

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 178

Lukmos
communications

29 JANUARY 2014

TRANSCRIPT PAGES 21127 TO 21301

1 **[PROCEEDINGS ON 29 JANUARY 2014]**

2 **[09:21] CHAIRPERSON:** The commission resumes.

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

25 ***BRIGADIER CALITZ:*** No. Mr. Chairperson.

1 I did not get a chance yet.

2 **CHAIRPERSON:** Alright. You are under

3 oath.

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

5 Chairperson, good morning.

6 **MR GOTZ:** Thank you, Chairperson and good

7 morning Commissioner, good morning Brigadier.

8 **BRIGADIER CALITZ:** Morning.

9 **MR GOTZ:** Brigadier, we were dealing with

10 the final few pages, final pages of exhibit KKK52 and we

11 got to slide 6. If that can be put up on screen and if

12 you could turn to that page, Brigadier. The page shows the

13 configuration of the vehicles as well as the position of

14 the protestors at 15:53:40 which is 10 seconds before the

15 TRT open fires. The strikers marked by the blue cloud have

16 just rounded the North West corner of the kraal.

17 Brigadier, you will accept that at this point it is

18 virtually impossible for people at the front of the group

19 of strikers, including Mr Noki to turn around or reverse.

20 **BRIGADIER CALITZ:** If you are talking about, at this point,

21 to what we referred to yesterday, the photos, I showed you

22 you there the configuration was not in

23 such a tight formation that it was impossible

24 for anyone to turn around.

25 **MR GOTZ:** Well, no, Brigadier, we

1 actually, the photographs that we were looking at were some
2 ten seconds earlier than this. At this point Mr Noki has
3 rounded the corner of the kraal. The photographs that we
4 were looking at were before, were slightly before that. He
5 hadn't yet got to the kraal, that was the photograph that
6 you highlighted, and what I'm putting to you is by the time
7 he has moved around the corner, the North West corner of
8 the small kraal it is virtually impossible for him to
9 reverse.

10 **BRIGADIER CALITZ:** The one we referred to was
11 according to you 5 seconds earlier,
12 and that is not the truth, they had already turned around the
13 and not as you just said, did not come around the kraal yet.
14 It was ascertained yesterday, in the video and even in your
15 own material, where I showed you it was on 14 seconds
16 where we can see they are already around the kraal, at that stage
17 we said the photo shows that they could have turned around
18 after they had already turned around the kraal.

19 **CHAIRPERSON:** Sorry, Mr Gotz, I do not
20 know, why do you say that turning the corner made all the
21 difference in this regard? If there's a reason for your
22 contention that it did make a difference? I think you
23 should put it to the witness so that he can deal with it.

24 **MR GOTZ:** Well, Chairperson, our case of
25 course is that it is very difficult to reverse from a much

1 earlier stage and perhaps what I should put to the
2 Brigadier is at the very least, Brigadier, would you accept
3 that it in a sense becomes progressively more difficult for
4 Mr Noki to reverse as the group moves passed the STF
5 Casspirs and around the corner of the kraal, would you at
6 least accept that?

7 **CHAIRPERSON:** But you still, I am afraid
8 you still haven't dealt with my difficulty, Mr Gotz, and
9 that is, I understand what you're putting, but if there's a
10 reason upon which you rely for saying it was more difficult
11 then the witness doesn't agree with you, then if there's a
12 reason for saying it is more difficult, and then I think you
13 should put it to him so that he can deal with it. If he
14 cannot deal with it satisfactorily then the victory will be
15 yours, and if he can, well then the victory
16 will be his. But at least let us have the reason that you
17 advance for saying that it became more difficult for Mr
18 Noki and those with him in the front line to change
19 direction by 180 degrees once they were around the corner.

20 **MR GOTZ:** Well, Brigadier, the one reason
21 that we did discuss yesterday was the fact that teargas
22 been fired behind the group of protestors, some five or six
23 seconds before that. So that is the one reason. The second
24 reason and we can now see it on the video is that there is
25 a push from the back as it were at this point in time and

1 perhaps we can show the video to get the sense of what Mr

2 Noki is doing at this point. So if we can play JJJ194.16

3 from the beginning of the clip. I beg your pardon, it's

4 17, sorry about that, JJJ194.17.

5 **CHAIRPERSON:** Before you proceed, I am

6 told that some people here have got there, they have got

7 headphones but they have not got them on. So before they

8 haven't got them on the sound from the earphone is coming

9 out clearly, we can hear it and it's making it difficult to

10 hear what has been said. So those who haven't got their

11 earphones on their ears must please put them on their ears

12 or else switch them off. Yes, Mr Gotz, I can still hear it

13 somewhere, the earphones, I do not know what the problem is.

14 You see if people aren't listening, I haven't got a

15 problem, then they can turn it off. The problem is they have

16 got them on but they have not got them on their heads and so

17 the sound -

18 **MR MPOFU:** Interferes, yes Chairperson, I

19 was, another way of dealing with the problem is when

20 they are not using them they must put the volume down

21 because there is a volume adjustment on the thing.

22 **CHAIRPERSON:** Well of course if they're

23 not listening, they will not hear the translation of what you

24 said, so you might like to repeat it, what you just said in

25 Xhosa, which may be helpful.

1 **MR MPOFU:** Okay.

2 **CHAIRPERSON:** Thank you, Mr Mpofu.

3 **MR GOTZ:** Chairperson 14 seconds into

4 this clip is the start of the TRT gunfire. I wonder

5 whether a warning wouldn't be appropriate under the

6 circumstances.

7 **CHAIRPERSON:** I do not think we have given

8 warnings simply for gunfire.

9 **MR GOTZ:** Mr Chaskalson did in relation

10 to this clip.

11 **CHAIRPERSON:** Alright. As you would

12 have heard we are told that 14 seconds, we can still hear

13 that thing. We have been told that 14 seconds into this

14 clip one can hear gunfire. Its gunfire which caused the

15 death of a number of people who, some of them who were

16 among the relatives, loved ones of those present, some of

17 those present in the auditorium. So if they feel that the

18 sound of that gunfire will cause them distress and pain

19 then I suggest they leave the chamber. We won't start the

20 video until a minute has lapsed after this. But I still

21 hear that noise, from someone's earphones. I do not know

22 how we are going to deal with the problem.

23 **MR GOTZ:** Just to add one actually does

24 see the TRT opening fire as the camera pulls back. One

25 doesn't in fact see any of the people being shot but one

1 does see the TRT line open fire.

2 **CHAIRPERSON:** No one has left the

3 chamber. So I assume the warning is being heard by those

4 who were listening on the earphones and it is not necessary

5 for the person concerned to leave. We will proceed now with

6 the video.

7 **MR GOTZ:** Brigadier, this clip commences

8 14 seconds before the TRT open fires so the time is-

9 The point of time, which we are debating, is four

10 seconds later. So what I want to do is play the first six

11 seconds of the clip and see what the response of the crowd

12 is towards the end of the first six seconds. In other

13 words the response of the people at the front of the crowd

14 of strikers. So if we can commence.

15 **[VIDEO SHOWN]**

16 **MR GOTZ:** Do you see, Brigadier, that

17 what happens in those moments is that there is a shot fired

18 by the strikers, at that point in time the crowd reacts as

19 it were, possibly to the sound of the gunshot and starts to

20 push forward into the channel created by the TRT vehicles,

21 do you see that Brigadier?

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

23 two things. There was not a channel through the TRT vehicles.

24 **MR GOTZ:** I beg your pardon, the Pappa

25 Nyalas.

1 **BRIGADIER CALITZ:** And we also showed; not
2 a channel, a space was left, as channelling is one
3 of our action operations, we had already testified to that,
4 just a correction there, and then, no, not at all,
5 when we play it frame by frame, by seconds,
6 I do not see a 'push' there at all. I see the people who move
7 casually, still not running, all very calm,
8 even when the shot went off. At that stage it was a shot
9 fired by one of their own. The person who fired the shot
10 could also have turned around and ran away if he wanted
11 to. So, we can look at it again, I do not see a group that, as you
12 say, looked like, what you get, a stampede, where they
13 push the ones in front.

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

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

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

25 **[VIDEO SHOWN]**

1 **MR GOTZ:** We can stop it there.

2 Brigadier I suggest to you that it's perfectly obvious, the
3 moment the shot is fired, possibly because of the people in
4 the front, people around him hear the shooting of the gun
5 there's a distinctive push by the people around him into
6 the corridor constituted by the kraal and the Pappa
7 vehicles. I think that is obvious, Brigadier.

8 **BRIGADIER CALITZ:** Mr. Chairperson, I
9 think – apologies

10 **CHAIRPERSON:** Yes, Brigadier.

11 **BRIGADIER CALITZ:** Excuse me, Mr. Chairperson,
12 I see you were busy. I think the material is
13 clearly visible to you. My testimony obviously differs
14 from what Mr. Gotz sees. I see people walking, not running,
15 I do not see any pushing, I can see in the front, between
16 the first three four five people, a half metre to a metre space;
17 after the shot rang out I saw in the background people starting
18 to move sideways, I can almost say; in other words, not
19 even to the front. And to the side, you can see a people step aside
20 as if they're taking shelter behind the person who
21 fired the shot. So, I cannot see anywhere a group, as you referred to,
22 pushing another group forward.

23 I we are going to count, I don't know – how many people- we can
24 put it together,

25 **CHAIRPERSON:** Sorry can you do it once

1 again please, there is something I want to see. Roll it

2 again.

3 **[VIDEO SHOWN]**

4 **CHAIRPERSON:** Can we go back a bit

5 please, go back, yes.

6 **[VIDEO SHOWN]**

7 **CHAIRPERSON:** I must tell you what I

8 see, the Brigadier is quite right, that the persons in the

9 front, there is a gap between them and the row behind them.

10 What one also sees is that once the shot is fired, what I

11 saw, I think I saw, once the shot is fired the row

12 comprising of the person who fired and those next to him

13 appears to stop or certainly go much slower than before and

14 those behind it, behind them, would come into them. So

15 that part then bunches up. That is what I saw, or least I

16 think I saw. But whether, what caused that is, it is not

17 possible to see from the slide, there's various

18 possibilities. One is of course that when the shot was

19 fired the people around the shooters feared there might be

20 some retaliation from the POP people and decided it might

21 be an idea to somehow get cover behind the shooter so that

22 he would take whatever was coming. But that is just

23 speculation. I'm not sure it's possible for us simply by

24 looking at the slide to say why people acted in the way

25 they did, but I have endeavoured to describe it as accurately

1 as I could what I saw. Others may differ and in which case
2 we would have to look at it again but I hope we will not get
3 there.

4 **MR GOTZ:** Chairperson, for the purposes
5 of my cross-examination I do not differ substantially from
6 that. Save to point out that the effect as it were of the
7 bunching, rather the bunching is caused by the fact that
8 people from the back or people further back pushed forward
9 and that is exactly –

10 **CHAIRPERSON:** What I saw is that the
11 people at the back continued moving forward.

12 **MR GOTZ:** Yes.

13 **CHAIRPERSON:** The row of the shooter, if
14 you can see what I mean, the shooter, those next to him appear to
15 be, either to become stationary, or move much slower and
16 that causes the bunching. That's what I saw which I take
17 is essentially what you want.

18 **MR GOTZ:** Yes. Have we accepted that
19 'shooters' is an English word, Chairperson?

20 **CHAIRPERSON:** I think you will find it in
21 the dictionary but if it isn't someone can bring a
22 dictionary tomorrow. Referring to shooter myself.

23 **MR GOTZ:** Brigadier, there's one further
24 piece of evidence in this clip which does demonstrate my
25 point and it comes a few seconds later if we can just take

1 the clip up to seven seconds. I think, yes, lets revert to
2 normal speed for the moment. One can simply play it, I
3 think it's -

4 **[VIDEO SHOWN]**

5 Let us stop here. Now, Brigadier, I'm afraid your
6 eyes are going to have to be rather good here. In the
7 foreground you'll see some POPS members shooting their
8 shotguns, rubber bullets with some gusto. What I would like to
9 -

10 **CHAIRPERSON:** Aren't they rubber balls?

11 I thought they were rubber balls?

12 **MR GOTZ:** Indeed.

13 **CHAIRPERSON:** They abolished or

14 prohibited rubber bullets because even they could cause
15 injury.

16 **MR GOTZ:** Indeed.

17 **CHAIRPERSON:** And they substituted

18 rubber balls and I think in the interest of accuracy we
19 must use that expression. Unless rubber bullets actually
20 are being fired which I don't think is the case.

21 **MR GOTZ:** Rubber balls are being fired.

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

23 we refer to it as rubber rounds, so rubber rounds is
24 the term we use operationally.

25 **CHAIRPERSON:** Being balls they would be

1 round, wouldn't they?

2 **MR GOTZ:** Now, Brigadier, what I want you

3 to focus on is the group of protestors who appear in

4 exactly the same position as where we saw them a couple of

5 seconds earlier, in other words at the corner of the kraal,

6 at this point they will be to the right of the helmet of

7 the policeman on the left hand side of the, on the left

8 hand side.

9 **[09:41]** So if we can play the clip from that position and

10 what I want you to focus on –

11 **CHAIRPERSON:** I haven't been doing what I

12 should be doing, but you must please, when you play a clip

13 indicate where on the clip it is so that those who follow

14 on the record later will be able to understand what's being

15 looked at. Am I right, are we now starting - where are we

16 starting now?

17 **MR GOTZ:** Yes, this is the start of the

18 clip – well, we're starting at 10 seconds into the clip.

19 **CHAIRPERSON:** Alright, 10 seconds.

20 **MR GOTZ:** It's four seconds before the

21 TRT opens fire and if one can - if you, Brigadier, will

22 focus on, again on the point which is at the corner of the

23 kraal and really at the point just to the right of the

24 helmet of the police officer on the left-hand side of the screen

25 that you see. So let's play it.

1 **[VIDEO SHOWN]**

2 Stop it there. Do you see, Brigadier, we can

3 play it in slow motion –

4 **CHAIRPERSON:** We're stopping at 17.

5 **MR GOTZ:** Stopping at 17. Do you see,

6 Brigadier – did you see that there is a person in white who

7 actually does make the attempt to reverse and finds it

8 impossible to do so and is then, as it were, pushed down

9 the corridor?

10 **BRIGADIER CALITZ:** We can just look at it again,

11 maybe at a slower speed then I can see what you're

12 referring to. No, Mr. Chairperson, the person in white I see,

13 if we can stop there; the person I see in white

14 is the person crouched down as if he reacted and ducked

15 from the fire-line on him. We are now moving

16 backwards instead of forward. See, there he crouches.

17 He ducks from the line of fire. You say he's being pushed; there is

18 absolutely no one behind him to touch him at all.

19 **MR GOTZ:** No, Brigadier, what I said to

20 you was that he makes an attempt to reverse out of the

21 corridor, fails in his attempt, and then continues to run

22 down the corridor.

23 **CHAIRPERSON:** But the Brigadier's point

24 is he doesn't fail because there's someone behind him

25 blocking his way. I think that's your point, Brigadier.

1 Is that right?

2 **BRIGADIER CALITZ:** Mr. Chairperson, he also did not turn around,

3 He basically crouched, as if he ducked for something,

4 from something, and moved on –

5 **CHAIRPERSON:** Yes, but I'm putting a

6 better point, if I may say so, and that is there was no-one

7 behind him to stop him from going back.

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

9 as well. Thank you. Sir.

10 **MR GOTZ:** But Brigadier, do you agree

11 with the proposition I'm putting to you, the proposition

12 being is that he makes an attempt to reverse and fails in

13 his attempt?

14 **BRIGADIER CALITZ:** Mr. Gotz, this is very clearly not

15 the case here, but as it is visible to the panel,

16 Mr. Chairperson can have a look at it yourself. Maybe

17 a point I want to make, show– I don't know if you

18 will get there – at 15:53:35 on the other "slides" that I

19 went through, and we discussed, "slide" 24 and now also

20 this video, if we count quickly– I just went over quickly

21 with my pen, and what I see is,

22 see 13, and the people passing here, they can't be more than

23 five or eight, plus. I think the experts can give us

24 the numbers. I don't think there can't be more than

25 20 people – well, I could be out with one or two,

1 in that first group. So, there is no
2 stampede from the group – I use the word
3 “stampede” – where they are pushed and then forced in
4 a certain direction. You will see that there is a big space between
5 them, and that group moved through,
6 when the shooting happened. So it is not a whole big stampede
7 pushing from behind and preventing people from turning around.

8 **MR GOTZ:** Brigadier, I don't dispute for
9 a moment that at this point there's been a dispersal in the
10 true sense of the word, in the sense that they have been
11 broken up into smaller groups. You must take account of
12 the fact that just prior to this the camera is not in fact
13 focussed on that scene. As the cameraman moves back, the
14 camera points to the ground and there's a section of about
15 four seconds where – four, five seconds where we don't see
16 anybody. So you can't simply count them, that number of
17 five people plus the 13 that you saw earlier because one
18 doesn't actually see the full extent of the mass that's
19 moved forward. But I don't dispute for a moment that at
20 this point there's been a dispersal in the sense that the
21 mass has been broken up into a smaller group, which then
22 makes its way through the corridor.

23 **BRIGADIER CALITZ:** I agree,
24 Mr. Chairperson, that is why I'm telling you the small
25 group that broke up made it easy for them

1 even at that stage, to still turn around.

2 **MR GOTZ:** In fact very few of these

3 people make their way out of the corridor. If one

4 continues to watch the videos, only one person makes it

5 back out – actually one person. So Brigadier, there were

6 16, 17 people killed at scene 1. How many people were

7 injured?

8 **BRIGADIER CALITZ:** I don't have the numbers here with

9 me. If I am correct, it's 78, but I don't know if it is the

10 total of the day or only at "scene" 1.

11 **CHAIRPERSON:** No, no, that includes scene 1.

12 2. What we want to know, if you can't find it immediately

13 never mind, we'll find it later.

14 **BRIGADIER CALITZ:** Yes, I don't have it

15 with me –

16 **CHAIRPERSON:** At scene 1 we know how many

17 were killed, killed or either sustained fatal injuries –

18 some of them didn't die on the spot – and we know some

19 others were injured. Mr. Magidiwana, for example, was one who

20 was injured, but what he wants to know from you is how many

21 people were injured? If it's information that is vital we

22 can get it now, otherwise we can get it later.

23 **MR GOTZ:** No, the Brigadier had started

24 to do a tally and I simply wanted to suggest that one can

25 get an accurate tally of the number of people who attempted

1 to make it down the corridor by adding the number of people

2 killed –

3 **BRIGADIER CALITZ:** We can find it on page

4 – “exhibit” L – apologies, Mr. Chairperson, I have

5 on exhibit L, scene 1, deceased 16, wounded 13, 1-3, and

6 then firearms recovered two. Then there were a number of

7 knopkieries, spears, iron rods, knives, pangas, all those

8 things, they’re covered. So in total then –

9 **CHAIRPERSON:** Could you tell us what

10 slide is that of L?

11 **BRIGADIER CALITZ:** 261.

12 **CHAIRPERSON:** Thank you.

13 **BRIGADIER CALITZ:** 16 dead, 13 injured,

14 if my maths is correct –

15 **CHAIRPERSON:** That’s the answer to Mr

16 Gotz’s question.

17 **BRIGADIER CALITZ:** 29. So –

18 **CHAIRPERSON:** 13 were wounded.

19 **MR GOTZ:** Brigadier, the number of 16 of

20 course must climb to 17 because we now know – and I mean I

21 think this fact has been established on the record – Mr

22 Mdze had originally been thought to have been shot with a

23 shotgun at scene 2 and died on the way to hospital. We now

24 know that he in fact was shot at scene 1 and died on the

25 way to hospital, so the number of people who were shot dead

1 or fatally wounded at scene 1 is 17.

2 **BRIGADIER CALITZ:** Mr. Chairperson, if

3 those facts are in front of the Commissioner, I am not

4 aware of it. I shall take your word for it.

5 **CHAIRPERSON:** I think that is so, but it

6 doesn't affect the number of 13 who were wounded because

7 the gentleman to whom you referred was wrongly allocated to

8 scene 2 when exhibit L was compiled. So the answer to your

9 question is, 13 were wounded. As far as I could make out

10 those who were shot in the legs were the ones who were

11 wounded and those who were shot higher up in the body died,

12 but what is the purpose for you asking the number wounded?

13 I take it you want to take that point further, do you?

14 **MR GOTZ:** No, Chairperson, it was a

15 response to Brigadier Calitz's statement that we simply

16 needed to add the number of people who had been shot or

17 fatally wounded to the five people that one saw in the

18 video and one could get a sense of the number of people who

19 had made their way down the corridor. I was pointing out

20 that one could get a better sense from adding the number of

21 people who were injured, so –

22 **CHAIRPERSON:** Brigadier, I mean that

23 sounds scientific, doesn't it? If you take the people who

24 died, who were killed or fatally wounded and you add to

25 that the number who were wounded, but not fatally, you get

1 a number of about 30, I think.

2 **BRIGADIER CALITZ:** 29, or then 17 if it's

3 true, then 31.

4 **CHAIRPERSON:** Well, that's the point; 17

5 plus 13 is 30, isn't it? And there may have been some

6 people who escaped unscathed completely, but I think on the

7 probabilities that's very remote, we can ignore that. So

8 it sounds as if –

9 **MR MPOFU:** No, Chairperson, I'm sure –

10 **MR SEMENYA SC:** No –

11 **MR MPOFU:** You know all this stuff,

12 there's hard evidence. I don't understand –

13 **CHAIRPERSON:** Okay, give us the hard

14 evidence then, Mr Mpofu.

15 **MR MPOFU:** Well, Mr Phatsha, who is

16 sitting there, testified in this Commission –

17 **CHAIRPERSON:** Alright, okay –

18 **MR MPOFU:** - that he, that a group of

19 people who went through the kraal and jumped over and –

20 **CHAIRPERSON:** You know, I'd forgotten

21 that. I'm grateful to you for drawing my attention to it.

22 So what we are busy with therefore is a number in excess of

23 30. 31 if it was only Mr Phatsha, but he says there were

24 others with him. I can't remember how many he said, but we

25 now are closer, I think, to the correct numbers, thanks to

1 Mr Mpofu's intervention. So we're looking at over 30.

2 **MR SEMENYA SC:** No, Chairperson, again there is
3 hard evidence that a whole host of those people who were
4 not responding to fire, to the water, to the teargas,
5 ultimately ran away. They must have turned somewhere.

6 **CHAIRPERSON:** Mr Phatsha's evidence was
7 he was right near the front and he actually jumped into the
8 kraal and that's how he escaped.

9 **MR SEMENYA SC:** But the others ran away,
10 Chairperson, otherwise –

11 **CHAIRPERSON:** No, no, there were others
12 who ran away. In fact many of them as we know ran away to,
13 ultimately ended up at scene 2.

14 **MR SEMENYA SC:** Yes, the question is how
15 did they run away – how do they turn if this proposition is
16 persisted with.

17 **CHAIRPERSON:** Well, the question of
18 course is where they were in the column. If Mr Gotz is
19 busy with those near the front of the column who he says
20 turned around with difficulty, obviously the further you
21 are – the closer you are to the back of the column, the
22 easier it is for you to run. But anyway, Mr Gotz I presume
23 is near the end of this point, so I think let's let him
24 finish his point and then move on. Anyway, we've got a
25 number of about, of over 30 people, it looks like, who were

1 near the front. There were others as well, as Mr Semenya
2 correctly points out, who succeeded in escaping from scene
3 1 and getting to scene 3, but anyway, I take it enough
4 facts are on record now for you to proceed with your point.

