver's door looks

6 open.

7 **BRIGADIER CALITZ:** The driver's door and

8 that is Warrant Office Nong, that is why I just wanted to

9 zoom in to see because in my statement I said Warrant

10 Officer Nong climbed out of the vehicle. I am not sure if

11 it is him pointing with his left hand, it might be and then

12 behind him with the denim and the green shirt, that is also

13 one of the hostage negotiators, it looks like Captain

14 Greyling.

15 **MR CHASKALSON SC:** And Captain Greyling

16 was one of the members inside your Nyala.

17 **BRIGADIER CALITZ:** He was one of mine,

18 yes.

19 **MR CHASKALSON SC:** If we go then to

20 JJJ1248 –

21 **COMMISSIONER HEMRAJ:** Just before we

22 leave this photograph, the two policemen up the bottom of

23 the photograph who seemed to be kneeling down, holding

24 firearms, what were they doing there, if you could just

25 zoom out again please of the photograph?

1 **BRIGADIER CALITZ:** The ones sitting

2 in a heeling position,

3 surrounded?

4 **COMMISSIONER HEMRAJ:** Yes, the two

5 policemen, the foremost two policemen in the photograph?

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

7 Commissioner. You will recall that I earlier testified that there were

8 TRT members that moved with the vehicles and making

9 arrests and that is the way in which they assisted

10 us. It is the members of the

11 TRT.

12 **MR CHASKALSON SC:** Just for chronology,

13 this photograph is taken at ETV time 16:13:37 and the

14 Colonel Botha, 5134 photograph was approximately two and a

15 half minutes later at 16:16:09. So what we saw in the

16 Colonel Botha photograph 5134 was two and a half minutes

17 after what we see in this photograph. If we can go down to

18 Captain Nel, JJJ61248 and we see a similar picture to 1245,

19 again strikers faced down, part of Captain McIntosh visible

20 in the top left hand corner of the photograph, the driver's

21 door is open in your Pappa 1 Nyala. That is 16:13:41.

22 Then the last photos I would refer to in this

23 context are Warrant Officer Nong's photos that you have just

24 mentioned. They run from JJJ83675 to 3695, the relevant

25 ones and there are 21 different mug shots of the suspects

1 who we see faced down in this photograph, maybe if we can
2 just see the first and the last, JJJ83675 and if we skip
3 then to the last, JJJ83695, they appear to be taken against
4 the backdrop of a white SAPS vehicle, possibly a Canter.

5 Can we go to 3695, and that is the last of these mug shots.

6 So there was time for Captain Nong to take 21 photographs
7 of individual suspects who were brought to be photographed
8 on the scene before they were presumably put into the
9 Canter for arrest. Would that be a correct assessment of
10 what had happened?

11 **BRIGADIER CALITZ:** Mr Chairperson,

12 yes, firstly it is Warrant Officer Nong, and not Captain

13 Nong, but he was the one taking the photos

14 and I also stated in my statement that he was outside

15 the vehicles. You will see the Nyala vehicles,

16 with the Canters, in the background, you will see it is

17 a Nyala vehicle. The photos was taken under the protection

18 of the armoured vehicles.

19 **MR CHASKALSON SC:** Now if you had perceived

20 an imminent threat to your men would you have allowed the

21 photographing of the suspects of this nature to proceed at

22 that time?

23 **BRIGADIER CALITZ:** M r Chairperson,

24 yes, it is always difficult when we do mass arrests at a

25 later stage, as we take 10, 12, 14 and then load them

1 onto the vehicles. It is difficult to then decide who
2 arrested whom so it is very important to know
3 and as Warrant Officer Nong takes
4 the photos, he will also indicate who is the one making
5 the arrests.

6 **MR CHASKALSON SC:** But, Brigadier, if
7 that was your concern, if there had been an imminent threat
8 of course it would have been impossible to put all of these
9 people in the Canter and take them to a place where there
10 was not an imminent threat and then have them photographed.
11 It is not like there were other suspects in the Canter
12 already.

13 **BRIGADIER CALITZ:** Mr Chairperson,
14 No, I disagree. Out of my experience, I can testify
15 that, that is the way we do it. You do it at a scene where
16 you load people, and that is why there is protection
17 all around, and why the TRT is present and
18 that is how we normally do it, from here they are loaded and
19 transported.

20 **MR CHASKALSON SC:** Would it be practice
21 to record the names of the people who you were
22 photographing?

23 **BRIGADIER CALITZ:** I believe you have to as Warrant-
24 Officer Nong that question, I did not follow
25 it up with him. I did not say

1 that is what Warrant Officer Nong did

2 at that stage, I said that is our practice during

3 normal circumstances.

4 **MR CHASKALSON SC:** So normal practice

5 would be to record the names of these people, you do not

6 know whether Warrant Officer Nong did it in this case?

7 **BRIGADIER CALITZ:** I will not be aware

8 if he did it or not, or if it was established

9 at a later stage.

10 **MR CHASKALSON SC:** But it would be normal

11 practice?

12 **BRIGADIER CALITZ:** I beg your pardon, Mr

13 Chairperson? I beg your pardon, I did not hear you?

14 **MR CHASKALSON SC:** But it would have been

15 normal practice?

16 **BRIGADIER CALITZ:** It would have been, if you

17 say "it would have been normal practice," that is what I mean

18 by how we normally do it in the field. It is not prescribed,

19 it is not a policy, there is not instruction that it must be done that way,

20 but that is the way we normally do

21 it.

