

TRANSCRIPTION OF THE

**COMMISSION OF INQUIRY**

**MARIKANA**

**BEFORE TRIBUNAL**

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON

MR TOKOTA SC

MS HEMRAJ SC

**HELD ON**

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**[PROCEEDINGS ON 18 FEBRUARY 2014]**

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

3 Provincial Commissioner, you are under oath still.

4 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

5 **CHAIRPERSON:** Mr Budlender, I understood

6 that you wanted to ask, you told me privately outside the

7 chamber that you wanted to ask the witness some questions

8 flowing from the Mkhwanazi report which is now an exhibit.

9 Please do so.

10 **FURTHER CROSS-EXAMINATION BY MR BUDLENDER SC:**

11 Thank you, Chairperson. Lieutenant General, good morning again.

12 **GENERAL MBOMBO:** Good morning, Counsel.

13 **MR BUDLENDER SC:** I just want to ask you

14 some couple of matters arising from the, what we call the

15 Mkhwanazi report, or the Task Team report. It is LLL11,

16 which you were asked about earlier. Do you have it?

17 **GENERAL MBOMBO:** Yes, I do.

18 **MR BUDLENDER SC:** It is called "Final

19 interim report Marikana 16 August 2012." What I would like you

20 to do is to look, is to go to page 3, or perhaps before

21 that, page 2 has the heading, paragraph 3 "Weaknesses," and

22 it identifies various weaknesses and then one of those is

23 paragraph 3.4 on the next page called "Means," and could

24 you go to the fourth paragraph there and we can read it

25 together, it says the following, "The management decision

1 to downsize" –

2 **CHAIRPERSON:** I am sorry, Mr Budlender, is

3 it possible for this to be put on the screen so that we can

4 follow it?

5 **MR BUDLENDER SC:** Could we have it?

6 **CHAIRPERSON:** Is it available

7 electronically? You have the document, do you, Provincial

8 Commissioner?

9 **GENERAL MBOMBO:** I have it, Mr Chairperson.

10 **CHAIRPERSON:** Good.

11 **MR BUDLENDER SC:** The technical people

12 do not have a copy, Chairperson. They are busy arranging that at

13 the moment. Would you like me to wait or to proceed?

14 **CHAIRPERSON:** Well, how long will it

15 take?

16 **MR BUDLENDER SC:** Two to three minutes,

17 Chairperson.

18 **CHAIRPERSON:** Oh well, I think we can

19 wait two to three minutes.

20 **MR BUDLENDER SC:** So I am instructed.

21 **CHAIRPERSON:** While we are waiting,

22 Provincial Commissioner, did you get an opportunity to read

23 all the documents that were made available by the Human

24 Rights Commission?

25 **GENERAL MBOMBO:** That is so, Mr Chairperson.

1 **CHAIRPERSON:** So you will be ready for Ms

2 Le Roux's cross-examination.

3 **GENERAL MBOMBO:** That is correct.

4 **MR BUDLENDER SC:** Chairperson, we do not have an

5 electronic copy available, so we'll need to proceed on the

6 hardcopy –

7 **CHAIRPERSON:** Well, can you please read

8 it out slowly and clearly?

9 **MR BUDLENDER SC:** This is the fourth

10 paragraph of the paragraph numbered 3.4 of exhibit LLL11,

11 and I shall read it slowly. Quote, "The management decision

12 to downsize Crime Combating Units (CCU) negatively affected

13 to SAPS' ability to maintain public order. The re-

14 establishment of POP based on the current demand in the

15 country indicates that the capacity and the strength must

16 be reviewed." You see that, General?

17 **GENERAL MBOMBO:** I see it.

18 **MR BUDLENDER SC:** I just want to identify

19 what was this decision to downsize and I think the easiest

20 way to do it may be to go to exhibit R. Could we go to

21 exhibit R, which is the Minister's policy statement of 29

22 August 2011, and go to page 14 of that, and at page 14 we

23 see the subheading, "Establishment of a dedicated Public

24 Order Policing POPS unit," and the policy statement refers

25 to the obligation on the National Commissioner under the

1 SAPS Act to establish a national Public Order Policing unit

2 and maintain the same, and then it says, second sentence,

3 "Such a unit was indeed established during 1996" –

4 **CHAIRPERSON:** I am sorry to interrupt you.

5 That passage you are now reading is not on – yes, I see – is

6 not on the screen. What we now have is the relevant

7 passage on the screen, so you now may proceed. It is near

8 the foot of the page and as you say, it is the section

9 headed "Establishment of a dedicated Public Order Policing

10 POPS unit," and you're now reading from the second

11 sentence.

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

13 Second sentence, "Such a unit was indeed established during

14 1996. During 2002 the POPS unit was subject to the SAPS

15 restructuring and aligned to function at policing area

16 level as the Area Crime Combating Units. As the latter

17 name suggests, the functions also changed to include crime

18 combating. Unfortunately, this relegated the crowd

19 management function into a secondary function. During the

20 subsequent restructuring process in 2006 the policing areas

21 were disbanded and policing resources 'released' to

22 supplement much needed capacity at station level. Again

23 the ACCUS was affected and the name was changed to Crime

24 Combating Units."

25 And on the next page, "The restructuring also had

1 the effect that the CCUS were incorporated as a section  
2 under the division Operational Response Services. The  
3 ACCUS was drastically rationalised and more than half of  
4 its members seen deployed to police station level to  
5 strengthen the local crime combating initiatives. The  
6 remaining half of members found themselves in a situation  
7 where they had to cover bigger areas with lesser  
8 resources.”

9 It then goes on in the next paragraph, “It is  
10 indeed the 2006 restructuring of the ACCUS which provoked  
11 serious criticism since it was indicative that specifically  
12 from this period a remarkable increase incurred in the  
13 number of service delivery protests. However, the reasons  
14 advanced for the transformation of the initial POP unit and  
15 the subsequent rationalisation of the ACCUS was firstly  
16 that the functions of the unit could not be justified since  
17 they did not have much duties to perform and thus not value  
18 for money in line with the PFMA; secondly that the skills  
19 and experience of the POPS unit were deemed necessary in  
20 creating capacity to boost police station crime combating  
21 initiatives.

22 The conclusion is that the current Operational  
23 Response Services operates as a division which includes the  
24 CCUS as a unit. Although the CCUS are still used for crowd  
25 management, its primary function remains crime combating.”

1 Now, I take it that this is the decision which is  
2 referred to in the Mkhwanazi report about the downsizing of  
3 the CCUS. It was these decisions in 2002 and 2006. Am I  
4 correct in understanding that?

5 **GENERAL MBOMBO:** That is so, Mr Chairperson,  
6 but a decision to make them more on the side of combating  
7 crime on the station level was started, if I remember  
8 correctly, in 2004.

9 **MR BUDLENDER SC:** I see, thank you. And  
10 who made those decisions, the first one in 2002, then 2004,  
11 and then 2006? Do you know whose decisions those were?

12 **GENERAL MBOMBO:** I am not sure about the  
13 2002 decision, but I think it was management forum at that  
14 time. I remember though the one of 2004, it was a  
15 management decision taken in a meeting. If I remember  
16 correctly, after that decision there is a letter or a  
17 document that was written in connection with that decision.

18 **MR BUDLENDER SC:** Thank you, and the 2006  
19 decision? Can you recall whose decision that was?

20 **GENERAL MBOMBO:** In 2006, Mr Chairperson, there  
21 was a restructuring in the police. I think during that  
22 time, that is when it was decided that other units be  
23 closed or others be downsized in order to increase the  
24 capacity in the station. If I remember correctly, in 2004  
25 when this decision was taken, the incidents of crowd

1 management had gone down whilst the crime increased at the  
2 station levels.

3 **MR BUDLENDER SC:** Can you recall who was  
4 the National Commissioner of Police at the various stages,  
5 2002, 2004, and 2006?

6 **GENERAL MBOMBO:** If I remember correctly  
7 the one of 2004 when this decision was taken it was  
8 Commissioner Selebe. It was still him in 2006 as well.

9 **MR BUDLENDER SC:** And I understand what  
10 you say about needing to balance crime prevention and crowd  
11 management, depending on the needs, but we see in the  
12 passage that we read a bit earlier at the foot of page 15  
13 of the – in fact it's right up on the screen there, right  
14 there, page 15 of exhibit R, if you look at the fifth line  
15 of that last paragraph it says, "Due to changes, demands,  
16 and an increase in public protests and demonstrations,  
17 especially incidences with a violent nature, since 2006,  
18 the need for a specialised Public Order Policing unit  
19 becomes more and more justified. This notion is  
20 strengthened by the constant negative public scrutiny of  
21 current policing methods." So we see from that that in  
22 fact since 2006 there was increased need for Public Order  
23 Policing. Is that correct?

24 **GENERAL MBOMBO:** Mr Chairperson, I am not sure  
25 about the figure showing the decrease or increase, but I am

1 sure those details can be obtained.

2 **MR BUDLENDER SC:** Yes, we do not have the  
3 figures, but this is the policy statement issued by the  
4 Minister in 2011 and we can rely on that as reliable. I  
5 mean if he says that since 2006 there has been an increase in  
6 public protests and demonstrations, especially with a  
7 violent nature, we can accept that that is the case.

8 **GENERAL MBOMBO:** I can agree with you, as  
9 you say this is the Minister's policy, but as I said I  
10 personally am not sure unless we get the figures.

11 **MR BUDLENDER SC:** No, I understand that.

12 **CHAIRPERSON:** The Minister appears to  
13 concede in the first two sentences in that paragraph, the  
14 paragraph beginning "Technically," that section 17 of the  
15 SAP Act is not being complied with because there's no  
16 longer a specialised dedicated Public Order Policing  
17 function and that's why he says, "The POP unit must be re-  
18 established, maintained and capacitated to execute those  
19 functions the act confers upon it." Do you know whether  
20 any attention has been given to re-establishing a  
21 specialised Public Order Policing function to comply  
22 with section 17 of the act?

23 **GENERAL MBOMBO:** Mr Chairperson, let me first  
24 say although they were downsized, they never stopped to do  
25 the work of crowd management. They also never stopped with

1 the trainings that were necessary and the resources, all  
2 those things continued. The only thing that changed is the  
3 name and the way they worked, namely that they will help  
4 mostly in the crime prevention. Now to answer your  
5 question, it is so that the police had the Public Order,  
6 although it was not called Public Order. Then in 2000 –  
7 I am not sure whether it was 2008 or 9 – it was agreed that  
8 their name should be changed and they should again go back  
9 to the name POP. So since 2011 the police ensured that the  
10 Public Order Policing is enhanced in order to comply with  
11 this policy, although they have not reached the desired  
12 level.

13 **MR BUDLENDER SC:** Yes, I think that's  
14 really the point, the last point I wanted to raise. There  
15 is still, as I understand the evidence, a shortage of  
16 Public Order police officers. Is that correct?

17 **GENERAL MBOMBO:** Yes, there is really a  
18 shortage.

19 **MR BUDLENDER SC:** And if we can just go  
20 to the first paragraph, next page, page 16, there it says,  
21 "The National Commissioner must ensure that sufficient  
22 appropriate capacity is created, whether by transferring  
23 back previous experienced and skilled members or building  
24 capacity through effective and focussed training to other  
25 members deemed fit, and must ensure that the unit is

1 appropriately resourced. These deliberations must be based  
2 within the context of current international trends,  
3 developments, norms, and standards." As I understand it  
4 what you are saying is that that has not yet been completed?

5 **GENERAL MBOMBO:** As we speak now, Mr  
6 Chairperson, there was a big meeting where these things were  
7 addressed where it was expected that Public Order should  
8 have presentations, and it must be brought to light what  
9 are the things that we need.

10 **MR BUDLENDER SC:** Yes, I understand that.  
11 Well, the only point I am seeking to clarify is that it  
12 seems from your evidence and what we have heard previously  
13 that we are currently still experiencing the consequences  
14 of those decisions which were made in 2002, 2004, and 2006.

15 **GENERAL MBOMBO:** I can agree, Mr Chairperson,  
16 and say that is so.

17 **MR BUDLENDER SC:** And this is the final,  
18 finally, Provincial Commissioner; this document LLL11, the  
19 Mkhwanazi document, if I can call it that for shorthand,  
20 that is called "Final Interim" – if you look at the front  
21 page the heading is "Final Interim Report." Now that  
22 implies that there were previous interim reports and this  
23 is now the final interim report. Where will we find the  
24 previous interim reports?

25 **GENERAL MBOMBO:** I do not get the

1 question.

2 **MR BUDLENDER SC:** If you look at the

3 heading it says, "Final Interim Report Marikana 16 August

4 2012." Now if this is the final interim report then it

5 means there must have been some previous interim reports.

6 Where will we find the previous interim reports?

7 **GENERAL MBOMBO:** Mr Chairperson, I have no

8 knowledge of the interim report, but I think we can look

9 for it.

10 **[09:29] MR BUDLENDER SC:** Well, should it have

11 been submitted to your office, given that this happened in

12 your province?

13 **GENERAL MBOMBO:** It could have been

14 submitted to the National Commissioner and I was

15 expected to get it but I do not remember receiving it.

16 **MR BUDLENDER SC:** I understand. Could I

17 ask you to ask someone in your office to make a search to

18 see whether you have the previous interim reports submitted

19 by the Task Team and perhaps the SAPS team could do the

20 same in respect of the National Commissioner's office.

21 **GENERAL MBOMBO:** I will do that.

22 **MR BUDLENDER SC:** Thank you, Chairperson, I

23 have no further questions.

24 **CHAIRPERSON:** Thank you, Mr Budlender.

25 Thank you, Provincial Commissioner, for that information

1 which will help us in our work.

2 **COMMISSIONER HEMRAJ:** Mr Budlender, as a  
3 matter of interest, the model for the community policing  
4 and the CC units at station level emanated, if you look at  
5 the documents on the SAPS hard drive, from the  
6 collaboration between the Belgium and the South African  
7 Police. It is very clearly minuted in those documents.

8 **MR BUDLENDER SC:** I think that must be  
9 so, Commissioner, but I think the only question is the  
10 quantum of resources allocated at the task. The fact that  
11 it was a decentralised operation, with respect seems to  
12 make a great deal of sense.

13 **COMMISSIONER HEMRAJ:** It's all the  
14 recommendations and they seem to have been implemented to  
15 the –

16 **MR BUDLENDER SC:** Well, perhaps Mr  
17 Hendricks when he comes can tell us more about that.

18 **COMMISSIONER HEMRAJ:** Yes, correct.