5 **MR GOTZ:** Yes, Brigadier, in the light of
6 the facts that we've seen we will argue that – let me put
7 it this way, that one can see this almost as if it were a
8 funnel with the corridor being the stem of the funnel,
9 the narrow, the stem of the funnel, in other words the
10 narrow pipe and as one enters the stem of the funnel it
11 becomes virtually impossible for the group of people in
12 that funnel to reverse out of the corridor, out of the
13 funnel. That's going to be our argument.

14 **CHAIRPERSON:** It sounds to me as if this
15 is a point upon which the opposing forces', if I can call
16 them that, positions are set in concrete. You put your
17 position and you made it clear what it is. The Brigadier
18 takes a different stance; he's made his view clear, and I
19 don't know if we're going to make any further progress in
20 getting the two opposing forces closer to each other. So I
21 suggest we move on to the next point.

22 **MR GOTZ:** Brigadier –

23 **BRIGADIER CALITZ:** Mr. Chairperson if I may just add
24 something, now that Mr. Mpofo made the remark,
25 earlier it was said they couldn't go left,

1 because there were vehicles, nor to the right, the
2 kraal was there. If I understand the evidence correctly, I
3 I wasn't present during that time, that some people did
4 jump through the kraal and ran away, also, I want to add,
5 that right was another option, not just turning around.
6 but going through the kraal they could also have gotten away.
7 If there were evidence, is, and we know there were
8 shoes, etcetera, you know, found and picked up in the kraal.
9 So, that was also a possible option. But, we can
10 move on, thank you, Mr. Gotz.

11 **MR GOTZ:** Brigadier, the following slide
12 that you'll see is slide 7 of exhibit KKK52. Brigadier,
13 you've had an opportunity to look through this presentation
14 and the report that underpins it. Have you got any
15 difficulties or disagreements with what we've depicted on
16 this slide, slide 8 and slide 9?

17 **CHAIRPERSON:** I'm sorry, in the bottom
18 right-hand corner of this slide is the number 7. So are
19 you asking him a general question –

20 **MR GOTZ:** Yes.

21 **CHAIRPERSON:** - 7, 8, 9, is he happy with
22 the positions of the vehicles? I think he may have a
23 problem with Pappa1, but which in any event is not actually
24 on the photograph, it's in the area above the photograph,
25 but has he got any problem with the position of the

1 vehicles, or the position of the strikers?

2 **MR GOTZ:** Yes, and let's take Pappa1 out

3 of it. It's not –

4 **CHAIRPERSON:** The advancing column of

5 strikers.

6 **MR GOTZ:** Let's take Pappa1 out of it

7 because it's not material for present purposes. Subject to

8 that qualification, Brigadier, do you have any disagreement

9 with what we've depicted on these slides?

10 **BRIGADIER CALITZ:** Mr. Chairperson, if I compare

11 slides 7, 8 en 9 with the documents you gave me yesterday,

12 to go over the contents, you will find the same

13 from page 31; the times correspond there. What we see,

14 you say it was seven seconds before the shooting of TRT at

15 that stage for the first time that the Nyala

16 –I take it that is what you refer to, Pappa19, and not the rest

17 of the vehicles – where the view is hampered for a moment where

18 he is going to drive in front of the TRT-line and past Warrant

19 Officer Kuhn, bur as I showed you

20 yesterday, 14 seconds and 10 seconds back, couldn't, there was

21 no obstruction. So, seven seconds is the first time

22 that the Nyala then obstructed the view. He moves in 49

23 seconds past Warrant Officer Kuhn, and your slide 9, on 50

24 seconds you now don't have – on 49 seconds he had already moved

25 past Warrant Kuhn, and then on 50 seconds he stands again

1 on the same lace he stood on 49 seconds when
2 the shooting occurred. So this is, I don't have any
3 uncertainty, if this is what you referred to, no.
4 **MR GOTZ:** Brigadier, sorry, are you
5 saying you agree with it and you're simply giving
6 additional commentary? Because I'm not sure that I differ
7 from what your commentary was, or are you disagreeing with
8 our representation –

9 **CHAIRPERSON:** I understood him to – let's
10 see if I've got it right. I understood him to be agreeing
11 with the position of the vehicles and I think the position
12 of the strikers. He was disagreeing with you on your
13 contention that you advanced that for a significant period
14 of time the TRT line was not visible to the advancing
15 strikers. I think that's his problem; there he disagrees
16 with you and we went into that yesterday. I don't think we
17 need go into it again today, but am I summarising your
18 evidence correctly, Brigadier?

19 **BRIGADIER CALITZ:** Perfectly correct, Mr.
20 Chairperson.

21 **MR GOTZ:** Yes, Brigadier, I'm not at this
22 point debating questions of when the TRT line became
23 visible to the strikers. I simply wanted confirmation that
24 you agree with the –

25 **CHAIRPERSON:** He said so. He says he

1 agrees. So you don't have to dance a dance of triumph on

2 this concession. Let's move on.

3 **MR GOTZ:** Brigadier, the ultimate

4 configuration that one sees of the vehicles when one

5 compares that to their position a minute earlier is

6 indicative – very much, I submit, or we would submit – of

7 some coordination. This is a, there's a clear pattern to

8 the vehicles. They have reached a position which

9 constitutes a formation and that is not the consequence of

10 accidents, but of coordination, Brigadier. What would your

11 response be?

12 **CHAIRPERSON:** So I think the question was

13 asked yesterday, but apart from that, who was in charge at

14 the time? You had gone by this time.

15 **BRIGADIER CALITZ:** No, Mr.

16 Chairperson, I am there in front by Pappa1 –

17 **CHAIRPERSON:** Yes, no, but you'd gone

18 already, hadn't you? You were on the point of going

19 through the fence.

20 **BRIGADIER CALITZ:** On this in fact,

21 according to CALS's document, I had moved forward in,

22. it must have been a couple of seconds. So what I –

23 **CHAIRPERSON:** Who was in charge of the

24 vehicles down there at the TRT end of the corridor, if I

25 can call it that?

1 **BRIGADIER CALITZ:** At the TRT self – Or,
2 of the Pappa Nyalas?

3 **CHAIRPERSON:** No, no, I'm talking about,
4 you know, where P19 alias P10 –

5 **BRIGADIER CALITZ:** The Senior –

6 **CHAIRPERSON:** - was, that part. Who was
7 in charge of the vehicles there, down there?

8 **BRIGADIER CALITZ:** The senior by Pappa10
9 would be Lieutenant Colonel Mere.

10 **CHAIRPERSON:** Alright.

11 **BRIGADIER CALITZ:** Who then also stayed behind
12 at the scene, and Colonel Makhubela, but he was by
13 the, just by the wire car line.

14 **CHAIRPERSON:** So if there was any
15 deliberate formation of the vehicles, putting them into
16 formation, who would have made that, taken that decision
17 and issued that instruction?

18 **BRIGADIER CALITZ:** Mr. Chairperson, if
19 there was such a formation, and someone gave the order, it would
20 certainly be given by the commanders, who would say;
21 stop behind each other or let's park in this way.

22 **[10:01]** But I know for sure as I had moved with them,
23 and my orders were only for the vehicles, to move ahead
24 and to disperse. I think what happened her is, simply, you know,
25 coincidental, there isn't such a formation as what you refer to here

1 that we can say; go and park in a straight line behind each other,
2 there was no time for that. So what happened here,
3 every commander on those vehicles had moved around, and what
4 occurred in front of him, as the vehicle stopped, I believe
5 he stopped and the action then occurred on their right sides
6. as the people came through. So, I think it is individual
7 actions by the commanders, which will then
8 testify to that time, definitely not coordinated or orders
9 given, no.

10 **MR GOTZ:** Brigadier, you gave an
11 instruction to block, we know that and we know also from
12 Colonel Scott's evidence that he, well, he says that you
13 were coordinating the vehicles, you were directing vehicles
14 at this stage. His evidence is clear and it was not
15 challenged.

16 **BRIGADIER CALITZ:** No, I don't know if this was not challenged
17 with him, but you certainly went over this with me
18 yesterday. You referred to Advocate
19 Chaskalson and you referred to the words, "a perfect
20 block." I had shown you, it was at that stage that they
21 came to the kraal at 45 degree angle. Mr. Chairperson,
22 I do not want to rehash the whole thing again. You
23 said it wasn't like that at all, I looked at the transcript
24 again and it is exactly as I had testified;
25 perfect block, and gave my reasons when I spoke about

1 the 45 degree angle they came in at. Just after that, Advocate
2 Chaskalson asked me, and we can go to that page,
3 if we must first block and then disperse
4 and my answer to him was very clear;
5 that, should the commanders get to such a position
6 and it is too dangerous to physically form such a line with your
7 members and say; get out, form a line, the danger line is too
8 close, then the block will never occur and they
9 would go into dispersion immediately.
10 So, the block fell away completely as a result of the
11 attack. I testified to this and it is on record, I
12 can refer you, I had seen it coincidentally, on page
13 18,277 of day 160. This is just the follow up question, Mr.
14 Chaskalson, where I explained to him that the block falls away
15 when the danger-situation is like that, and the commanders see it can't
16 work that way, then they go into dispersion.
17 **MR GOTZ:** Brigadier, I don't want to go
18 over evidence that has already been given, you were the one
19 who described this is the perfect block and we agree with
20 it, but it is block of a particular nature and we showed
21 you the SAPS' training manuals, which indicate that, this is
22 the type of block that is used to channel people down a
23 particular corridor. I'm not going to go through that
24 again, I think it is clear.
25 **BRIGADIER CALITZ:** I think only one correction,

1 you say; we agreed on it, we definitely did not agree
2 on it. I explained to you that
3 manual is instructions for when a block operation
4 and we know in a city area, the people will converge on a specific
5 spot, then we can place our vehicles in such a position.
6 Here I think the evidence leaders played a clip for us,
7 I think of 1 minute and 30 seconds, where the people moved
8 up and around and what played out in front of them
9 they, had to make a decision. It would be very foolish and dangerous
10 if there were indeed Public Order members
11 standing in a line, it would be life threatening
12 for them. We saw it and of the members started moving
13 back to their vehicles, so no, we definitely
14 did not agree.

15 **MR GOTZ:** And the proposition that Mr.
16 Chaskalson was putting to you is that you had a number of
17 vehicles at your disposal in order to create a block which
18 stopped the protestors from advancing any further and he
19 suggested to you that you could have placed that block
20 between the north-west corner of the kraal and where you
21 see the STF Casspir was located, and then you'll recall
22 there was a whole debate about whether or not the red line,
23 where the red line was drawn you had accepted the
24 proposition, I don't want to go back to that.

25 **BRIGADIER CALITZ:** I also did not –

1 **MR GOTZ:** So based on that –

2 **BRIGADIER CALITZ:** I also did not accept that proposition,

3 there was a difference, and I had proofed that with

4 I think, 17 of 19 inserts in the transcript, so, I

5 don't think we should go there again. What I did say

6 to him, he made a suggestion that there could have been

7 a block there previously, then Mr. Chairman asked;

8 where we would have positioned the people, and we said

9 much further ahead, and I showed clearly from the transcript

10 what we meant. To coordinate the vehicle in such a manner

11 within a few seconds, to park it right next to each other

12 is just about impossible in the operational,

13 situations played out here, and I

14 think my testimony was, should the vehicles be parked next to

15 or against each other, with, we said a door space separating them,

16 what would prevent the people from simply

17 just running between the vehicles, the kraal, between

18? two vehicles? Surely it is not a

19 solid line, so you have to

20 make use of POP, well, between the

21 vehicles and that would not be possible, therefore the block falls

22 away and I testified that we went into

23 a dispersion action.

24 **MR GOTZ:** Brigadier, let's look again at

25 Exhibit KKK47 that draws various diagrams, which show that

1 you're completely wrong.

2 **CHAIRPERSON:** - diagram that shows he is

3 completely wrong, I think you must draw his attention

4 specifically to those that you say show he is wrong so that

5 he can deal with them.

6 **MR GOTZ:** And look at slide 15, I think

7 it is slide 15, unfortunately they're not numbered. So

8 what that slide shows and indeed the one right next to the

9 one following it is that you can use vehicles touching each

10 other as it were, and you do, do that, and indeed you are

11 trained to do that.

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

13 do not want to give you lecture upon lecture, but if

14 we block the vehicles in such a way, there will always be POP

15 members who will man those, corners as shown, in other words,

16 the crosses shown there or the spaces,

17 as you see, between the number 2 and the Nyala there

18 is a space - who would close those spaces?

19 When two Nyalas park against each other, nose to nose,

20 we can go and do the practical exercise, I will show you

21 there will still be between, where you will have to place

22 personnel. Now, this was my testimony which I

23 referred to with Mr. Chaskalson. When the commanders

24 arrived, it was their call.

25 Every section commander, group commander before him,

1 make a decision and there were some of them who said,
2 pertinent, I think Pappa11 is an example if I am correct,
3 who gave his members orders; you do not leave your
4 vehicles, it is too dangerous, gave orders to only deploy
5 dispersion action, which definitely is not
6 wrong in operational terms. So this is not –

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

12 **BRIGADIER CALITZ:** No, this is not what I said,
13 Mr. Gotz, please.

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

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

18 **BRIGADIER CALITZ:** Mr. Chairperson, I
19 even when one parks the vehicles against each other, the Nyala
20 vehicle, there will always be a space through which people
21 can pass. In other words, should we park against the kraal,
22 and the other Nyala, park against the other, the mirrors,
23 we can't, surely, smash the vehicles against each other.
24 Do you understand what I'm trying to say? The kraal was still
25 there. You will still find spaces. We can practically

1 go and demonstrate it on the ground for you. There will always
2 be spaces between, where the POP members will
3 be placed. We work with this in daily situation.
4 in demonstrations, and the term, block, is used
5 when we know beforehand. Why I used the words; "go block"
6 was just to try and stop the people in case
7 you use dispersion action. The purpose was, go and see if they
8 don't just want to stop and heed the dispersion action
9 which had already occurred at incident 2,
10 but the frontline militant group, we know that 30,
11 why they wanted to get through and still would
12 get through

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

21 **BRIGADIER CALITZ:** Mr. Chairperson, I
22 I think if you take this proposal and ask the same question,
23 Pappa10 was Lieutenant-Colonel Mere, Pappa5 was Lieutenant-
24 Colonel Pitsi. They are people with years of experience in
25 Public Order, so, you can ask them, when they come to testify.

1 give them the same proposition, it is practically impossible
2 within seconds to say; we know the people are passing through here
3 right now, let us go and park the vehicles like this, and that one there,
4 inconsideration of where I was, to move forward, as Pappa4 en 2,
5 and what would prevent the people from moving between Pappa4 and
6 Pappa2, and what would prevent them from pass through
7 the kraal between Pappa2, and then also the same for
8 between Pappa4 and the Casspir, what would prevent them there
9 from jumping over that corner of the buffer of a
10 Nyala? What must we put in that space?
11 This is not a solid, I don't know if you understand,
12 maybe if we demonstrate what a Nyala looks like from the outside
13 you may get a grasp -
14 **MR GOTZ:** Brigadier, it is perfectly
15 obvious, what I'm suggesting to you is that you can use the
16 Pappa2, Pappa4 or Pappa5 to create a form of block which
17 interrupts the flow of the strikers around the corner of
18 the kraal. You could have done that if you wanted to.

19 **BRIGADIER CALITZ:** Mr Chairperson, in
20 hindsight, it is very difficult to sit and say yes;- had we known
21 the people would come pass this corner- let us proceed with a
22 block- formation, stop them there and it was planned
23 beforehand, certainly there could have been a block
24 formation with the POP members placed in between.
25 What I am telling you, it would still have been dangerous,

1 life-threatening for those POP members and they would have
2 retreated back to their vehicles, with the same,
3 maybe unless the people heeded the warnings.
4 But that group was determined to move through and we all
5 know the reasons for that.

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

13 **BRIGADIER CALITZ:** Yes, but I did not talk about the
14 members in the vehicles, I did not once
15 refer to that -them.

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

21 **BRIGADIER CALITZ:** Mr. Chairperson,
22 the block you see here, no. not at all. I say again,
23 every commander, what plays out in front of him, he will
24 make the decision. And the senior officers, Pappa5, whom I mentioned,
25 Lieutenant-Colonel Pitsi, Lieutenant-Colonel Mere, will tell you

1 why they were in that position, where they were,
2 when they come to testify. They were at the back of me. I can't tell
3 what had happened at that stage, if one of them said, pull in
4 behind me or next to me. All I can say to you is that the block
5 wasn't planned beforehand, there wasn't anticipated that we would
6 have to make use of a block-action
7 at that stage. If we had to use a block action,
8 we may very well just have used a wire vehicle
9 and would have just left another space somewhere
10 else. So, there are varied possibilities
11 in hindsight, Mr. Chairperson, but no,
12 what you see here, nothing would have prevented them
13 from just moving past between the vehicles anyway.
14 **CHAIRPERSON:** Mr Gotz, I think we've
15 spent a lot of time on this point. It sounds to me as if
16 you've got as much out of the brigadier as one can expect
17 because he has left the scene at a relevant time. Colonel
18 Mere, I think, is one of those who perhaps would be able to
19 throw further light on the question. It occurs to me, if
20 one looks at the various slides that you've given us, you
21 start with 15:53:30 and then 15:53:40 and then there is one
22 at, in fact there is one at 35, so if one takes 15:53:30,
23 35, 40, 45, 50, on the assumption which I think is not
24 challenged, that boldly speaking your position of the
25 various vehicles is correct, then one can see how they

1 moved. One can see that there was what looks like some
2 kind of a block earlier on, but for some reason, which
3 presumably will be able to be explained to us, or maybe
4 able to be explained to us by Colonel Mere, the position of
5 the vehicles was changed to what we see on the later
6 slides, but I don't know that there is any point in asking
7 this witness about it any further because he can't really
8 tell us.

9 He denies that a specific instruction was given,
10 he says it was left to the individual Nyala commanders at
11 the time, or possibly the senior Nyala commander present at
12 the scene at the time, and I don't know that there is any
13 point in asking him anymore questions on it. The
14 comparison of the position of the vehicles at the various
15 times may well prove instructive, but that's something, any
16 instruction we get won't be from this witness, I think, so
17 I suggest that you might consider moving on to your next
18 point.

19 **MR GOTZ:** Chairperson, the reason I'm
20 asking this witness of course is that he was the one who
21 gave on his own admission an instruction to block and what
22 I'm testing is –

23 **CHAIRPERSON:** Yes, I know that, that
24 point has been made. A further point was made that in
25 effect there was a kind of block within the meaning of the

1 definition –

2 **MR GOTZ:** Yes –

3 **CHAIRPERSON:** And that point was made

4 yesterday, it is either a good point or a bad point, but I

5 don't know that it is improved by being repeated and being

6 approached from various angles. We've got all the basic

7 facts, we know what the witness says about these things.

8 There will be other witnesses who can be questioned about

9 this, who were actually responsible for moving the relevant

10 vehicles at the relevant times. I mean if you look at the

11 slide at the moment, the 15:53:30 one, there is what looks

12 like a block. 2, 4 and the Casspir look very similar to

13 that picture of a block in the police manual. We know from

14 your subsequent slides that that block, if one can call it

15 that, the witness may deny that it is a block properly so

16 called, but it looks like a block, apparent block, shall we

17 say. We know that that apparent block didn't persist

18 because those vehicles were moved.

19 **MR GOTZ:** Chairperson, -

20 **CHAIRPERSON:** I don't know that he can

21 help us as to why they were moved, those who moved them can

22 come and tell us.

23 **MR GOTZ:** Yes.

24 **CHAIRPERSON:** But my point is, I don't

25 know that there is any point in carrying on with this

1 witness at the moment on this line.

2 **MR GOTZ:** Chairperson, I'm happy to leave

3 it, but just one clarification. What we sought to do on

4 this slide and indeed the one following is to illustrate

5 that these types of blocks could have been attempted –

6 **CHAIRPERSON:** Yes, I think you could

7 assume –

8 **MR GOTZ:** It was never suggested that –

9 **CHAIRPERSON:** I'm sorry to interrupt you,

10 I'm assuming you could assume that we got that point. You

11 don't have to tell us what you're about, you are here at

12 the moment to ask questions, you're asking questions. I'm

13 suggesting to you the line that you are busy going along,

14 you more or less reached the, it is a cul-de-sac, you've

15 reached the dead end, you've gone as far down this line as

16 you can go, I suggest you go on another line. There are

17 other witnesses who will be in the same avenue from whom

18 you can ask questions about this later, but I don't know if

19 there is any point in carrying on further with this

20 witness. Ms Hemraj says that this line is blocked.

21 **MR GOTZ:** Chairperson, with that block I will

22 come to the end of my cross-examination.

23 **CHAIRPERSON:** Thank you. Is there any, I

24 don't know if anyone else have to cross-examine, is there,

25 except, - it was told to us that Lonmin are not proposing

1 to cross-examine this witness.

2 **MR BURGER SC:** No, indeed, not Chairperson,

3 thank you.

4 **CHAIRPERSON:** Re-examination, Mr Semenya?

5 **[10:21] RE-EXAMINATION BY MR SEMENYA SC:** Thank

6 you, Chairperson. Brigadier, this is day 26 that you have been

7 giving us evidence and 24 of which you have been giving

8 evidence under cross-examination. Your answers have been

9 fairly expansive, but I would like us to deal with various

10 topics. Maybe it is fitting that we deal with this one

11 first.

12 The proposition about channelling of the strikers

13 to the TRT line, can we start with that. You tell us that

14 you are in the 14:30 briefing. Is that right, Brigadier?

15 **BRIGADIER CALITZ:** This is correct, by

16 "forward holding area" 1.

17 **MR SEMENYA SC:** Was the channelling of

18 strikers discussed in that briefing of 14:30?

19 **BRIGADIER CALITZ:** No, not at all Mr.

20 Chairperson.

21 **MR SEMENYA SC:** Were the commanders of

22 the POP present at that briefing?

23 **BRIGADIER CALITZ:** Yes, all the

24 commanders were there except for, Lieutenant Colonel Mere

25 whom I later briefed.

1 **MR SEMENYA SC:** As far as you know there
2 would have been a briefing of 13:30, the mid-afternoon,
3 right?

4 **BRIGADIER CALITZ:** You mean the JOCCOM
5 meeting?

6 **MR SEMENYA SC:** On the 13th, yes.

7 **BRIGADIER CALITZ:** Yes, it was, we
8 were told there was a 13:30 meeting.

9 **MR SEMENYA SC:** To your knowledge, was
10 there any discussion relating to channelling of strikers to
11 the TRT line?

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

14 **MR SEMENYA SC:** If that was to be the
15 operational conduct for the day, would you have expected
16 that to be discussed in the 13:30 JOCCOM meeting?

17 **BRIGADIER CALITZ:** It would very well have been an
18 important discussion point where, I believe,
19 decision would have been made.

20 **MR SEMENYA SC:** You were in the JOCCOM
21 meeting of 6 o'clock where there was reference to stage 3,
22 were you not?

23 **BRIGADIER CALITZ:** That is correct, Mr.
24 Chairperson.

25 **MR SEMENYA SC:** Was the channelling of

1 strikers to the TRT line ever discussed there?

2 **BRIGADIER CALITZ:** No, Mr.

3 Chairperson.

4 **MR SEMENYA SC:** If it was part of the

5 police planning op for the day, would it have been

6 discussed?