22 **MR CHASKALSON SC:** Let us go back to your

23 statement and we have reached, I think paragraphs 122 to 125

24 which seemed to describe the next stage of proceedings.

25 "If I can take you to paragraphs, 122 describes Warrant

1 Officer Nong taking the photographs that we have not seen,
2 and then 123, Lieutenant-Colonel Vermaak who was within the
3 Nyala screamed and informed me that one of the members was
4 under attack."

5 **CHAIRPERSON:** Colonel McIntosh, you said
6 Vermaak?"

7 **MR CHASKALSON SC:** Lieutenant-Colonel
8 McIntosh. "He climbed out of the Nyala and ran immediately
9 in the direction of the member. Lieutenant-Colonel Vermaak
10 reported over the radio that the armed strikers were
11 encircled. I instructed all POP's members in Nyalas to get
12 out of the vehicles to engage, meaning to approach the
13 hill, disperse the group into smaller pockets, encircle
14 them, disarm and affect their arrests as per their briefing
15 received. At that moment I shouted at Warrant-Officer Nong
16 to come quickly to the Nyala. On his arrival we drove to
17 where Lieutenant-Colonel was attending to a striker who was
18 lying on the ground. This is the person who has been
19 identified as body C, which is Mr Mpumza. Lieutenant-Colonel
20 McIntosh informed me that the person had died."
21 I have got a series of questions flowing from those
22 paragraphs but the first is, it appears from the statement
23 that three things happened more or less simultaneously.
24 Warrant-Officer Nong was photographing strikers who had
25 been arrested outside the Nyala, that is in 122.

1 Lieutenant-Colonel McIntosh saw a member under attack and
2 screamed and then climbed out of the Nyala to go to the
3 member and in your evidence in chief you actually explained
4 that you tried in vain to stop him. We shall give you the
5 reference, it is day 154, page 17349, lines 2 to 14, and
6 you were also getting a report from Lieutenant-Colonel
7 Vermaak that the strikers in the hills were encircled, so
8 you ordered the members in the hill to get out of the
9 Nyalas and to engage and make arrests in the hill. Am I
10 correct in reading your statement to suggest that these
11 three things were happening more or less simultaneously?
12 **BRIGADIER CALITZ:** Mr Chairperson,
13 previously I said that I do not think the statement was
14 done in sequence. I referred you to
15 121 as an example on what happened on 120. If we look
16 at paragraph 122, "moved in a north-westerly
17 direction where several arrests were affected, Warrant-
18 Officer Nong climbed out of the Nyala." "Several arrests
19 were affected," if we look at the transcription
20 we would get a more accurate timeline,
21 I think at 11 minutes and 25 seconds in the
22 the transcription, I said, "We made arrests and I counted 1, 2, 3,
23 4, 5, 6 arrests," immediately after that, "JOC chopper, JOC
24 chopper, 2 bodies, 2 bodies at the back of the second
25 hill, 2 bodies."

1 While we were busy with the arrests, the
2 chopper reported the bodies. It is just to explain the
3 imminent threat to you. There were
4 still action happening, everything was not quiet and
5 peaceful. You can hear it on the transcript,
6 as it was reported."

7 **MR CHASKALSON SC:** And what did you
8 understand by bodies?

9 **BRIGADIER CALITZ:** I beg your pardon?

10 **MR CHASKALSON SC:** What did you
11 understand by bodies that the chopper was reporting?

12 **BRIGADIER CALITZ:** Exactly what my evidence
13 was earlier, Mr Chairperson, nothing else.

14 **MR CHASKALSON SC:** Well, let me take you
15 up on that, let me take you up on that. What the
16 transcription says and maybe let us go to it. You hear
17 Colonel Vermaak saying, "JOC chopper, JOC chopper," and
18 then he is interrupted by somebody else and then he says,
19 "JOC chopper, 2 bodies at the back of the small hill."

20 Do you recall that?

21 **BRIGADIER CALITZ:** My transcription is not the same,
22 on my transcription it just shows, "JOC, JOC
23 chopper." It does not show that it was interrupted, "2 bodies, 2
24 bodies at the back of the second hill, 2 bodies." That is what
25 is in my transcription.

1 **MR CHASKALSON SC:** What you have left out
2 is Colonel Vermaak's attempt to make this report before you
3 get in to make your report of the arrests. So at 11:47 you
4 hear Colonel Vermaak saying, "JOC chopper," and you then
5 butt in and say, "Small hill, we make 1, 2, 3, 4, 5, 6
6 arrests with these reservists," and then Lieutenant-Colonel
7 Vermaak gets his opportunity and says, "JOC, JOC chopper, 2
8 bodies, 2 bodies at the back of the second hill, 2
9 bodies."

10 **BRIGADIER CALITZ:** It was my evidence,
11 yes.

12 **MR CHASKALSON SC:** Now we have been through
13 the entire transcription of the tape. This is the only
14 report on the tape that Lieutenant-Colonel Vermaak makes to
15 the JOC expressly. Do you accept that?

16 **BRIGADIER CALITZ:** No, I do not agree,
17 I think he also referred to the bodies at scene 1,
18 he gave it through to the JOC and that is why the **[17:16]** note
19 of the 18 is made.

20 **MR CHASKALSON SC:** On the tape I am
21 talking about, that was before the Lonmin chopper
22 transcript, the Lonmin chopper video, - sorry, the Protea
23 Coin chopper video started. So, on the tape this is the
24 only report that Lieutenant-Colonel Vermaak makes to the
25 JOC.