19 **CHAIRPERSON:** Alright, Ms Le Roux, are  
20 you now ready to commence your cross-examination?

21 **MS LE ROUX:** Yes, thank you, Chairperson. Good  
22 morning, Provincial Commissioner.

23 **GENERAL MBOMBO:** Good morning, Counsel.

24 **CHAIRPERSON:** Now before you get  
25 underway, if I can put it that way, it might be sensible

1 for us to engage in some housekeeping and mark the  
2 documents that you want to hand in as exhibits. Let me see  
3 from my book where we are. We are, I presume that would be  
4 part of the L-series and according to my notebook we have  
5 as far as LLL11, so I suggest that we mark the documents  
6 you want to hand in as part of the LLL-series and then once  
7 we have done that it will make your cross-examination flow  
8 more smoothly. Now the statement of Eddie Hendricks, this  
9 is the final one, is it? Do we know whether that's an  
10 exhibit yet?

11 **MR BUDLENDER SC:** I do not think it is,  
12 Chairperson.

13 **CHAIRPERSON:** Yes, so we will make this one  
14 LLL12, shall we? The statement of Eddie Hendricks.

15 **MR BUDLENDER SC:** Chairperson, could we just  
16 put a date to it, because we have a couple of versions of  
17 Mr Hendricks's statement. Is it dated?

18 **CHAIRPERSON:** Yes, quite right. Quite  
19 right. This one is January 2014. I remember he took his  
20 oath in the embassy in Brussels.

21 **MR BUDLENDER SC:** That is the very recent  
22 one then.

23 **CHAIRPERSON:** Yes, that is the one we are  
24 busy with. Yes, it appears on page 67 that on the 27th of  
25 January this year, he swore to this affidavit in the South

1 African embassy in Brussels. So this will then be LLL12.

2 Then we have a barely legible manuscript statement by

3 Warrant Officer Jan Jacobus Swartz. I do not think that's

4 in either, is it?

5 **MS LE ROUX:** No, Chairperson.

6 **CHAIRPERSON:** So that will be LLL13. We

7 then have a typed document, also a statement from Warrant

8 Officer Swartz. I shall give the date in a moment. That will

9 be LLL14 – sorry, the first one, the manuscript one is – it

10 hasn't got a date on it, but so I haven't got an

11 attestation either and it may not even be an affidavit,

12 this may just be a statement. But anyway, we know what it

13 is. It is an undated manuscript statement of Warrant

14 Officer Jan Jacobus Swartz and we have marked it LLL13.

15 LLL14 is a typed supplementary statement, also apparently

16 not sworn, and this one also does not have a date, but anyway

17 – is there a page missing? Is this an affidavit without an

18 attestation certificate, or what is it? You see, and it's

19 headed "Supplementary statement," so it doesn't purport to

20 be under oath, but is there –

21 **COMMISSIONER HEMRAJ:** All the others I have

22 seen do seem to have a last page with an attestation

23 certificate, so is this just missing perhaps or –

24 **CHAIRPERSON:** There's a page missing,

25 alright. Anyway, so we'll mark the front page LLL14 and

1 hopefully we'll get the last page with the attestation  
2 certificate at a later date. Then we have the diary, or  
3 actually pocketbook -

4 **MS LE ROUX:** Pocketbook.

5 **CHAIRPERSON:** - because he's a Warrant

6 Officer. The pocketbook of Warrant Officer Swartz for the

7 dates dealing essentially with 15th and 16th of August 2012.

8 That LLL15. Yes, Provincial Commissioner, do you want to

9 say something?

10 **GENERAL MBOMBO:** Just that I do not have

11 all these documents, Mr Chairperson.

12 **CHAIRPERSON:** Oh dear. Well, we will -

13 what is that black file you have on your left there?

14 **GENERAL MBOMBO:** No -

15 **CHAIRPERSON:** No, no, no, under that.

16 What is that one?

17 **GENERAL MBOMBO:** No, this one it does have

18 the statement of Mr - oh, there is that pocketbook.

19 **CHAIRPERSON:** Mr Tokota solved the

20 mystery with one fell swoop.

21 **GENERAL MBOMBO:** Oh, I see Swartz - oh,

22 sorry, Chairperson.

23 **CHAIRPERSON:** Do you have it?

24 **GENERAL MBOMBO:** Yes.

25 **CHAIRPERSON:** No, that is fine. Does that

1 mean that you have not read it or you did read it but you –

2 **GENERAL MBOMBO:** No, I have looked at it,

3 but I –

4 **CHAIRPERSON:** I see, well okay. Okay, so

5 these things happen in the best regulated families, I am

6 sure. It does cause a problem. It has been solved. So just

7 as well we found it now so we do not have difficulties

8 later. Anyway, so LLL15 is the pocketbook of Warrant

9 Officer Swartz. Then we have the Protected Disclosures

10 Act which is LLL16, Protected Disclosures Act No. 26 of

11 2000. That is then followed by a batch of – then we have

12 the regulations for the South African Police Service,

13 regulation 20 thereof. That is LLL17. I take it it's just

14 regulation 20. I do not know whether it is the whole of

15 regulation 20, but it's certainly a page and a half

16 containing –

17 **MS LE ROUX:** Yes, Chairperson –

18 **CHAIRPERSON:** - regulation 20 –

19 **MS LE ROUX:** Correct.

20 **CHAIRPERSON:** - of the regulations of the

21 South African Police Service.

22 **MS LE ROUX:** Correct.

23 **CHAIRPERSON:** Without any indication as

24 to where one finds it in the relevant Gazettes and so on,

25 but these are problems that if necessary can be sorted out

1 later. Then we start with LLL18. Now I am not going to  
2 waste time and mark them all, but can you tell me how many  
3 there are? There are a number of documents which deal with  
4 courses passed or in some cases, most cases failed, by some  
5 of the members of the service, and they appear to be  
6 summarised in a document at the end, or a series of  
7 documents at the end called, the first one is called "POP  
8 shooters training records," which I suspect is a summary of  
9 the documents we just referred to. That is followed by TRT  
10 shooters training analysis, NIU shooters training analysis,  
11 and then shooters who had most recent shooting firearm  
12 training. Now what I suggest we do is we actually – sorry,  
13 what I suggest we do is we do not call the individual  
14 document in respect of the individual members of the  
15 service LLL18 and following; let's just move over to the  
16 summary which starts with POP shooters training records, if  
17 I am correct. Let us call that LLL18, and then the next  
18 document TRT shooters training analysis will be LLL19, and  
19 NIU shooters training analysis will be LLL20. Then the K9  
20 shooters will be LLL21. Shooters who had failed most  
21 recent shooting practice firearm training, LLL21, and  
22 shooters who had failed most recent POP course, LLL22, and  
23 then shooters who were deemed not fit to carry – the  
24 heading is wrong, it has actually to be singular, shooters  
25 who were deemed unfit to carry a firearm should be LLL23.

1 **MS LE ROUX:** Sorry, Chairperson, we seem to

2 have skipped one out. We have two LLL21.

3 **CHAIRPERSON:** Oh no, which one did I skip

4 over? There is a batch, I understand there are 22 documents

5 in respect of individual members setting out their courses,

6 which we will look at in a moment. Then we have documents

7 which are effectively summaries of those documents.

8 **MS LE ROUX:** Correct, Chairperson, so -

9 **CHAIRPERSON:** And the first one is POP

10 shooters training records, according to my bundle -

11 **MS LE ROUX:** So that is 18.

12 **CHAIRPERSON:** That is LLL18, right.

13 **MS LE ROUX:** 19 -

14 **CHAIRPERSON:** Then the next one in my

15 bundle is -

16 **MS LE ROUX:** TRT.

17 **CHAIRPERSON:** - TRT shooters training

18 analysis, which is LLL19. Then the next one in my bundle

19 is -

20 **MS LE ROUX:** Is NIU.

21 **CHAIRPERSON:** - NIU shooters training

22 analysis, LLL20.

23 **MS LE ROUX:** Yup.

24 **CHAIRPERSON:** K9 shooters training

25 analysis, LLL21.

1 **MS LE ROUX:** Yes.

2 **CHAIRPERSON:** Shooters who had failed

3 most recent shooting practice firearm training, LLL21 –

4 **MS LE ROUX:** No, that should be 22

5 because then we have two 21s.

6 **CHAIRPERSON:** Oh sorry, I beg your

7 pardon. I see. I am sorry, I apologise for that senior

8 moment. That's LLL22, and then, so shooters who had failed

9 most recent POP course, that is actually only one of them

10 really, but that is LLL23. Right, we then have a number

11 of documents – oh sorry, I beg your pardon, then I have

12 missed the shooter not deemed fit to carry a firearm, it

13 says shooters but there's only one of them, deemed not fit

14 to carry a firearm, that will be LLL24. We have then got a

15 batch, 22 I believe, of documents in respect of individual

16 members. What I would suggest we do is we call those LLL25.1

17 down to point 22 and we will not mark them all now. I do not

18 know whether we will do that in the tea adjournment, I think,

19 or someone will, I will not. And I do not know whether it will

20 be necessary for you actually in the course of your cross-

21 examination to refer to these documents one by one because

22 you have the summary and if –

23 **MS LE ROUX:** Yes, no Chairperson, that was the

24 plan. I hope not to have to refer to individuals, but they

25 are there.

1 **CHAIRPERSON:** If the witness does not  
2 agree with the summary then we can look at the foundation  
3 documents. Right, so it is LLL25.1 and the last one will be  
4 LLL25.22 and the ones in between will be numbered  
5 accordingly. Are you happy with that?

6 **MS LE ROUX:** Yes, thank you, Chairperson.

7 **CHAIRPERSON:** Alright, I am sorry about  
8 missing one, but these things happen, I am afraid. Are you  
9 with us, Provincial Commissioner? Do you have the numbers  
10 and things

11 **GENERAL MBOMBO:** I tried, Mr Chairperson.

12 **CHAIRPERSON:** So did I, but like me you  
13 found it a rather trying experience. Alright, so Ms Le  
14 Roux, are you now ready to commence your cross-examination,  
15 the necessary housekeeping having been done?

16 **MS LE ROUX:** Yes, Chairperson. I should just  
17 note for the record the training records that have been  
18 provided and we have now marked as LLL25.1 to 22, they  
19 underpin LLL22, 23, and 24. So obviously we can, if an  
20 issue arises, but we haven't burdened you with all of the  
21 training records that are analysed in LLL18 to 21. But we  
22 can of course provide those if necessary.

23 **CHAIRPERSON:** Yes, yes, well you can  
24 provide them if the police want them or challenge any  
25 assertion you make, then they can do so.

1 **COMMISSIONER HEMRAJ:** Mr Pretorius, is

2 there a complete set of these regulations available?

3 MR PRETORIUS: I do not have them here.

4 **COMMISSIONER HEMRAJ:** Yes, thank you.

5 **CHAIRPERSON:** Yes, that's something that

6 can be attended to in due course. Anyway, now that we have

7 done the housekeeping, can you now start your cross-

8 examination?

9 **CROSS-EXAMINATION BY MS LE ROUX:** Thank

10 you, Chairperson. Provincial Commissioner, I would like to start

11 with an aspect of Mr White's statement. You do not need to

12 go there now, but just for the record, this is JJJ178, the

13 final statement of Gary White, commencing at page 63, and

14 this relates to the question of input into the final plan,

15 operational plan, and the challenge process. That's the

16 topic we will be dealing with.

17 Could I ask you to turn in your amplified

18 affidavit, exhibit LLL1, to page 5, please? And paragraph

19 16 in particular.

20 **GENERAL MBOMBO:** I found it.

21 **MS LE ROUX:** Thank you. Now in that

22 paragraph you state that you "assumed that the operational

23 plan would be drawn up by experienced Public Order Policing

24 members together with such assistance as would be obtained

25 from other provinces and the national structures." You see

1 that in that paragraph, correct?

2 **GENERAL MBOMBO:** I see it.

3 **MS LE ROUX:** And in your experience in

4 other operations have the operational plans been drawn up

5 by POP, by experienced Public Order Policing members? Has

6 that been your experience?

7 **GENERAL MBOMBO:** That is so, Mr Chairperson.

8 **MS LE ROUX:** You then say that you

9 therefore did not attempt to examine the adequacy or

10 otherwise of the plan, but the question we have is did you

11 make enquiries about who was giving input into the plan?

12 **GENERAL MBOMBO:** I did that, yes.

13 **MS LE ROUX:** And you were aware that

14 Colonel Scott was taking primary responsibility for

15 developing the plan?

16 **GENERAL MBOMBO:** I do not remember it

17 being explained to me like that.

18 **MS LE ROUX:** When you enquired as to who

19 was giving input, what were you told?

20 **GENERAL MBOMBO:** I was told that there is

21 a team that was together with Colonel Scott and that they

22 were busy with the plan.

23 **MS LE ROUX:** Who did you make that

24 enquiry of?

25 **GENERAL MBOMBO:** Generals Mpembe and

1 Annandale.

2 **MS LE ROUX:** But you understood that

3 Colonel Scott would be involved with – he would be

4 primarily responsible for putting together the plan?

5 **GENERAL MBOMBO:** That is not how I

6 understood it, it is as it was explained to me.

7 **MS LE ROUX:** What was your understanding

8 of what Colonel Scott's role was with respect to the plan?

9 **GENERAL MBOMBO:** Mostly I was told that

10 it's the person who had sufficient knowledge in computers.

11 He is part of this team so that he can download this

12 operation into the computers for the presentation.

13 **MS LE ROUX:** So you understood that

14 Colonel Scott was involved because of his knowledge of

15 computers and his ability to draw down Google Earth maps, I

16 assume you mean?

17 **GENERAL MBOMBO:** That is so, Mr Chairperson,

18 and the person who is operational.

19 **MS LE ROUX:** Were you aware with respect

20 to Colonel Scott's operational expertise that he was from

21 STF, not POP?

22 **GENERAL MBOMBO:** Initially I did not know

23 it but I became aware of that after I had asked him.

24 **MS LE ROUX:** When did you ask him and

25 what did you ask him?

1 **GENERAL MBOMBO:** I did not ask him  
2 personally. I enquired about him and I was told that he  
3 was from the STF.

4 **MS LE ROUX:** And who did you ask about  
5 Colonel Scott?

6 **GENERAL MBOMBO:** I cannot remember now  
7 whether it was one of the people from STF or was it General  
8 Mpembe. I am not sure.

9 **MS LE ROUX:** And when did you establish  
10 that Colonel Scott was from STF?