7 **BRIGADIER CALITZ:** Yes, certainly

8 Mr. Chairperson.

9 **MR SEMENYA SC:** I'm just trying to

10 explore with you because this theory is given either that

11 the channelling of the strikers to the TRT line was by

12 design or default, but can we explore the design one first?

13 After the 6 o'clock JOCCOM meeting Colonel Scott was asked

14 to continue perfecting the plan, so to speak.

15 **BRIGADIER CALITZ:** I believe he stayed behind,

16 he was busy with that, Mr. Chairperson.

17 **MR SEMENYA SC:** Now we know the plan as it

18 was given before this Commission, does it or does it not

19 have any channelling of strikers to the TRT line?

20 **BRIGADIER CALITZ:** I am not aware of any

21 channelling in that plan.

22 **MR SEMENYA SC:** Would you have expected

23 it to be there if that was part of the police plan for the

24 16th?

25 **BRIGADIER CALITZ:** Yes, definitely, Mr.

1 Chairperson.

2 **MR SEMENYA SC:** Okay. Now the evidence

3 leaders have trawled basically the hard drive of Colonel

4 Scott. You are aware of that?

5 **BRIGADIER CALITZ:** I gathered that from

6 the media.

7 **MR SEMENYA SC:** And they have mapped it

8 in terms of time when all the stages of the plans were

9 contemplated and brought to the computer. Are you aware of

10 that?

11 **BRIGADIER CALITZ:** I am aware of all the

12 drafts, the configuration that was on his computer. I heard

13 of it, yes.

14 **MR SEMENYA SC:** Have you come across any

15 of those drafts that are depicting a channelling of the

16 strikers to the TRT line?

17 **BRIGADIER CALITZ:** As I know, it was

18 never discussed, handed over to him or found.

19 **MR SEMENYA SC:** Now throughout the

20 planning of this operation, did the police anticipate in

21 advance that the strikers would approach Nyala 4, as they

22 did?

23 **BRIGADIER CALITZ:** No, Mr.

24 Chairperson, we only expected it afterwards,

25 not at that stage.

1 **MR SEMENYA SC:** Just so that I follow
2 your evidence correctly, and given the questions of whether
3 this would have happened by happenstance or coincidence,
4 can we look at the last slide, which is KKK52, 15:53:30,
5 and that is slide 11 that Mr Gotz has been dealing in his
6 cross-examination of you. That is supposed to depict a
7 scenario that, we are told, you ought to have done on the
8 day, correct?

9 **BRIGADIER CALITZ:** This is the suggestion that we used
10 that block, he calls it a block-formation,
11 that is correct, yes.

12 **MR SEMENYA SC:** Yes, let us see how that
13 is achievable operationally. Would the person in Pappa2
14 have had a briefing about it before?

15 **BRIGADIER CALITZ:** No, that is – he had, he would not have
16 had any briefing for that.

17 **MR SEMENYA SC:** What I'm asking, is to
18 achieve that result, would you have to inform the driver of
19 the Nyala what they must do?

20 **BRIGADIER CALITZ:** Oh, in order to
21 achieve – I misunderstood- Yes, he most certainly would
22 have been briefed, Mr. Chairperson.

23 **MR SEMENYA SC:** Would you have had to advise
24 the driver of Pappa4 that that must be the position they
25 must take?

1 **BRIGADIER CALITZ:** He would have been part
2 of that planning.

3 **MR SEMENYA SC:** That of the Casspir?

4 **BRIGADIER CALITZ:** This is correct.

5 **MR SEMENYA SC:** That of the STF?

6 **BRIGADIER CALITZ:** Yes, even them as part of a
7 tactical, would have been included, that is correct.

8 **MR SEMENYA SC:** So all of those would
9 have to have a briefing before this is realisable?

10 **BRIGADIER CALITZ:** They would have been included
11 in the planning, be part of the plan, if there had been any,
12 and also included in the briefing.

13 **MR SEMENYA SC:** As a matter of fact do we
14 know if there was any discussions with Pappa2 driver to take
15 any particular formation on the day?

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

18 **MR SEMENYA SC:** Do we know any
19 information that the driver of Pappa4 on the day was
20 informed that is the formation he must take?

21 **BRIGADIER CALITZ:** No, Mr.
22 Chairperson.

23 **MR SEMENYA SC:** That of the Casspir?

24 **BRIGADIER CALITZ:** No, also not.

25 **MR SEMENYA SC:** Okay. Now I would like

1 to throw us back to another slide.

2 **CHAIRPERSON:** It's now half past 10, Mr

3 Semenya. When it's convenient we'll take the tea

4 adjournment, I think. If you need some time to find the

5 slide you're going to show perhaps we can take tea now,

6 otherwise we can see the slide and deal with the point that

7 you're going to make in relation to the slide and then take

8 the tea adjournment, but I'm in your hands.

9 **MR SEMENYA SC:** We can take the break

10 now, Chairperson.

11 **CHAIRPERSON:** We take the tea

12 adjournment.

13 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

14 **[11:02] CHAIRPERSON:** The Commission resumes.

15 Brigadier, you're still under oath. Mr Semenya.

16 **ADRIAAN MARTHINUS CALITZ:** Thank you, Mr.

17 Chairperson.

18 **RE-EXAMINATION BY MR SEMENYA SC (CONTD.):**

19 Thank you, Chairperson. Perhaps, Brigadier, before we go to the

20 next slide, can we just finalise some few outstanding

21 issues relevant to the previous slide, which is KKK52 and

22 slide 11, the one dealing with a hypothesis of blocking.

23 On this hypothesis, Brigadier, what would have been the

24 protection, if at all, of Pappa11?

25 **BRIGADIER CALITZ:** Not at this stage

1 there would not be any protection

2 for him.

3 **MR SEMENYA SC:** Would that be consistent

4 with how Public Order Policing operation should happen?

5 **BRIGADIER CALITZ:** No, not at all Mr.

6 Chairperson. It wouldn't have been planned like this.

7 **MR SEMENYA SC:** And in the event this

8 formation was to be carried as proposed, what would have

9 happened to the plan to disperse, disarm the protesters?

10 **BRIGADIER CALITZ:** That plan is still implemented by

11 what we referred to as incident 2. At

12 Nyala 4 they had already used the dispersion action,

13 if I understand you correctly.

14 **MR SEMENYA SC:** I may not have expressed

15 myself well. I'm trying to understand if this blocking in

16 the form that is proposed here had happened, i.e. the

17 Nyalas and the Casspirs had formed in the way of that

18 blocking, what would have happened to the plan to disperse

19 the crowd and to disarm them?

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

21 to just have blocked, wouldn't have worked, that is why

22 it goes with the dispersion, so, that is why we would have

23 POP members on the outside, to then proceed with the

24 dispersion action I referred to, which

25 would be dangerous.

1 **MR SEMENYA SC:** Would you have still been

2 able to disperse in that formation?

3 **BRIGADIER CALITZ:** Yes, but it would have been difficult

4 in that formation.

5 **MR SEMENYA SC:** How do you preclude them

6 going through the kraal with that formation?

7 **BRIGADIER CALITZ:** If I understand you correctly,

8 I had testified previously, that they still went through the

9 On the side of Pappa2 and the kraal.

10 **MR SEMENYA SC:** How would you have

11 prevented them going through the fence that is bordering

12 that property?

13 **BRIGADIER CALITZ:** Not with this formation,

14 no. A totally different formation would have had to be set up there

15 because that fence is just a three-line

16 wire, so, it is easier getting through there.

17 **MR SEMENYA SC:** Could this formation have

18 happened spontaneously?

19 **BRIGADIER CALITZ:** No, Mr.

20 Chairperson.

21 **MR SEMENYA SC:** Would you have had to be

22 told as the operational commander, that this becomes

23 necessary?

24 **BRIGADIER CALITZ:** Yes, if it was

25 discussed, definitely.

1 **MR SEMENYA SC:** In terms of the
2 timelines, how much time would have been required to
3 properly inform everybody that this blocking has become
4 necessary?

5 **BRIGADIER CALITZ:** Sjh, Mr.
6 Chairperson, to put a proper blocking in place,
7 it means we have to brief the commanders, whereupon
8 they will have to brief their members
9 on the vehicles. So, definitely not in the minute 30 seconds time
10 we had here,
11 It would take much longer than that.

12 **MR SEMENYA SC:** If, as the operational
13 commander, you wanted spontaneously to achieve this, or
14 instantly to achieve this feat, how much time would you
15 have needed?

16 **BRIGADIER CALITZ:** I think the, Mr. Chairperson
17 from where they came from, the
18 30, or the 20 up to 50, it gives a few seconds, 10,
19 20 seconds, which is much too little time to put any plan
20 in place.

21 **MR SEMENYA SC:** Okay, can I invite you to
22 comment on another exhibit, which is KKK51, slide 5, the
23 one below this one. That's the one. This is a blown-up
24 version of the previous slide. We are told this is now 29
25 seconds before the TRT responded to the crowd.

1 **BRIGADIER CALITZ:** Yes, I think this is in zoom from
2 the photo of Colonel Vermaak, if I don't have
3 it wrong.

4 **MR SEMENYA SC:** Yes, according to your
5 study of the material, Brigadier, would scene 2 have
6 happened this time? Incident 2, rather.

7 **BRIGADIER CALITZ:** Incident 2 had already
8 occurred. This is where they moved around to incident 3.

9 **MR SEMENYA SC:** And the water cannon,
10 according to your understanding of the evidence had it
11 already sprayed the crowd?

12 **BRIGADIER CALITZ:** Mr. Chairperson, I did
13 say that I wasn't away when he sprayed,
14 so, I can't testify about that.

15 **MR SEMENYA SC:** Let us look there at the
16 opportunity of people turning back and going to their
17 respective destinations of choice. Is there anything on
18 the part of the police precluding these members from going
19 to all various spaces that we see on that photograph?

20 **BRIGADIER CALITZ:** As you say precluding,
21 I just want to ensure –

22 **MR SEMENYA SC:** Is there anything by the
23 police, which prevents any of these people from going back?

24 **BRIGADIER CALITZ:** No, Mr. Chairperson,
25 I think if maybe we take a look at the video material

1 we had just seen –

2 **MR SEMENYA SC:** Shortly before –

3 **BRIGADIER CALITZ:** Apologies, Mr.

4 Chairperson, no, I just want to answer this. When we look at the

5 video material, which we had just seen, and the big group

6 we shall see that the dispersion, which occurred, did work,

7 and the bigger majority –

8 – I think if we can zoom out, we will see what size was the group who

9 followed at this stage. So, that group of 30

10 pushed through. The others reacted on the dispersing and the

11 police action. So, nothing prevented them from

12 from turning around and moving away from that

13 dispersion.

14 **MR SEMENYA SC:** And we see the Nyalas

15 there in what is called the corridor, the channel, or the

16 funnel. Was that ever discussed in any briefing that the

17 Nyalas should be in that formation?

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

19 Chairperson, it was never discussed.

20 **MR SEMENYA SC:** As the operational

21 commander, did you talk to any of those drivers to take that

22 formation?

23 **BRIGADIER CALITZ:** Not to take that formation

24 no. I did say, follow me – well,

25 I said follow me, but some of them were already there when I

1 told him, stop the people, "disperse, so the

2 "commanders" took in that

3 position.

4 **MR SEMENYA SC:** Were you minded when you

5 gave whatever instructions you gave to form a corridor?

6 **BRIGADIER CALITZ:** No, not at all,

7 not in that way, no.

8 **MR SEMENYA SC:** Were the drivers of the

9 various Nyalas aware that a corridor ought to be formed for

10 the purposes of channelling these strikers to the TRT line?

11 **BRIGADIER CALITZ:** Yes, it was

12 never discussed, so

13 they were not aware of that, no.

14 **MR SEMENYA SC:** At the time of incident 2

15 were you as the operational commander alive to the fact

16 that the strikers would want to go around the kraal, the

17 small kraal?

18 **BRIGADIER CALITZ:** Mr. Chairperson, I

19 think I testified that I could see the front of the vehicle,

20 the Nyala 4, where it blocked, and the bigger back part

21 we observed moving around and this is why I

22 told the vehicles to move around and try to block, to

23 stop.

24 **MR SEMENYA SC:** What I'm trying to

25 establish is whether at the time incident 2 happens, were

1 you as the police aware that closing of that route by Nyala

2 4 would lead the group to go around the kraal?

3 **BRIGADIER CALITZ:** No Mr. Chairperson,

4 the effective purpose of the incident 2 and then also the orders

5 to act were to disperse and

6 they would have moved away in a westerly direction.

7 **MR SEMENYA SC:** And how much time did you

8 have at that point to then rearrange the Nyalas as we see

9 them on this slide?

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

11 I don't have the exact time between incidents 2 and 3. I

12 think on the video shown to us, you can see the time

13 we started moving up, to be a minute and 30 seconds, I think, I

14 am under correction here.

15 **MR SEMENYA SC:** As the operational

16 commander did you talk to TRT this time?

17 **BRIGADIER CALITZ:** Not specific orders to

18 TRT no.

19 **MR SEMENYA SC:** Was there anything – let

20 me ask it differently. Pappa11, we see it where it is. Was

21 it through any of the direct instructions that you gave it?

22 **BRIGADIER CALITZ:** To park in that position,

23 no. The commander decided

24 to move forward and park there.

25 **MR SEMENYA SC:** Okay. I would like us to

1 also deal with various other slides and obtain your input.

2 If we go to page 25 of exhibit KKK52, that is the slide

3 dealing with 14 seconds before the action by the TRT on the

4 – no, the one which is page 25, screenshot from exhibit UU3

5 at 5 seconds, and which is 14 seconds before the TRT

6 line opens fire. Yes, that's the one, Brigadier. Is the

7 TRT line visible to the approaching strikers?

8 **BRIGADIER CALITZ:** Yes, that is correct

9 Mr. Chairperson.

10 **MR SEMENYA SC:** Are the members of the

11 police visible, of POP rather, to the approaching strikers?

12 **BRIGADIER CALITZ:** The POP is also

13 visible to them, yes, that is correct.

14 **MR SEMENYA SC:** The Nyalas by the police,

15 are those visible to the approaching strikers?

16 **BRIGADIER CALITZ:** Yes, it will be clearly

17 in their vision.

18 **MR MPOFU:** Sorry, Chairperson, I don't

19 know what this means. The approaching strikers, what is

20 being spoken about here? How many people? 3 000? Two?

21 Three?

22 **CHAIRPERSON:** Mr Semanya, Mr Mpofu wants

23 you to clarify your question, so can you oblige?

24 **MR SEMENYA SC:** At least to the 10,

25 minimum of 10 on that photo, would they have reasonably

1 been able to see what we are talking about?

2 **BRIGADIER CALITZ:** This is correct Mr.

3 Chairperson, they will see it.

4 **CHAIRPERSON:** I thought this was covered

5 yesterday, Mr Semenya. I don't want to stop you, but I

6 thought this matter was dealt with fairly fully. The whole

7 question of the visibility to the strikers of the TRT group

8 was gone into in some depth. The proposition was put by Mr

9 Gotz, which the witness didn't agree with, and he then

10 referred to various slides and so on, indicating there's a

11 longer period than Mr Gotz had suggested. I'm not sure

12 that anything new has been added at this stage so that you

13 have to go over this ground again in re-examination, but

14 look, you may be leading up to something so I won't stop

15 you at this stage, but it's not necessary to repeat

16 evidence that was given yesterday just because it's re-

17 examination and not cross-examination.

18 The point you're apparently seeking to make at

19 the moment is the amount of time which was available to the

20 strikers at the front to see the TRT ahead of them. That

21 point was fully dealt with yesterday and I don't know that it

22 has to be repeated, unless there's something new that was

23 not drawn to our attention yesterday which puts an extra

24 aspect to the matter that we haven't got at the moment.

25 **COMMISSIONER HEMRAJ:** Mr Semenya, can we

1 have some assistance about the distances between where the
2 strikers appear on this photograph and where the POPS
3 police can be seen, and where the TRT police line is?

4 **MR SEMENYA SC:** I do not have that, but
5 we will attempt to ascertain the distance, Commissioner.

6 **COMMISSIONER HEMRAJ:** Thank you.

7 **CHAIRPERSON:** I'd understood that some
8 calculation has been done on the Google Earth, but we're
9 going to have to have an inspection I think at some stage,
10 one more, one perhaps final inspection, and perhaps at one
11 of the exercises that can be performed at the inspection –
12 I think we were told what it is in Mpofu paces, but that's
13 not a scientific measurement. So various measurements,
14 Mpofu paces, but at the inspection we can measure them
15 exactly and remove any difficulty or lack of clarity on
16 this aspect, and similar aspects.

17 **MR SEMENYA SC:** I would like, Brigadier,
18 still on that photograph, is there an opportunity for those
19 strikers in the front to move in between the Nyalas if they
20 so elected?

21 **BRIGADIER CALITZ:** That is correct, yes.

22 **MR SEMENYA SC:** Was there anything in
23 your assessment that would have prevented them from doing
24 so, by the police?

25 **BRIGADIER CALITZ:** The POP, there was

1 what we had seen on the video,
2 had one or two members who stood between the Nyalas,
3 the dispersion action with shotgun.

4 **MR SEMENYA SC:** Did they respond to that
5 at all?

6 **BRIGADIER CALITZ:** No, no, they just
7 moved past and their response to the dispersion with
8 the shotgun was the striker who took out the pistol
9 and fired on, or in the direction of
10 the policeman.

11 **MR SEMENYA SC:** Was there an opportunity
12 for the strikers to stop right there as we see them in this
13 frame if they so elected?

14 **BRIGADIER CALITZ:** Mr. Chairperson,
15 Yes. This is what I testified to. I will say there was.

16 **MR SEMENYA SC:** Was there an opportunity
17 for the strikers if they so elected to just put their arms
18 there and proceed unarmed?

19 **BRIGADIER CALITZ:** I they had laid down their arms.
20 stood still with their arms in the air, and surrendered,
21 there would have been no tragic consequences

22 That is correct.

23 **MR SEMENYA SC:** Do you know why that
24 didn't happen?

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

1 can only testified to the threats made against us,
2 and that they told us we will die on that day.
3 And the threats themselves that they would attack the
4 police line. We also know from one of the
5 speakers – I think Mr. Chairperson referred to that,
6 I don't have the reference with me – who said the people
7 from the, I think the, can't say the exact words, the homelands,
8 who came from outside that day will die there, or
9 not die, they will finish them off. I think that was the correct,
10 wording, so all those utterances, this was our understanding,
11 that they wanted
12 to attack.

13 **[11:21] MR MPOFU:** Okay, at –

14 **CHAIRPERSON:** We've gone over that ground
15 a great already as well. There are two things, you can't
16 really tell us from your own knowledge to why they didn't
17 make the decision at that point when they saw the TRT in
18 front of them, to lay down their arms and surrender or lay
19 down their arms and walk forward in an unarmed way, you can
20 speculate, you have an opinion on the matter which you've
21 expressed before but you can't take it further than that,
22 is that right?

23 **BRIGADIER CALITZ:** Mr. Chairperson,
24 except the threats made directly to us,
25 yourself –

1 **CHAIRPERSON:** You've testified about that

2 already, that's -

3 **BRIGADIER CALITZ:** Yes, all I meant was,

4 that information, that is -

5 **MR MPOFU:** Chairperson, sorry.

6 Chairperson, I'm sorry, I'm sure you did not intend to do

7 it, what I'm going to object to, but the evidence of Mr

8 Magidiwana is that they did not see the TRT line, so let's

9 not, we can't say when they saw the TRT line when there is

10 hard evidence un-contradicted that they did not see it and

11 in fact this witness and the cross-examination by me even

12 confirmed the reasons why they did not see the TRT line, so

13 -

14 **CHAIRPERSON:** Yes, I know what -

15 **MR MPOFU:** Maybe let's say if they saw

16 the TRT line.

17 **CHAIRPERSON:** Well, I think the question

18 is put on the basis that, the contention is they could see,

19 one assumes that they did, Mr Magidiwana says they didn't,-

20 **MR MPOFU:** Yes, -

21 **CHAIRPERSON:** - so the value of that

22 evidence would have to be evaluated later. The mere fact,

23 it is not directly contradicted, as I indicated to Mr

24 Semenya in another context yesterday, it isn't the end of

25 the story because there is a clear authority, Segune versus

1 -

2 **MR MPOFU:** Yes, no, that I accept,

3 Chairperson, -

4 **CHAIRPERSON:** Okay, -

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

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

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

8 actually didn't.

9 **CHAIRPERSON:** Well, the hard -

10 **MR MPOFU:** Supported by this witness by

11 the way.

12 **CHAIRPERSON:** The hardness or softness of

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

14 **MR MPOFU:** Yes.

15 **CHAIRPERSON:** But Segune versus Banks if

16 the case, I think.

17 **MR MPOFU:** Yes, -

18 **CHAIRPERSON:** But -

19 **MR MPOFU:** - soft evidence.

20 **CHAIRPERSON:** But in any way the fact of

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

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

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

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

25 end of the case. You're correct -

1 **MR MPOFU:** And –

2 **CHAIRPERSON:** You're correct in saying

3 that the question should be put more objectively.

4 **MR MPOFU:** Thank you.

5 **CHAIRPERSON:** And not on the basis of

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

7 but anyway.

8 **MR MPOFU:** No, Chairperson, -

9 **CHAIRPERSON:** I'm sure Mr Semenya will

10 take that point aboard and proceed.

11 **MR MPOFU:** Yes, I'm sorry, I'm sorry

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

13 interrupt Mr Semenya. The extra point is that that

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

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

16 things that I put to him here.

17 **CHAIRPERSON:** Alright.

18 **MR SEMENYA SC:** We'll just refresh our

19 memory, did you agree to this proposition?

20 **BRIGADIER CALITZ:** No, I can't say I was ever

21 in agreement, that I said they couldn't see

22 the TRT . We can go to the transcript, if you

23 tell me the Nyala blocked them, then maybe

24 in that case, but –

25 **CHAIRPERSON:** Yes, there was evidence

1 about Nyalas blocking the line of sight of the strikers,
2 there is an agreement about that, whether they could see
3 between the Nyalas and so on and then a Nyala moved, Nyala
4 10 I think it was, was seen on the video moving across and
5 thereafter there was a clear view and there was a lot of
6 cross-examination about that, but anyway, Mr Mpofu has
7 raised the point, which we will bear in mind. Mr Semenya,
8 you can proceed in a manner that doesn't provoke further
9 objections along those lines.

10 **MR SEMENYA SC:** Well, Brigadier, we are
11 told we're looking at objective evidence now. Who are the
12 men that aligned there, 14 seconds before the TRT line we
13 are told who opened fire?

14 **BRIGADIER CALITZ:** If I understand you
15 correctly, referring to the strikers?

16 **MR SEMENYA SC:** No, no, no, the people
17 with helmets and uniforms that are in a line there.

18 **BRIGADIER CALITZ:** Oh, this, no, this is
19 the TRT line.

20 **MR SEMENYA SC:** Is there anything in the
21 frame at least obstructing the line of vision of the
22 advancing strikers?

23 **BRIGADIER CALITZ:** No, not at all, maybe
24 Warrant-Officer Kuhn in a way, but we could almost see
25 the whole group of, we talk about 10, 16, the front

1 point of that group.

2 **MR SEMENYA SC:** Is there anything

3 obstructing them using this objective evidence in seeing

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

5 **BRIGADIER CALITZ:** No, in my opinion

6 they must have seen them.

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

8 mean honestly how are Mr Semenya and Brigadier Calitz ever

9 going to establish that those three who are standing

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

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

12 this.