1 **BRIGADIER CALITZ:** It is what is stated here,
2 yes. It is correct, it is what was recorded on the tape.

3 **MR CHASKALSON SC:** You have said that when
4 he reported the bodies that he was counting first time out
5 he also made that report to the JOC.

6 **BRIGADIER CALITZ:** Just repeat it, I am
7 not following you.

8 **MR CHASKALSON SC:** You said, when I said
9 this is the only report he made you said that he made an
10 earlier report when he was counting the bodies out at scene
11 1, that was also a report to the JOC.

12 **BRIGADIER CALITZ:** Yes, it is correct, yes,
13 you said you are only talking about what was on the tape recording.

14 **MR CHASKALSON SC:** Well, we thought this
15 was quite significant because why would Colonel Vermaak
16 want to report something to the JOC if it was not about a
17 body that may be a dead body? Why would Colonel Vermaak
18 want to report to the JOC that there were people lying
19 down, possibly waiting to be arrested, possibly injured?

20 **MR SEMENYA SC:** It would be a pure
21 conjecture, Chairperson, on his part to read the mind of Colonel
22 Vermaak.

23 **CHAIRPERSON:** What do you say about that,
24 Mr Chaskalson?

25 **MR CHASKALSON SC:** No, with respect it is

1 not an issue of reading the mind of Colonel Vermaak with
2 the view to establishing what Colonel Vermaak's actual
3 intention was. It is a view to hearing, to interpreting a
4 communication that Lieutenant-Colonel Vermaak made with the
5 view to establishing what someone who heard that
6 communication would understand the communication to mean.
7 If that communication is addressed to the JOC someone
8 hearing it will understand that to mean something very
9 different to a communication that is not addressed to the
10 JOC, because there would be no purpose whatsoever in
11 addressing to the JOC specifically a report –

12 **CHAIRPERSON:** Your point is that Colonel
13 Vermaak is the eye in the sky and he is giving most of the
14 time instructions to people on the ground to what to do
15 based upon what he can see from the sky, whereas when he is
16 giving information to the JOC he is not giving instructions
17 to the JOC as to what they must do, because manifestly they
18 can do nothing sitting as they are in the JOC, is that the
19 point you are making?

20 **MR CHASKALSON SC:** Indeed, so why would
21 he make a report to the JOC of 2 bodies or 18 bodies if he
22 did not think that they may be dead bodies.

23 **[15:38] MR SEMENYA SC:** Still I cannot see how
24 this witness can answer that question, Chairperson. You are still
25 interrogating why Colonel Vermaak would have made that

1 report and you are asking somebody else to opine on it.

2 **CHAIRPERSON:** No, I hear the point you are

3 making. Perhaps the problem can be solved as follows.

4 When you heard Colonel Vermaak making a report to the JOC

5 about bodies, did it not occur to you that in view of the

6 fact that he was talking to the JOC it was possible, if not

7 probable, that he was talking about dead bodies?

8 **BRIGADIER CALITZ:** Mr Chairperson,

9 No, not at all. At "scene" 1, Colonel Vermaak reported it and

10 the JOC would have been informed too,

11 otherwise there would not be an note made in the Incident Book -

12 about the 18 "bodies".

13 Exactly as per the

14 "dispersion action," where we said

15 "dispersion" was a continuous action, some people did not

16 stop and others continued. We continued with the

17 "dispersion action" with our Pappa vehicles. The

18 "bodies", in my viewpoint would have been people

19 injured due to the dispersing action,

20 and other actions occurring. Under no

21 circumstances I was aware of any other units, except for

22 the Public Order Policing and Pappa Nyalas vehicles

23 performing the dispersing actions.

24 **MR CHASKALSON SC:** It did not strike you

25 as strange that these were the only two communications that

1 Lieutenant-Colonel Vermaak addressed to the JOC?

2 **BRIGADIER CALITZ:** Mr Chairperson,

3 no, Colonel Vermaak were in continuous communication with the JOC,
4 with me and with the vehicles.

5 If you go and listen to the tapes, you will hear,

6 the people that said they could not get hold of us, heard

7 us talking continuously. Everything he saw, he

8 was supposed to report.

9 **MR CHASKALSON SC:** Yes, but these are the

10 only two communications that are expressly addressed to the

11 JOC, not to you, not to any of the Pappa Nyalas on the

12 ground, but to the JOC.

13 **BRIGADIER CALITZ:** I cannot answer on

14 why Colonel Vermaak, just saw the two from the

15 air. That is a question that he will have to

16 answer.

17 **CHAIRPERSON:** Mr Chaskalson, I think the

18 point, insofar as it is a point that is being made, you can

19 argue it further. I do not think there is any point in

20 arguing it further with the witness.

21 **MR CHASKALSON SC:** Okay, I will not take it

22 further, Chairperson, at this stage. Let us go back to the

23 sequence. You have drawn a distinction between the time when

24 the arrests were made and the time when Lieutenant-Colonel

25 Vermaak reported over the radio that armed strikers were

1 encircled. I was not talking when I said three things were
2 happening simultaneously about the arrests. I was talking
3 about Warrant-Officer Nong photographing the arrested
4 person, Lieutenant-Colonel Vermaak reporting over the radio
5 that the armed strikers were encircled, and Lieutenant-
6 Colonel McIntosh running out of the – screaming and running
7 out of the Nyala to attempt to assist the member under
8 threat. Is that what you are conveying in this statement,
9 or did these things happen at different times?