11 **GENERAL MBOMBO:** I think it was in the  
12 afternoon, the Tuesday on the 14th.

13 **MS LE ROUX:** So you knew that he was STF,  
14 not POP, before the 16th?

15 **GENERAL MBOMBO:** Yes, I knew.

16 **MS LE ROUX:** Were you aware that Colonel  
17 Scott was not familiar because he had not been trained in  
18 and was not aware of the contents of Standing Order 262?

19 Did you know that?

20 **GENERAL MBOMBO:** I did not have knowledge  
21 of that, Mr Chairperson.

22 **[09:49] MS LE ROUX:** Were you aware that the 1:30  
23 JOCCOM on the 16th of August was the first time that any  
24 stage 3 plan was put to the JOCCOM.

25 **GENERAL MBOMBO:** No, I did not know about

1 that.

2 **MS LE ROUX:** And did you notice that at

3 that 1:30 JOCCOM there were no POP members present?

4 **GENERAL MBOMBO:** I did not notice that

5 whilst I was there, but I see it now on the minutes as to

6 the people who attended.

7 **MS LE ROUX:** So the Human Rights

8 Commission will submit in due course, that this led to the

9 failure of the operation because the plan to deal with a

10 large and potentially dangerous crowd was first of all

11 drawn up by somebody with no detailed knowledge of the

12 requirements for public order policing, being Colonel

13 Scott. And secondly was then presented to a JOCCOM that

14 had no POP expertise present. Do you have a comment on

15 that?

16 **GENERAL MBOMBO:** I do not want to agree

17 with you about that because, as I say, according to me they

18 had come together concerning this plan. And on the second

19 point, again I do not agree with you completely because

20 even if the Public Order Police were not in that meeting

21 General Mpembe and Annandale were present and they have

22 knowledge about working with the crowd management.

23 **MS LE ROUX:** But, Provincial

24 Commissioner, my question goes to there was no member

25 present at that 1:30 JOCCOM where the plan for stage 3 was

1 discussed for the first time that has an explicit POP

2 training or background.

3 **GENERAL MBOMBO:** I am trying to say, Mr

4 Chairperson, I do not agree with you that it was the first time

5 this was being discussed, according to my knowledge.

6 **MS LE ROUX:** Provincial Commissioner, are

7 you familiar with both the statement and the evidence of

8 Colonel Scott because his evidence was that this was the

9 first time that any plan with respect to stage 3 was

10 presented to the JOCCOM was at 1:30 on the 16th of August?

11 So you are not aware of any other evidence that disputes

12 what Colonel Scott says when he says the 1:30 JOCCOM is the

13 first time the phase 3 plan is discussed?

14 **GENERAL MBOMBO:** I heard about that, Mr

15 Chairperson. But when I look at exhibit EE, the minutes of the

16 JOCCOM, the meeting of the morning of the 16th, it gives me

17 the impression that the plan of stage 3 was known already

18 at that time because in this meeting –

19 **CHAIRPERSON:** EE is 1:30, 6 o'clock –

20 there are problems in the minutes of that meeting. But you

21 were not in the meeting anyway were you?

22 **GENERAL MBOMBO:** No.

23 **CHAIRPERSON:** So you do not know what

24 happened in the meeting. You do not know whether we should

25 prefer the manuscript notes made at the time or the final

1 version that was produced after much editing at Roots, you

2 do not what the answer to that is do you?

3 **GENERAL MBOMBO:** I do not have definite

4 knowledge, Mr Chairperson.

5 **MS LE ROUX:** Provincial Commissioner, we

6 may be talking past each other. It is true that before the

7 1:30 JOCCOM it was known that there would be a stage 3 and

8 that stage 3 entailed dispersal and disarmament. My point

9 is though, that until the 1:30 JOCCOM there was no

10 operational plan for how to accept dispersal and

11 disarmament. You do not know of any evidence that that plan

12 was developed before the 1:30 JOCCOM do you?

13 **GENERAL MBOMBO:** No, I do not have

14 knowledge of that.

15 **MS LE ROUX:** Now as I understand the SAPS

16 position it is that the members of the JOCCOM are

17 collectively responsible for any plan that is approved by

18 the JOCCOM, correct?

19 **GENERAL MBOMBO:** That is so, Mr Chairperson.

20 **MS LE ROUX:** But of course, the JOCCOM is

21 not there merely to rubber stamp whatever is put before it,

22 is it?

23 **GENERAL MBOMBO:** Yes, that is correct.

24 **MS LE ROUX:** And what we know from

25 standing order 262, we do not need to go there, it's exhibit

1 SS2, page 8, paragraph 11 for record purposes, that because  
2 the requirement of standing order 262 to avoid the use of  
3 force at all costs, am I correct that members of the JOCCOM  
4 need to satisfy each of themselves before approving any  
5 plan that the plan achieves that goal?

6 **GENERAL MBOMBO:** That is so, yes.

7 **MS LE ROUX:** So the members of the JOC  
8 have an obligation to understand the plan that is being put  
9 before them, to interrogate that plan, to test any aspects  
10 of the plan that they have concerns about, clarify any  
11 uncertainties, understand the reasoning that produces the  
12 plan. They need to really interrogate and challenge the  
13 plan, correct?

14 **GENERAL MBOMBO:** That is correct, yes.

15 **MS LE ROUX:** And for the record, again we  
16 do not need to go there, Mr White, page 64, paragraph 6.3.8  
17 sets out the kind of challenge process that he is familiar  
18 with in an operation. Have you seen that aspect of Mr  
19 White's report? To summaries, he says essentially the plan  
20 is presented and those that are present are required to  
21 challenge and interrogate the different aspects of the  
22 plan, to test whether it has taken into account all factors  
23 that would be relevant. Whether every possibility has been  
24 thought through and has been properly tested. You are  
25 familiar with that portion of his evidence?

1 **GENERAL MBOMBO:** I remember seeing that,

2 yes.

3 **MS LE ROUX:** Okay and you would agree that

4 this type of challenge process is necessary?

5 **GENERAL MBOMBO:** I agree with you there.

6 **MS LE ROUX:** And this is all the more so,

7 where, as you've accepted, there's a risk of injury and

8 even death as part of an operation. It would be even more

9 important to make sure that you had a good plan where you

10 foresaw a potential level of violence.

11 **GENERAL MBOMBO:** That is correct, yes.

12 **MS LE ROUX:** Now, Colonel Scott has told

13 the Commission that there was no meaningful interrogation

14 of the plan. It was not challenged, it was essentially

15 accepted with very little discussion. In the other

16 operations that you have been involved in, have you seen that

17 be the process, that the plan is generally just accepted

18 when it is presented? Or have you ever been in an operation

19 where the police members who are present have interrogated

20 and challenged and pulled apart and really had a good look

21 at what the plan is? What is your experience other than

22 Marikana?

23 **MR SEMENYA SC:** Well for the record it is

24 also the evidence of Colonel Scott that there was an

25 opportunity for those POP members who would have had

1 questions on it to do so. The witness must be given –

2 **CHAIRPERSON:** This is half past two in

3 the field shortly before the operation is due to be

4 implemented, that is correct though, the point you make is

5 on the record.

6 **MS LE ROUX:** Provincial Commissioner, do

7 you recall the question again? Other than Marikana have

8 you seen an operational plan be challenged in the way that

9 Mr White explained it should be?

10 **GENERAL MBOMBO:** I normally see it being

11 done like that, yes.

12 **MS LE ROUX:** And what have you seen?

13 **GENERAL MBOMBO:** Both the discussion

14 about the operation or the report presented, how it's going

15 to be dealt with and people would agree.

16 **MS LE ROUX:** And in those other

17 experiences was a written document distributed for everyone

18 to have a look at or how was the plan presented in your

19 other experiences?

20 **GENERAL MBOMBO:** The one I remember when

21 I was present, yes there was an operational plan presented.

22 **MS LE ROUX:** And that was a written

23 document?

24 **GENERAL MBOMBO:** That is correct, yes.

25 **MS LE ROUX:** And what do you recall of

1 that document? How long was it, what did it contain? Do

2 you remember anything about the detail of that document?

3 **GENERAL MBOMBO:** I do not remember

4 clearly, but it would explain how much resources are there,

5 who is the operational commander, who is going to play what

6 role, things like that.

7 **MS LE ROUX:** And would it detail the

8 steps of the operation? So for example, if we use Marikana

9 as an example, phase 3, would it detail for example how

10 barbed wire will be deployed, where the different units

11 will be stationed? What everybody's responsibility is and

12 when they should participate in the operation? Did it have

13 that detail in it?

14 **GENERAL MBOMBO:** I think it did have such

15 details, yes.

16 **CHAIRPERSON:** Does standing order 262

17 require a written operational plan?

18 **GENERAL MBOMBO:** That is correct.

19 **CHAIRPERSON:** Do you know why there

20 wasn't one here?

21 **GENERAL MBOMBO:** I do not know, Mr Chairperson.

22 **CHAIRPERSON:** Did you not enquire, after

23 the event when things had turned rather badly did you not

24 enquire? Did you not say look here 262 says there should

25 be a written operational plan, where is it? None could be

1 produced, why wasn't there one? Did you not ask those  
2 questions?

3 **GENERAL MBOMBO:** I did ask those  
4 questions, Mr Chairperson, after the incident.

5 **CHAIRPERSON:** What answers did you get  
6 and from whom?

7 **GENERAL MBOMBO:** I saw that the  
8 operational plan was done on the computer to be presented,  
9 discussed, alterations would be made where necessary. If I  
10 remember correctly, the person who gave that explanation  
11 was Colonel Scott.

12 **MS LE ROUX:** Provincial Commissioner, the  
13 only document you saw at the 1:30 JOCCOM and that you saw  
14 on the 16th, was the single Google Earth image that Colonel  
15 Scott used for his briefing, correct?

16 **GENERAL MBOMBO:** I was no longer there  
17 when he gave that briefing, so there is no document I have  
18 seen.

19 **MS LE ROUX:** I think you may have  
20 misunderstood or my question was not clear. At the 1:30  
21 JOCCOM the only document that was presented was the Google  
22 Earth Image that Colonel Scott had used, correct?

23 **GENERAL MBOMBO:** No, I am trying to  
24 explain that when the presentation was made, if it was  
25 made, I was no longer there.

1 **CHAIRPERSON:** Do you have exhibit L

2 there?

3 **GENERAL MBOMBO:** I have it.

4 **CHAIRPERSON:** If you look at slide 181,

5 you will see – have you got that? It is on the screen now,

6 but I suggest you have a look at it in front of you, your

7 own copy of L. According to Colonel Scott, that is what he

8 showed the people, certainly out in the field at 2:30 and I

9 assume he did so at the JOCCOM meeting, I am not sure about

10 that. All he showed the commanders in the field was that

11 slide minus the white blocks. Do you see the white blocks

12 with writing? Minus that. And he had to explain to them

13 orally what is contained in those white blocks. There was

14 no written plan, operational plan. All he had to show the

15 people out in the field, about an hour before the operation

16 was to take place, was that slide which was on his computer

17 screen minus the white blocks. Where you aware of that,

18 was that disclosed to you when you enquired afterwards?

19 **GENERAL MBOMBO:** Mr Chairperson, I do not

20 remember clearly but when I inquired I was told that the

21 plan was on the computer.

22 **CHAIRPERSON:** No, but I am asking you now.

23 Is this the first time you hear that what was on the

24 computer and shown to the commanders in the field was that

25 slide minus the writing in the white blocks?

1 **GENERAL MBOMBO:** Mr Chairperson, when we were  
2 at Roots there was a plan that Colonel Scott presented to  
3 us.

4 **CHAIRPERSON:** You know you are still not  
5 answering my question, Commissioner. I am sure it's my  
6 fault, I am not putting it clearly enough. Let me repeat it  
7 to you now. I understand that Colonel Scott created a lot  
8 of documents after the event to indicate what had been  
9 present as it were on some cases orally, but as far as  
10 actual documents are concerned, when he was asked about  
11 that he conceded that this document we see here was all he  
12 had on his computer to show the commanders in the field at  
13 the briefing at 2:30. But the words which are in the white  
14 blocks were not there. He explained that orally, so if you  
15 look at that document, you take out in your mind's eye the  
16 white blocks and in them, you will see all that he  
17 had to show the commanders in the field at 2:30. Now what  
18 I am asking you is, were you told about that or do you hear  
19 it for the first time today?

20 **GENERAL MBOMBO:** Mr Chairperson, yes he told us  
21 about this and he showed it to us and also said his plan  
22 was in the computer. I did not know that there was no real  
23 plan available.

24 **MS LE ROUX:** Provincial Commissioner,  
25 just so that we do not mislead you, if I could ask –

1 **CHAIRPERSON:** Sorry, what were you saying

2 Provincial Commissioner?

3 **GENERAL MBOMBO:** I had already finished,

4 Mr Chairperson.

5 **MS LE ROUX:** Provincial Commissioner, for

6 the sake of the record and so that we do not miss each other

7 if I could ask for slide 149 to be displayed from exhibit

8 L? Because that is the image, that Colonel Scott presented

9 at the 1:30 JOCCOM, not slide 181 which is presently on the

10 screen.

11 **CHAIRPERSON:** My understanding is 181 is

12 what he says he showed the commanders in the field at 2:30.

13 It was not clear in my mind what he said at 1:30 but that

14 was the only thing he showed, according to his evidence,

15 the only thing he showed the commanders in the field at

16 2:30 on his laptop.

17 **MS LE ROUX:** Correct, Chairperson, and slide

18 149 is what he presented to the 1:30 JOCCOM. If we can go

19 to 149, thank you. Which of course, the stage 2 briefing,

20 it does not reflect the ultimate stage 3 briefing that he

21 gave late that afternoon. Provincial Commissioner, do you

22 recall that image being presented to you at the 1:30

23 JOCCOM, did you see that at the 1:30 JOCCOM?

24 **GENERAL MBOMBO:** Chairperson, when Colonel

25 Scott was giving a presentation at that meeting I would already

1 left.

2 **MS LE ROUX:** So during the time that you

3 were present in the 1:30 JOCCOM you saw no presentation at

4 all by Colonel Scott?

5 **GENERAL MBOMBO:** From my recollection I

6 left before any presentation was given.

7 **MS LE ROUX:** And given your previous

8 experience where a written detailed document was handed

9 out, did you ask for a copy when you were leaving so that

10 you could have a look at what was being presented?

11 **GENERAL MBOMBO:** I did not do that.