13 **CHAIRPERSON:** I think, Mr Mpofu, it is

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

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

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

17 say from the so called objective evidence of the picture

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

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

20 Chairperson.

21 **CHAIRPERSON:** The person who is in the

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

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

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

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

1 who were there in front of him. One can see people

2 approaching –

3 **MR MPOFU:** Yes, but what if the

4 photographer was standing –

5 **CHAIRPERSON:** It is merely –

6 **MR MPOFU:** - somewhere else? I mean

7 really, -

8 **CHAIRPERSON:** It is really a matter of

9 argument at the end of the day from what, anyone who looks

10 at this clip, not just the witness, can see or not see, so

11 perhaps you can bear that in mind also, Mr Semenya. Today

12 you don't have to ask the brigadier what he sees if what he

13 sees can be seen by anybody and everybody and form a

14 matter, an informed argument at the end of the matter. The

15 fact that he sees things which we all can see, doesn't

16 strengthen his evidence. Equally if he says he sees things

17 which we can't see, then his evidence may suffer from that,

18 but it is an objective fact, what one can see, the argument

19 that flows from it, -

20 **MR SEMENYA SC:** Chairperson, -

21 **CHAIRPERSON:** I don't think we should

22 waste too much time on that, if I may so.

23 **MR SEMENYA SC:** Chairperson, we spent days on

24 end with Mr Gotz doing precisely this in cross-examination

25 and we objected at the time and said if the evidence is

1 what it is we don't need cross-examination on it to make
2 those arguments, but we spent days on end and I think in
3 fairness –

4 **CHAIRPERSON:** Alright, okay, no, the
5 point you take is a good one, but proceed with as much
6 brevity as you have at your command.

7 **MR SEMENYA SC:** Thank you, Chairperson. Can we
8 go to KKK47? These are the manuals for POP training, are
9 they not?

10 **BRIGADIER CALITZ:** The tactical options,
11 this is correct.

12 **MR SEMENYA SC:** And just for context,
13 there is a definition for blocking which we handled
14 earlier, you would see it on the third folio. Is that
15 right, Brigadier? Now this tells us that there are
16 different types of blocking.

17 **BRIGADIER CALITZ:** That is correct, it is written
18 in the manual.

19 **MR SEMENYA SC:** In terms of the blocking
20 as the hypothesis was offered, do you remember that was
21 offered by Mr Chaskalson, it was offered by Mr Gotz and it
22 was also proposed by Mr Budlender, do you recall that?

23 **BRIGADIER CALITZ:** That is correct, Mr.
24 Chairperson.

25 **MR SEMENYA SC:** Which of the blocking

1 would have been appropriate in terms of this manual?

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

3 no, I think if we must use this manual,

4 operational block, then there must be a total

5 planning-meeting and we must have had the information

6 before the time, from which direction they were coming,

7 which routes they were following, and only then,

8 you will see at the end of the block, if I am right, they, talk about,

9 I think it is the four Ms, it is somewhere in the document,

10 the menace milieu that threatens, the

11 resources we need, what the menace, the means, the

12 area itself and the task, all of it is on the screen.

13 menace refer to the threat itself, so it must

14 definitely have been discussed, the means are the

15 resources available to us, the milieu is the area,

16 the area had to be thoroughly investigated before, there stands;

17 conductor recce; physical inspection to the area, and then

18 the last one is then the mission, the task of the

19 day, the order to be implemented, so the block wasn't part of

20 any of those discussions.

21 **MR SEMENYA SC:** And if we go to the

22 diagrams that illustrate the blockings as, for example, page

23 16 of that exhibit, that's the diagram on page 16 of that

24 exhibit, it appears and you can correct me if I'm wrong.

25 It appears to be an illustration of a typical urban

1 environment, is that right?

2 **BRIGADIER CALITZ:** It is correct, yes.

3 **MR SEMENYA SC:** On the facts and in

4 Marikana was this realisable?

5 **BRIGADIER CALITZ:** No, Mr.

6 Chairperson.

7 **MR SEMENYA SC:** Around the hill?

8 **BRIGADIER CALITZ:** No, Mr.

9 Chairperson.

10 **CHAIRPERSON:** But why do you say that?

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

12 once again, we should have known the routes, this is easy

13 in a city environment where we know it is a demonstration.

14 we know beforehand where the points are, we know

15 where we want to take them to, where we want to keep them,

16 away from, it had to be planned, we had to have knowledge

17 of this. In this case we could not precipitate that they would

18 come around that hill during the rolling out of the wire,

19 no.

20 **MR SEMENYA SC:** The manual also deals

21 with the canalising, on that diagram what those arrows

22 indicate.

23 **BRIGADIER CALITZ:** This is the direction in which

24 we would want to move the crowd to, should they then arrive

25 we could move them left or right in those directions.

1 **MR SEMENYA SC:** On the facts, was that

2 achievable around the kraal?

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

4 if we knew about it beforehand and planned for,

5 but on the facts of that day, no.

6 **MR SEMENYA SC:** Given the time that it

7 became apparent to the police that they were going to go

8 around the kraal, was this achievable?

9 **BRIGADIER CALITZ:** Operationally, it

10 would not be possible to do it in that format,

11 no.

12 **MR SEMENYA SC:** Okay, now the other part

13 of your evidence, which was challenged in cross-examination

14 is the fact that you say you did not hear when the TRT line

15 was shooting.

16 **BRIGADIER CALITZ:** This is correct.

17 **MR SEMENYA SC:** Just remind us, where

18 again in Pappa11 were you seated?

19 **BRIGADIER CALITZ:** No, I was sitting in

20 Pappa1.

21 **MR SEMENYA SC:** In Pappa1, sorry?

22 **BRIGADIER CALITZ:** Yes, Pappa1, if we look at the vehicle

23 from behind, at the right-hand side, the very

24 last seating, to the right.

25 **MR SEMENYA SC:** Okay, and it was put to

1 you that Colonel McIntosh did hear the shooting. Did he

2 tell you that he has heard the shooting?

3 **BRIGADIER CALITZ:** No, Mr.

4 Chairperson.

5 **MR SEMENYA SC:** It was also put to you

6 that Nong also would have heard the shooting, and did he

7 tell you that he had heard the shooting?

8 **BRIGADIER CALITZ:** No, Mr.

9 Chairperson.

10 **MR SEMENYA SC:** Did any of the TRT

11 members tell you at that time that they have just heard the

12 shooting and they are bringing it to your attention?

13 **BRIGADIER CALITZ:** At that stage?

14 No, Mr. Chairperson.

15 **MR SEMENYA SC:** Any members in your Nyala

16 that told you that they have heard or seen the shooting and

17 they brought it to your attention?

18 **BRIGADIER CALITZ:** No, it wasn't shared nor

19 discussed with me.

20 **MR SEMENYA SC:** Any of the commanders of

21 the POP who may have observed the shooting happened, did

22 they talk to you at all?

23 **BRIGADIER CALITZ:** No, that will be at the

24 back. Colonel Mere, Colonel Makhubela also did not give

25 any such reports.

1 **MR SEMENYA SC:** At the time that it
2 happened, did the JOC contact you to tell you that it has
3 happened?

4 **BRIGADIER CALITZ:** No, Mr.
5 Chairperson.

6 **MR SEMENYA SC:** Where you aware, just to
7 refresh my memory, were you aware that the TRT line was
8 where it ultimately came to stand?

9 **BRIGADIER CALITZ:** They did indeed move up
10 as I just –

11 **MR SEMENYA SC:** No, were you aware at
12 that time that the TRT line is forming what it ultimately
13 did?

14 **BRIGADIER CALITZ:** Oh, no, Mr,
15 Chairperson, not from where they were in front of me, no.

16 **MR SEMENYA SC:** There is also a
17 suggestion that the proper course of conduct for that
18 operation would have been to do the cordon and search, and
19 not the dispersal and the arrest of the strikers, do you
20 remember that?

21 **BRIGADIER CALITZ:** I remember it Mr.
22 Chairperson.

23 **MR SEMENYA SC:** How much of intelligence
24 was available to the police about where the strikers are, I
25 mean where the armed strikers would have been sleeping

1 through that period?

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

3 we said from the start, the word used was,-

4 the intelligence coming in from the mine was -

5 that these were faceless people, we know from scene 13

6 we tried enlarging photos and videos and looked at it,

7 they couldn't tell us where the people came from, from which

8 hostel they were or where the weapons were

9 stored. Afterwards we did establish that a group of them slept

10 by hill 3, but we had no information pertaining

11 to that fact, no.

12 **MR SEMENYA SC:** Now as we know would a

13 cordon and search have happened on Tuesday, the 14th?

14 **BRIGADIER CALITZ:** The information, no,

15 what you are saying,; did it happen or were there information that we -

16 **MR SEMENYA SC:** Would cordon and search

17 have been appropriate on the 14th of August?

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

19 no. To do a cordon and search, one must do proper

20 planning and the information must be confirmed.

21 We talking about information and intelligence, there was

22 intelligence at that stage but no confirmed intelligence;

23 from which hostel, where and which people or where

24 to do it, that is why they decided

25 on the negotiation phase.

1 **MR SEMENYA SC:** Would it have been
2 prudent to do it given the negotiations that were being
3 conducted?

4 **BRIGADIER CALITZ:** From the 14th, no,
5 Mr. Chairperson, I think we tried to establish a trust
6 relationship and the to work through those Cs
7 as per the document, to first establish communication
8 and then set up that relationship with them.

9 **MR SEMENYA SC:** Would it have been
10 prudent to do the cordon and search on the 15th of August?

11 **BRIGADIER CALITZ:** No, Mr.
12 Chairperson, I think on the 14th we told them that we will convey
13 their message to us to mine management, we
14 also told them that we will return the next morning to
15 give them feedback. So, that would have broken down the
16 relationship we tried to build with them,
17 it would not have worked.

18 **MR SEMENYA SC:** Okay, the other area of
19 criticism, Brigadier, relates to this; it was suggested
20 that perhaps the police ought to have waited for Mr Zokwana
21 to do his investigation, and then to come back to you to
22 give you the feedback as to whether he has been able to
23 help identify the troublesome elements of the strikers, do
24 you remember that?

25 **BRIGADIER CALITZ:** No, I cannot say

1 with certainty that I testifies about Mr. Zokwana, if you could
2 maybe again –

3 **[11:41] MR SEMENYA SC:** You remember the evidence
4 relating to Mr Zokwana making an undertaking at most, an
5 undertaking that he will go and find out who the
6 troublesome elements – I’m rephrasing – are?

7 **BRIGADIER CALITZ:** Yes, I am not able to say,
8 I don’t have clarity –

9 **CHAIRPERSON:** I think what counsel is
10 referring to –

11 **BRIGADIER CALITZ:** - not understand,

12 **CHAIRPERSON:** - is the evidence that on
13 the Wednesday evening in the so-called debriefing by
14 General Mpmembe of Mr Zokwana and later Mr Mathunjwa, during
15 the debriefing, as it’s called, of Mr Zokwana, General
16 Mpmembe asked if the NUM people could inform the police,
17 find out and then inform the police where the weapons of
18 the people on the hill were at night, and so forth, and
19 Mr Zokwana undertook to do that, to ask his members to make
20 the necessary enquiries and then the information to be
21 given to the police on the clear understanding that the
22 fact that they’d provided the information was to be kept
23 secret. That’s the evidence that I think Mr Semenya is
24 referring you to. That was an undertaking given on the
25 Wednesday night, and the criticism was put to you in cross-

1 examination that instead of proceeding with the tactical
2 option on the Thursday before Zokwana or his people could
3 come back with the information, the – or no, the point put
4 to you was that instead of waiting for that information, it
5 was an error on the part of the police to proceed with the
6 tactical option on the Thursday. That was the point in
7 criticism to which I think Mr Semenya is referring. Is
8 that right, Mr Semenya?

9 **MR SEMENYA SC:** It's correct, Chairperson.

10 **CHAIRPERSON:** He's asking you to comment
11 on that.

12 **BRIGADIER CALITZ:** Mr, Chairperson,
13 yes, I can only say that I would have assumed when he came
14 back, he'd have gone to the generals, or then
15 the JOCCOM, and shared the detail, there.
16 know the decision was made at 13:30, so this, I can't say if
17 the information was shared, if feedback was given,
18 or if there was any feedback at all.

19 **MR SEMENYA SC:** So you're not aware of
20 what he did about that undertaking, that is Mr Zokwana?

21 **BRIGADIER CALITZ:** No, Mr.
22 Chairperson.

23 **CHAIRPERSON:** The evidence is that the
24 decision was taken not so much at 1:30 on the Thursday, but
25 the evening before, that very Wednesday evening when

1 General Mpembe was talking to Mr Zokwana the decision was
2 taken by the Provincial Commissioner, with the endorsement
3 of certain members of the National Management Forum, but I
4 just mention that to you by way of correction of the
5 statement you made about the decision being made at 1:30 on
6 the Thursday, but that doesn't affect necessarily the main
7 thrust of your answer, I take it.

8 **BRIGADIER CALITZ:** Mr. Chairperson,
9 no, I can testify to what I was aware of. I
10 was made aware of the allegation that it was the previous
11 evening. If there is evidence of or
12 testified to, I wasn't aware of it on the day.
13 To my knowledge it was made at 13:30 and so shared with me.

14 **MR SEMENYA SC:** So as operational
15 commander you are not aware of any feedback that was
16 brought by Mr Zokwana on that endeavour?

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

19 **MR SEMENYA SC:** The other area of your
20 evidence which was sought to be challenge related to the
21 briefing of 14:30 the Thursday 16 August 2012. It was
22 suggested to you, it was asked whether any of the POP
23 commanders there expressed a view that perhaps stage 3
24 should occur at a different time as opposed to 15:30 that
25 was initially agreed. You remember that piece of evidence?

1 **BRIGADIER CALITZ:** I remember that part,

2 yes, Mr. Chairperson.

3 **MR SEMENYA SC:** And it was your evidence,

4 if I'm not incorrect, that no such view was expressed by

5 the commanders, POP commanders in that briefing.

6 **BRIGADIER CALITZ:** This is correct Mr.

7 Chairperson.

8 **MR SEMENYA SC:** Now was there anything to

9 yourself, as well as the POP commanders there, to suggest

10 that you ought to halt the implementation of stage 3?

11 **BRIGADIER CALITZ:** Mr. Chairperson, no,

12 not at that stage. The information we had is that they

13 in all probability would have laid down their arms that morning.

14 That which was communicated to us didn't happen.

15 The leader elements know there was threats,

16 from the media side

17 on us personally, the moving away, so I have no

18 positive, if I can put it like this, feedback to say;

19 Mr. Mathunjwa someone came to me, or there was

20 anything positive to maybe postpone or to say,

21 wait, here is something happening, or the situation

22 has changed. So, there was no reason against that decision.

23 **MR SEMENYA SC:** Where there any -

24 **CHAIRPERSON:** Sorry, Mr Semenya. Mr

25 Burger, you turned your light on. I don't know whether

1 that's intentional or otherwise.

2 **MR BURGER SC:** I'm so sorry.

3 **CHAIRPERSON:** Alright.

4 **MR SEMENYA SC:** Was there anything at

5 that stage of the briefing, that is 14:30, to suggest to

6 all of you that it is better stage 3 is done on a different

7 day maybe?

8 **BRIGADIER CALITZ:** No. there was nothing like

9 that.

10 **MR SEMENYA SC:** Anything present in your

11 minds why it ought not to go ahead on that day as planned?

12 **BRIGADIER CALITZ:** No, the reasons given

13 that day was, that the group, pre-set armed group,

14 could not be allowed to move ahead with those weapons,

15 uncontrolled, and given the threats at that stage, and the

16 instructions from the JOCCOM, so there wasn't anything else

17 that we, that I could have against them

18 at that stage.

19 **MR SEMENYA SC:** Typically, in those type

20 of environments how is decision-making done? Do you confer

21 amongst yourself as police and make the best, and make

22 judgment on the best available information to you, or do

23 you have to consult somewhere else, other experts, to see

24 whether or not your operation would be prudent to

25 undertake?

1 **BRIGADIER CALITZ:** Mr. Chairperson,
2 what you are proposing now, this is what happens in the JOCCOM,
3 so, in the JOCCOM meeting, all that information,
4 call it intelligence, people will sit in,
5 and all will come to a mutual decision. If it gets to the ground
6 operationally, it will be an order.

7 We have an hierarchy in the police, and if a JOCCOM order,
8 I would not have complied, as if something should happen,
9 I would be responsible for it.

10 **MR SEMENYA SC:** Brigadier, the other
11 aspect is that given the threats that had been uttered to
12 the police, I think the suggestion and the theme of cross-
13 examination there was that the police ought not to have
14 implemented stage 3. You remember that evidence?

15 **BRIGADIER CALITZ:** Yes, I remember.

16 **MR SEMENYA SC:** In ordinary police
17 operations if the police are threatened, do you abort the
18 operation?

19 **BRIGADIER CALITZ:** No, Mr.

20 Chairperson, not at all.

21 **MR SEMENYA SC:** Of any of the threats
22 uttered by Noki, if it is so accepted there, and was that
23 adequate to abort the operation?

24 **BRIGADIER CALITZ:** No, Mr. Chairperson,
25 it is even more reason to proceed to

1 the next phase.

2 **MR SEMENYA SC:** Given the observation

3 that these militant strikers were reluctant to disarm,

4 would that be enough reason to abort a police operation to

5 disarm them?

6 **BRIGADIER CALITZ:** No, Mr.

7 Chairperson, I won't say that.

8 **MR SEMENYA SC:** Again in relation to the

9 use of barbed wire, previous experience, you have told us,

10 the unrolling or unfurling of barbed wire did not trigger

11 the same conduct that you say happened on the 16th, the

12 Thursday, right?

13 **BRIGADIER CALITZ:** That is correct, Mr.

14 Chairperson.

15 **MR SEMENYA SC:** Now as there anything –

16 no, the information that the strikers dislike the idea of

17 barbed wire, was that sufficient for the police to abort

18 the use of barbed wire?

19 **BRIGADIER CALITZ:** No, Mr.

20 Chairperson, I think I had indicated, about 10, 12 times we

21 the purpose of the wire, we explained on more than one

22 occasion, so, no,

23 not to abort, no.

24 **MR SEMENYA SC:** How central, or how

25 material was the use of the barbed wire to the operation?

1 **BRIGADIER CALITZ:** It was very important
2 as it set the dividing line, a protection line if we
3 can call it that, between the police and,
4 and the strikers, as well as the media present
5 that day.

6 **MR SEMENYA SC:** Was the plan executable
7 without the use of the barbed wire?

8 **BRIGADIER CALITZ:** Mr. Chairperson, I
9 think it would have fallen back on us, then. If we did not use barbed
10 wire, then the only other plan, not that one,
11 would not have been executable, what was, on that
12 day, available. That would mean we would only have gone
13 with the POP, that day, given a warning and just started to
14 disperse. That would not have been
15 executable.

16 **MR SEMENYA SC:** What would be the risks
17 of doing that without the barbed wire?

18 **BRIGADIER CALITZ:** Mr. Chairperson, you then
19 would have that entire open space directly to the police line.
20 that would be chaotic with people moving in between.
21 given that the lines would be broken, and the
22 to the media and the other homeowners
23 on that side.

24 **MR SEMENYA SC:** I think it was Mr Mpofu,
25 dealing with a different matter, suggesting that perhaps

1 the Nyala 4, 5 and 6 ought to have lined up at the, shall I

2 call it the mouth of the corridor before that footpath.

3 You remember that line of cross-examination?

4 **BRIGADIER CALITZ:** I remember that Mr.

5 Chairperson.

6 **MR SEMENYA SC:** To that theory - I don't

7 want us to repeat what he said about the blocking earlier -

8 would that have had to have been pre-planned for it to be

9 realisable?

10 **BRIGADIER CALITZ:** There would have had to be a briefing

11 for the vehicles, for them to move out,

12 the routes which would have had to be used,

13 because this would have closed it.

14 **MR SEMENYA SC:** Where the drivers told?

15 **BRIGADIER CALITZ:** No, Mr.

16 Chairperson.

17 **MR SEMENYA SC:** Was it part of your

18 strategy as the operational commander to do that?

19 **BRIGADIER CALITZ:** No, Mr.

20 Chairperson.

21 **MR SEMENYA SC:** Was that part -

22 **MR MPOFU:** Chairperson, it's not a big

23 point, but just so that the record is accurate, I never

24 suggested that Nyala 4 would play that part because Nyala 4

25 had blocked the kraal. So I just don't want my silence to

1 be interpreted to be agreeing that I put the contention as
2 formulated by Mr Semenya. But the thrust of what he's
3 saying, that the other vehicles could have blocked what he
4 calls the mouth of the corridor is correct.

5 **MR SEMENYA SC:** I stand corrected, yes,
6 Mr Mpofu. Was that though something that was discussed by
7 the commanders of the various Nyalas that they proposed to
8 block?

9 **BRIGADIER CALITZ:** Not that I was aware of.
10 Mr. Chairperson.

11 **MR SEMENYA SC:** Okay. We do find though,
12 Brigadier, that in the statement of Colonel Makhubela there
13 is reference to encircling on that day as the plan. Are
14 you able to explain that?

15 **BRIGADIER CALITZ:** Mr. Chairperson, I think
16 the very first meeting we've had, the –
17 when was it? - the 14th, the morning, according to the plan
18 there'd have been, originally the plan would be to encircle
19 the hill, and given the time we meant to implement this.
20 6 o'clock in the morning, there were people gathered on
21 the hill already, and we didn't have enough wire to
22 do this. That could be one explanation.
23 I just say this as I see it. And then the other could be
24 that his group of Nyalas had to close to
25 enable the POP to move out and then to

1 do the encirclement. So, this is maybe what he

2 could refer to.

3 **MR SEMENYA SC:** Happily even Mr Budlender

4 says it was not going to be possible to do that on that

5 day –

6 **CHAIRPERSON:** I don't know why you say

7 "even Mr Budlender;" that gives him a kind of elevated

8 status, which he may not deserve.

9 **MR SEMENYA SC:** Well, there was also

10 reference at the same time to the statement of Captain

11 Prinsloo relating to whether there was going to be blocking

12 or encircling. You remember that piece of evidence?

13 **BRIGADIER CALITZ:** I remember it vaguely, not

14 in detail, but I remember it was

15 discussed.

16 **MR SEMENYA SC:** The thrust of that cross-

17 examination, if I understood it, was to suggest that the

18 briefing may have been unclear as to what was to happen.

19 Now you were at the 14:30 briefing.

20 **BRIGADIER CALITZ:** That is correct, Mr.

21 Chairperson.

22 **MR SEMENYA SC:** Was the briefing of a

23 nature that could produce this confusion, if there is a

24 confusion at all?

25 **BRIGADIER CALITZ:** No, Mr.

1 Chairperson, I think Colonel Makhubela was with us and he was
2 the commander of the wire group, and
3 the briefing was very clear and to where the wire was to be
4 unrolled, and the purpose to move out from there and then
5 then from there to disperse, encircle, disarm and
6 arrest. So, the briefing was very clear,
7 and when we returned from the briefing,
8 Colonel Makhubela, also explained it as such to the commanders
9 of each of those vehicles.

10 So, yes, I think the briefing was clear.

11 **MR SEMENYA SC:** And the time for that
12 briefing, was it adequate, not?

13 **BRIGADIER CALITZ:** It was at the
14 time, Mr. Chairperson, because I, we were there from 14:30
15 until about 3 o'clock, so we returned to the hill,
16 and at that stage, given 15, 20 minutes, that we gave that
17 briefing to the vehicles.

18 **MR SEMENYA SC:** In that limited time was
19 the execution of the plan sufficiently explained?