10 **BRIGADIER CALITZ:** Mr Chairperson,
11 again you are referring to my statement as a “sequence”, I think
12 this is the third time that I am telling you that it was not written in
13 “sequence”. To refer back to you question, the
14 arrests were made,
15 Colonel McIntosh shouted that there was a person under
16 “attack” and it is Mr Mpumza, “body C” as marked,
17 and it occurred at approximately 16:20, if I have the timeline
18 correct. Colonel Vermaak gave the order,
19 “People are encircled,” on the “transcript” 13:28 in
20 the “transcript”, I think you are the expert on the timeline,
21 you may be able to give us a better indication of what
22 happened first. As I said, I did not write it in
23 “sequence”, I did it as I could remember it and as the day
24 developed, I put it in my statement.
25 I know the incident in paragraph 123

1 on page 25, was the last shooting incident. We established
2 that in hindsight. The people was "encircled"
3 and we can look for the time in the "transcript",
4 and you will see that we referred to
5 "body C".

6 **MR CHASKALSON SC:** No, I shall get to that
7 in due course, but I want to again take up your answer a
8 little further. Look at 125. Read 124 and then read 125.
9 "Lieutenant-Colonel Vermaak reported over the radio that
10 the armed strikers were encircled. I instructed all POP
11 members in the Nyalas to get out of the vehicles to engage,
12 meaning to approach the hill, disperse the group into
13 smaller pockets, encircle them, disarm and effect the
14 arrests as per their briefing received. At that moment I
15 shouted at Warrant-Officer Nong to quickly come to the
16 Nyala. On his arrival we drove to where Lieutenant-Colonel
17 McIntosh was attending to a striker who was lying on the
18 ground." Now when I read those two paragraphs together it
19 does not leave much scope for doubt that when you had given
20 your instruction to disperse the groups into smaller
21 pockets, encircle them, disperse and affect the arrests,
22 when you'd done that, at that moment you shouted at
23 Warrant-Officer Nong to come quickly to the Nyala and on
24 his arrival you then drove to Lieutenant-Colonel McIntosh.
25 What do you say to that?

1 **BRIGADIER CALITZ:** That is how it is in

2 my statement, Mr Chairperson.

3 **MR CHASKALSON SC:** No, absolutely that is

4 how it stands in your statement, but do you now disavow

5 what's in your statement?

6 **BRIGADIER CALITZ:** What is the

7 Afrikaans word for "disavow."

8 **MR CHASKALSON SC:** Do you still stand by

9 what is in your statement?

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

11 Chairperson. Maybe the phrase "at that moment," is

12 not correct, is that the part you are worried about?

13 **MR CHASKALSON SC:** Yes, that is the

14 concern that I have. There is another concern with 123, if

15 you go back.

16 **BRIGADIER CALITZ:** I think we must put it,

17 McIntosh got out of the Nyala and then I have included the

18 part of Colonel Vermaak, again, it was not meant to be

19 in "sequence". "At

20 that moment I shouted," so paragraph 125 follows on 23 where

21 McIntosh jumped out. So I do not think –

22 **CHAIRPERSON:** I am sorry, you must forgive

23 me, Brigadier, but there is something I do not understand

24 about this whole thing. If you take it slowly and be

25 patient with me, I shall be grateful. What we see here is

1 first of all there was this large group of strikers to the
2 north of the northwest and you sent a Nyala in that
3 direction to deal with them, right. Then some of the
4 Nyalas then went with the water cannons to hill 3 and
5 they were being instructed from the air by Colonel Vermaak.
6 Is that right?

7 **BRIGADIER CALITZ:** Correct, Mr

8 Chairperson.

9 **CHAIRPERSON:** Then three of the Nyalas,
10 including your one, moved off in a northerly direction.

11 Several people were arrested. They were made to lie on the
12 ground with their faces down and Warrant-Officer Nong
13 climbs out of the Nyala to take pictures, right?

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

15 Chairperson.

16 **CHAIRPERSON:** Now he is outside the Nyala.

17 That is at 122. McIntosh is with you in your Nyala, screams
18 and says one of the members is under attack, and then he
19 gets out of the Nyala and runs in that direction, and then
20 Lieutenant-Colonel Vermaak from the air reports that the
21 armed strikers were encircled. Now I do not know what armed
22 strikers are being talked about because it has not been
23 mentioned yet in the narrative, but it would appear that,
24 if one thinks back to the photograph we saw, you stopped,
25 the other Nyala stopped. People were arrested, made to lie

1 down on the ground. Nong went and took photographs of
2 them. We see McIntosh then getting out of, having got out
3 of your Nyala, right. Nong has got the door open, and is
4 that the time when McIntosh shouts to you - you are still in
5 the Nyala, it would appear - shouts to you one of the
6 members is under attack. Now where did that attack take
7 place? I take it that was not visible on the photograph we
8 saw. Is that correct? Was that to the left of the
9 photograph? Because remember, McIntosh appears to be going
10 towards the left, top left of the photograph. So was
11 McIntosh at that point moving in the direction of the
12 person who was under attack?

13 **BRIGADIER CALITZ:** It is correct, Mr
14 Chairperson. He ran from where the vehicles formed a group,
15 towards the person that was under
16 attack.