12 **CHAIRPERSON:** Are you surprised now when

13 you hear, well never mind now, you heard subsequently I

14 take it, that there was no written plan, you already told

15 us that. Were you surprised about that?

16 **[10:09]** I mean they had the time in the morning to

17 prepare a plan and according to one version that's before

18 us the time, there was discussion about it even the day

19 before. That is one version we have. But even on the other

20 version that the matter was dealt with on the morning, the

21 Thursday morning, were you surprised when you were told

22 about that there was no written plan, you knew that's what

23 262 requires, you knew that had happened in the past. Were

24 you not surprised why someone apparently as competent and

25 efficient as Colonel Scott wasn't able to produce a written

1 plan on the Thursday in time for the 1:30 meeting?

2 **GENERAL MBOMBO:** Mr Chairperson, really I am  
3 surprised because I really believe that even if it is in  
4 the computer, but it is available, it is there.

5 **MS LE ROUX:** Provincial Commissioner, can  
6 I ask you to turn to exhibit EE, which is the 1:30 JOCCOM  
7 minutes, please? And then if you can follow through the  
8 three pages with me because it indicates your attendance,  
9 then you address the meeting regarding the purpose of the  
10 meeting, then there is a discussion of the execution of  
11 stage 3 with Major General Annandale beginning that, then  
12 Lieutenant Colonel Scott giving a slide presentation, and  
13 that then on the top of the next page is set out in some  
14 detail. Then Major General Annandale goes through a  
15 checklist and then we have closing remarks and the second  
16 paragraph there has the Provincial Commissioner indicated  
17 as giving that you would already communicated with the National  
18 Commissioner, informing her of the current situation, a  
19 deadlock was reached, stage 3 of the operational plan is  
20 being executed, and that the National Commissioner had  
21 indicated she would inform the Minister of Police about the  
22 current situation. Major General Annandale then gives a  
23 final instruction and the meeting adjourns. So the minutes  
24 seem to indicate that you were present during Lieutenant  
25 Colonel Scott's slide presentation because you then make

1 closing remarks that follow that in the minutes. Do you

2 care to comment on these minutes?

3 **GENERAL MBOMBO:** Mr Chairperson, I did correct

4 the issue of these minutes, explaining that I was not

5 present when the meeting came to a close, and explaining

6 also that these points mentioned here, I talked about it on

7 the other side when I was giving the instruction, and I

8 explained that I did not say it in the way it appears here,

9 especially the last sentence. I explained that I said,

10 what I said is the National Commissioner is probably

11 telling the Minister, or it was my belief that she is doing

12 so.

13 **MS LE ROUX:** Provincial Commissioner, I

14 understand your earlier evidence where you dispute the

15 contents of the minutes. You say it does not accurately

16 reflect what you said, but do you have any particular

17 comments as to why the minutes reflect you being present

18 all the way through to be able to make closing remarks?

19 **MR SEMENYA SC:** Chairperson, we dealt with this

20 subject as well and the witness explained in chief and also

21 in cross-examination these very points.

22 **CHAIRPERSON:** That is correct, Ms Le

23 Roux. This point was gone into in some depth while you

24 were not with us.

25 **COMMISSIONER HEMRAJ:** Before she moves

1 on, Mr Semenya, can someone in your team assist me with  
2 that part of the record that deals with Colonel Scott's  
3 evidence about what was presented as regards the plan? I  
4 do not have my transcript with my, but I do have it marked,  
5 but can somebody in your team assist me with that just to  
6 get some clarity, please?

7 **MR SEMENYA SC:** You mean at the 1:30  
8 meeting?

9 **COMMISSIONER HEMRAJ:** Yes, at the 1:30  
10 meeting, exactly what was presented, because I seem to  
11 recall that more than just a slide was presented. But it  
12 need not be done now. It can be done at a later stage.

13 **MR SEMENYA SC:** We will, Commissioner.

14 **COMMISSIONER HEMRAJ:** Thank you.

15 **MS LE ROUX:** Provincial Commissioner, I had  
16 like your comment on a submission that the Human Rights  
17 Commission will make in due course, which is this; that  
18 it is clear that there was no comprehensive written  
19 operational plan as required by Standing Order 262  
20 presented to the JOCCOM, and at best, it received an oral  
21 briefing with some visual aid. So we will submit that the  
22 Marikana operation on 16 August, phase 3, had no  
23 operational plan. Do you have a comment on that?

24 **CHAIRPERSON:** Sorry, you dropped your  
25 voice. You will submit that the?

1 **MS LE ROUX:** That the phase 3 of the  
2 Marikana operation on the 16<sup>th</sup> of August had no written  
3 operational plan, it only had a briefing.

4 **GENERAL MBOMBO:** As I am saying, Mr Chairperson,  
5 according to my knowledge I thought that there was a plan,  
6 but as Colonel Scott testified and indicated that there was  
7 no plan, I do not know what happened. It also shocks me.

8 **MS LE ROUX:** Provincial Commissioner,  
9 could I ask you to return to your statement, your amplified  
10 statement, LLL1, and paragraph 16, page 5 again. I want to  
11 return to the statement where you say you did not attempt to  
12 examine the adequacy or otherwise of the plan, so we have  
13 covered that you never saw a written operational plan and  
14 we will submit that you were in a position to ask for the  
15 written operational plan, but you didn't do that, correct?

16 **GENERAL MBOMBO:** There is nothing that was  
17 compelling me to do that if I had appointed someone to be  
18 in charge of that operation.

19 **MS LE ROUX:** But Provincial Commissioner,  
20 we will submit in due course that there had already been many  
21 deaths by the time this 1:30 JOCCOM is held. We will submit  
22 that you accept that there was, it was foreseeable that  
23 there would be injury and possibly death in the operation,  
24 and we'll submit that in those circumstances it was all the  
25 more important for you to demand to see a written

1 operational plan as required by Standing Order 262, that  
2 you should not have merely said I assume the other members  
3 of the JOCCOM know what they are doing. Do you have a  
4 comment?

5 **GENERAL MBOMBO:** I will not agree with  
6 you there.

7 **CHAIRPERSON:** Forgive me, Ms Le Roux, are  
8 you now moving on to a new point? Because what we have been  
9 doing lately for reasons that I do not have to explain,  
10 we have been taking comfort breaks every hour for the benefit  
11 of those who have difficulty sitting for long periods and  
12 at a suitable stage in your cross-examination will you let  
13 me know when it will be appropriate for a comfort break to  
14 be taken?

15 **MS LE ROUX:** Chairperson, I think let us take it  
16 now because to wrap this up will take a little bit longer.

17 **CHAIRPERSON:** We will now take a comfort  
18 break for 10 minutes.

19 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

20 **[10:34] CHAIRPERSON:** The Commission resumes.  
21 Provincial Commissioner, you are still under oath.

22 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

23 **CHAIRPERSON:** Ms Le Roux.

24 **CROSS-EXAMINATION BY MS LE ROUX (CONTD.):**

25 Thank you, Chairperson, Provincial Commissioner. Chairperson, I tried

1 to use the tea adjournment to address Commissioner Hemraj's  
2 question relating to establishing the documents that were  
3 presented at the JOCCOM early in the day and then at 1:30,  
4 so if I can just go through what we have managed to  
5 establish. If we start, it is in the transcript, day 134,  
6 which is where Mr Chaskalson was cross-examining Colonel  
7 Scott, and then if we can at the same time have open HHH –  
8 sorry, HH20 which is – no, HHH20, which is Colonel Scott's  
9 statement.

10 **CHAIRPERSON:** Well, we cannot look at both  
11 together. So what should we – which –

12 **MS LE ROUX:** Let us start with HHH20.

13 **CHAIRPERSON:** So alright, we will look at  
14 that first. What paragraph?

15 **MS LE ROUX:** If we start page 74,  
16 paragraph 9.4. So Chairperson, just to orientate you, we do not  
17 need to go to – the previous page explains this is when  
18 Colonel Scott starts explaining Thursday the 16th and he's  
19 explaining the 6AM JOCCOM, and then Major General Annandale  
20 speaks to the phase 2 and 3 deployment concepts briefly and  
21 he, and then 9.4 Colonel Scott says, "When I was asked to  
22 show the deployment I briefed the commanders by showing the  
23 mission and the strategic guidelines and then speaking  
24 directly to the Google Earth satellite photos with icons  
25 arranged on it. In explaining phase 2 I mentioned the

1 outline of phase 3 as phase 2 was in essence also a pre-  
2 positioning in case phase 3 was to be implemented." So  
3 what we have there – and then if we can go to the  
4 transcript –

5 **CHAIRPERSON:** Is there anything further  
6 in 9.4, in any of the subparagraphs thereof which enlarges  
7 on that introductory statement at the beginning?

8 **MS LE ROUX:** No, Chairperson, it does not  
9 identify the two icons, but perhaps let's just stay in the  
10 document and go to paragraph 12.4, which is where Colonel  
11 Scott is detailing the 1:30 JOCCOM and Major General  
12 Annandale had asked how they were going to execute phase 3  
13 and then 12.4 Colonel Scott says, "I asked if I may suggest  
14 a course of action, to which I was given the floor to brief  
15 the JOCCOM. I explained on the Google Earth satellite  
16 photo which I had printed out for the commanders that  
17 morning for the phase 2 deployment where I felt the  
18 dispersion should take place with the different units in  
19 their different roles and areas of responsibility." So  
20 what 9.4 and 12.4 show us is Colonel Scott saying he  
21 printed out Google Earth images that related to phase 2 for  
22 the 6AM JOC and then at the 1:30 JOCCOM he used those phase  
23 2 Google Earth images to speak to phase 3.

24 Then if we can turn now to the transcript, day  
25 134, and if we start at the bottom of page 14235, line 20,

1 right, so if we go down to line 20, Mr Chaskalson then  
2 starts, so he says, well line 22, "In terms of the  
3 contemporaneous documents," he takes him to paragraph 9.4,  
4 "where you mentioned the Google Earth satellite images."  
5 Colonel Scott, "Yes." He then quotes from paragraph 9.4  
6 and then speaks on, "Later on you mention that at the 1:30  
7 JOC," which is now that paragraph 12.4 reference –  
8 **CHAIRPERSON:** It has gone a bit, hasn't it?  
9 Yes.  
10 **MS LE ROUX:** So he nails down paragraph  
11 9.4, then goes to paragraph 12.4. Then Mr Chaskalson says,  
12 "Now we do not necessarily have the actual photo, but what  
13 we do have is the photographs that Captain Van Heerden took  
14 of the JOC on the 16<sup>th</sup>, which might depict that photo,"  
15 meaning the photos that had been printed out in the morning  
16 for phase 2 and were used at 1:30 to speak to phase 3, and  
17 then if we go – and he identifies those as exhibit JJJ107  
18 in Van Heerden's photographs, and then top of page 14237 Mr  
19 Chaskalson identifies the two particular photographs that  
20 he wants, the 1020196 and 1020197. "Those are two  
21 photographs taken at the JOC on the 16<sup>th</sup>, on the evening of  
22 the 16<sup>th</sup>, round about 7:27PM, and my question to you is, are  
23 these the gridded photographs to which you referred in your  
24 statement, are these the photographs that were handed out  
25 to the commanders on the morning of the 16<sup>th</sup>?" and

1 Lieutenant Colonel Scott confirms, "That's correct. They  
2 were given out to show the stage, or the phase 2 deployment  
3 to the commanders. That was given to commanders just after  
4 the JOCCOM of the 16<sup>th</sup> in the morning 6 o'clock," and then  
5 they left to brief meetings.

6 So if we then go to JJJ107, you will recall those  
7 are the pictures taken in the JOC and on the wall are two  
8 gridded aerial photographs which Colonel Scott has  
9 confirmed at page 14237 as being the two images that he  
10 handed out –

11 **CHAIRPERSON:** No, it cannot be JJJ107

12 because that's –

13 **MS LE ROUX:** JJJ –

14 **CHAIRPERSON:** That is Brigadier Calitz's

15 statement.

16 **MS LE ROUX:** No, sorry, it is JJJ07, so 7,

17 apologies.

18 **CHAIRPERSON:** JJJ7? Yes, those are the

19 Van Heerden photographs, yes.

20 **MS LE ROUX:** Yes, those, Chairperson. So these

21 show the gridded – and then the next one is 1020197. So

22 what we have established, Chairperson and Commissioners, these two

23 Van Heerden photographs show you the two images that were

24 printed out for the morning JOCCOM on the 16th that speak to

25 phase 2 deployment, and that is what was used at the 1:30

1 JOCCOM when Colonel Scott speaks to phase 3. Thank you,  
2 Chairperson. So in the absence of any further questions on  
3 that –

4 **CHAIRPERSON:** Sorry, it was Adv. Hemraj's  
5 question, not mine, but if she has any follow-up questions  
6 she would ask them now.

7 **COMMISSIONER HEMRAJ:** That is actually not  
8 the part in the transcript that I remembered, but I shall get  
9 to that later on and I shall raise it with you, if necessary.

10 Thank you, Ms Le Roux.

11 **MS LE ROUX:** Thank you. Provincial  
12 Commissioner, if we can then return to paragraph 16 of your  
13 statement, and you'll recall before the adjournment we were  
14 addressing that aspect of paragraph 16, page 5, where you  
15 say you didn't attempt to examine the adequacy or otherwise  
16 of the plan and so, and we have covered the first aspect of  
17 that, which is that you were certainly in a position to  
18 demand of your JOCCOM where is the written operational plan  
19 and we know that that has not happened, and you have testified  
20 this morning that now that you have become aware that there  
21 never was a written operational plan, you were, I think the  
22 word you used was "shocked."

23 So in light of that I would like to return to  
24 something that was covered by Adv. Bizos. We do not need to  
25 go to the transcript, but it was day 182, page 21993,

1 because there Adv. Bizos asked you whether you agree with  
2 the experts who have criticised the lack of a written  
3 operational plan for phase 3 and you said you did not agree  
4 with that expert criticism. In light of the fact that  
5 we have established this morning that now you have become  
6 aware that there never was a written operational plan and  
7 you said that you were shocked that there was never a  
8 proper written operational plan, do you still disagree with  
9 the experts when they criticise the lack of an operational  
10 plan?

11 **MR SEMENYA SC:** No, the lack of a written  
12 operational plan, not –

13 **CHAIRPERSON:** Yes, yes, I think the  
14 word –

15 **MS LE ROUX:** Of a written operational  
16 plan.

17 **CHAIRPERSON:** I think the word "written"  
18 was intended by Ms Le Roux, but Mr Semanya is right, the  
19 question is the lack of a written operational plan.