20 **BRIGADIER CALITZ:** Yes, it was discussed
21 in detail with every commander, who then had to
22 share it with his section leaders.

23 **MR SEMENYA SC:** Just for completeness, it
24 is also suggested that the Lonmin interpreter who was in
25 your Nyala would have heard shots being fired, that is at

1 scene 1. Did he tell you that he has heard it?

2 **BRIGADIER CALITZ:** No, no, he said nothing about that
3 to us. I only learned of this in his statement that he heard
4 something hit the vehicle, if
5 I remember correctly.

6 **MR SEMENYA SC:** In any other manner
7 alerted you to the fact that shooting had occurred?

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

10 **MR SEMENYA SC:** You were also asked about
11 who would be the appropriate person to have called the
12 operation to a halt after scene 1. You remember that
13 evidence?

14 **BRIGADIER CALITZ:** That is correct.

15 **MR SEMENYA SC:** Who would have been the
16 person? Just remind me.

17 **[12:01] BRIGADIER CALITZ:** Mr. Chairperson,
18 if I had the information and they had told us,
19 then I would have send that information through to the JOC, and then
20 the CJOC, the overall commander, with my recommendation
21 would make that decision.

22 **MR SEMENYA SC:** Would it have been
23 competent for the TRT commanders to stop the operation for
24 instance?

25 **BRIGADIER CALITZ:** To not participate – if I understand you

1 correctly, anymore? No, I think they must have still

2 informed me and then they would receive

3 the orders.

4 **MR SEMENYA SC:** I'm just trying to

5 establish the lines of authority on the field. Would those

6 commanders of the TRT have had the authority to stop the

7 dispersal/arrest operation?

8 **BRIGADIER CALITZ:** No, Mr.

9 Chairperson.

10 **MR SEMENYA SC:** Colonel Makhubela by

11 himself, could he have had the authority to stop the

12 rollout of the operation if he saw scene 1 happen?

13 **BRIGADIER CALITZ:** No, Mr.

14 Chairperson.

15 **MR SEMENYA SC:** Colonel Mere?

16 **BRIGADIER CALITZ:** No, also not.

17 **MR SEMENYA SC:** Alright. Now we will

18 know in the further conduct of this Commission that General

19 Mawela was in Mpumalanga somewhere; he had a helicopter

20 somewhere at the place where he was and saw on TV the

21 events of the shooting on ETV, I suspect, and he came to

22 the scene. Did you see him?

23 **BRIGADIER CALITZ:** Yes, Mr.

24 Chairperson, I can't testify to where he was but I did

25 meet him at scene 2,

1 hill 2.

2 **MR SEMENYA SC:** And the alarm that was

3 raised by the evidence leaders with you is that you would

4 only have come to know of the incident 1 at 16:47, or

5 something like that.

6 **BRIGADIER CALITZ:** Yes, this is when I knew of the

7 shooting incident of Mpumza, if I am right, "body C,"

8 if I have the surname right, have passed it through to General Annandale

9 and that was when he told me about the shooting,

10 the incident at 1.

11 **MR SEMENYA SC:** With the flighting of

12 that scene by the television, was that brought to your

13 attention at all whilst you were still on the field?

14 **BRIGADIER CALITZ:** Not while I was on the ground,

15 I saw it when we returned to the

16 JOC that evening.

17 **CHAIRPERSON:** I'm also interested to know

18 when you say General Mawela arrived you saw him at scene 2,

19 is that correct?

20 **MR SEMENYA SC:** Mawela.

21 **CHAIRPERSON:** I'm sorry, Mawela, yes.

22 **BRIGADIER CALITZ:** The

23 Department Commissioner, Lieutenant General Mawela.

24 **CHAIRPERSON:** Yes, yes.

25 **BRIGADIER CALITZ:** Yes, he arrived with the

1 Provincial Commissioner.

2 **CHAIRPERSON:** Yes, I understand. What I

3 want to know is what time was that?

4 **BRIGADIER CALITZ:** Mr. Chairperson, I

5 think my statement, under correction, it is around

6 5 0 clock, 17h00 when the chopper –

7 **CHAIRPERSON:** It was after you had

8 already heard about the incident at scene 1 from General

9 Annandale. You already had that knowledge for about a

10 quarter of an hour before Lieutenant General Mawela arrived

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

12 saying?

13 **BRIGADIER CALITZ:** This is correct I had the information

14 already, and I had also started moving into the hill,

15 spoke with General Naidoo, and afterwards

16 the – not long, about 10 minutes afterwards the

17 choppers landed. Or the one helicopter, not two.

18 **MR SEMENYA SC:** The other area of

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

20 shooting at scene 1 you nevertheless proceeded to where you

21 did without looking back at the head of the attacking

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

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

24 of the group attacking the police line?

25 **BRIGADIER CALITZ:** You talking about

1 1?

2 **MR SEMENYA SC:** At scene 1, yes.

3 **BRIGADIER CALITZ:** Scene 1.

4 **MR SEMENYA SC:** Yes.

5 **BRIGADIER CALITZ:** I remember I was asked
6 about that, yes.

7 **MR SEMENYA SC:** And you gave your
8 evidence that when you saw that happen your instructions
9 were to the Nyalas, in Afrikaans, let me just say it in
10 Afrikaans, "I ordered them to move between the people."
11 Can you explain that for us so that I at least can have an
12 understanding of what tactical move that entails?

13 **BRIGADIER CALITZ:** Mr. Chairperson,
14 yes, it is not a prescribed movement.
15 When I saw the front part arrive, and then saw they didn't
16 heed the dispersion action, or the POP members,
17 I realized that if this other group
18 will follow, it will be chaotic, and because the non-
19 lethal weapons we used had no effect on them,
20 that is when I gave the order we must move forward with the
21 Pappa Nyalas with the purpose that we will then physically
22 disperse them with the and vehicles and them -
23 the purpose is to discourage them, that they can see the armoured
24 vehicles arriving, in their direction,
25 they will then be discouraged, which as far as I'm concerned,

1 was successful as the people at that stage also turned around
2 and ran away in different
3 directions.

4 **MR SEMENYA SC:** Was it your best judgment
5 at the time that that is what must be done?

6 **BRIGADIER CALITZ:** Mr. Chairperson,
7 yes, at that stage there was no other method.
8 The less lethal did not work and that attempt
9 to break up the group that way, worked,
10 according to me.

11 **MR SEMENYA SC:** In fact Mr Budlender put
12 it as high as this; that your evidence that you were
13 unaware of scene 1 is untrue on one leg. Let's deal with
14 that first. Your account, is it the truth, is it not the
15 truth?

16 **BRIGADIER CALITZ:** Mr. Chairperson,
17 I testified to that. I think it was proven by the CALS
18 documents that I had already moved forward. I also think the purpose
19 of Mr. Chairman, I assume Adv. Bizos – ach,
20 Adv. Mpofo – I apologize, I had your surname –

21 **CHAIRPERSON:** I never thought that Adv.
22 Bizos and Adv. Mpofo would be confused with each other.

23 **BRIGADIER CALITZ:** No, no, no, I
24 had –

25 **CHAIRPERSON:** But the day has arrived,

1 and that happened.

2 **BRIGADIER CALITZ:** No, Adv. Bizos definitely wasn't

3 with us in the vehicle, I believe

4 not.

5 **MR MPOFU:** The resemblance is

6 irresistible, Chairperson.

7 **BRIGADIER CALITZ:** Yes. I apologize for

8 that one.

9 **CHAIRPERSON:** I think each of them might

10 feel complimented by the fact that you confuse them with

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

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

13 **BRIGADIER CALITZ:** It was said with respect,

14 nothing was meant by it. No, Mr. Chairperson,

15 I'm just saying it is – I'm being asked if I- about my testimony

16 about the truth. I had already moved forward

17 and the reasons for that I gave, I demonstrated

18 when you, yourself, Mr. Chairperson, on my – I'd let you sit where

19 I sat and shouted what I shouted,

20 we had fired from inside the Nyala with the shotgun, and all

21 those things; I sat in the back and was busy shouting all

22 those things. So it is possible other people could hear it

23 at the back. My vision wasn't

24 like that. I was concentrating on this group I had to

25 disperse, my orders, and afterwards I spoke to

1 the vehicles and shouted orders and directions. If you
2 listen to the transcript, you will hear my voice is not as normal,
3 calm, as now here while we're talking.

4 **MR SEMENYA SC:** Also it was suggested
5 that that fact illustrates a massive and fundamental
6 failure in the planning. You remember that line of cross-
7 examination?

8 **BRIGADIER CALITZ:** I can vaguely remember such a
9 allegation. Yes.

10 **MR SEMENYA SC:** What's your reaction
11 again to that?

12 **BRIGADIER CALITZ:** Mr. Chairperson,
13 no, I think if we did not break up
14 that group in that manner, the consequences would have been
15 much more tragic. If the larger
16 group had managed to break through, I hesitate to think what
17 could have happened. There would have been far worse
18 tragic results. So I think the fact that I moved forward,
19 and managed to break up the group, the "dispersion
20 action" deployed in that manner, contributed to the
21 only 17 we heard about today.

22 **MR SEMENYA SC:** The other challenge is
23 that your subordinates ought to have kept you abreast of
24 the information. You remember that line of cross-
25 examination?

1 **BRIGADIER CALITZ:** Correct, Mr.

2 Chairperson.

3 **MR SEMENYA SC:** Your subordinates were

4 not identified, but let us see at least some of the senior

5 officers there. Do you know whether somebody like Colonel

6 Mere was alive to the fact that you were unsighted of that

7 event?

8 **BRIGADIER CALITZ:** No, I don't think he would have been aware

9 that I didn't know about it , no.

10 **MR SEMENYA SC:** Colonel Makhubela, are

11 you aware that he was aware that you are unsighted about

12 the event?

13 **BRIGADIER CALITZ:** No, Mr.

14 Chairperson, he took over at scene 1 as the senior

15 officer there.

16 **MR SEMENYA SC:** Any of those senior

17 officers, are you alive, are you aware that they were aware

18 that you are unsighted and elected not to tell you?

19 **BRIGADIER CALITZ:** No, I will not go so far as to say it

20 was a deliberate omission by them. If there were

21 attempts, they would certainly have tried

22 the radio.

23 **MR SEMENYA SC:** There was another area of

24 contestation, or debate –

25 **CHAIRPERSON:** Mr Semenya, seeing you're

1 moving on to a new point, it's appropriate I think for us

2 to take a comfort break at this point.

3 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

4 **[12:26] CHAIRPERSON:** The commission resumes.

5 Brigadier, you're still under oath. Mr Semenya, you're

6 moving onto your next point.

7 **MR SEMENYA SC:** Thank you, Chairperson. When

8 we deal with this aspect, Brigadier, you would recall, you

9 were cross-examined around the address you gave to members

10 on the 18th at that parade.

11 **BRIGADIER CALITZ:** I remember, This is

12 correct.

13 **MR SEMENYA SC:** Let us try and

14 contextualise this. What was your target audience, who

15 were you talking to?

16 **BRIGADIER CALITZ:** It was all the operational members

17 who had to report for duty again that day

18 POP, TRT, STF, NIU,

19 basically all of them including the Public Order Policing.

20 There were commanders. I can say a

21 few hundred members.

22 **MR SEMENYA SC:** Because the cross-

23 examination went to suggest that that is what you were also

24 communicating to the rest of the public, and it would have

25 been rash to make the conclusions and the statements you

1 were making to the members.

2 **BRIGADIER CALITZ:** No, I -

3 **CHAIRPERSON:** Mr Semenya, I don't

4 remember that line of cross-examination being pursued. Do

5 you have a reference in the record to it?

6 **MR SEMENYA SC:** I don't have it, but Mr

7 Budlender was the one to say, that it would have been rash

8 immediately after the events that he in his position could

9 then be telling them that they've done nothing wrong.

10 **MR MPOFU:** I think that is correct but

11 whether he was telling them or the public nobody has

12 suggested.

13 **CHAIRPERSON:** It was a lengthy cross-

14 examination, there was lengthy cross-examination in respect

15 of the speech that he made. So I can't sure about it but I

16 certainly don't recall the point being made that it was a

17 rash thing to say these things because it was an address to

18 the public, and I think if that had been said I'm inclined

19 to think I would have, we would have raised a question

20 about it, because it patently wasn't an address to the

21 public. But I could be wrong on that. But Mr Semenya

22 hasn't made a reference to it. But anyway the short point

23 I take it is the answer given by the witness already, that

24 the speech wasn't intended for the public, in fact when he

25 saw or acted rather, rather authoritarian manner, when he

1 saw that there was someone making a video of it, he
2 immediately spoke to Lieutenant Colonel Macintosh and did
3 his best not only to stop the recording but obtain a copy
4 of it so that it would, could be destroyed, is that not
5 right?

6 **BRIGADIER CALITZ:** Mr. Chairperson,
7 we had never gone so far. This was only suggested
8 and after we agreed with the person, the band, or
9 the copy or the confiscating,
10 never took place.

11 **CHAIRPERSON:** But anyway the fact of the
12 matter was you weren't intending to speak to the public, and
13 the impression I got from that little passage was you were
14 horrified at the idea that what you were saying was somehow
15 going to be conveyed to the public, is that correct?

16 **BRIGADIER CALITZ:** Mr. Chairperson,
17 even where I am sitting here, because strategic plans of the police
18 were discussed and how we were to operate in order to implement
19 certain action, I would not really want it made public,
20 as it was.

21 **MR SEMENYA SC:** It was also in
22 anticipation of the arrival of Mr Malema, that that parade
23 was called for?

24 **BRIGADIER CALITZ:** It was part of the operation
25 of that day, also his arriving, that is

1 correct.

2 **MR SEMENYA SC:** And there was also a
3 thrust of questions that were saying you were schooling
4 everybody there to - the self-defence private defence
5 thing, do you recall that?

6 **BRIGADIER CALITZ:** I remember that yes.

7 **MR SEMENYA SC:** Was that ever your
8 intention?

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

10 Chairperson. I testified to that. As a commander of my
11 rank and position it was just my way to motivate them.
12 To give total and complete cooperation to the commission,
13 and that was my purpose from day one and I think throughout
14 the 26 days of my testimony is also to give 100%
15 cooperation. This is what we asked of the members,
16 many of those members weren't even on the scene that
17 day. So part of the discussion was to inform them of what had
18 transpired.

19 **MR SEMENYA SC:** Of those who had shot and
20 who have at least alleged to have fired in self or private
21 defence was there any information open and available to you
22 to cast a doubt on that account?

23 **BRIGADIER CALITZ:** No, not at that stage,
24 not on the 18th, no, no.

25 **MR SEMENYA SC:** There is also a line of

1 questioning that went to, want to point to a collusion
2 between the police and Lonmin. Do you remember that?

3 **BRIGADIER CALITZ:** I remember, Mr.

4 Chairperson.

5 **MR SEMENYA SC:** To that you were pointed

6 to a whole number of factors, the use of CCTV amongst

7 others.

8 **BRIGADIER CALITZ:** Yes that is correct. I referred to the good

9 cooperation there was, not the

10 suggestion that was made, no coalition or what

11 the word was, yes.

12 **MR SEMENYA SC:** Is it ordinary police

13 operation if there is an evidential material of that kind to

14 use it?

15 **BRIGADIER CALITZ:** Yes, this is correct, Mr.

16 Chairperson. I referred to an incident we had at

17 Sun City, where we also established a

18 Joint Operational Centre

19 and then one uses the CCTV made

20 available by them. They have the facilities,

21 the police unfortunately don't.

22 **MR SEMENYA SC:** The use of information

23 relayed to you by the Lonmin security was it helpful to the

24 course you were about there or not?

25 **BRIGADIER CALITZ:** I will say a definite yes as far as ii

1 concerns Mr. Sinclair and Mr. Botes, and it was very
2 helpful, as you referred. It helped us in the way
3 Mr. Chairperson, that with the arrival there, Mr.
4 Sinclair spend hours, outside of his normal working hours,
5 to explain to the people, on a map, where the key point
6 is, where the mine's properties are, where everything is, to
7 orientate the members, and Mr. Botes, who sat in on the
8 meetings, also gave us a lot of input regarding exactly
9 what happened, criminally, how, and where there normal
10 services were rendered. So the cooperation was very
11 good and it helped a lot.

12 **MR SEMENYA SC:** Any standing orders that
13 prohibit such type of contact the police should have any
14 help that they could get?

15 **BRIGADIER CALITZ:** No, nothing I was aware
16 of, definitely not, Mr. Chairperson.

17 **MR SEMENYA SC:** Did any of the Lonmin
18 security personnel do policing work in that collaboration
19 you had with them?

20 **BRIGADIER CALITZ:** If I can just get
21 clarity of the policing work?

22 **MR SEMENYA SC:** Give instructions to
23 members for instance?

24 **BRIGADIER CALITZ:** Oh, no, no not in that way
25 at all. They did escort us on

1 routes, I testified that Mr. Sinclair escorted as the first
2 day with the protection of the Lonmin interpreter and then
3 also the helicopter they made available to us that
4 escorted us to explain the routes to the
5 properties, but to give orders and take part in the
6 operations, no, not that I am aware of.

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

9 **BRIGADIER CALITZ:** No, they are not empowered to
10 do that and it also didn't happen that way.

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

14 **BRIGADIER CALITZ:** Mr. Chairperson,
15 no, the any prescripts you may find is the
16 flight plan, which will then determine the height and where the
17 helicopter and stuff can fly, but not that we
18 can use it, no.

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

25 **BRIGADIER CALITZ:** I remember, Mr.

1 Chairperson.

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

5 **BRIGADIER CALITZ:** When I arrived at the hill
6 everything was over and upon my arrival there I saw
7 people who were under arrest, busy with
8 arrests and there was movement at
9 the scene. So, no, I observed nothing upon my arrival
10 there that would have made it doable.

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

14 **BRIGADIER CALITZ:** Mr. Chairperson,
15 no, my testimony was not of the Pappa
16 Nyalas and the people who were there who warned the people
17 and said come out, you know with the dispersion
18 action and so on. I can't say if that was said. I know
19 afterwards on the Ryland video we can hear where he
20 to the guys if they want to come out, let them come
21 out, and you know where you say; put down your weapons,
22 some of that could be heard on the Ryland video. So,
23 I believe there was communication with the group.

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

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

3 **BRIGADIER CALITZ:** With the information
4 available to me and what Colonel Vermaak said to me I was fully
5 under the impression that we were busy with a successful
6 dispersion. The Pappa Nyalas was
7 there. The entire time he was speaking only to the Pappa Nyalas
8 with the water cannons, and at a stage when he told me they are
9 encircled, I gave orders for them to get out and
10 commence with the arrests. So, this is part of the
11 dispersion action that was monitored only on the one side and
12 same what we, can I say western side, did where groups
13 were also broken up and arrested.
14 Now in hindsight we know that other things
15 happened that I wasn't aware of.

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

20 **BRIGADIER CALITZ:** I remember it Mr.
21 Chairperson.

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

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

1 **BRIGADIER CALITZ:** I used no

2 weapon at all on that day.

3 **MR SEMENYA SC:** Were you aware that the

4 conduct of your members was in one way or another unlawful

5 if it is so found?

6 **BRIGADIER CALITZ:** No up to now I know

7 one was self-defence, until now I heard nothing

8 about anything that was unlawful.

9 **MR SEMENYA SC:** Would you have associated

10 yourself with that type of behaviour?

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

12 definitely not. If anything came to my knowledge at any stage

13 that something was untoward, as the operational

14 commander, I would definitely give attention to it

15 and made sure steps were taken.

16 **MR SEMENYA SC:** Could you have had shared

17 any common purpose with an unlawful killing of a civilian?

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

19 Chairperson, not at all.

20 **MR SEMENYA SC:** Would you have such an

21 intention?

22 **BRIGADIER CALITZ:** N, not in my position

23 or in my line of work, definitely not, Mr. Chairperson.

24 **MR SEMENYA SC:** And we have dealt in the

25 totality of the evidence in relation to what the various

1 experts say and what the police is around this matters.

2 **BRIGADIER CALITZ:** I remember this, Mr.

3 Chairperson.

4 **MR SEMENYA SC:** Chairperson, that would be the

5 re-examination we have of the witness.

6 **CHAIRPERSON:** Yes, thank you, Mr

7 Semenya. There's a few questions that I would like to ask

8 you. In your consolidated statement you referred to the

9 meeting at 6 o'clock on the Thursday morning and you

10 referred to the fact that it was necessary for a

11 contingency plan to be drawn up, this was paragraph 76 on

12 page 16, "a decision was taken that we must have a

13 contingency plan in place should the strikers fail to

14 disarm as it was indicated by the AMCU president. The

15 police were to disperse the crowd into smaller groups to

16 encircle them in order to disarm and to effect arrests".

17 I've read that paragraph 76. Now we see the kind of

18 contingency plan that had been drawn up in the past, I

19 think it was referred to yesterday, it was a plan that you

20 were responsible, would be part I think for drawing up. I

21 think it was exhibit SS3.

22 **BRIGADIER CALITZ:** That is correct Mr.

23 Chairperson.

24 **CHAIRPERSON:** Was that the kind of

25 contingency plan that you had, you people at the meeting at

1 6 o'clock on Thursday morning had in mind?

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

3 no, I think there was more referrals given to what happens should they

4 not give any heed to phase 2. That there is a

5 operational plan and it will maybe be

6 the next phase.

7 **CHAIRPERSON:** No, no I understand that

8 but I mean it would have been a fairly detailed plan of

9 what the following phase would have involved?

10 **BRIGADIER CALITZ:** It would be the one of

11 Colonel Scott that I referred to, that's correct.

12 **CHAIRPERSON:** The next point I'm going to

13 ask you, I take it the logical person to draw it up will do

14 the first draft of anyway, the first draft of it would have

15 been Colonel Scott?

16 **BRIGADIER CALITZ:** This is correct, Mr.

17 Chairperson.

18 **CHAIRPERSON:** Now when you were at the

19 briefing at 2:30 all that you had was his laptop, there

20 wasn't any piece of paper, there wasn't any hardcopy.

21 There wasn't any detailed statement of what was going to

22 happen. The laptop as far as I can remember had a picture

23 on it, which we had as one of the slides but the slide we

24 have has got some writing on it, what phase 1 of the

25 operation would be, phase 2 and phase 3. That wasn't on,

1 even that wasn't on the laptop, is that correct? There was
2 just a picture of various positions, the hill, the
3 strikers, their position, the position of various vehicles
4 and then he gave an oral account of what was to happen, is
5 that, that's the evidence?

6 **BRIGADIER CALITZ:** This is a colourful summary
7 of phase 3 if I can put it like that.

8 **CHAIRPERSON:** Now were you surprised that
9 he hadn't spent the morning preparing a detailed
10 contingency plan with hardcopies and so forth and he merely
11 relied on this oral exposition of an image on his laptop?
12 Was it not a cause for surprise on your part?

13 **BRIGADIER CALITZ:** Mr. Chairperson, I
14 don't know if surprise, if I would use the same
15 words. Given the time and the
16 explanation he gave that the operation must be at
17 15:30 and why he was using his laptop, and all the
18 commanders were present at the previous JOCCOM meeting
19 so all had the general idea.

20 **[12:46]** And I think with that in mind he used his laptop
21 instead of hard copies. I don't think time allowed for that
22 but maybe I was under the impression
23 that he did have it the JOCCOM had it
24 there in detail, but he did not give
25 it to us, no.