17 **CHAIRPERSON:** Right, so what I take it is
18 missing is that there was a member who is not on the
19 photograph, who is somewhere to the left possibly higher up
20 of that photograph, not visible and there is a group of
21 armed strikers there who are attacking him or was it just
22 one person who was attacking him?

23 **BRIGADIER CALITZ:** No, he yelled that the police
24 were under attack, in my statement at
25 paragraph 126, I noticed on our arrival Macintosh informed

1 me that the person has died and then I noticed a TRT

2 members who were at the scene.

3 **CHAIRPERSON:** Yes, yes, I understand

4 that.

5 **BRIGADIER CALITZ:** That was the first time

6 that -

7 **CHAIRPERSON:** I am trying to understand

8 what happened at the scene. So Macintosh's getting out of

9 your Nyala, top of the paragraph, going to the left and

10 there is' something happening off the scene as we can see

11 it, presumably to the left and up -

12 **BRIGADIER CALITZ:** I think it is in the

13 direction of hill 3.

14 **CHAIRPERSON:** Yes, in the direction of

15 hill 3, yes I understand that but we cannot see from the

16 photographs depicting this -

17 **BRIGADIER CALITZ:** No, no, no, yes.

18 **CHAIRPERSON:** So it is to the left and

19 virtually north west if one uses that, diagonally to the

20 left corner of the photograph and beyond, is that, would

21 that be right? You understand what I mean? Assuming this

22 is the photograph, I am showing you the photograph and the

23 top left hand corner is your Nyala and Macintosh has got

24 out of it and he's moving to the left, right, is that

25 correct?

1 **BRIGADIER CALITZ:** I will say to the

2 bottom of the page.

3 **CHAIRPERSON:** The bottom of the page.

4 **BRIGADIER CALITZ:** We were, yes,

5 Commissioner, Mr Chairperson, if we can maybe can

6 get a photo of the vehicles; you will see we are on the north

7 western side of the hill.

8 **CHAIRPERSON:** Yes.

9 **BRIGADIER CALITZ:** Basically the vehicles

10 were situated where we got together to

11 carry out the arrests at hill 3, the person that was attacked

12 was basically in the middle of our

13 vehicle and hill 3.

14 **CHAIRPERSON:** Okay, I understand that.

15 But he's not visible on the photograph we saw?

16 **BRIGADIER CALITZ:** No.

17 **CHAIRPERSON:** But where would he, where

18 would he have been if the picture had been slightly bigger?

19 **MR CHASKALSON SC:** Can I suggest we look

20 at the photograph of Colonel Botha which may assist in

21 showing a bigger picture.

22 **CHAIRPERSON:** And clear up my problem.

23 **MR CHASKALSON SC:** In fact –

24 **CHAIRPERSON:** Suddenly you are talking

25 once and for all about the armed strikers and they have not

1 been mentioned before, if we look at Colonel Botha's
2 photographs and it may become clear.

3 **MR CHASKALSON SC:** Can we look at 5139 of
4 Colonel Botha's 5139. KKK16 5139.

5 **CHAIRPERSON:** Where are you now, maybe
6 you can orientate me on this photograph. This is hill 3
7 I take it and the scene that was depicted in the other
8 photograph of the people lying on the ground who have been
9 arrested with Macintosh hastily exiting from your Nyala,
10 now where do we see that or part of it on this photograph?

11 **BRIGADIER CALITZ:** Mr Chairperson,
12 there where the group of vehicles are, left below
13 the white helicopter on that photo, where
14 the four, five vehicles are standing together. That is
15 where my Nyala was and then -

16 **CHAIRPERSON:** Sorry, where do we, do we
17 see your Nyala in the photograph?

18 **BRIGADIER CALITZ:** Yes.

19 **CHAIRPERSON:** Where is it?

20 **BRIGADIER CALITZ:** I am not sure,
21 I think it might be the one in the middle, on the right-hand side
22 at the back. The one on the far right, I am
23 not 100% sure about at this moment.

24 **MR CHASKALSON SC:** You are correct, in
25 fact -

1 **CHAIRPERSON:** Which one, is it the one -

2 **BRIGADIER CALITZ:** Pappa1.

3 **CHAIRPERSON:** There is one in the bush -

4 **MR CHASKALSON SC:** The one he is busy

5 marking now.

6 **CHAIRPERSON:** Oh I see. There is one in

7 the middle of the photograph next to a bush and if one goes

8 diagonally upwards towards the right there is a Nyala. So

9 that is that Nyala, right? That is your Nyala?

10 **BRIGADIER CALITZ:** The one on the far

11 right is my Nyala.

12 **CHAIRPERSON:** That is right and where were

13 the arrested people lying on the ground, do we see them?

14 **BRIGADIER CALITZ:** They are

15 still there on the ground, Mr Chairperson.

16 **CHAIRPERSON:** Near the Canter?

17 **BRIGADIER CALITZ:** It is correct.

18 **CHAIRPERSON:** They are still on the ground

19 are they?

20 **BRIGADIER CALITZ:** It is correct, some of them

21 are on the ground and some are being

22 loaded into the Canter.

23 **CHAIRPERSON:** Yes, I understand. Alright

24 and where is, in which direction is Macintosh running?

25 **BRIGADIER CALITZ:** Directly down, if I

1 say down, down to the photograph in the direction of hill

2 3, I think we can maybe get -

3 **CHAIRPERSON:** So now we see a bit of

4 hill 3 in this photograph.

5 **BRIGADIER CALITZ:** There is the

6 photograph, I think the body was between that tree where

7 the, is it Nyala or Canter standing there, between the tree

8 and there is rocks somewhere in there.