20 **MS LE ROUX:** Correct, Chairperson.

21 **GENERAL MBOMBO:** Mr Chairperson, I would agree  
22 with this criticism if really there was no plan, written  
23 plan on the computer.

24 **CHAIRPERSON:** We saw what he showed the  
25 people at 2:30 was that slide that I showed you which is in

1 exhibit L, and the writing on it in the white blocks wasn't  
2 there. So there wasn't even a written plan in the  
3 computer, as I understand it.

4 **MS LE ROUX:** Provincial Commissioner, do  
5 you accept the Chairperson's clarification of the evidence, that  
6 the evidence has established there was no written  
7 operational plan, there were only Google Earth images with  
8 some icons placed on them, there was never a written  
9 operational plan?

10 **CHAIRPERSON:** Even on the computer with  
11 electronic images on the computer there was nothing  
12 written. I mean "written" normally means writing on paper,  
13 but here even if you take the word in a wider sense,  
14 "written" in the sense of words written on a screen, if you  
15 look at the – I think it was 181, slide 181 of exhibit L,  
16 we looked at it before; his evidence was - I was surprised  
17 when he gave the evidence, but his evidence was that even  
18 that white writing in the white blocks was not there. So on  
19 that basis I would have thought even on a wider definition  
20 of "writing" there was no written plan.

21 **GENERAL MBOMBO:** If that is the case, Mr  
22 Chairperson, as you say, then I agree with the criticism.

23 **MS LE ROUX:** Thank you, Provincial  
24 Commissioner. Now you've accepted that injuries and/or  
25 deaths were foreseeable once stage 3 was implemented, and

1 Mr White criticises the SAPS because he says that he is not  
2 satisfied on the evidence available that there was an  
3 urgent need to launch stage 3 on the afternoon of 16  
4 August. For the record, this is at page 74 of Mr White's  
5 statement, and he raised a number of points there that  
6 relate to how the SAPS members who were present on the day  
7 accepted, or failed to challenge the move to actually go to  
8 stage 3. So I need to just put these points to you for  
9 comment.

10 Now first of all we know that Lieutenant Colonel  
11 Scott set his criteria for the move to stage 3 as saying  
12 that that should only happen if all other options to  
13 resolve the situation without force were exhausted. Now is  
14 it your view that all other options to resolve the  
15 situation without force had been exhausted?

16 **GENERAL MBOMBO:** I think, Mr Chairperson, as  
17 counsel is also saying, it was Mr Scott's view. My view  
18 was that if negotiations fail we would then go to stage 3.

19 **MS LE ROUX:** If I can ask you to open up  
20 Mr White's final statement, and if you go to page 74,  
21 paragraph 6.5.4, and then it follows through to 6.5.7, and  
22 the conclusion is set out at 6.5.7, page 77. So if we can  
23 go there.

24 **GENERAL MBOMBO:** Page?

25 **MS LE ROUX:** 77.

1 **GENERAL MBOMBO:** Okay.

2 **MS LE ROUX:** There Mr White directly

3 challenges your rationale for launching stage 3 as not

4 sufficient justification for ordering the commencement of

5 stage 3, and that it is inconsistent with the requirement of

6 the SAPS policy to avoid the use of force at all cost. Do

7 you have any comment on that criticism?

8 **GENERAL MBOMBO:** Which one are you

9 talking about?

10 **MS LE ROUX:** Provincial Commissioner,

11 paragraph 6.5.7 on page 77, Mr White there says that in his

12 opinion there was not sufficient justification to order the

13 commencement of stage 3 and neither is that order

14 consistent with the requirements of the SAPS policy to

15 avoid the use of force at all cost. Do you have a comment

16 on that criticism?

17 **GENERAL MBOMBO:** I am not sure what he's

18 trying to say here.

19 **MS LE ROUX:** Provincial Commissioner, the

20 thrust of Mr White's criticism there is he takes your

21 statement where you say you thought it would be justified

22 to move to stage 3 if negotiation efforts fail, and he says

23 with respect to that position that you have taken that you

24 should only move to stage 3 if negotiation efforts have

25 failed and he says that in his view it is not sufficient

1 justification for ordering the commencement of stage 3, nor  
2 is it consistent with the requirements of the SAPS policy  
3 to avoid the use of force at all cost. So he says it's  
4 insufficient to say negotiations have failed, therefore  
5 stage 3, and one of the reasons he says that is because  
6 stage 2 was working. There had not been further violence.  
7 The show of force was having some effect at keeping the  
8 peace, and therefore he says there's no – that the failure  
9 of negotiations is an insufficient reason to move to stage  
10 3, but that's the reason you give for why you wanted to  
11 move to stage 3. So I am asking you whether you have any  
12 comment on his view that the failure of negotiations is not  
13 a basis to move to stage 3, nor is it consistent with the  
14 SAPS policy to avoid the use of force at all cost.

15 **GENERAL MBOMBO:** Then I think, Mr Chairperson,  
16 that is his view.

17 **MS LE ROUX:** And you disagree with it?

18 **GENERAL MBOMBO:** Definitely, Mr Chairperson.

19 **COMMISSIONER HEMRAJ:** Are you putting  
20 6.5.4 to her as well, Ms Le Roux, if you are going to follow  
21 this line any further?

22 **MS LE ROUX:** No, Commissioner, because  
23 that relates to Colonel Scott's criteria. So I am just  
24 trying to tackle her own articulated reason to move, which  
25 is the failure of negotiation. Provincial Commissioner,

1 the other criticism made by Mr White against your conduct  
2 on the day, on the 16<sup>th</sup>, is set out at page 71, paragraph  
3 6.4.10A. There Mr White begins detailing why the absence  
4 of the written operational plan at the 1:30 JOCCOM and  
5 before the implementation of stage 3 is problematic, and A  
6 states, "What stage 3 planned that the Provincial  
7 Commissioner and/or Major General Mpembe as overall  
8 commander approve. It appears that the decision to proceed  
9 to stage 3 was made prior to the 1:30 JOCCOM, but it was  
10 only during that JOCCOM that Lieutenant Colonel Scott  
11 outlined orally how stage 3 might work. Therefore whoever  
12 actually made the decision to proceed to stage 3 did so  
13 without a full appreciation of what stage 3 entailed. If  
14 correct, that is a very serious issue."

15 So Provincial Commissioner, let's take this in  
16 steps. We know that before the 1:30 JOCCOM you didn't know  
17 what stage 3 would entail. You didn't know how dispersal  
18 and disarmament would occur, correct?

19 **GENERAL MBOMBO:** Though I did not know  
20 its details, I knew about it already on Tuesday afternoon  
21 when I left.

22 **MS LE ROUX:** And do you have any comment  
23 on Mr White's criticism that it was inappropriate for you  
24 to order the move to stage 3 without an appreciation of  
25 what that actually entailed.

1 **[10:54] GENERAL MBOMBO:** Because I had an overall  
2 commander present there who was supposed to make those  
3 decisions.

4 **MS LE ROUX:** Provincial Commissioner, I had  
5 now like to move on to another –

6 **CHAIRPERSON:** Sorry, before you move away  
7 from this point, there's a question I'd like to ask about  
8 this. You referred to Tuesday afternoon. Are you saying  
9 that you effectively approved the decision to move  
10 eventually to stage 3 on the Tuesday afternoon in the  
11 absence of successful negotiations?

12 **GENERAL MBOMBO:** That is so, Mr Chairperson.

13 **CHAIRPERSON:** Now if Colonel Scott is  
14 correct, the only plan on the table at the JOCCOM on the  
15 Thursday morning was the encirclement plan. So if that's  
16 correct, the only plan that you could have approved would  
17 have been - on the Tuesday would have been the encirclement  
18 plan, not the plan that was ultimately implemented. Now  
19 what comment do you have to make about that?

20 **GENERAL MBOMBO:** Mr Chairperson, I did not know  
21 anything about stage 3. I was briefed at the JOC when I  
22 arrived on Tuesday in the afternoon. As I have already  
23 said, Mr Chairperson, they spoke about the encirclement plan and  
24 they indicated to me that it was again criticised. There  
25 were some criticisms about it and as I was leaving on

1 Tuesday going to a meeting, after I have heard about a body  
2 that was found on the hill I then said that I phoned  
3 General Mpembe and Annandale and told them that, "That  
4 stage 3 of yours, which is the disarmament and dispersion,  
5 I think it should be carried out tomorrow."

6 **CHAIRPERSON:** Well, if some of the other  
7 witnesses' evidence is correct, there was not a dispersal  
8 and disarmament plan in existence at the time. Brigadier  
9 Engelbrecht in his statement says that he was in the JOC on  
10 the Wednesday afternoon and the plan that was still being  
11 discussed was the encirclement plan. So either your  
12 evidence on the point – well, if they are correct, it  
13 obviously has to be put on that basis, if what Colonel  
14 Scott said that the only plan on the table even on Thursday  
15 morning was the encirclement plan, and what Brigadier  
16 Engelbrecht said about the discussion in the JOCCOM on the  
17 Wednesday is correct, then your evidence that you approved  
18 a dispersal and disarmament plan already on the Tuesday  
19 cannot be correct. Is there any comment you wish to make  
20 about that?

21 **GENERAL MBOMBO:** Mr Chairperson, even if it was  
22 not present on paper at that time, but they spoke about it  
23 to me because on Wednesday when I was in a meeting in  
24 Midrand I was expecting that they would carry out their  
25 disarmament. According to General Mpembe that did not

1 happen because they got hold of Mr Mathunjwa and Mr

2 Zokwana.

3 **CHAIRPERSON:** I see. Now let me put

4 something else to you. The criticism which Mr White makes

5 in this paragraph which we have on the screen at the

6 moment, subparagraph (a) which was read says – let me just,

7 it was read before but let me read it again so that those

8 who read the record in due course will understand what I am

9 asking you about. "What stage 3 plan did the Provincial

10 Commissioner and/or Major General Mpenbe, overall

11 commander, approve? It appears that the decision to

12 proceed to stage 3 was made prior to the 13:30 JOCCOM. It

13 was only during that JOCCOM that Lieutenant Colonel Scott

14 outlined orally how stage 3 might work. Therefore whoever

15 actually made the decision to proceed to stage 3 did so

16 without a full appreciation of what stage 3 entailed. If

17 correct, that is a very serious issue." That is the end of

18 the quotation.

19 Now if you are correct in saying that the minutes

20 are wrong in reflecting that you were there at the end of

21 the meeting at the time the closing remarks were given, you

22 say, your evidence is that that was incorrect, that what

23 you said, which is reflected in that paragraph, was said at

24 the time you left, which was before Lieutenant Colonel

25 Scott outlined how stage 3 might work, then of course

1 you'll have to deal with the criticism which presumably Mr  
2 White would make that it is even worse if you approved stage  
3 3 not because you did not have a full appreciation of what  
4 stage 3 entailed, but because you couldn't have had any  
5 appreciation at all because you weren't present when  
6 Lieutenant Colonel Scott gave the oral outline to which  
7 reference is made. Now how would you deal with such  
8 criticism?

9 **GENERAL MBOMBO:** I agree with that

10 criticism, Mr Chairperson.

11 **CHAIRPERSON:** Thank you.

12 **COMMISSIONER HEMRAJ:** Can you just assist  
13 me with something, please, General? On the 14th when you  
14 talk about the dispersal plan, did you know about it or did  
15 you actually approve it on the Tuesday?

16 **GENERAL MBOMBO:** Not to approve it, Mr  
17 Chairperson, but it was explained to me. All the stages of this  
18 plan, I think if I am not mistaken up to stage 5, were  
19 explained to me. They were also saying they were getting  
20 input from other people, so I took it at that stage that  
21 it is probably not on paper, but they have spoken about it.

22 **COMMISSIONER HEMRAJ:** So when did you  
23 then in relation to the 14th actually approve the plan?

24 **GENERAL MBOMBO:** Mr Chairperson, I am not the  
25 one who was going to approve the plan, but General Mpembe

1 I would, and I then thought about what had happened and when  
2 I was on the way and said because of what had happened,  
3 let us continue with this plan tomorrow.

4 **COMMISSIONER HEMRAJ:** So on the 14<sup>th</sup> you  
5 also did not know the mechanics of the plan?

6 **GENERAL MBOMBO:** That is so, yes.

7 **COMMISSIONER HEMRAJ:** And similarly on  
8 the 16th?

9 **GENERAL MBOMBO:** That is correct.

10 **COMMISSIONER HEMRAJ:** Thank you.

11 **MS LE ROUX:** Provincial Commissioner, I had  
12 like to move on to my next topic. I would ask you to turn to  
13 page 45 of Mr White's statement. This is section 4.4,  
14 which is titled, "Evidence for the criminal justice  
15 process," and it covers, if we can just run through briefly  
16 the three paragraphs that follow. So 4.4.1 Mr White says  
17 that, "Related to the previous point is the apparent  
18 absence of material before the Commission to support the  
19 prosecution of offenders in the criminal justice process.

20 One of the objectives of stage 3 of the operational plan  
21 for 16 August was to make arrests for those who refused to  
22 disarm. I infer that those arrests were attended to lead  
23 to prosecutions and convictions. However, I am struck by  
24 the absence of evidence before the Commission that would  
25 support the prosecution of many of those arrested. When

1 planning for a large-scale Public Order operation where it  
2 is anticipated that arrests will be made, one would expect  
3 to see video operators and photographers present to  
4 document the operation to ensure that the police have  
5 evidence of the commission of any criminal offences.  
6 Moreover one would expect to see statements from all of the  
7 officers who made arrests, with a detailed description of  
8 those arrested, the circumstances of arrest, the suspected  
9 offence for which the arrests were made." That approach is  
10 supported by paragraph 5.2.7 of the POP policy document on  
11 crowd management, but from the evidence Mr White has seen  
12 it does not appear to have been implemented in the Marikana  
13 operation.  
14 Then he concludes, "There do not appear to be any  
15 police videos or police photographs of the alleged violent  
16 attacks at scene 1 or 2. Additionally there do not appear  
17 to be statements from all of the members who made arrests,  
18 detailing the identity of the person arrested and the  
19 circumstances of arrest. I make this point to illustrate  
20 that careful videoing and photographing of operations and  
21 the provision of detailed statements after the event is  
22 important not simply to account to the Commission of  
23 Inquiry, but also in order to ensure there is sufficient  
24 evidence for the criminal justice process. It does not  
25 appear that the criminal justice element of the operation

1 was given significant thought.”