1 **CHAIRPERSON:** Yes, I don't know how a
2 satisfactory explanation of the reference of the time is,
3 because this was agreed at the meeting at six o'clock, the
4 meeting which began at six o'clock, sometime from six
5 o'clock onwards and at what time did the meeting end, the
6 six o'clock meeting, more or less?

7 **BRIGADIER CALITZ:** Say an hour, an hour and a half,
8 an hour more or less.

9 **CHAIRPERSON:** So let's be safe, we'll say
10 it ended at 7:30, there is some evidence that he was
11 preparing, helping to prepare an application for a
12 coordinated search operation and he told us he finished
13 that at 20 minutes past 8, 8:20. So he would have had from
14 8:20 until 1:30 when the JOCCOM, the second JOCCOM was
15 held, to do what it was agreed would be done, namely to
16 draw up a contingency plan, so surely he would have had
17 enough time to prepare something more comprehensive and
18 more detailed than what you merely saw on his laptop. So
19 surely it does cause one's eyebrows to rise a bit, it is a
20 bit surprising, isn't it, particularly a man like Scott who
21 I think the evidence indicates, he is a very efficient
22 capable officer, would you agree with that?

23 **BRIGADIER CALITZ:** No, yes, he is a very gifted
24 officer, I agree with you, there was enough time given
25 given, just when he received the information that it will

1 run over into the next phase or, I don't know if against
2 it, -we now know what you say, the previous evening, so,
3 I am -
4 **CHAIRPERSON:** That explanation I'm afraid
5 doesn't stand up either because remember it was a
6 contingency plan. He didn't have information that they hadn't
7 laid down their arms, that information admittedly only came
8 later because there were delays, remember, before Mathunjwa
9 went and in fact Mathunjwa hadn't even come back from his
10 first visit when the 1:30 meeting started, but the point
11 was, it was the contingency plan. The contingency was if
12 they don't lay down their arms voluntarily we have to have
13 a plan in place, so that one is not going to work. So it
14 is a bit surprising, isn't it?
15 **BRIGADIER CALITZ:** I hear what you say Mr.
16 Chairperson.
17 **CHAIRPERSON:** Do you agree?
18 **BRIGADIER CALITZ:** I agree in that
19 case.
20 **CHAIRPERSON:** Yes, now did you ever ask
21 him about it, did you ever say to him, look here, Colonel,
22 there must have been some problem, how come we didn't have
23 a contingency plan such as it is normally drawn up, but we
24 only had to deal with what you showed us in your laptop?
25 Did you ever ask him that?

1 **BRIGADIER CALITZ:** Mr. Chairperson, afterwards
2 we did indeed discuss it, and he showed me the
3 slides, which were attached to the SS3,
4 the planning, because in the contingency plan is the orders
5 for further deployments and the decisions would be attached
6 to this plan. So, he showed me his slides and his
7 preparations that he presented to the JOCCOM .

8 **CHAIRPERSON:** Well, a lot of those
9 apparently were compiled afterwards for the benefit of the
10 Commission, but anyway that's the explanation you say he
11 gave you, you can't take it further than that?

12 **BRIGADIER CALITZ:** No, this is it Mr.
13 Chairperson.

14 **CHAIRPERSON:** Thank you. Now I would
15 like to ask you something about scene 2. I understood you
16 to say yesterday that if you had known that the people on
17 the hill were surrounded, you didn't know that General
18 Naidoo had come, he was supposed to be at scene 1, where he
19 was supposed to come from forward holding area 1 to scene 1
20 with the paramedics and so on. You didn't know he had
21 arrived at scene 2 and was actually taking part in the
22 action, so you can't be blamed for that, and you also
23 didn't know that Captain Kidd had come with the K9 people,
24 that's right, isn't it?

25 **BRIGADIER CALITZ:** General Naidoo arrived

1 with the K9, Captain Kidd with the TRT –

2 **CHAIRPERSON:** Oh, sorry, yes, I had it

3 wrong, but you corrected me. You're correct, General

4 Naidoo had the K9 people and Captain Kidd had the TRT

5 people. Captain Kidd was supposed to be at holding area 2

6 regarding an informal settlement, as I understand it,

7 nearby, is that right?

8 **BRIGADIER CALITZ:** With a filtering line,

9 should the people then –

10 **CHAIRPERSON:** Yes, –

11 **BRIGADIER CALITZ:** -moved through, correct,

12 Mr. Chairperson.

13 **CHAIRPERSON:** And General Naidoo was

14 supposed to be doing something else, you didn't know that?

15 **BRIGADIER CALITZ:** I know what they were supposed to have done,

16 but I was –

17 **CHAIRPERSON:** No, no, – so you didn't

18 know that the hill was in fact surrounded?

19 **BRIGADIER CALITZ:** Not with them, no,

20 not at all, Mr. Chairperson.

21 **CHAIRPERSON:** And what you said, as I

22 recall was, if you had known that it was surrounded you

23 wouldn't have given a warning to the people on the hill,

24 did I understand you correctly?

25 **BRIGADIER CALITZ:** This is completely

1 correct, Mr. Chairperson.

2 **CHAIRPERSON:** Alright, now the next

3 question I want to ask you is, what exactly would you have

4 said in your warning?

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

6 if I must say out of the air if Colonel Vermaak informed me

7 that the people were sort of boxed in, in other words,

8 that we knew it was TRT or K9, I would certainly have contacted

9 those commanders and tried to determine.

10 And in that way someone would definitely have reported to

11 me that there was a shooting incident or a shooting

12 on-going.

13 **CHAIRPERSON:** I'm sorry, I don't want to

14 interrupt you, but you're not answering my question, I

15 asked something different. The question was, if you had

16 known that they were surrounded –

17 **BRIGADIER CALITZ:** Yes, –

18 **CHAIRPERSON:** You said you would have

19 given them a warning. So what I want to know from you is,

20 what would the warning have contained?

21 **BRIGADIER CALITZ:** Oh, my apologies, no,

22 I'm still getting to that. I just wanted to say first of all, If I had all the

23 information, – Mr. Chairperson, I would immediately have given

24 orders and also to the CJOC, to the JOC to let them know

25 that all people at that hill are to

1 stop, indeed, as I say, that information was conveyed to me, -
2 and that those people must take cover, under the vehicles, stones
3 whatever was near them.
4 How it will work operationally; I will send in the Nyala
5 vehicles as I was using my Pappa
6 Nyala vehicles, and they are the protection vehicles,
7 so not the soft shell or people on foot. So, I'd have told those
8 people to all just stop, stop where you are,
9 no action and let the POP go in and give me situational reports
10 and then I myself would
11 also had moved in.

12 **CHAIRPERSON:** Yes, I'm sorry, I didn't
13 understand you yesterday then. I thought you said that if
14 you had known that the hill was surrounded you would have
15 given the warning to the people on the hill. Do you
16 remember Mr Mpofo asked you a question, he had a long
17 speech that he said you would have given by way of a
18 warning, which I thought, and I hope he won't be offended
19 if I say, that was a little extravagant, but did I
20 understand you correctly when you said that if you had
21 known the hill was surrounded you would have given a
22 warning to the people on the hill, to the strikers?
23 **BRIGADIER CALITZ:** It is, in the first place, Mr.
24 Chairperson, firstly for the police members, if I had known they
25 were there, so the action could stop and the

1 Pappa Nyalas and myself, what I had just said- could move in closer
2 and we then would have seen the people surrounded
3 encircled" and immediately we would have started communicating
4 with the people and told them to come out, peacefully.

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

9 **BRIGADIER CALITZ:** Mm –

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

12 **BRIGADIER CALITZ:** No, no, no.

13 **CHAIRPERSON:** But what would you have
14 said?

15 **BRIGADIER CALITZ:** It would have been
16 through the interpreter, that the people were encircled,
17 come out you are under arrest for carrying, possessing
18 dangerous weapons, those who wouldn't come out,
19 the normal warning we would give them maybe before
20 the dispersion, but in the way that they were now done,
21 followed up, encircled and that they were busy with
22 arresting them, identified ourselves,
23 went through all those steps, to get the people out from
24 under the bush or from behind the stones.
25 if they would move out freely.

1 If not, the dispersion action would have

2 continued.

3 **CHAIRPERSON:** You see I also understood

4 you to say that you did realise later that they were boxed

5 in, is that right? You used the word "boxed in" yesterday

6 or "boxed in", I think, -

7 **BRIGADIER CALITZ:** This is what I

8 said -

9 **CHAIRPERSON:** - is that right?

10 **BRIGADIER CALITZ:** In hindsight we had

11 seen this is -

12 **CHAIRPERSON:** No, I understood you to say

13 yesterday that you realised that they were boxed in, this

14 was just before the, you gave an order, - sorry, I mustn't

15 promote him unduly. Colonel Vermaak made a report to you

16 from the helicopter and you then gave an order to the

17 members who were, to whom you were commanding at that

18 point, and I understood you to say that at that point you

19 thought or you realised that the strikers were boxed in.

20 Did I misunderstand that?

21 **BRIGADIER CALITZ:** I think the word I used

22 if I used 'boxed in', but what he said to me is

23 the people were encircled and he said it to me in Afrikaans;

24 Brigadier, if the water cannons can wait, the people are now

25 encircled, you can make arrests,

1 I did -

2 as to my knowledge POP vehicles

3 were encircling the crowd.

4 **CHAIRPERSON:** Who effectively surrounded

5 them?

6 **BRIGADIER CALITZ:** According -

7 **CHAIRPERSON:** On your understanding -

8 **BRIGADIER CALITZ:** According to my -

9 **CHAIRPERSON:** Your understanding was,

10 let's be clear what we're talking about, you didn't know

11 that the whole hill was surrounded because you didn't

12 know that Naidoo and Kidd were there, we know that, but you

13 did think, because that was the information you had been

14 given, that the strikers were surrounded, that's right,

15 isn't it?

16 **BRIGADIER CALITZ:** That is, they were

17 encircled, yes, surrounded.

18 **CHAIRPERSON:** yes, you used the word

19 surrounded. So why didn't you then give them a warning?

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

21 remember I was 153 meters away during the time that information

22 was shared with me, that is why I ordered the

23 vehicles to get out, and to make

24 arrests. I was told that at that scene it was aggressive,

25 that there was a shooting

1 shooting incident where people had died, so, no.

2 **CHAIRPERSON:** But the fact of the matter

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

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

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

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

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

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

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

10 nothing prevented you from giving them a warning if they

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

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

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

14 you at that point give them a warning?

15 **BRIGADIER CALITZ:** Mr. Chairperson, -

16 **CHAIRPERSON:** Was there a reason?

17 **BRIGADIER CALITZ:** Yes, no, all I can testify to

18 about that, is that I didn't know if my vehicles were there

19 and already gave a warning, all I can say is what I told you,

20 I was a 150 meters away. What I said to you I would have

21 moved nearer if I was aware of

22 the TRT and the K9 who could clearly -

23 **CHAIRPERSON:** So -

24 **BRIGADIER CALITZ:** - have changed

25 the scene. As it was for me at this stage,

1 was a normal dispersion, it was what we were busy with at the
2 western side and there I also said there,
3 encircle, arrest, so, we didn't give
4 warnings again, no.

5 **CHAIRPERSON:** Yes, I understand, you see
6 what I'm interested in is, when your people were dispersing
7 and disarming them, regard being had to some of the history
8 and what had gone before and the intelligence that had been
9 obtained and so forth, that these people were unwilling to
10 hand over their arms and would fight to keep their arms and
11 so forth, wouldn't it have been, perhaps this is a
12 hindsight question, but wouldn't it had been sensible
13 before you gave that disarm order, to have given the people
14 a concerned warning, so to try to encourage them to
15 cooperate with the police rather than to put up a fight as
16 they might well have done, with a result in bloodshed?

17 **BRIGADIER CALITZ:** Mr. Chairperson,
18 Yes, in hindsight, if we now look at a specific scene,
19 it is a possibility. Operationally I can just testify to you;
20 if we follow up to the
21 Pappa blockings and the people regroup again, we get closer with the
22 vehicles, then no more warnings are given,
23 then it is a physical process of arresting and what
24 follows, so, this is not like a prescribed procedure,
25 but I agree with you, it is a possibility.

1 **CHAIRPERSON:** Alright, I'm afraid I have
2 a few more questions to ask you, it is now one o'clock, I'm
3 afraid I'm going to have to ask you a few more questions at
4 quarter to two, so we'll now take the lunch adjournment
5 until quarter to two.

6 **BRIGADIER CALITZ:** Thank you Mr.

7 Chairperson.

8 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

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

10 Brigadier, you're still under oath.

11 **ADRIAAN MARTHINUS CALITZ:** Thank you, Mr.

12 Chairperson.

13 **CHAIRPERSON:** I understand that on Monday
14 a series of statements were filed by members of the police
15 service and a number of them were by people who were in one
16 of the Nyalas on Thursday, the 16th. The main one is by
17 Warrant Officer Mamabolo. Now am I correct in thinking
18 that Warrant Officer Mamabolo was in Pappa11? Is that
19 right?

20 **BRIGADIER CALITZ:** I believe so, Mr.

21 Chairperson.

22 **MR SEMENYA SC:** Chairperson, might I just state
23 that the witness is not aware of Mamabolo's statement. I
24 don't know where the Chairperson is going –

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

1 there will be a problem. If there is I understand the
2 point you make. Now according to this witness, and indeed
3 the others with him, other statements made by people who
4 were with him in that Nyala, after being at scene 1 he, the
5 Nyala, Nyala 11 then proceeded to, ultimately to hill 3,
6 and he describes what happened when they got to hill 3.

7 All I want to know from you at this stage is when Nyala 11,
8 Pappa11 rather, Pappa11 came to hill 3, did you see it?

9 **BRIGADIER CALITZ:** Mr. Chairperson, if I am
10 correct about Pappa11, it is the Nyala which was with us when
11 we made the arrests on the north-westerly corner and
12 from there they drove to the hill. I think it is
13 the movement of Pappa11 which I think one of the
14 advocates, I'm not sure, went through with us. There was,
15 a coloured document in which was described how
16 we moved into the middle of the hill.

17 **CHAIRPERSON:** Yes.

18 **BRIGADIER CALITZ:** But no, I did not see
19 him move there, precisely when he left
20 from there.

21 **CHAIRPERSON:** Now perhaps I should hand
22 you the copy that I have. It will be an exhibit in due
23 course. I suppose it may have to be an exhibit already.
24 What's the latest exhibit? KKK, so it will be KKK61,
25 statement Mamabolo, Warrant Officer Mamabolo. Well,

1 perhaps I could read just the paragraph, it's paragraph 13.
2 "We received instructions through the radio that Pappa11
3 should go and protect the Gauteng water cannon which was
4 following the protesters and spraying them with water. The
5 protesters were busy running through the open area. We
6 further received instructions through the radio from one of
7 the police choppers that we should get out of the Nyalas
8 and effect arrests. I instructed the crew of the Nyala to
9 get out and we assisted other members to effect arrests.
10 Whilst we were busy effecting arrests the water cannon
11 proceeded further to scene 2. The place where the arrests
12 were effected is reflected in the photo per movement of ETV
13 number 16:13:51 to 16:21 as per document marked movement of
14 Pappa11." Anyway, you don't have to worry about that
15 because you know where this particular Nyala was.
16 **BRIGADIER CALITZ:** That is correct Mr.
17 Chairperson.
18 **CHAIRPERSON:** "After the arrest of the
19 protesters, while they were lying on the ground, we left
20 them with the members in the two other Nyalas." That's
21 correct also, isn't it? "After the arrest of the
22 protesters, while they were lying on the ground, we left
23 them with the members in the two other Nyalas."
24 **BRIGADIER CALITZ:** I think he refers there to the
25 North-Western side where he was with me.

1 **CHAIRPERSON:** Yes, it sounds like it.

2 **BRIGADIER CALITZ:** This is correct, Mr.

3 Chairperson.

4 **CHAIRPERSON:** "This was after the driver

5 of the Nyala proposed that we proceed to the hill to

6 protect the water cannon as there was gunfire in that

7 direction. I could also hear the sound made by the firing

8 of live ammunition in the vicinity of the hill. At that

9 stage I did not know from which direction the live

10 ammunition was fired." So it appears that what Warrant

11 Officer Mamabolo is saying is that while his Nyala was

12 together with your Nyala and a third Nyala at the place at

13 the northwest corner of hill 3, while people were lying

14 on the ground, the arrested people were lying on the

15 ground, they left because the proposal had been made that

16 they proceed to the hill to protect the water cannon as

17 there was gunfire in that direction and he said he could

18 also hear the sound made by the firing of live ammunition

19 in the vicinity of the hill. The question I ask you is

20 did you not hear that firing as well?

21 **BRIGADIER CALITZ:** No, Mr.

22 Chairperson, this is what I testified about. I did not,

23 at that stage, hear any live fire . I don't know if he was

24 outside the vehicle or where they were positioned

25 at that stage. I was in the vehicle the majority

1 of the time so, no, I did not hear.

2 **CHAIRPERSON:** I understand, thank you.

3 Now I'd like –

4 **MS PILLAY:** Chairperson, I'm sorry to

5 interrupt. If I may just indicate that the last exhibit

6 number is KKK60. So it should be KKK60 instead of 61. The

7 supplementary statement of Warrant Officer Mamabolo.

8 **CHAIRPERSON:** Oh yes, of course, we had

9 the problem that it turned out it was in already. Yes,

10 thank you very much. So we'll correct that. I haven't

11 marked – it's now been marked exhibit KKK60, six-oh. I'd

12 like to now move on to another topic and that is it appears

13 from exhibit L that the TRT members were briefed, this was

14 after the briefing at 2:30 the commanders went back to

15 brief their sections.

16 **BRIGADIER CALITZ:** This is correct, Mr.

17 Chairperson.

18 **CHAIRPERSON:** And it appears from exhibit

19 L, it was referred to previously when I think Mr Mpofu was

20 cross-examining you, that the TRT commanders gave a

21 particular briefing to their members and what was said was

22 that there was specific instruction in respect of self-

23 defence and private defence and that it was not necessary

24 to have an instruction before firing. That's my paraphrase

25 of what was said. You remember that passage? Do you

1 remember that evidence?

2 **BRIGADIER CALITZ:** I remember Mr.

3 Chairperson. I can't remember the page, but I do remember
4 your reference.

5 **CHAIRPERSON:** Now all I want to know from

6 you, is that a standard briefing that members of the TRT

7 would receive? It's slide 182 of exhibit L. "Commanders

8 of the teams of TRT who were responsible for supporting the

9 dispersion action of POP personally briefed their own

10 forces with regard to their roles and responsibilities.

11 The placement of the members of the TRT is behind the POP's

12 line, the allocation of hill 2 for sweeping and

13 searching. The rules of engagement were emphasised,

14 advancing on command, to perform a planned role during the

15 dispersion, clarifying private defence, when to engage

16 without instruction." All I want to know from you is, is

17 it customary when commanders of teams of the TRT brief

18 their forces, as it's put here in the slide, for them to

19 emphasise the rules of engagement and to clarify the rules

20 relating to private defence and when to engage without

21 instruction? Is that a standard kind of briefing, or is it

22 something that happened on this day?

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

24 I can't really help you there as I am not involved with the

25 tactical briefing of the TRT members, but what I know

1 from the planning in the term
2 'use of force' we usually write in any planning in order
3 of execution and then also "self-defence,
4 private defence." So under the terms "use of force" that
5 terminology is used. So, if those were the words
6 that the TRT commanders used
7 at that stage, they will probably just have to explain it more
8 clearly. But the "use of force" usually comes in a
9 before any of our, "OCT
10 plans."

11 **CHAIRPERSON:** Yes, but you say the
12 impression you get from this – or perhaps we'll have to ask
13 them when they come, but as is if this particular
14 instruction in relation to the rules relating to self-
15 defence and private defence and the ability to fire without
16 instruction, that appears to have been given with more
17 detail than is customary.

18 **BRIGADIER CALITZ:** It will appear so in
19 this document, Mr. Chairperson.

20 **CHAIRPERSON:** I think what I said wasn't
21 recorded. What you say is that the particular briefing as
22 summarised here in slide 182 appears to be more detailed
23 than is customary. Higher than that you can't put it. Is
24 that fair?

25 **BRIGADIER CALITZ:** It seems to me they went into

1 detail with what I refer to as “use of force”,

2 what we usually write in operational planning.

3 **CHAIRPERSON:** Thank you. And I’d now

4 like to ask you something else. In relation to the

5 instructions you gave just before you left the vicinity of

6 scene 1, what precisely was the instruction you gave? It

7 was paraphrased in Afrikaans at one stage. I take it you

8 gave it in English. Can you remember more or less what

9 your words were?

10 **BRIGADIER CALITZ:** Mr. Chairperson, I think I told you

11 the previous time you asked me; I’m not sure about the

12 exact words, I told you it was 18 months

13 later since we stood there, I saw people coming down

14 –are you talking about the first incident or when we moved

15 around or from the very beginning?

16 **CHAIRPERSON:** From the beginning, yes.

17 **BRIGADIER CALITZ:** From the start,

18 basically stood and then saw people. I first told

19 Pappa4 who was in front of us to close the doors,

20 and for the people to move in as the group was busy

21 moving down to there. After that I saw them moving in

22 a – what are they, in the direction of Nkaneng’s side,

23 the larger group, and I told the Nyalas to close

24 the gap, in other words; “Move forward, move

25 forward, close that gap,” and then I stood there

1 until I saw at the top part, by
2 say, where the kraal part is. Then I told the
3 "vehicles"; "Engage, engage," where I meant they must get involved
4 and from there was discussions with the
5 Pappa Nyalas;, "Pappa Nyalas,
6 go to the gap, try to block them and disperse," and when I saw
7 it didn't work, at that stage was when I moved to incident
8 2, we passed and I told the "vehicles"
9 again; "The Pappa Nyalas, follow me so that we can block
10 them, disperse them, disperse them." So it will go something like;
11 "Move, move, move, move, move forward." So, there were no
12 specific orders given as to who must park which vehicle.
13 Because the call signals are on the roof,
14 it is very difficult at that stage to do it
15 that way. So, in other words, the dispersion action would have
16 occurred from where we arrived by
17 the wire.

18 **CHAIRPERSON:** I understood you to say
19 that you gave an instruction that the vehicles were to be
20 used to disperse the people, the strikers. Is that right?
21 It's that instruction that particularly interests me. How
22 did you word that instruction?

23 **BRIGADIER CALITZ:** Mr. Chairperson,
24 this would have been when I had seen the group
25 passed by us and the words to my driver would be;

1 "Move forward, move forward." He said there was a wire,
2 he couldn't move through, whereupon I told all the vehicles;
3 "Move forward and disperse these people. Use the
4 vehicles, drive in between them. Break them up. Break up
5 this group, "and in other words- and this is
6 precisely what happened; when the Pappa Nyalas moved forward,
7 the groups started dispersing, running away from each other.

8 **CHAIRPERSON:** Was this instruction given
9 in particular to one of the senior officers there who was
10 going to be in command, as it were, of that part of the
11 operation after you left to go to hill 2?

12 **BRIGADIER CALITZ:** No, no. not
13 specifically. I talked to the Pappa Nyalas who then
14 all moved to the, what we referred to as
15 the "dry riverbed," to there -

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

17 **BRIGADIER CALITZ:** - till there, and then I
18 which vehicles were with us.

19 **CHAIRPERSON:** So effectively the people
20 were to be dispersed by having Nyalas driven near them, as
21 it were, between them, is that right?

22 **BRIGADIER CALITZ:** This is correct, Mr. Chairperson.