9 **CHAIRPERSON:** You say between the trees

10 but, which tree are you talking about?

11 **BRIGADIER CALITZ:** There is the Nyala

12 vehicle standing next to a tree -

13 **CHAIRPERSON:** Oh, that is the one I

14 describe as the bush. If one goes down to the left from

15 your Nyala -

16 **BRIGADIER CALITZ:** That is correct.

17 **CHAIRPERSON:** Diagonally there is an Nyala

18 and there is a bush next to it? A bush or a tree, whatever,

19 yes. Now where was Macintosh going to, where was the member

20 who was being attacked?

21 **BRIGADIER CALITZ:** I cannot pinpoint on this

22 photo, but it will be between

23 the bush and the hill. Somewhere down there, I believe

24 there is a photo -

25 **CHAIRPERSON:** Okay, somewhere down there.

1 **BRIGADIER CALITZ:** He ran in

2 that direction.

3 **CHAIRPERSON:** And he was being attacked

4 by how many people?

5 **BRIGADIER CALITZ:** Mr Chairperson,

6 No, I do not have -

7 **CHAIRPERSON:** You see because you say he

8 was being attacked, you do not say by whom, but then later

9 on in the next paragraph 124 you suddenly talk about the

10 armed strikers were encircled so there was a group of armed

11 strikers who did not mentioned in the notes previously and

12 they were encircled, now where were they, where was the

13 encirclement?

14 **BRIGADIER CALITZ:** It is those at

15 hill 3. That is what was conveyed via the radio by

16 Colonel Vermaak. It has nothing to do with those

17 arrested on the ground. That is what we

18 were informed about what was happening at hill 3.

19 When those people were encircled,

20 I instructed the Pappa Nyalas to

21 get out of the vehicles and to

22 arrest the people.

23 **CHAIRPERSON:** Right now at that point,

24 sorry at that stage Nong was still outside your Nyala

25 because he got out to take the photographs?

1 **BRIGADIER CALITZ:** He was approximately there
2 where the Canter vehicle, the Canter vehicle is on my
3 -

4 **CHAIRPERSON:** Yes, okay. I see that. So
5 you then told all the POP members in the Nyalas to get out
6 of the vehicles and to presumably to run in the direction
7 of hill 3 to deal with the attack which had been launched
8 on one of your members, is that correct?

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

11 **MR CHASKALSON SC:** Chairperson, maybe if
12 I can clarify through the Brigadier because what is
13 happening is three different processes. The communication
14 in relation to the, the communication from Lieutenant
15 Colonel Vermaak and the Brigadier's response relate to
16 events that are happening inside the hill itself.

17 **BRIGADIER CALITZ:** Yes.

18 **MR CHASKALSON SC:** And maybe if we can
19 just read the transcript of what that communication was, my
20 note which is at 13, starts at approximately 13:48 of the
21 Protea Coin video, Lieutenant Colonel Vermaak says, "Yes
22 Pappa1 if that water cannon can wait," in other words a
23 water cannon at hill 3, "the people they are encircled,
24 you can make arrests now there, arrests in hill 3."

25 **BRIGADIER CALITZ:** It was in hill 3,

1 yes.

2 **MR CHASKALSON SC:** And the Brigadier then

3 responds okay water cannons hold back, takes up Lieutenant

4 Colonel Vermaak's suggestion that the water cannon must

5 wait. So the Brigadier responds, "Okay water cannons hold

6 back. Guys get out of the Nyalas under protection, under

7 protection, get out, get out there, engage, and get out there

8 and engage those vehicles of the task force."

9 **BRIGADIER CALITZ:** With the task force.

10 **MR CHASKALSON SC:** With the task force.

11 **BRIGADIER CALITZ:** It refers to the Pappa

12 vehicles that moved under the protection of the task force to hill 3.

13 At that stage we did

14 talk to the two, three Nyalas doing the arrests,

15 but with the Nyala Pappa

16 vehicles under the command of Colonel

17 Vermaak.

18 **CHAIRPERSON:** Alright but that, what I

19 still do not know where this attack was taking place and in

20 which direction Lieutenant Colonel Macintosh ran because

21 what you say in your statement is that we see, having seen

22 Macintosh jump out of your Nyala in the first photograph,

23 we are then told that he ran immediately as you put it in

24 paragraph 123 in the direction of the members. That must

25 be in the member whose been attacked. So which direction

1 did, have you got a point there, can you point for us.