2 Provincial Commissioner, do you have a comment to

3 that criticism by Mr White that is set out in the three

4 paragraphs I have read into the record?

5 **GENERAL MBOMBO:** About the absence of

6 video material, I agree with him that was our problem.

7 About the statements of the officers I believe that the

8 police officers who made the arrests would explain that in

9 their statements, but I agree with him that video material

10 would have had to show the evidence.

11 **MS LE ROUX:** And just to take this in

12 stages; you agree with the criticism - Provincial

13 Commissioner, to break it down, you agree with the

14 criticism about the lack of video evidence. Do you also

15 agree with the criticism about the lack of photographic

16 evidence that could assist in the criminal justice process?

17 **GENERAL MBOMBO:** That is so, yes.

18 **MS LE ROUX:** Then if we can focus with

19 respect to the statements -

20 **CHAIRPERSON:** I am sorry, I am not sure

21 that that concession is necessarily rightly made. There's

22 apparently quite a lot of photographic material of people

23 on the hill with weapons and so forth, and the evidence

24 is that during the run-up to the events on the Thursday

25 afternoon a number of Criminal Intelligence people were

1 brought in from Gauteng and they spent many hours working  
2 with Lonmin people trying to identify the people whose  
3 faces could be seen on the photographs taken, which would  
4 presumably have led to various things, inter alia cordon  
5 and search of their homes to see if there were arms there,  
6 but also could have been used as evidence in the criminal  
7 prosecution of these people. So I am not sure that the – I  
8 understand the concession you make relating to the video  
9 material, which is very, very unfortunate that there is a  
10 lack of that kind of material, particularly in the light of  
11 clear policy prescripts that applied, but as far as still  
12 photographs were concerned, taken over the period from I  
13 suppose the 10<sup>th</sup> of August, I am not sure the concession you  
14 made was correct.

15 **MR SEMENYA SC:** Chairperson, may we also add –

16 **GENERAL MBOMBO:** Thank you, you helped  
17 me, Mr Chairperson.

18 **MR SEMENYA SC:** This witness is really  
19 confronted about operational matters where she wasn't, but  
20 there is also evidence of the, what I'd call the Calitz  
21 arrests, which is videotaped. There is also the arrests at  
22 hill 3 which are videotaped.

23 **CHAIRPERSON:** Yes, but the point that I  
24 think Ms Le Roux is making, based upon what Mr White said,  
25 in this very document on crowd management it's said part of

1 the process must be collecting evidence which can be used  
2 against people arrested. You cannot just have an operation  
3 to arrest people because if you arrest people you're  
4 arresting them not just to stop them from doing what  
5 they are doing, but to bring them before the courts to be  
6 charged with something. So you have to have evidence  
7 upon which a prosecution can be based and the complaint is  
8 that that does not appear to be attended to. Certainly the  
9 point would be true in the case of police videos to some  
10 extent at least – to what extent is a matter for debate  
11 later, and certainly in relation to police photographs of  
12 the alleged violent attacks at scenes 1 and 2, as you say  
13 there is some material. But I was concerned more with  
14 photographs being taken from the 10th of August onwards  
15 dealing with people with weapons who are seen on the hill  
16 or in front of the hill. But anyway, the point has been  
17 made. You obviously wish to say something further.

18 **MR SEMENYA SC:** I was going to say,  
19 Chairperson, that the criticism that there is no video material  
20 at all would be incorrect.

21 **COMMISSIONER HEMRAJ:** There is a further  
22 aspect, the criticism about the provision of detailed  
23 statements, we are not privy to the contents of those  
24 dockets so we do not know if there are indeed detailed  
25 statements as part of the investigations.

1 **CHAIRPERSON:** At any rate, Ms Le Roux put  
2 her point to you and you made your comment on it, which is  
3 on record and we can proceed.

4 **MS LE ROUX:** And Chairperson, let me focus then  
5 on the detailed statements that would be useful statements  
6 that should be made by the members who made arrests on the  
7 16th of August. Now Provincial Commissioner, on 30 October  
8 2013 – and for the record it's day 140, page 15248, you  
9 do not need to go there, but Provincial Commissioner, I was  
10 cross-examining Major General Mpembe on that day and at  
11 that part of the transcript it has reflected where I asked  
12 Major General –

13 **CHAIRPERSON:** Sorry, could we perhaps  
14 have that on the screen? Would you repeat the day and the  
15 page and the line –

16 **MS LE ROUX:** Day 140 –

17 **CHAIRPERSON:** - to assist the operators  
18 to put it on the screen?

19 **MS LE ROUX:** Day 140, page 15248.

20 **CHAIRPERSON:** Now you can complete the  
21 process by giving us the line number.

22 **MS LE ROUX:** Well, Chairperson, if we could  
23 actually move up a little bit to 15247, then we'll get the  
24 context. Go down. Right, so – sorry, go further down.

25 **CHAIRPERSON:** This is line 13. Line 13

1 on that page seems to be the point at which you begin with  
2 the point.

3 **MS LE ROUX:** So the question is, "There  
4 was no coherent plan to capture, deal with and retain the  
5 best evidence that will be available to assist the  
6 prosecution?" Sorry, Chairperson, I have made an error. It was  
7 obviously Colonel Scott, not Major General Mpmembe. So if  
8 we proceed, I am asking the same question of Colonel Scott  
9 and he then says from line 19, "What you're saying is a  
10 coherent plan comes down to the Standing Orders and I  
11 would not need to explain to detective what he needs to do  
12 to process the person, wouldn't have to explain to a police  
13 official what they need to provide when arresting a person  
14 because they know they would need to provide an arresting  
15 statement, similarly with the evidence chain, physical  
16 evidence, the crime scene experts, so for me to dictate  
17 their action is out of place." Then I say, "Thank you,  
18 Chairperson, we will follow up through the evidence leaders, but if  
19 the SAPS could confirm whether there are any such arresting  
20 statements or video evidence," and then if we keep going,  
21 Chairperson, you ask Mr Semenya and the rest of the team one  
22 question regarding whether there, "Are you aware of the  
23 fact as to any instructions."  
24 Now we have followed up in this respect with the  
25 SAPS team relating to the provision of arresting statements

1 and we have not been provided with any. Provincial  
2 Commissioner, do you know whether there are any statements  
3 by members who made arrests that could be used in the  
4 criminal justice process? Because we haven't yet been able  
5 to obtain any.

6 **GENERAL MBOMBO:** I think there is a  
7 docket for the people who were arrested and in that docket  
8 I think there are statements of the members.

9 **MR SEMENYA SC:** For the record, Chairperson,  
10 the dockets are with the NDPP's office and I am told there  
11 is an arrangement with the evidence leaders about access to  
12 those.

13 **COMMISSIONER HEMRAJ:** I think we were  
14 informed that there are certain sensitivities about the  
15 various stages of the investigations as well. Mr  
16 Budlender, was that not part of the discussion?

17 **MR BUDLENDER SC:** I have not – we will have  
18 to check. We have not, or I have not seen statements in  
19 relation to the arrests of the protesters for unlawful  
20 gathering or for possession of unlawful weapons. I seen  
21 material in relation to the deaths, but I haven't seen in  
22 relation to the general prosecution. But there may be  
23 some.

24 **[11:14]** I do not say there aren't any, I just haven't seen  
25 them.

1 **COMMISSIONER HEMRAJ:** But that would have  
2 been a while ago.

3 **MR BUDLENDER SC:** Probably. We will have  
4 to check that, Chairperson.

5 **CHAIRPERSON:** In every docket of someone  
6 who is arrested for public violence or possession of  
7 dangerous weapons, every docket should contain an arresting  
8 statement. I mean that is elementary. So there must be  
9 arresting statements, and generally speaking it is difficult  
10 to see how an arresting statement could be sensitive  
11 because the arrestor will say I arrested such-and-such a  
12 person and will say what he observed or she observed which  
13 led him or her to make the arrest.

14 Anyway, perhaps this is a matter which can be  
15 explored later. We do not have to explore it further in the  
16 chamber, and clearly to be fair to the Provincial  
17 Commissioner, I do not think she has facts readily available  
18 to be able to deal with the questions put. These are  
19 matters that I would hope could be dealt with by agreement  
20 between the police, the Provincial Director of Public  
21 Prosecution's office, and the Human Rights Commission, the  
22 evidence leaders, and the result of such agreement or  
23 negotiation can be put before us in due course without  
24 troubling the Provincial Commissioner who, to be fair, I  
25 think cannot be expected to answer the questions with any

1 degree of detail.

2 **MS LE ROUX:** Indeed, Chairperson, and we will  
3 follow up with the SAPS, the relevant prosecution  
4 authorities, and the evidence leaders to see if we can  
5 establish anything about the arresting statements.  
6 Provincial Commissioner, I must just ask you two further  
7 follow-up questions relating to this. Mr White, as you've  
8 seen in his statement, says that there appears to have been  
9 little focus on the criminal justice aspect of the policing  
10 operation, and so what I need to put to you is whether the  
11 Marikana operation was a policing operation that was  
12 targeted at being able to stop illegal activity and  
13 ultimately assist with evidence for a prosecution for that  
14 illegal activity, or was the main focus of the operation  
15 merely to end the strike?

16 **GENERAL MBOMBO:** That is not so, Mr  
17 Chairperson.

18 **MS LE ROUX:** What do you say the purpose  
19 of the operation was?

20 **GENERAL MBOMBO:** You will remember that  
21 there was a criminal act that had taken place there earlier  
22 on. Those people were illegally armed. Our aim was to  
23 disarm them and arrest those that we could arrest. We did  
24 not have the power to end the strike.

25 **CHAIRPERSON:** Sorry, Ms Le Roux, can I

1 intervene at this stage and ask a question? My  
2 understanding of the relevant provision of the Criminal  
3 Procedure Act – I cannot remember the number, but I am sure  
4 the people here will know – is basically a peace officer, I  
5 think is the phrase used in the Criminal Procedure Act – is  
6 entitled generally to make an arrest for two purposes. The  
7 first is so that someone can eventually be brought before a  
8 court and prosecuted, so that the arrested person can be  
9 brought before the court and be prosecuted. Arrest is a  
10 means of obtaining the attendance of an accused person  
11 before the court, the criminal court. That is the main  
12 purpose for which arrests are effected, but there's also a  
13 section in the Criminal Procedure Act which provides, as  
14 far as I remember, that a peace officer can arrest someone  
15 who appears to be about to commit an offence, and that kind  
16 of arrest is a preventative arrest. The person obviously  
17 is not charged. The person normally would be released  
18 shortly thereafter without having been brought before a  
19 court. There is a period which a person can be detained  
20 without being brought before court. But generally speaking  
21 probably 99%, if not higher percentage, of people arrested  
22 are arrested with a view that they are being brought before  
23 a court to face a charge, being guilty of some or other  
24 criminal conduct.  
25 Now what is your understanding, what was your

1 intention as far as what was happening at Marikana was  
2 concerned, what was your understanding; were the people who  
3 were arrested, arrested to prevent them from committing  
4 crimes, in other words in terms of that exceptional  
5 provision of the Criminal Procedure Act to which I  
6 referred, or were they arrested for the main reason for  
7 which arrests are made, namely to bring them in due course  
8 before a criminal court to face a charge?

9 **GENERAL MBOMBO:** Mr Chairperson, I think our  
10 aim was to arrest and bring before court people who had  
11 committed criminal acts or who appeared so.

12 **CHAIRPERSON:** And the murder charge was  
13 added later in circumstances that may have given rise to  
14 some controversy, but the original basis for the arrests,  
15 bases for the arrests were that the persons arrested, as I  
16 understand it – if I am wrong you must correct me – they  
17 were guilty of the crime of public violence and they were  
18 guilty, or reasonably suspected of being guilty of the  
19 crime of public violence and/or they were reasonably  
20 suspected of being in possession of dangerous weapons in  
21 circumstances where they were not entitled to be in  
22 possession of them. Is that correct?

23 **GENERAL MBOMBO:** That is so, Mr Chairperson.

24 **MR GQIRANA:** Mr Chairperson, the Commissioner  
25 wants to say something.

1 **CHAIRPERSON:** Sorry, yes. Yes, forgive  
2 me, Provincial Commissioner, you want to make a comment?  
3 Would you like a – you want to suggest that we take the tea  
4 adjournment at this stage? I do not think there will be any  
5 opposition to that and we will take the tea adjournment -

6 **GENERAL MBOMBO:** That is my request.

7 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

8 **[11:48] CHAIRPERSON:** The Commission resumes.

9 Provincial Commissioner, you are still under oath.

10 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

11 **CHAIRPERSON:** Ms Le Roux.

12 **MS LE ROUX:** Thank you, Chairperson.

13 Provincial Commissioner, I just want to round out this –

14 **CHAIRPERSON:** I am sorry, before you

15 [microphone off, inaudible] we have been given a document

16 which some kind person has caused to be placed before us.

17 It is headed "Key to training analysis documents."

18 **MS LE ROUX:** Yes, Chairperson, this is a

19 document that we should probably just mark as LLL18.1.

20 It's the key to the spread sheets that summarise the

21 training records that I shall get to in due course.

22 **CHAIRPERSON:** Alright, well let me write

23 it in my book. 18.1, key to?

24 **MS LE ROUX:** Key to –

25 **CHAIRPERSON:** Analysis document –

1 **MS LE ROUX:** CALS analysis, training and

2 disciplinary record.

3 **CHAIRPERSON:** CALS analysis documents,

4 we will just call them analysis documents because it is all –

5 **MS LE ROUX:** Yes, Chairperson –

6 **CHAIRPERSON:** Alright, hang on. Let's

7 get our housekeeping in order. So LLL18.1 –

8 **MS LE ROUX:** Yes.

9 **CHAIRPERSON:** - is a document which I have

10 described as key to CALS analysis documents.

11 **MS LE ROUX:** Yes.

12 **CHAIRPERSON:** Thank you.

13 **MS LE ROUX:** And just to explain,

14 obviously on the spread sheet heading row it is impossible to

15 type all of the possible courses that are described in the

16 training records, so these headings are in bold but below

17 that are the courses that we have classified into those

18 categories.

19 **CHAIRPERSON:** Just to make it easier for

20 us to handle these documents. Alright, anyway you are not

21 there yet in your cross-examination, but you will be there

22 in due course.