23 You will remember in the beginning there were allegations
24 or rumours that we drove over people,
25 People were hit. I think on the autopsy reports

1 that Dr Naidoo of Perumal did, there were no marks on
2 any bodies. Si, I think where the rumours came from
3 is because the vehicles moved between them and in this manner
4 broken them up,
5 then discouraged them to stay on one big group, but to
6 break up and run in different
7 directions.

8 **CHAIRPERSON:** Now was this instruction
9 carried out?

10 **BRIGADIER CALITZ:** According to me it was
11 indeed carried out, Mr. Chairperson, because when we started to
12 move forward, I saw a large group. We saw today
13 on the video, I think we mentioned 30
14 who went through. The reaction of those people heeded the
15 "dispersion action" and had moved away in a western
16 and also north, north-westerly
17 direction.

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

21 **BRIGADIER CALITZ:** The 30 we saw
22 today? –

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

25 **BRIGADIER CALITZ:** Yes, that is the number

1 more –

2 **CHAIRPERSON:** The front 30 –

3 **BRIGADIER CALITZ:** More or less, yes.

4 **CHAIRPERSON:** The front group which

5 appears to be about 30 or thereabouts. Is that right?

6 **BRIGADIER CALITZ:** That, they had moved through

7 Mr. Chairperson, yes. They were –

8 **CHAIRPERSON:** They weren't dispersed

9 then?

10 **BRIGADIER CALITZ:** I will say unsuccessful.

11 There were attempts made. We can see it on the video.

12 There was "non-lethal action" taken against them by the people

13 who shot through the two Nyalas.

14 **CHAIRPERSON:** Oh, yes, yes, sorry, I put

15 the question badly. I know, I think teargas was fired at

16 them and I think stun grenades. Was any water sprayed on

17 them?

18 **BRIGADIER CALITZ:** They said 8 seconds-

19 as per CALS documents laid in front of the TRT,- "volley." I just perused

20 the documents quickly. But –

21 **CHAIRPERSON:** So there was water sprayed

22 at them.

23 **BRIGADIER CALITZ:** But I doubt to the

24 front, I can see the whole inside of the kraal

25 is wet.

1 **CHAIRPERSON:** yes.

2 **BRIGADIER CALITZ:** Also at the incident 2,

3 where Pappa4 was is also a wet spot

4 observed. So, there was definitely water sprayed.

5 **CHAIRPERSON:** So we're not sure about

6 water, but stun grenades and teargas we do know. That was

7 done in order to disperse them, but this other way of

8 dispersing them by using the vehicles, did that happen as

9 far as they were concerned? Was an attempt made to

10 disperse them, the front 30 or thereabouts, was an attempt

11 made to disperse them by means of the vehicles?

12 **BRIGADIER CALITZ:** I believe the vehicles who moved

13 up would have followed, Mr. Chairperson,

14 Chairperson, but as we see it so clearly on this video,

15 that part of the 30 came through before the vehicles

16 moved forward. But the, 90% of the group, 99%

17 we can say, did react to it.

18 **CHAIRPERSON:** Can we say whether an

19 attempt was made – it would appear to have been

20 unsuccessful if it was, but can we say that an attempt was

21 made to disperse them by using vehicles to, as it were,

22 push them along?

23 **BRIGADIER CALITZ:** You're talking –

24 **CHAIRPERSON:** Push them apart perhaps.

25 **BRIGADIER CALITZ:** you're talking about the

1 group in front, or –

2 **CHAIRPERSON:** Yes, front group.

3 **BRIGADIER CALITZ:** Yes, the front group,

4 I would say more than this, we originally used first the “stuns”

5 the smoke and then also the shotguns. You mustn’t forget the people

6 who stood between the vehicles and who then ignored

7 the dispersion action, so –

8 **CHAIRPERSON:** The rubber rounds?

9 **BRIGADIER CALITZ:** That is correct Mr. Chairperson,

10 yes. So, those attempts were definitely

11 made and in a desperate move to break up the groups,

12 the vehicles then started moving in between them.

13 **CHAIRPERSON:** Did those endeavours result

14 in them being pushed in any particular direction?

15 **BRIGADIER CALITZ:** The larger part in a

16 western direction –

17 **CHAIRPERSON:** I’m not busy with “the

18 bigger part,” I’m busy with the 30.

19 **BRIGADIER CALITZ:** Oh no, no, Mr.

20 Chairperson. We wouldn’t have, you know, in a – what is it?

21 – a southern direction, no, there was no push in a

22 southern direction from the vehicles.

23 **CHAIRPERSON:** They weren’t being pushed

24 in the direction of the TRT group?

25 **BRIGADIER CALITZ:** Definitely not, Mr.

1 Chairperson.

2 **CHAIRPERSON:** So essentially it would

3 appear that dispersal attempts in respect of the front

4 group didn't succeed at all.

5 **BRIGADIER CALITZ:** The attempts of

6 "non-lethal," on them had no

7 affects, Mr. Chairperson, and we -

8 **CHAIRPERSON:** Thank you.

9 **BRIGADIER CALITZ:** No, I only wanted to say we knew

10 as the result of the blankets and the double layered

11 clothing. We tested it. So, the "non-

12 lethal" had no effect on them.

13 **CHAIRPERSON:** Yes, thank you. I have no

14 further questions.

15 **MR SEMENYA SC:** Matters arising, Chairperson?

16 **MR MPOFU:** Yes.

17 **CHAIRPERSON:** In the past I've allowed

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

19 up his hand too.

20 **MR MPOFU:** Yes, Chairperson, I was also

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

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

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

24 them up, is what we say.

25 **CHAIRPERSON:** Yes, well, though Mr

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

2 first.

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

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

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

6 **MR MPOFU:** Thank you, Chairperson.

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

8 **CHAIRPERSON:** You made that promise to –

9 **BRIGADIER CALITZ:** I heard that before.

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

11 yes.

12 **BRIGADIER CALITZ:** But you said two

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

14 **MR MPOFU:** Only two questions, alright.

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

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

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

18 remember that?

19 **BRIGADIER CALITZ:** This is correct, yes.

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

21 that the reason that that was adequate in the circumstances

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

23 briefing, correct?

24 **BRIGADIER CALITZ:** Yes, I can just tell you, the question to me was

25 what did Colonel Scott asked me and why there wasn't a plan

1 and I said what he told me is
2 that there isn't a proper plan
3 not that there wasn't one, he said he only briefed us in the
4 screen of his laptop.

5 **MR MPOFU:** No, irrespective of what
6 Colonel Scott might or might not have said, your view is
7 that that type of briefing which would be otherwise
8 inadequate was explained on the basis that there was not
9 enough time, correct?

10 **BRIGADIER CALITZ:** No, Mr.
11 Chairperson, this is not the question that Mr. Chairperson
12 asked of me, You asked a totally different question. My
13 answer on that will be the half an hour that he and I spend
14 he explained the whole of
15 phase 3.

16 **MR MPOFU:** Okay, then you were asked
17 about the issue of the warning that you might have given in
18 respect of, - then you were asked about the issue of the
19 warning that you might have given and I understand that it
20 is speculative, in respect of scene 2. Now your evidence
21 in respect of scene 1 was that you would have given the
22 strikers about 20 to 30 minutes to respond to the warning.
23 Would you be able to say that in respect of the warning
24 that you might have given at scene 2, how much you would
25 have given them to respond, either to own up or come out

1 and as the chairperson said, I made it more elaborate, you
2 would have said, look, there are helicopters, there is this
3 and that, but whatever the real actual proper warning that
4 you would have given, how long would you have given them?
5 Brigadier?

6 **BRIGADIER CALITZ:** No, I see the
7 chairperson was just busy, I was just waiting.

8 **CHAIRPERSON:** No, no.

9 **BRIGADIER CALITZ:** Apologies, Mr.

10 Chairperson.

11 **CHAIRPERSON:** No, I'm listening to you, I
12 listened to you even though my colleague, Advocate Tokota
13 was putting a point to me, but now you've got my full
14 attention.

15 **BRIGADIER CALITZ:** No.

16 **CHAIRPERSON:** I'm interested to hear your
17 answer.

18 **BRIGADIER CALITZ:** No, I was respectfully
19 waiting for you to finish –

20 **CHAIRPERSON:** No, no, I appreciate it.

21 **BRIGADIER CALITZ:** Mr. Chairperson,
22 yes, again the question difference. Mr. Chairperson
23 asked, would we have given the warning? I told
24 him in normal practice it is not a requirement if
25 we are busy with a dispersive action to give another warning

1 and then Mr. Chairperson said; but there could have been a
2 possibility and I said yes, maybe a
3 possibility could well exist, so, to go on that proposition
4 that it could be possible, depends on the
5 circumstances. If I had arrived at the hill and had seen
6 there is of the Pappa vehicles
7 around them, well it would have depended on the circumstances,
8 what the terrain looks like from their side,
9 was – should there have been any reaction, I had told
10 the Chairperson we would have continued with the dispersion action
11 in other words, physically had gotten out,
12 dispersed the group with non-lethal force and started
13 making arrests.

14 **MR MPOFU:** Okay.

15 **BRIGADIER CALITZ:** So, it depends a lot on the
16 circumstances, I can't now tell you –

17 **MR MPOFU:** No, fair enough –

18 **BRIGADIER CALITZ:** - a specific
19 time.

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

25 **BRIGADIER CALITZ:** It all depends, Mr.

1 Mpofu, if –

2 **CHAIRPERSON:** Sorry, I take it you would

3 have given them a reasonable time to respond, what depends

4 on the circumstances is what the reasonable period would

5 be, but if you give a warning you've got to give a

6 reasonable time to people to respond to it, whether the

7 reasonable time is a minute or ten minutes is a different

8 question, but a reasonable time you've got to give. What's

9 the point of giving a warning and then immediately acting

10 before a reasonable time has elapsed, I mean that must be

11 so?

12 **BRIGADIER CALITZ:** It must be, Mr.

13 Chairperson, that is why I said it depends on the circumstances

14 when we arrived there if we would give a

15 warning.

16 **CHAIRPERSON:** No, no, I understand it.

17 The first question is, would you have given a warning,

18 that's hypothetical, but we're now busy with what we can

19 call the second hypothetical, that if you had given the

20 warning how long in those circumstances would you have

21 waited before proceeding with the operation, in other words

22 what would you have regarded as a reasonable time for them

23 to respond to any warning that you may have given? That's

24 Mr Mpofu's question, I think.

25 **MR MPOFU:** That's correct, Chairperson.

1 **BRIGADIER CALITZ:** Mr. Chairperson,
2 this is a very difficult question to answer operationally,
3 not that I'm avoid the question, I will probably arrived at a time
4 it all depends on, should a person do a
5 follow up, remember the people are already dispersed, so you sit
6 with a group already emotional, and who won't react rationally
7 you have a group who, should you communicate to try again
8 to walk back to Pappa1,
9 it cannot, so, that is why I say as soon as a
10 person told the people the police is here,
11 come out of the things, you are under arrest, you know
12 that type, from and with, there wouldn't be cooperation,
13 so we'd have gone immediately over to further
14 diversion action.
15 If then there was, as you said in the previous times,
16 a person with a white flag coming out, remember
17 that statement you made, I believe a leader would have
18 spoken to us on the public address system and then told their people;
19 put down your weapons and come out, they'd have
20 come out and those others would still have been arrested
21 under those circumstances. So, given the time,
22 it depends on the reaction
23 of the strikers.
24 **CHAIRPERSON:** Does that mean that if
25 there was no reaction you would have given them a fairly

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

4 **BRIGADIER CALITZ:** This is –

5 **CHAIRPERSON:** It is difficult to give –

6 **BRIGADIER CALITZ:** In hindsight it is a
7 possibility Mr. Chairperson, definitely.

8 **CHAIRPERSON:** Yes, that seems fair. I

9 think those were your two questions, the correct ones, Mr
10 Mpofu?

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

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

16 **MR SEMENYA SC:** Other questions, Chairperson.

17 Regarding the statement of Warrant-Officer Mamabolo, he
18 would have been at a certain point at the north-west where
19 the first arrests were made, do you remember that?

20 **BRIGADIER CALITZ:** This is correct, yes.

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

24 **BRIGADIER CALITZ:** This is correct.

25 **MR SEMENYA SC:** Did he tell you that he

1 is leaving 1?

2 **BRIGADIER CALITZ:** No, I had actually only just learned of it

3 for the first time in the statement, so I was happy I wasn't

4 aware of it.

5 **MR SEMENYA SC:** Neither did he

6 communicate that he has heard the shots?

7 **BRIGADIER CALITZ:** That is correct Mr. Chairperson,

8 I wasn't aware thereof.

9 **MR SEMENYA SC:** With the question of

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

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

12 reduced to paper would it have changed anything?

13 **BRIGADIER CALITZ:** No, Mr.

14 Chairperson, the briefing even and the deployment thereof

15 is what we see, what we learned, Mr. Chairperson

16 referred to, what was exhibited for Exhibit

17 L.

18 **MR SEMENYA SC:** If it had been given in

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

20 changed anything?

21 **BRIGADIER CALITZ:** Not the implementation part

22 no, what usually accomplishes a plan, is the

23 administrative side, the logistic, die radio channels,

24 that type of thing, so the implementation would have been enough,

25 the time it was given wouldn't really

1 have made a difference.

2 **MR SEMENYA SC:** Those are the questions I

3 have for the witness, Chairperson.

4 **CHAIRPERSON:** Thank you, Mr Semenya. I

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

6 **MR SEMENYA SC:** Indeed, Chairperson.

7 **CHAIRPERSON:** Yes, Brigadier, you're

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

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

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

11 come back, on that basis you are excused.

12 **BRIGADIER CALITZ:** I always give my 110%

13 cooperation, Mr. Chairperson.

14 **CHAIRPERSON:** I've heard that phrase

15 somewhere before.

16 **BRIGADIER CALITZ:** Mr. Chairperson if I

17 may, thank you very much for this opportunity, especially

18 to the Advocate, the manner in which this, how can I say it

19 was handled. I appreciate it and with respect, where we differed

20 it wasn't out of facetiousness, on purpose,

21 and then my deepest sympathy for all who had

22 suffered loss.

23 **[NO FURTHER QUESTIONS - WITNESS EXCUSED]**

24 **CHAIRPERSON:** Thank you, Brigadier. Your

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

1 available?

2 **MR SEMENYA SC:** Indeed, Chairperson, can I –

3 **CHAIRPERSON:** I understand, you came to

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

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

6 but she is prepared to receive questions in English.

7 Obviously if she requires assistance in understanding a

8 particular question and needs to have an interpreter to

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

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

11 have to return to the mode of sequential interpretation or

12 semi sequential interpretation. So what will happen is,

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

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

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

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

17 interpreter in the other room will interpret the questions

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

19 questions will have to use their headphones and presumably

20 the sound track they will receive will include the Xhosa

21 answer by the witness.

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

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

24 is simultaneous translation but we will spend one and a

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

1 Mahlangu, I take it you don't have to interpret for us in,
2 you don't have to interpret it into, what we say in English
3 into Xhosa, because that would be interpreted by your
4 colleague across the way. What you will do is, you will
5 interpret for us the Xhosa answers of the witness into
6 English, that's my understanding.

7 **MR MAHLANGU:** That is, I suppose, how it
8 is going to work.

9 **CHAIRPERSON:** Mr Semenya, do you require,
10 shall we take a short adjournment before your witness
11 comes?

12 **MR SEMENYA SC:** I would appreciate it,
13 Chairperson.

14 **CHAIRPERSON:** Alright, we'll adjourn for
15 five minutes.

16 **MR MPOFU:** sorry, -

17 **CHAIRPERSON:** Cancel the order for
18 adjournment, Mr Mpofo, you turned on your light, what do
19 you want to say?

20 **MR MPOFU:** No, thank you, Chairperson,
21 you know just at a human level, I see that the brigadier is
22 emotional, so I just wanted to say that the words that he
23 had said to my colleagues, I'm sure I'm speaking for all my
24 colleagues to say that we also appreciate your assistance
25 and as you say we all have to perform our professional

1 duties, you yours and we have to do what we have to do, but

2 none of it was personal, thanks, Chairperson.

3 **CHAIRPERSON:** We'll now take the five

4 minute adjournment.

5 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

6 **[14:42] CHAIRPERSON:** The Commission resumes.

7 Yes, Mr Semenya?

8 **MR SEMENYA SC:** I beg leave to call

9 General Mbombo, Chairperson.

10 **CHAIRPERSON:** Yes, is it appropriate for

11 me to swear her in, or should I ask Mr Mahlangu to do so?

12 **MR SEMENYA SC:** You can swear her in,

13 Chairperson.

14 **CHAIRPERSON:** Lieutenant General, would

15 you stand up, please? Are you prepared to swear that the

16 evidence you give will be correct? If you take the oath

17 will that be binding on your conscience, or would you wish

18 to affirm?

19 **GENERAL MBOMBO:** I wish to confirm, Sir.

20 **CHAIRPERSON:** You wish to affirm?

21 **GENERAL MBOMBO:** Yes.

22 **CHAIRPERSON:** Very well. Would you

23 affirm that the evidence you'll give before this Commission

24 will be the truth, the whole truth, and nothing but the

25 truth? Please say, "I so affirm."

1 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** I so

2 affirm.

3 **CHAIRPERSON:** You may be seated.

4 **EXAMINATION BY MR SEMENYA SC:** Thank you,

5 Chairperson. General, there is a file before you; I hope you

6 have it. In that file you will find a document marked

7 GGG5. Do you have that?

8 **CHAIRPERSON:** I'm sorry, Mr Semenya. We

9 didn't put her full names on record. I see she is Mirriam

10 Nosaziso Zukiswa Mbombo. That's correct?

11 **GENERAL MBOMBO:** It is so, Mr

12 Chairperson.

13 **MR SEMENYA SC:** Do you have the document?

14 **GENERAL MBOMBO:** I do have it.

15 **MR SEMENYA SC:** There is also an unmarked

16 document, but it has in a rectangle first page amplified

17 affidavit. Do you have that one?

18 **GENERAL MBOMBO:** I have got it.

19 **CHAIRPERSON:** May I interrupt you at this

20 stage? I see most of the documents in this file are

21 already exhibits. There are only two that are described as

22 not yet an exhibit. The first of those is the amplified

23 statement, which is number 2 in the file. Shall we call

24 that exhibit –

25 **MR SEMENYA SC:** L.

1 **CHAIRPERSON:** LLL1?

2 **MR SEMENYA SC:** LLL1, Chairperson.

3 **CHAIRPERSON:** And then there's another

4 document which is number 12, which is a letter from, I

5 think he's a Lieutenant Colonel Vermaak, dated the 28th of

6 May 2012. We'll make that one LLL2, shall we?

7 **MR SEMENYA SC:** No, that one is an

8 exhibit; that is a minute of the National –

9 **CHAIRPERSON:** No, no, no, there are two

10 letters from Lieutenant Colonel Vermaak. The second one,

11 number 12 on your list, it says "Not yet an exhibit." If

12 it is an exhibit already, well then that's fine, but if it

13 isn't an exhibit then we have to mark it. That's all I'm

14 saying. Perhaps Ms Pillay can tell us.

15 **MS PILLAY:** Chairperson, both letters are

16 exhibits.

17 **CHAIRPERSON:** Very well. So the second

18 letter, the one the 28th of May, what exhibit number is

19 that, so we can write it in, in the relevant column on the

20 front page of the file, of the documents in the file.

21 **MS PILLAY:** It's the 22nd of May, is

22 exhibit JJJ137.

23 **CHAIRPERSON:** JJJ?

24 **MS PILLAY:** 137.

25 **CHAIRPERSON:** 137. Yes, that's the

1 letter dated the 28th of May. The previous one, the letter
2 dated the 12th of December 2012, that's HHH68. Yes, alright,
3 so housekeeping having been attended to, you may proceed to
4 lead the evidence.

5 **MR SEMENYA SC:** Bar one, Chairperson; there is
6 an excerpt, or there should be an excerpt in that bundle of
7 documents of the minute of the National Management Forum.

8 That also is unmarked. If we can mark it LLL –

9 **CHAIRPERSON:** I don't see it here.

10 Number 5 is extract of National Management Forum minutes
11 and then it says JJJ177. According to the front sheet in
12 the file document number 5 is described as extract of
13 National Management Forum minute, date of the next meeting
14 9/10 October 2012, and then according to the right-hand
15 column it's JJJ177.

16 **MR SEMENYA SC:** Chairperson, I think the
17 identification of the document as JJJ177 is incorrect.

18 **CHAIRPERSON:** I'm sorry, document number
19 5 in the file has got JJJ177 written at the top.

20 **MR SEMENYA SC:** That should be of the 15th
21 of August. We're talking about the next item, which is the
22 item unnumbered.

23 **CHAIRPERSON:** Oh, that doesn't appear to
24 be in my copy of the file.

25 **MR SEMENYA SC:** Chairperson, I will fix it at

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

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

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

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

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

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

16 **MR SEMENYA SC:** No –

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

1 say 15/8/2012, and then 5A is extract of NMF minute –

2 **MR SEMENYA SC:** Date 9 and 10 October.

3 **CHAIRPERSON:** Yes, that's right. That

4 will be 5A, right, and that will be exhibit LLL2. So

5 housekeeping is now in order, is it Mr Semenya?

6 **MR SEMENYA SC:** I thank you, Chairperson.

7 **CHAIRPERSON:** Let's proceed.

8 **MR SEMENYA SC:** General, can we start

9 with GGG5? If you go to page 9 of that document you will

10 see it's dated the 19th of November 2012. Do you recognise

11 the signature there?

12 **GENERAL MBOMBO:** It is so, Sir.

13 **MR SEMENYA SC:** On the first page you

14 tell us against paragraph 3 that you joined the police in

15 November of 1980. Is that right?

16 **GENERAL MBOMBO:** It is so, Sir.

17 **MR SEMENYA SC:** And that you went through

18 the ranks until you were appointed the Provincial

19 Commissioner for Northern Cape, and that was in November of

20 2005. Is that right?

21 **GENERAL MBOMBO:** It is so, Chairperson.

22 **MR SEMENYA SC:** And in there, Northern

23 Cape, you served until the July of 2010.

24 **GENERAL MBOMBO:** It is true.

25 **MR SEMENYA SC:** And then you were

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

4 **GENERAL MBOMBO:** It is so, Chairperson.

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

9 **GENERAL MBOMBO:** It is correct, Sir.

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

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

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

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

24 **MR MAHLANGU:** That is –

25 **GENERAL MBOMBO:** I just wanted to check,

1 Mr Chairperson, when it's on is it red or is it –

2 **CHAIRPERSON:** When it's on, it's red.

3 **GENERAL MBOMBO:** Okay.

4 **CHAIRPERSON:** And when it's not on

5 there's no colour at all.

6 **MR SEMENYA SC:** I'm just trying to

7 understand the technology, Chairperson. I think if the

8 interpreter is going to be having his mike on, the General

9 doesn't have to switch hers on and off; she's just speaking

10 in Xhosa.

11 **CHAIRPERSON:** I have been told by my

12 colleague Adv. Tokota that if she doesn't have her

13 microphone on there may be problem for the interpreter at

14 the other end, who's across the courtyard, who is

15 interpreting the English material into Xhosa for the

16 benefit of those who are here, and also what she says in

17 Xhosa must find its way into the headphones of the people

18 who are listening to hear the Xhosa soundtrack. So that's

19 why Mr Tokota made the suggestion which I repeated.

20 **MR SEMENYA SC:** I'm indebted, Chairperson.

21 **CHAIRPERSON:** If we're wrong on that we

22 must be told because we've never had this arrangement

23 before, but we must get it right for the benefit not only

24 of a proper record, but also so that those people who are

25 here who prefer to hear the proceedings in Xhosa hear what,

1 her actual words.