2 **BRIGADIER CALITZ:** I have just asked if

3 someone can –

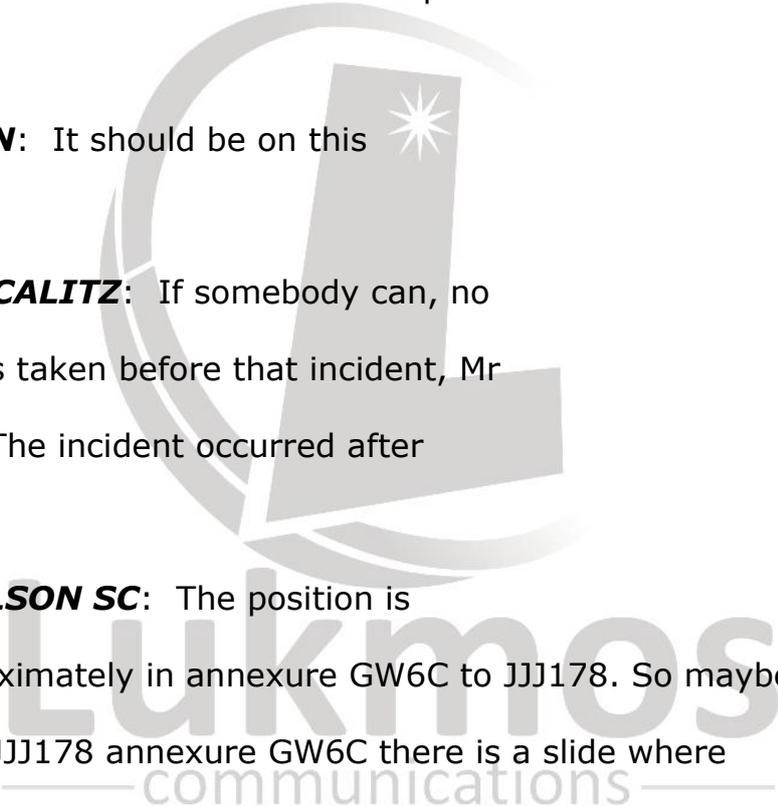
4 **CHAIRPERSON:** And you can also when you

5 get the pointer you can indicate to us where this attack

6 was taking place. Mr Wesley is going to help us.

7 **BRIGADIER CALITZ:** I know there is a photo

8 of -

9 **CHAIRPERSON:** It should be on this 

10 photograph.

11 **BRIGADIER CALITZ:** If somebody can, no

12 this photo was taken before that incident, Mr

13 Chairperson. The incident occurred after

14 this.

15 **MR CHASKALSON SC:** The position is

16 marked approximately in annexure GW6C to JJJ178. So maybe

17 if we can get JJJ178 annexure GW6C there is a slide where

18 the position of the body is marked.

19 **[15:57] CHAIRPERSON:** Is this going to be body C

20 or body N?

21 **MR CHASKALSON SC:** Body C, Mr Mpumza, and

22 it is page 23 of that slide, page 23 of that annexure. If

23 we can magnify that and the position of Pappa 1 is marked on

24 this slide. Brigadier, can you just mark Pappa 1?

25 **CHAIRPERSON:** I take it Pappa1 is the P1

1 on the slide?

2 **BRIGADIER CALITZ:** If you look at the back,

3 the –

4 **CHAIRPERSON:** Is P1 Pappa1?

5 **BRIGADIER CALITZ:** It is correct.

6 **CHAIRPERSON:** So there it is, it is

7 marked already, P1 and I do not know where your red thing

8 is?

9 **BRIGADIER CALITZ:** No, no, -

10 **CHAIRPERSON:** Your red thing is under P4,

11 that is the wrong place.

12 **BRIGADIER CALITZ:** No, No, Mr

13 Chairperson, I just wanted to state that it was the red dot to which

14 Colonel Vermaak ran, in that direction.

15 That is where body C was lying.

16 **CHAIRPERSON:** Alright, so we get things

17 in sequence first. P1 is your Nyala, right?

18 **BRIGADIER CALITZ:** Correct, Mr

19 Chairperson.

20 **CHAIRPERSON:** And then to the left of the

21 slide we see a number of Nyalas, one is a water cannon, a

22 north-west water cannon and a Canter, in fact two water

23 cannons, a Canter and some Nyalas and we see under P4 is a

24 red dot and that is where the body was?

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

1 Chairperson.

2 **CHAIRPERSON:** Is that where the attack

3 was taking place on the member?

4 **BRIGADIER CALITZ:** It is correct, that is how it was reported

5 to me.

6 **CHAIRPERSON:** And is that the direction

7 in which Colonel McIntosh ran?

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

9 Chairperson.

10 **CHAIRPERSON:** Alright, and where were the

11 armed strikers who were encircled? Were they, - was the

12 member who was being attacked at the red spot, was he being

13 attacked by more than one person?

14 **BRIGADIER CALITZ:** No, I presume he was

15 one person running out towards the policemen, attacking him

16 and then the police acted in self-defence.

17 **CHAIRPERSON:** Okay, I can understand that

18 but you see I am interested in this statement in paragraph 1

19 to 4, Lieutenant-Colonel Vermaak reported over the radio

20 that the armed strikers were encircled. Now is this part

21 of the same narrative or is this something different?

22 **BRIGADIER CALITZ:** No, it is the

23 people arrested at hill 3, part of the

24 259 arrested inside

25 hill 3. It was the people that fled from hill 2 to hill

1 3. The water canon sprayed

2 the inside and some of my POP vehicles were

3 also around.

4 **CHAIRPERSON:** I just want to make sure I

5 understand it. So at the lower end of the picture was a

6 group of strikers who were encircled, alright, but some

7 distance away from them was a single striker who was

8 attacking a member.

9 **BRIGADIER CALITZ:** Correct, Mr

10 Chairperson.

11 **CHAIRPERSON:** And that is more or less at

12 the red spot.

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

14 **CHAIRPERSON:** Below P4 on the picture?

15 **BRIGADIER CALITZ:** Correct, Mr

16 Chairperson.

17 **CHAIRPERSON:** McIntosh ran from your

18 Nyala, P1 in that direction?

19 **BRIGADIER CALITZ:** Correct, Mr

20 Chairperson.

21 **CHAIRPERSON:** And while that was

22 happening Vermaak then, the eye in the sky, reported that

23 there was a group of strikers in the vicinity but on hill

24 3 and you then instructed the POP members in your group of

25 Nyalas over there on the right hand side of the picture, to

1 get out, go towards the hill and do the necessary, to
2 disarm and arrest the people, is that correct? So you did
3 that while McIntosh was running towards the member who was
4 being attacked at the spot indicated by the red mark, is
5 that correct?