23 **CROSS-EXAMINATION BY MS LE ROUX (CONTD.):**

24 Thank you, Chairperson. Provincial Commissioner, I want to round

25 out the issue of statements and I want to explain five

1 facts that the Human Rights Commission team has been able  
2 to establish and then ask for your comment on this. So  
3 we have analysed the statements before the Commission and  
4 we have managed to establish the following, that of the  
5 approximately 200 POP members present at Marikana on 16  
6 August we have only 65 statements, that 32.5% of all POP  
7 members have given statements that are before the  
8 Commission. Oh, apologies, the percentage is the  
9 percentage missing, not the percentage obtained. So 32.5%  
10 have not given us statements.

11 **CHAIRPERSON:** You'll have to revise your  
12 earlier figure then; of the 200 POP members how many have  
13 provided statements, or in respect of how many have  
14 statements been provided? If it is 33%, it looks as if we are  
15 looking at about –

16 **MS LE ROUX:** So 135 have provided –

17 **CHAIRPERSON:** Yes –

18 **MS LE ROUX:** Approximately 65 have not  
19 provided.

20 **CHAIRPERSON:** I see, alright.

21 **MS LE ROUX:** With respect to the  
22 approximately 165 TRT members we do not have statements from  
23 more than 70 of those, so 42% of TRT members' statements  
24 are outstanding. Of the 110 NIU members there are still  
25 more than 30 outstanding, meaning 27% have still not

1 provided a statement. With respect to the 22 STF members,  
2 11 have not yet provided, so 50% have provided, 50% we  
3 still await, and of the 38 K9 members we still do not have  
4 statements from four, which is 10.5%. So do you consider  
5 that to be problematic? Do you consider it a problem that  
6 32% of POP, 42% of TRT, 27% of NIU, 50% of STF, and 10% of  
7 K9 have still not provided statements to this Commission?

8 Does that trouble you?

9 **GENERAL MBOMBO:** I am not sure, Mr  
10 Chairperson, as to what has caused those statements not to  
11 be available. As far as I know all the police who were  
12 involved in this operation, the statements were sought  
13 from.

14 **COMMISSIONER HEMRAJ:** Ms Le Roux, this  
15 analysis has been done after a perusal of the SAPS hard  
16 drive statements?

17 **MS LE ROUX:** That is correct,  
18 Commissioner. We have looked at every single statement that  
19 we have in any form and these are the stats that we come  
20 out with, and this document has been provided to the SAPS  
21 because we engaged with them in November last year and  
22 still have not received a response on that proceed.

23 **CHAIRPERSON:** Alright, well perhaps – I am  
24 not going to ask him to do it now because he will presumably  
25 need to take instructions, but at some stage Mr Semanya

1 will get an opportunity to comment either directly from the  
2 bar, as it were, or in re-examination of the witness on the  
3 points that you have put. He may agree with your statistics,  
4 he may disagree. He may make further statements in respect  
5 of those statements that have not yet been provided, but I  
6 will not ask him to do it now because he obviously needs time  
7 to take instructions. Is that right, Mr Semenya?

8 **MR SEMENYA SC:** That is correct, Chairperson.

9 **MS LE ROUX:** And Chairperson, to assist my  
10 learned friend, the correspondence is dated 19 November  
11 2013 which sets out this analysis. Provincial  
12 Commissioner, I would like to turn to my penultimate topic,  
13 which relates to training and disciplinary records, well  
14 the training and discipline of SAPS members. Now as I  
15 understand it from your statement – we do not need to go  
16 there unless there's controversy with this; for the record,  
17 it's page 4 of exhibit LLL1, paragraph 11.6 – I understand  
18 that you are responsible for the implementation of HR  
19 programmes and procedures. Am I correct that that would  
20 include oversight with respect to training and discipline?

21 **GENERAL MBOMBO:** It is correct.

22 **MS LE ROUX:** Now I would like us to look at  
23 the training and discipline of the members that were on  
24 duty at Marikana specifically on the 16th, but including the  
25 commanders that were in charge during the course of the

1 week, and I would like to start at a policy level. So exhibit  
2 R, if we can call that up, is SAPS policy and guidelines,  
3 policing of public protests, gatherings and major events,  
4 and this is a document that we understand to be dated  
5 August 2012, but am I correct this document remains in  
6 force? You do not know of any other policy document that  
7 governs policing of public protests, gatherings, and major  
8 events, a policy document rather than the Standing Order?

9 **GENERAL MBOMBO:** It is this one,

10 Chairperson.

11 **MS LE ROUX:** And if we could go to page 4

12 of this document, and specifically section 2, Objectives,

13 and if we scroll through to page 4, a final bullet point is

14 that, "One of the objectives of this policy is to

15 facilitate the introduction of appropriate training

16 initiatives which must, amongst others, address the

17 principle of first responder, guide SAPS operational

18 planning and response, resource deployment and physical

19 execution." So one of the objectives of the police

20 document for POP policing is to facilitate the introduction

21 of appropriate training initiatives, correct?

22 **GENERAL MBOMBO:** That is correct, yes.

23 **MS LE ROUX:** And then if we scroll

24 through to section 7, commencing page 9, this is a section

25 entitled "International perspective and comparison," and if

1 we can go to page 10, the two paragraphs that appear on  
2 that page state, "Current international research supports  
3 continuous police training in crowd control and management.  
4 Education and training in crowd control depend on a  
5 knowledge management systems available within the police  
6 which capture operational reports on successes and  
7 failures. The knowledge management system is an  
8 organisation's ability to capture lessons learnt and best  
9 and worst practices in the context of crowd control  
10 operations," and it continues to describe "how there's a  
11 need for clear and comprehensive police leadership to  
12 ensure that such training actually occurs within all  
13 appropriate police structures. In principle every law  
14 enforcement agency is required to conduct and document  
15 semi-annual training for all officers on the lawful and  
16 appropriate or professional use of force and deadly force.  
17 This training should be designed to reflect current  
18 standards established by statutory and law" – I think they  
19 mean statute and law – "as well as State-wide, country and  
20 individual agency policy. It should include, but not be  
21 limited to," and then it lists a series of substantive  
22 topics that should be covered, and of interest here of  
23 course is the use of force in general, the use of physical  
24 and mechanical force, the use of deadly force, limitations  
25 that govern the use of force, and deadly force. "The

1 international perspective on the broader aspects of police  
2 training in crowd control and management highlight that  
3 training should include review and reinforcement of the  
4 applicable laws, State statutes, department policies, a  
5 review of civil rights issues inherent in mass  
6 demonstration events, a uniform understanding of rules of  
7 engagement, use of force, policies, and mass arrest  
8 procedures, clear instructions on the need for self-  
9 control, teamwork, adherence to commands, stated  
10 expectations for highly disciplined behaviour, self-control  
11 and restraint, and a strong statement that any officer's  
12 failure to comply could result not only in failed police  
13 tactics, but also employee discipline."

14 So what we take from all of this is that current  
15 international research relied upon by the SAPS supports  
16 continuous police training in crowd control and management.  
17 You agree with that?

18 **GENERAL MBOMBO:** It is correct, yes.

19 **MS LE ROUX:** And Chairperson, we do not need to  
20 go there unless it's necessary, but the final statement of  
21 Hendricks, which we have now marked as LLL12, at page 66,  
22 paragraph 160 where Mr Hendricks is setting out his final  
23 recommendations to the Commission, page 66, paragraph 160, one  
24 of his recommendations is the implementation of a  
25 continuous learning programme for all members of the SAPS

1 involved in POP. So Mr Hendricks as one of the experts in  
2 this process confirms that this is something that he thinks  
3 needs to be implemented.

4 What we see from the policy document, and if we  
5 can return to exhibit R, the policy document, the training  
6 needs to cover a wide range of skills. It is use of force  
7 and the judgments and law relating to when force is  
8 appropriately used, civil rights, questions of self-control  
9 and judgment, as well as teamwork, command and control of  
10 those type of operations.

11 So in the policy document, if we then move to  
12 page 14, and the third paragraph on that page states, "It's  
13 acknowledged that the recent past has exposed serious gaps  
14 in the existing operational policies, strategies, and  
15 approaches applied by the SAPS during the policing of  
16 public protests. These gaps widen when SAPS responses to  
17 unplanned protests is contextualised. It is thus  
18 imperative that the SAPS must urgently align itself with  
19 the following issues as crucial areas for intervention and  
20 redress," and then if we scroll through the recommendations  
21 there that need urgent implementation we get to page 16  
22 where we see training of members attached to POP units, and  
23 it highlights there, "Comparative research has shown that  
24 the current level of training to SAPS members in crowd  
25 management and control, Public Order Policing lacks

1 content. Basic and refresher training for police and  
2 others involved in law enforcement should include courses  
3 not only on human and constitutional rights, but also  
4 scientific techniques and other best practices for the  
5 professional discharge of their functions with the public  
6 protest environment.”

7 So what we take from this document is that POP  
8 training must have both basic courses, as well as refresher  
9 courses on the topics identified and that these include  
10 human rights and constitutional obligations. We have read  
11 the document correctly, that’s the obligation described,  
12 correct?

13 **GENERAL MBOMBO:** That is correct, yes.

14 **MS LE ROUX:** Right, now of course there’s  
15 much more that’s interesting in the policy, but if we can  
16 now turn to a different document, which is the POP policy  
17 document on crowd management, exhibit FFF1 and page 8 of  
18 that document, paragraph 4.3.2, if we look at the third  
19 sentence there, “The planning and operational command of  
20 Public Order operations must always be entrusted to  
21 commanders of POP units in consultation with the Provincial  
22 Commissioner as they are trained and usually experienced in  
23 such matters.” So I emphasise there that we want the  
24 command of POP to be in the hands of POP commanders because  
25 they are trained as well as experienced. So you will accept

1 that there are two different things there; POP operation

2 commanders should be experienced, but they also should be

3 trained. You accept that?

4 **GENERAL MBOMBO:** I hear you.

5 **MS LE ROUX:** So with that requirement in

6 mind, if we can then turn to the training records of your

7 senior commanders at Marikana, and these are the six

8 documents that are GGG27, GGG27.1 is the training history

9 of General Annandale, 27.2 that of yourself, 27.3 of

10 General Mpembe, 27.4, Brigadier Calitz, 27.5, General

11 Naidoo, 27.6 is Brigadier Fritz. Now Chairperson, we do not need

12 to display these because we have analysed them, unless

13 there is some dispute, but Provincial Commissioner, what

14 that training history demonstrates are the following

15 things, that neither you, General Mpembe, Brigadier Calitz,

16 General Naidoo, or Brigadier Fritz, none of you have any

17 POP training after 1994. That is correct in your case,

18 right? You have not had any POP training after 1994.

19 **GENERAL MBOMBO:** It is correct.

20 **MS LE ROUX:** And do you have any

21 knowledge of whether Mpembe, Calitz, Naidoo, or Fritz have

22 had any POP training after 1994, different to what their

23 training records state?

24 **GENERAL MBOMBO:** Except what I see here,

25 I have no other knowledge.

1 **MS LE ROUX:** So we see from these records  
2 that only General Annandale received POP training and that  
3 was in 2000. You are not aware of General Annandale  
4 receiving any other POP training post 2000, are you?

5 **GENERAL MBOMBO:** As I have already  
6 indicated, Chairperson, I have no idea.

7 **MS LE ROUX:** So you do not have any other  
8 knowledge that can help the Commission, because what  
9 appears from the training records is that the planning and  
10 operational command of the Marikana POP operation was  
11 entrusted to people who do not have training in the  
12 planning and operational command of Public Order  
13 operations, that the training is – whatever training they  
14 have received is outdated. You do not have any other  
15 evidence relating to training, do you?

16 **GENERAL MBOMBO:** I do not have,  
17 Chairperson.

18 **MS LE ROUX:** And obviously, we know then  
19 that the senior leadership of this operation, while they  
20 may be experienced in POP operations, have not been going  
21 through continuous police training in crowd control or  
22 management as recommended by policy documents, as well as  
23 international best practice and the expert Eddie Hendricks?

24 **GENERAL MBOMBO:** As you say, Chairperson,  
25 I think it is right as you say.

1 **MS LE ROUX:** Provincial Commissioner,  
2 could you then turn to page 106 of Mr White's statement?  
3 That is JJJ178. JJJ178, final statement of Gary White, and  
4 page 106, paragraph 7.3.19, there Mr White recites his  
5 understandings that the senior leadership have no up-to-  
6 date POP training, albeit that they are experienced, and Mr  
7 White then says he disagrees that experience is sufficient.  
8 He says, "Experience is undoubtedly useful and necessary in  
9 order to command a major POP operation. However, it is not  
10 sufficient. Unless you are properly trained in what is  
11 considered as best practice, you can never be sure if your  
12 experience is still relevant. Over time  
13 **[12:07]** laws change, tactics change and equipment  
14 changes. Professional police officers, even highly  
15 experienced officers, need to refresh their training to  
16 ensure they remain fit for purpose and contemporary in  
17 their knowledge. In the UK context commanders of Public  
18 Order operations must be both occupationally and  
19 operationally competent. Occupational competence requires  
20 the completion of a set of specific training modules,  
21 continuing professional training and development, and  
22 yearly reaccreditation. Operational competence requires  
23 not only experience in the role, but confirmation by other  
24 commanders that the officer's performance in the role was  
25 and is in accordance with the national standards."

1 Now Provincial Commissioner, do you agree that  
2 there is a distinction between occupational competence of a  
3 police officer, which is based on the training that they  
4 have received, and their operational competence, which is  
5 based on their experience? Do you accept that distinction?

6 **GENERAL MBOMBO:** I accept as it is  
7 written, I accept that it is so.

8 **MS LE ROUX:** And you accept in light of  
9 the analysis of the training records that the leadership of  
10 this POP operation in Marikana was not occupationally  
11 competent for the role, meaning they had not been properly  
12 trained in Public Order Policing?

13 **GENERAL MBOMBO:** I am not sure who you are  
14 referring to here.

15 **MS LE ROUX:** Provincial Commissioner, I am  
16 referring to General Annandale, yourself, General Mpembe,  
17 Brigadier Calitz, General Naidoo, and Brigadier Fritz. As  
18 we understand it, they are the commanders of the Marikana  
19 POP operation on the 16th of August and we see from their  
20 training records that, with the exception of General  
21 Annandale, none of you had received POP training after 1994  
22 and General Annandale had last been trained in 2000. So  
23 with respect to Mr White's criticism that commanders must  
24 be continuously occupationally competent, they must have  
25 on-going training, the commanders of Marikana POP operation

1 did not have that occupational competence; they were not  
2 properly trained. Do you accept that?