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

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

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

5 that right, General?

6 **GENERAL MBOMBO:** It is so, Chairperson.

7 **MR SEMENYA SC:** And that you received a

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

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

10 illegal strike. Is that right?

11 **GENERAL MBOMBO:** It is so.

12 **MR SEMENYA SC:** Do you now know who the

13 person is who gave you a call?

14 **GENERAL MBOMBO:** I do, Chairperson.

15 **MR SEMENYA SC:** Give us the name.

16 **GENERAL MBOMBO:** Mr Blaauw.

17 **MR SEMENYA SC:** Do you know what position

18 Mr Blaauw holds in Lonmin employment?

19 **GENERAL MBOMBO:** I am not sure of his

20 position.

21 **MR SEMENYA SC:** But he then tells you

22 that that unprotected strike resulted in some people being

23 shot and that it appears that the strikers might continue

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

25 **GENERAL MBOMBO:** It is so, Sir.

1 **MR SEMENYA SC:** What do you tell him?

2 **GENERAL MBOMBO:** I said to him I am going

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

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

5 necessary help.

6 **MR SEMENYA SC:** And we now know that

7 General Naidoo was acting as the Provincial Commissioner

8 during your sick leave.

9 **GENERAL MBOMBO:** It is correct.

10 **MR SEMENYA SC:** What is his otherwise

11 position within the North West province police?

12 **GENERAL MBOMBO:** General Naidoo is my

13 deputy. He helps me in components such as communication

14 and organisational development and inspection. He is known

15 as the operations officer.

16 **MR SEMENYA SC:** Having had that

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

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

19 **GENERAL MBOMBO:** I did so, Mr

20 Chairperson.

21 **MR SEMENYA SC:** What do you say to

22 General Naidoo?

23 **GENERAL MBOMBO:** I asked him to be of

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

25 that what was happening is brought to an end.

1 **MR SEMENYA SC:** What about the Marikana

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

3 **GENERAL MBOMBO:** I was referring to the

4 Marikana, the crime prevention members there, the crime

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

6 that time.

7 **MR SEMENYA SC:** And his response to you,

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

9 Policing, that's in Rustenburg?

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

11 Sir.

12 **MR SEMENYA SC:** What does he say with

13 reference to Brigadier Calitz?

14 **GENERAL MBOMBO:** That he had also been in

15 contact with Brigadier Calitz whereby, wherein he requested

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

17 **MR SEMENYA SC:** Okay, and the following

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

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

20 **GENERAL MBOMBO:** It is so, Sir.

21 **MR SEMENYA SC:** Do you know who this

22 person is now?

23 **GENERAL MBOMBO:** I do know now.

24 **MR SEMENYA SC:** Give us the name.

25 **GENERAL MBOMBO:** Mr Blaauw.

1 **MR SEMENYA SC:** And in that call Mr

2 Blaauw then tells you that two security guards in the

3 employment of Lonmin have been brutally murdered by the

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

5 Is that right?

6 **GENERAL MBOMBO:** It is so, Mr

7 Chairperson.

8 **MR SEMENYA SC:** What you then do next is

9 to contact General Naidoo, correct?

10 **GENERAL MBOMBO:** I did, yes Sir.

11 **MR SEMENYA SC:** And you advise him to

12 contact the South African Police Service Head Office with a

13 view to getting more resources and manpower so that the

14 unfolding situation can be effectively dealt with. Is that

15 right?

16 **GENERAL MBOMBO:** It is correct,

17 Chairperson.

18 **MR SEMENYA SC:** And later that very day

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

20 followed your instruction and that members from various

21 operational response service units were being called up.

22 **GENERAL MBOMBO:** It is correct, Sir.

23 **MR SEMENYA SC:** You then give

24 instructions to Brigadier Calitz that he must set up a

25 joint operation centre at Marikana. Is that right?

1 **GENERAL MBOMBO:** It is so.

2 **MR SEMENYA SC:** You do so because, and as

3 a result of the seriousness of the situation that is

4 developing there. Is that right?

5 **GENERAL MBOMBO:** Yes, Sir.

6 **MR SEMENYA SC:** And also because of that

7 you then decided to come back from your sick leave and to

8 go assist General Naidoo, correct?

9 **GENERAL MBOMBO:** It is so, yes, Sir.

10 **MR SEMENYA SC:** It is on that very day,

11 you tell us, that you telephone Major General Mpembe who at

12 the time, or still is the Deputy Provincial Commissioner.

13 He's your 2IC.

14 **GENERAL MBOMBO:** It is so, Sir.

15 **MR SEMENYA SC:** At that time General

16 Mpembe is on leave, was he not?

17 [15:01] **GENERAL MBOMBO:** It is correct,

18 Chairperson.

19 **MR MPOFU:** Chairperson, I'm sorry, I

20 really don't want to interrupt, but I will. I'm afraid I

21 don't understand what the point of putting – I would

22 ordinarily be objecting against the leading questions, but

23 I won't because obviously Mr Semenya is simply reading from

24 the statement, but I'm not sure if there's any purpose in

25 Mr Semenya reading the statement which is already part of

1 the record, for the witness to just say yes, yes, yes.

2 **CHAIRPERSON:** Well, there are a lot of

3 people who are present in the chamber listening who haven't

4 got the record, the document in front of them. There are

5 lots of people, I take it, watching this on YouTube who

6 haven't got the document in front of them. So he's putting

7 - there's no question of leading questions because the

8 points he's putting at the moment I don't think are

9 controversial -

10 **MR MPOFU:** No, no, that's it -

11 **CHAIRPERSON:** But this is why you don't

12 object.

13 **MR MPOFU:** Yes.

14 **CHAIRPERSON:** But it's important that the

15 people who are interested in what happens here, both

16 because they're present, also because they're watching

17 through YouTube for example, it's important that they

18 should know what's being said and there's no other way of

19 doing it, I'm afraid. It's better that he does it in

20 English, speed things up from the point of view of the

21 translation, because for the reasons that we did before, so

22 I think there's no avoiding what's happening. He's also, I

23 think, putting facts on record that he thinks is important

24 the public should be aware of, but I take it that when we

25 get to the more controversial matters then the -

1 **MR MPOFU:** Mode of questioning –

2 **CHAIRPERSON:** - Lieutenant General will

3 give her evidence in the normal way and then we will then

4 hear the translation from Xhosa into English.

5 **MR MPOFU:** Thanks, Chairperson.

6 **CHAIRPERSON:** So I think that's the way

7 it's proceeding and I don't see a problem with it. Mr

8 Semanya, you may proceed.

9 **MR BURGER SC:** Chairperson, speaking for

10 Lonmin, we have no objection to my learned friend simply

11 putting to the witness what she had said. It sounds

12 strange on the ear that she acknowledges that she signed a

13 statement and my learned friend then sentence by sentence

14 asks her whether that's what she'd said. So if –

15 **CHAIRPERSON:** No, I understand that, but

16 you see the point I raised was the people here who come all

17 the way from Pondoland to witness and hear what's

18 happening, they don't know what's in the statement and the

19 people who are watching on the world wide web through

20 YouTube don't know either, so I'm afraid – I don't propose

21 to allow Mr Semanya to go through the whole statement, but

22 I think some of this preliminary material can best be dealt

23 within the way that he's dealing with it. I share your

24 concern that we must use the time we have as profitably as

25 we can, but I think that the other considerations have some

1 relevance, so I think we must proceed for the moment.

2 **MR SEMENYA SC:** General, you were at a

3 point where you told us, or you were telling us that you

4 then once more got in touch with General Naidoo arising out

5 of the hysterical telephone call that you got from Mr

6 Blaauw. Is that right?

7 **GENERAL MBOMBO:** It is correct.

8 **MR SEMENYA SC:** And the whole purpose was

9 to really get more manpower resources to deal effectively

10 with the unfolding situation.

11 **GENERAL MBOMBO:** That's correct,

12 Chairperson.

13 **MR SEMENYA SC:** What does General Naidoo

14 then tell you in response?

15 **GENERAL MBOMBO:** He mentioned that he had

16 been in contact, he tried to be in contact with our office,

17 head office, asking for assistance there.

18 **MR SEMENYA SC:** And we were at a point in

19 your statement where you got in touch with Major General

20 Mpmembe and that he too was on leave. Is that right?

21 **GENERAL MBOMBO:** That is correct,

22 Chairperson.

23 **MR SEMENYA SC:** What do you say to him?

24 **GENERAL MBOMBO:** I asked him that we

25 please hurry to Lonmin the following day, though he was

1 about to come back on leave the following Monday.

2 **MR SEMENYA SC:** What was his response to

3 you?

4 **GENERAL MBOMBO:** He mentioned that he had

5 also heard of the problem at Lonmin.

6 **MR SEMENYA SC:** Chairperson, does it matter

7 that it is the time that it is now, or we should just

8 proceed?

9 **CHAIRPERSON:** I'm in your hands. If you

10 would find it convenient for me to take the tea adjournment

11 at this stage, I'll do so. We'll take the tea adjournment

12 now.

13 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

14 **[15:25] CHAIRPERSON:** The Commission resumes.

15 Lieutenant General, you're still bound by the affirmation

16 that you made.

17 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:**

18 Affirms.

19 **CHAIRPERSON:** Mr Semenya.

20 **EXAMINATION BY MR SEMENYA SC (CONTD.):**

21 Thank you, Chairperson. On the 13th you drive to Marikana

22 together with General Mpembe and General Naidoo.

23 **GENERAL MBOMBO:** It is correct,

24 Chairperson.

25 **MR SEMENYA SC:** And you then meet with

1 the local POP members who you find in Marikana there.

2 **GENERAL MBOMBO:** It is correct, Sir.

3 **MR SEMENYA SC:** As a body of people you

4 go and you get to Lonmin Mine with a view to discuss with

5 the management there.

6 **GENERAL MBOMBO:** That's right, Sir.

7 **MR SEMENYA SC:** The delegation you find

8 representing the Lonmin management is, as you tell us, led

9 by Mr Mark Munroe. Is that right?

10 **GENERAL MBOMBO:** I say so, Mr

11 Chairperson, because that's how he introduced himself.

12 **MR SEMENYA SC:** And tells you that he is

13 the head of mining in Lonmin.

14 **GENERAL MBOMBO:** It is correct,

15 Chairperson.

16 **MR SEMENYA SC:** Do you recall who also

17 was part of the Lonmin delegation there?

18 **GENERAL MBOMBO:** Yes, Sir.

19 **MR SEMENYA SC:** Tell us.

20 **GENERAL MBOMBO:** Mr Barnard Mokwena -

21 **MR SEMENYA SC:** Just have your mike on.

22 **GENERAL MBOMBO:** There was Mr Barnard

23 Mokwena present, Mr Kgotle, there was a Mr Kwadi, Mr

24 Sinclair. Possibly there were others which I don't

25 remember.

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

1 about what had happened there which went up to the killing
2 of the guards. We did not discuss with him the causes,
3 what actually led to the unrest there.

4 **MR SEMENYA SC:** Did you get to know
5 though that information about the causes for the unrest?

6 **GENERAL MBOMBO:** After we had come and we
7 had met the management at Lonmin. That's where that
8 explanation was given to us.

9 **MR SEMENYA SC:** What were you told?

10 **GENERAL MBOMBO:** We were told that from
11 Friday the 10th of August that there were people that were
12 marching, that started marching, who marched and came to
13 Lonmin. We then asked, we were told that their problem was
14 not known, that management did not know what their problem
15 was.

16 **MR SEMENYA SC:** No, Mr Interpreter, I
17 think you got that wrong a little.

18 **MR MAHLANGU:** I'm sorry.

19 **GENERAL MBOMBO:** What their problem was,
20 that it was not known what their problem was.

21 **MR SEMENYA SC:** Was it known who were the
22 marchers?

23 **GENERAL MBOMBO:** Because even the people
24 that were marching were not known. One other thing was
25 that they had not submitted any document laying out their

1 complaints.

2 **MR SEMENYA SC:** Yes?

3 **GENERAL MBOMBO:** We went on in the
4 meeting, enquiring; we asked, "If it is so then why are
5 they marching to you?" We were told that some of the
6 people who were marching were dismissed by the company
7 Lonmin.

8 **MR MAHLANGU:** Or I'm sorry, Sir; that
9 they could be some of the people that had been dismissed.

10 **GENERAL MBOMBO:** We then questioned them
11 as to, "If you say these are not your workers, where are
12 your workers?" That was a question we put to them. They
13 said, it was said it was possible that some of their
14 workers could be part of those, but the people that
15 actually organised this march are those that they had
16 mentioned who are not known. They did not know who the
17 leaders were or the organisers, people from whom they could
18 ask what the actual problem is. That is where the word
19 "faceless" came up.

20 We then proceeded asking – this was in the
21 meeting, we asked them according to them what do they think
22 could be the cause of all this. They said maybe it's a
23 problem that started sometimes ago where the organisation,
24 the National Union of Mineworkers, where the organisation
25 dismissed or chased away some of its members, that those

1 members that were dismissed, that those people that were
2 dismissed from the National Union of Mineworkers started
3 their own union called AMCU. Then they said this AMCU,
4 that AMCU has started recruiting and they are doing a lot
5 of recruitment in their company, which has caused that NUM
6 gets worried about this because of the loss of membership.
7 We then asked and they explained to us that there
8 are some other unions, such as UASA. There was another
9 mentioned, which I unfortunately don't remember, but they
10 kept on saying that the fact is for AMCU where it is
11 recruiting more from the NUM. We then asked them, we
12 questioned them about, "You people are saying AMCU is
13 making a lot of recruitment over here," and we then asked
14 them which is the union that is now recognised. They then
15 explained to us that NUM still enjoys more members. They
16 also explained to us that they have an agreement with NUM
17 which is still valid for two years, that this agreement was
18 in connection with the salaries of the workers. They said
19 in terms of this agreement the discussions would only be in
20 October of 2013.

21 We kept on questioning them, telling them this is
22 not – we are not satisfied with these explanations, that as
23 far as we know that trade unions have got a right to
24 recruit. We asked them what was the problem, what is the
25 cause of people behaving in this manner. We got the

1 explanation again that one other thing is the management,
2 that the management has made an agreement with – a decision
3 that some money would be given to the people working
4 underground, known as the RDOs. They said what was done
5 which possibly could have had an influence on this is that
6 this decision, or this agreement that was made, was made
7 between them and the RDOs themselves without involving the
8 unions.

9 We then said if there is a union in the work or
10 in the company, according to our thinking, or as far as we
11 know that if any discussions are being made pertaining to
12 money, salaries of the workers, that this should be made in
13 such a way where the unions could be involved or have an
14 input in that discussion. They then told us, Chairperson,
15 that they as management had decided that this was a gift
16 that they were offering their workers. According to them
17 this was to be paid at the end of the week during which we
18 were there. At the end the complaint was that this
19 allowance was only given to those people working
20 underground and those working on the surface would not get
21 anything.

22 We agreed together with them that a way had to be
23 found in which this problem could be solved, the matter
24 between the NUM and AMCU, so that an agreement should be or
25 that things that have to be done to the workers should be

1 done peacefully. They told us, Mr Chairperson, that they
2 could not bring these two organisations together because
3 the NUM had mentioned publicly, in the public, that they
4 cannot sit together with AMCU. We promised that on our
5 side that we would make all endeavours, we'll try to get
6 both organisations together so that we could talk to them
7 together and together with management, Lonmin management
8 encourage them to talk about this problem. At the end we
9 agreed that we as the police would do whatever it is that
10 we are to do to bring about peace, but they as management
11 have to try their level best as a company to try and get a
12 solution.

13 **MR SEMENYA SC:** Who on the part of Lonmin
14 is giving you this information?

15 **GENERAL MBOMBO:** The meeting in which we
16 were, Mr Chairperson, was chaired by Mr Mokwena. Most of
17 our discussion was between Mr Mokwena, Mr Kgotle, and Mr
18 Kwadi. They are the people that were giving us these
19 explanations.

20 **MR SEMENYA SC:** Against paragraph 9.6 of
21 your statement you do tell us that Lonmin requested you to
22 remain in their precinct in order to assist in preventing
23 further damage to the property.

24 **GENERAL MBOMBO:** Correct, Chairperson.

25 **MR SEMENYA SC:** Is this an unusual

1 request?

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

3 **MR SEMENYA SC:** What was your response to

4 that request?

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

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

7 **MR SEMENYA SC:** After having that meeting

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

9 that right?

10 **GENERAL MBOMBO:** It is correct,

11 Chairperson.

12 **MR SEMENYA SC:** You were given further

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

14 further briefing given.

15 **GENERAL MBOMBO:** We were given this by

16 Brigadier Calitz and Colonel Merafe.

17 **MR SEMENYA SC:** And in addition you were

18 being told what additional resources have come to assist.

19 Is that right?

20 **GENERAL MBOMBO:** Correct, Chairperson.

21 **MR SEMENYA SC:** You are also in that

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

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

24 **GENERAL MBOMBO:** We were shown a footage

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

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

2 **MR SEMENYA SC:** And just so that we step

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

4 **GENERAL MBOMBO:** Correct, Chairperson.

5 **MR SEMENYA SC:** And what do you see

6 there?

7 **GENERAL MBOMBO:** We saw men who had

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

9 other things they had.

10 **MR SEMENYA SC:** What are they doing next

11 to the railway line?

12 **GENERAL MBOMBO:** They were walking.

13 **MR SEMENYA SC:** And then as the

14 Provincial Commissioner looking at that, do you give any

15 instructions?

16 **GENERAL MBOMBO:** It is correct,

17 Chairperson. I deemed it necessary that I give an

18 instruction.

19 **MR SEMENYA SC:** And you tell us that one

20 of the instructions you gave was that that gathering of

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

22 this to?

23 **GENERAL MBOMBO:** That's an instruction

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

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

1 manner and that the situation as has been explained to us,
2 I said "I now ask you, put you here to work together with
3 Brigadier Calitz in this matter." Those conditions I gave
4 in terms of the OB-entry that I made at the time, this was
5 to General Mpembe.

6 **MR SEMENYA SC:** It was part of your
7 instruction that those weapons must be confiscated?

8 **GENERAL MBOMBO:** Correct, Chairperson.

9 **MR SEMENYA SC:** And those who can be
10 arrested, should be arrested too?

11 **GENERAL MBOMBO:** Correct, Chairperson.

12 **MR SEMENYA SC:** And that there must be
13 further deployment to key areas, key strategic areas there?

14 **GENERAL MBOMBO:** Correct, Chairperson,
15 and this was also requested by Lonmin.

16 **MR SEMENYA SC:** You do say though to
17 General Mpembe that the members must act professionally and
18 they must ensure that peace prevails.

19 **GENERAL MBOMBO:** I did, Chairperson.

20 That was my aim.

21 **MR SEMENYA SC:** Can I invite you to look
22 at the occurrence book, which is exhibit FFF25, and in
23 particular – alright, I think they will post it on the
24 screen. If you look to the big screen you will see item
25 number 37. If I read it to you, General, there it is

1 recorded in the OB, "JOC visit," this is now 12:45 the OB
2 reads, "and is shown the different points of the gathering.
3 The planning has been adjusted to disperse the gatherings.
4 All police officials on duty to conduct searches and
5 confiscate all dangerous weapons. All those that can be
6 identified on the footage should be picked up and
7 deployments to key strategic areas should be enhanced. In
8 terms of our policing on crowd management all members to
9 conduct themselves within the limits of this policy unless
10 the situation dictates otherwise. Ensure that peace
11 prevails," and the OB is signed Lieutenant General Mbombo.

12 Is that what you are referring to?

13 **GENERAL MBOMBO:** This is correct,

14 Chairperson.

15 **MR SEMENYA SC:** Just for completeness,
16 why did you find it necessary to inform the police that
17 they ought to act professionally and to ensure that peace
18 prevails?

19 **GENERAL MBOMBO:** At all times, Mr
20 Chairperson, when we send police out on duty it is my duty
21 as a person in charge to remind them about the
22 responsibility that is on their shoulders as they are
23 conducting their job.

24 **MR SEMENYA SC:** How does General Mpembe
25 respond to this instruction?

1 **GENERAL MBOMBO:** General Mpembe went to

2 do what was supposed to be done.

3 **MR SEMENYA SC:** And you then left for

4 Potchefstroom?

5 **GENERAL MBOMBO:** It is correct,

6 Chairperson.

7 **MR SEMENYA SC:** Can I interrupt us here,

8 General; perhaps it would help explain some elements of

9 these events. Your professional background within the

10 police service, in what area is it, or has it been?

11 **GENERAL MBOMBO:** It has been more on the

12 side of the finances.

13 **MR SEMENYA SC:** And the National

14 Commissioner former, Judge Fivaz, he was also from the

15 police service. He had a police service career, did he

16 not? Did he not, Judge Fivaz?

17 **GENERAL MBOMBO:** Yes, it is so, Mr

18 Chairperson.

19 **MR SEMENYA SC:** In the main what was his

20 career path within the police service?

21 **GENERAL MBOMBO:** At the time that he was

22 appointed as the National Head of the Police he came from

23 the side of the Efficiency Services.

24 **MR SEMENYA SC:** Is that side different

25 from Operational Response Services?

1 **GENERAL MBOMBO:** Yes.

2 **MR SEMENYA SC:** And talking about the

3 other Provincial Commissioners in the country now, do they

4 all come – but yourself – from Operational Response

5 Services as a career line?

6 **GENERAL MBOMBO:** At the moment, as of now

7 the eight Provincial Commissioners, that's including

8 myself, there's only one Provincial Commissioner who has

9 got sufficient knowledge of the ORS.

10 **MR SEMENYA SC:** Okay, so you then give

11 the instruction that the people be intercepted, they be

12 disarmed, and General Mpembe leaves. We're back there,

13 General.

14 **GENERAL MBOMBO:** It is so, Sir.

15 **MR SEMENYA SC:** And you leave for

16 Potchefstroom.

17 **GENERAL MBOMBO:** Yes.

18 **MR SEMENYA SC:** Just to give you a heads-

19 up, as they use the expression, some criticism is levelled

20 that having given this type of instruction you would then

21 leave for Potchefstroom and not oversee to the carrying out

22 of that instruction. Normally, and in the past, do you

23 give these type of instructions and then get involved

24 operationally?

25 **GENERAL MBOMBO:** No, it doesn't happen

1 that way, Mr Chairperson.

2 **MR SEMENYA SC:** How does it happen?

3 **GENERAL MBOMBO:** Having given the

4 authority to General Mpembe to be in charge of the

5 operation, I by so doing give him all the rights, the full

6 right to be in charge of that operation, knowing him to be

7 a person that is knowledgeable, that he has complete

8 knowledge of seeing to the success of that operation.

9 Another thing; when I appointed him, I knew that there were

10 some others there who had extensive knowledge.

11 **MR SEMENYA SC:** Who are those?

12 **GENERAL MBOMBO:** One of them is Brigadier

13 Calitz, Colonel Merafe, and others.

14 **MR SEMENYA SC:** Okay, and we have heard

15 that the POP experience of the individuals that you

16 mention, and then you go to Potchefstroom. Where in

17 Potchefstroom do you go?

18 **GENERAL MBOMBO:** I went to the office

19 from where I operate my work, Mr Chairperson.

20 **MR SEMENYA SC:** We're going to be dealing

21 in greater detail with this, Chairperson. Would this be an

22 appropriate stage?

23 **CHAIRPERSON:** Yes, I think so. We will

24 adjourn now until 9 o'clock tomorrow morning.

25 **[COMMISSION ADJOURNED]**