6 **BRIGADIER CALITZ:** Commissioner, yes, I gave
7 them the order when McIntosh got out of
8 the vehicle, I cannot recall of it was in
9 sequence while we were on our way, but it was –

10 **CHAIRPERSON:** More or less the same time?

11 **BRIGADIER CALITZ:** More or less the same
12 time, yes.

13 **CHAIRPERSON:** So it was effectively two
14 incidents, one was the disarmament and arrest of the group
15 at the edge there of hill 3 which is particularly
16 described in paragraph 124 and there was the other incident
17 of the attack on the member which McIntosh ran to deal with
18 which is described in 123 and which follows immediately on
19 what we saw in that photograph of McIntosh. It actually
20 preceded the picture we saw of McIntosh having left your
21 Nyala and moved to the left on the photograph, is that
22 correct?

23 **BRIGADIER CALITZ:** It is correct, Mr
24 Chairperson.

25 **CHAIRPERSON:** Alright.

1 **BRIGADIER CALITZ:** I, - yes.

2 **CHAIRPERSON:** So then McIntosh goes to

3 deal with the situation at the red dot, your other members

4 go down to the hill acting on the information you

5 received from Vermaak about the group –

6 **MR CHASKALSON SC:** Sorry, Chairperson,

7 can I interrupt –

8 **CHAIRPERSON:** Yes –

9 **MR CHASKALSON SC:** - because I think you

10 may be at cross purposes. Brigadier, your instruction to

11 get out of the Nyalas and to make the arrests, that was not

12 an instruction that was addressed to your group of Nyalas.

13 **BRIGADIER CALITZ:** No, -

14 **MR CHASKALSON SC:** That was a radio

15 instruction to the Nyalas in the hill?

16 **BRIGADIER CALITZ:** Yes, I waited for

17 Mr Chairperson to finish. He mentioned the

18 people on my right-hand side, I just wanted to give

19 him the opportunity to finish and then I

20 would have told him that the people under the command of Colonel Vermaak

21 was on the left-hand side, Pappa4, Pappa18, Pappa9, Pappa7,

22 Pappa4, the task force, and the Casspir.

23 Those Pappa vehicles were instructed

24 to get out as the people were

25 encircled. The members on my right-hand side remind there,

1 they already processed the people and loaded them in the
2 Canters and from there we followed them. I immediately moved
3 towards Colonel McIntosh. When I reached him,
4 he informed me that one person was deceased,
5 and then we can just look at the statement I reported to the
6 JOC.

7 **CHAIRPERSON:** And the person who was
8 "deceased", as you put it, he was dead, is the person, I
9 cannot remember his name –

10 **BRIGADIER CALITZ:** Mr Mpumza –

11 **CHAIRPERSON:** - but he is described as
12 body C?

13 **BRIGADIER CALITZ:** It is correct, I have him
14 as Mr Mpumza.

15 **CHAIRPERSON:** Okay?

16 **BRIGADIER CALITZ:** Mr Mpumza.

17 **CHAIRPERSON:** I see, Mr Mpumza, thank
18 you. So effectively, just to get this right, there were
19 two incidents that took place more or less at the same
20 time, - there were three incidents. The first is the
21 arrest by you and the people with you of the strikers who
22 were made to lie down on the ground and who were eventually
23 loaded into the Canters and whose pictures were taken by
24 Nong, that is incident 1. Incident 2 is the attack on a
25 member in the vicinity of the red spots which McIntosh ran

1 to deal with. The third incident is the arrest of a group
2 of strikers who were at the outer edge there of the hill
3 and who had been seen by Colonel Vermaak from the air.

4 **BRIGADIER CALITZ:** They were inside the
5 hill, yes.

6 **CHAIRPERSON:** That is right.

7 **BRIGADIER CALITZ:** Encircled.

8 **CHAIRPERSON:** And you then instructed the
9 people in the Nyalas 18, 9, 4, etcetera, -

10 **BRIGADIER CALITZ:** It is correct-

11 **CHAIRPERSON:** - to go and deal with them?

12 **BRIGADIER CALITZ:** It is correct, yes.

13 **CHAIRPERSON:** And you told Nong to get
14 back into your Nyala because he had been out of it taking
15 pictures, to get into your Nyala and drive quickly in the
16 direction of McIntosh so that you could assist there and
17 when you got there McIntosh reported that the striker was
18 dead, is that the story?

19 **BRIGADIER CALITZ:** It is correct, I was worried
20 because he ran out alone and it was not safe,
21 and that is why I shouted that we had to move toward him
22 as quick as possible.

23 **MR CHASKALSON SC:** Chairperson, I see
24 we have run past four.

25 **CHAIRPERSON:** Sorry, if you want to wrap

1 it up before we adjourn do so, and as soon as it is

2 convenient we can –

3 **MR CHASKALSON SC:** I am afraid there is

4 quite a lot still to be said about this, so if we can pick

5 it up tomorrow morning.

6 **CHAIRPERSON:** Alright, well, in the

7 circumstances we will adjourn now until tomorrow morning at

8 nine o'clock.

9 **[COMMISSION ADJOURNED]**