3 **GENERAL MBOMBO:** According to what he  
4 says, yes, but all these people normally work in POP  
5 operations. General Annandale, he is at head office,  
6 working in the Public Order division of head office.  
7 According to records he might not be trained, but in  
8 practice he is always involved with such matters.  
9 General Mpembe might not have had recent  
10 training, as you say, but according to his job he is always  
11 involved in such operations.

12 Brigadier Calitz, since I have known him from my  
13 arrival in this province he is in charge of the Public  
14 Order Police, working together with Public Order people in  
15 his job.

16 I am not disputing that training should be  
17 continuous, but I think if a person is continuously  
18 involved in this job you get the necessary experience in  
19 order to be competent in the job.

20 **MS LE ROUX:** But Provincial Commissioner,  
21 this is precisely the Human Rights Commission's point, that  
22 your senior commanders of the Marikana operation, while  
23 they may be very experienced, have not been properly  
24 trained and it's the SAPS' own document, own policy  
25 document which says they should be continuously trained and

1 as the Provincial Commissioner it would be your  
2 responsibility for your province to make sure that they  
3 were being properly trained, and that has not happened.

4 **GENERAL MBOMBO:** Remembering,

5 Chairperson, that particularly when it comes to Public  
6 Order Policing their training interventions are conducted  
7 by head office. In agreeing with you I admit that it is my  
8 responsibility that my people get the training, but it's  
9 not for me to know when that training intervention is going  
10 to be held and it's also not for me to know how many of the  
11 members in my division would receive that training if it is  
12 being conducted.

13 **MS LE ROUX:** Provincial Commissioner,

14 what system have you put in place to then monitor that the  
15 SAPS policy document that requires on-going training is  
16 being done with respect to your area of responsibility?

17 **GENERAL MBOMBO:** As I say, Chairperson,

18 it is not my part, that of the training of members of the  
19 Public Order. However, I know that at head office where it  
20 is based that there are endeavours that are being made in  
21 order to comply with the policy. But it is not for me,  
22 Chairperson, to make the decision I want 50 of my members  
23 to be trained there.

24 **MS LE ROUX:** But Provincial Commissioner,

25 I must take you back to where we started with this line of

1 questioning, which was in your statement where you say  
2 you are responsible for the implementation of HR programmes  
3 and procedures and you confirm that that includes an  
4 oversight role for training and discipline of members in  
5 your province. So what have you done in your province, or  
6 what systems have you put in place in your province to  
7 ensure that your members are getting trained the way the  
8 SAPS policy document require them to be trained?

9 **GENERAL MBOMBO:** The powers that I have,  
10 Mr Chairperson, in connection with the Public Order is that  
11 members of the POP once in a week should, to go for  
12 refresher courses. To correct that, it is not a once-a-week  
13 refresher course, Chairperson. It is in-service training.  
14 I am not quite certain here, but in a month, they have to go  
15 for a refresher course. That is the only thing in the  
16 province that I have the right to do. When it comes to  
17 formal training interventions, Chairperson, that is the  
18 responsibility of the Public Order at national level.

19 **MS LE ROUX:** But Provincial Commissioner,  
20 I go back to my question. What system do you have to  
21 establish that your POP members in your province are going  
22 for the training they should be going for? I understand  
23 your answer to be it's the head office responsibility to  
24 organise. My question is in your role as having oversight  
25 over training of members in your province, what have you

1 done to establish that they are being trained regularly as

2 they are supposed to be trained?

3 **GENERAL MBOMBO:** I do not know whether you

4 want me to explain that. In the province we do have

5 training division, or a section which has what I have already

6 explained.

7 **MS LE ROUX:** Does that training unit

8 undertake courses in Public Order Policing?

9 **GENERAL MBOMBO:** As I have already said, it

10 can only record this service training and refresher courses

11 because for us in the province we do not have qualified

12 people that can formally train Public Order Police.

13 **MS LE ROUX:** Provincial Commissioner,

14 I shall follow up with some other questions on your answer,

15 but I must just get an answer to my question, which what

16 system is there in your province to establish that on-going

17 training is being provided to POP members? And I mean if

18 there is no system then that would be the answer, that

19 there is no specific system to monitor and ensure that POP

20 members are receiving on-going training. So the question

21 is, what is the system to ensure on-going POP training in

22 your province?

23 **GENERAL MBOMBO:** Systems that we have,

24 the systems that allows us to monitor the training the

25 police have received and to be able to see what kind of

1 training they have not received which they still need to  
2 have. We do have that system, but I must say again even if  
3 I have that and I see that my members of my police need  
4 training, it does not depend on me as to when they receive  
5 their training, except those that I have explained the  
6 courses.

7 **CHAIRPERSON:** Sorry, I do not quite  
8 understand. Is there a computer program that you have  
9 somewhere that keeps track of the various POP members and  
10 the training that they have received, or is it just  
11 recorded on paper somewhere in records that are kept in  
12 your office? How does it work?

13 **GENERAL MBOMBO:** Chairperson, each and  
14 every member of the police appears on computer, indicating  
15 training and what that person has been trained.

16 **CHAIRPERSON:** Now let's take by way of  
17 example, let's look at this schedule that's been prepared  
18 for us, LLL18, that gives POP shooters training records.  
19 Now let's take the first name there, Sergeant Baloyi, top  
20 of the list, Sergeant Baloyi. He apparently hasn't done a  
21 course in human rights at all, but he does not appear to  
22 have done basic training either as a matter of fact. Well,  
23 I do not know how he got in there if he does not have basic  
24 training, unless this schedule is wrong. But anyway, let's  
25 not concentrate on the details; let's take him as an

1 example. Now do your records tell you, are you able to say  
2 at any given time that what training Sergeant Baloyi has  
3 received, what courses he received, and when last he  
4 received them?

5 **GENERAL MBOMBO:** It is correct,  
6 Chairperson, yes. That system, if the person has undergone  
7 that training, that system is being updated correctly.

8 **CHAIRPERSON:** Now presumably if you  
9 looked at your records you would have seen that Sergeant  
10 Baloyi has not had a course in human rights. That is right,  
11 isn't it? That appears from LLL18.

12 **GENERAL MBOMBO:** Mmm.

13 **CHAIRPERSON:** Now would the course in  
14 human rights have been provided provincially in the  
15 province, or is it something that would have been provided  
16 by some head office or some national training institution?

17 **GENERAL MBOMBO:** Pertaining to human  
18 rights we conduct this in the province, Chairperson.

19 **CHAIRPERSON:** So we do not know why  
20 Sergeant Baloyi did not have a course in human rights.  
21 Certainly we cannot blame head office for that. Is that  
22 correct?

23 **GENERAL MBOMBO:** It is so, Chairperson.

24 **CHAIRPERSON:** Alright, now what courses  
25 are provided by head office, or nationally?

1 **GENERAL MBOMBO:** Mostly the formal

2 interventions in the Public Order.

3 **CHAIRPERSON:** Now do you have a number of

4 places – I take it they have courses from time to time. Do

5 they allocate a number of places to your province in

6 respect of the courses that they are organising?

7 **GENERAL MBOMBO:** It is correct,

8 Chairperson. They make it a national course, but each and

9 every province receives a number of seats there.

10 **CHAIRPERSON:** And how many of these

11 courses are there every year?

12 **GENERAL MBOMBO:** I am not certain. No,

13 I am not sure, Chairperson.

14 **CHAIRPERSON:** One a month or one a year

15 or how frequently are they – roughly, I understand you

16 cannot, you do not have the exact facts at your fingertips.

17 I do not expect that.

18 **GENERAL MBOMBO:** Though I am not quite

19 certain of the number, Chairperson, but I remember that

20 last year we sent our people to two different courses.

21 **CHAIRPERSON:** Alright, so let's take two

22 as a provisional number. How many persons did you send to

23 each course? How many positions on the courses were made

24 available to your province?

25 **GENERAL MBOMBO:** I do not remember, but I

1 can get these figures for the Chairperson.

2 **CHAIRPERSON:** What I am trying to

3 ascertain is were enough places being made available during

4 the course of each year to your province so that you could

5 ensure that your POP members were properly trained and

6 their training was being kept up to date?

7 **GENERAL MBOMBO:** During last year,

8 Chairperson, I can say that quite a number of our POP

9 members were trained in different courses, as I have

10 stated.

11 **CHAIRPERSON:** What percentage of them

12 would you say are – if I were to ask you, you may not be

13 able to give me the answer, but if I were to ask you what

14 percentage of your POP members do you think have been

15 trained recently at the national level in the national

16 courses, would you be able to give me an approximate

17 figure?

18 **GENERAL MBOMBO:** Chairperson, I have 348

19 members of the POP. If I remember well the figures of the

20 people that were sent to different interventions, though

21 I am not quite certain, but there is over a hundred.

22 **CHAIRPERSON:** Now would you say that the

23 number of positions available to your province every year

24 in these courses is not adequate to train all your people

25 properly?

1 **[12:27] GENERAL MBOMBO:** I would not say certainly  
2 so, Chairperson, particularly now, Chairperson, that the  
3 training of Public Order is being prioritised.

4 **CHAIRPERSON:** If you say now, is this  
5 post August 2012 or was that the case even before August  
6 2012?

7 **GENERAL MBOMBO:** From the beginning of  
8 last year, Chairperson.

9 **CHAIRPERSON:** Would it be fair to say  
10 that since the events at Marikana, since the beginning of  
11 last year the number of places available to your province  
12 at these various training courses has risen substantially?

13 **GENERAL MBOMBO:** I would agree with you, Sir.  
14 I would agree with you there, Chairperson.

15 **CHAIRPERSON:** I did not hear the answer.

16 **GENERAL MBOMBO:** I agree with you there,  
17 Chairperson.

18 **CHAIRPERSON:** You agree with that, thank  
19 you. Ms Le Roux, I have tried to open up some of the – cut  
20 some of the bush away for you so you can proceed with your  
21 cross-examination. I do not know how successful I was, but  
22 I tried.

23 **MS LE ROUX:** Thank you, Chairperson.  
24 Provincial Commissioner, following up on the Chairperson's line  
25 of questioning, I understand that the system you have

1 described records when training is done. When you are  
2 selecting which members to send to the national training  
3 interventions for POP does your system tell you who's most  
4 in need of training either because they have never been  
5 trained, or because their training is out of date?

6 **GENERAL MBOMBO:** Can you please repeat  
7 the question?

8 **MS LE ROUX:** As I understand your  
9 evidence the system that you have in your province  
10 captures when someone is trained and then you are able to  
11 access POP training provided at a national level by head  
12 office and last year you sent approximately a hundred POP  
13 members to that training. That is your evidence, correct?

14 **GENERAL MBOMBO:** That is so, yes.

15 **MS LE ROUX:** Okay, so my question is,  
16 does your system enable you to identify who needs training  
17 most urgently? Does it tell you for example who is never  
18 been trained or whose POP training is most out of date  
19 because it is the oldest? Does your system tell you that?

20 **GENERAL MBOMBO:** Every year we do some  
21 planning about the interventions that are needed for our  
22 members. We do that based on the needs of our workers.  
23 Others would for instance say I want training in such and  
24 such a course. Some would look as to the training needs of  
25 their units; we would then compare those with the 96s of

1 the members that are there, trying to identify gaps that  
2 are there in each unit concerning the training. Those gaps  
3 will then be put into what we call workplace skills plan.  
4 That is what we then submit to the national office so that  
5 the interventions done by the national office will be seen  
6 and identified where we lack. We also assist them  
7 according to the budgeting in terms of those interventions.  
8 We then use that workplace skills plan to budget as a  
9 province in order to make provision for the people that we  
10 can train as a province and budget for them.

11 **MS LE ROUX:** Provincial Commissioner, I  
12 understand your evidence to be that since Marikana  
13 happened, so for 2013 at least there was more POP training  
14 provided in your province. That is your evidence, correct?

15 **GENERAL MBOMBO:** That is so, Mr Chairperson.

16 **MS LE ROUX:** So do you accept that before  
17 2013 there was insufficient POP training in your province?

18 **GENERAL MBOMBO:** I would not say I do not  
19 agree with you, though I would not be in – I do not totally  
20 agree, fully agree with you.

21 **CHAIRPERSON:** Let's just concentrate on  
22 human rights. Human rights is quite an important course  
23 for people involved in Public Order Policing. Is that  
24 correct?

25 **GENERAL MBOMBO:** Correct, Chairperson.

1 **CHAIRPERSON:** Now according to exhibit

2 LLL18 there are 55 people mentioned here, that's to say, I

3 take it these are the members of the POP who fired shots.

4 I am not sure whether they're all in your province, but

5 let us not worry about that for the moment. There are 55 on

6 the list. Now on this basis –

7 **MS LE ROUX:** Chairperson, if I can for the

8 record just clarify, LLL18 is – you're correct it's

9 everyone who fired shots on the 16th, but it only includes

10 training records up to and including 16 August 2012.

11 **CHAIRPERSON:** Yes, yes. No, I –

12 **MS LE ROUX:** So 2013 unfortunately

13 are not –

14 **CHAIRPERSON:** No, no, I understand that.

15 Now, what we see from LLL18 is that 55 POP people mentioned

16 here, ranging from constables to warrant officers – oh no,

17 I see there's some lieutenants as well, at least one

18 lieutenant. Now in the period from 2007 to 2012 up to the

19 date of the shootings at Marikana on the 16th of August only

20 four of the 55 had attended a human rights course, and if

21 you look at the position prior to 2007 there's only one

22 person who attended a human rights course in the period

23 before 2007. Now it is rather an extraordinary omission,

24 isn't it? 55 people, four of them in the period from 2007

25 to the shootings at Marikana attended human rights course.

1 Now, what is the reason for that?

2 **GENERAL MBOMBO:** Chairperson, I would not

3 be sure of the reasons.

4 **CHAIRPERSON:** It does look, does it not,

5 as if human rights was not given a very high priority when

6 it came to deciding what courses to be made available to

7 the POP people. Is that correct?

8 **GENERAL MBOMBO:** It looks as though that

9 was the position, Chairperson, but I wouldn't be sure of

10 what the problems were, Chairperson. Those would then be

11 known by the people at training.

12 **CHAIRPERSON:** Is not some oversight

13 exercised by your office, or wasn't it exercised – we're

14 talking about the period ending in on August 25th, wasn't

15 some oversight being exercised by your office in seeing to

16 it that the various POP members received adequate training

17 in all important aspects of Public Order Policing,

18 including human rights?

19 **GENERAL MBOMBO:** I agree there,

20 Chairperson, with you. It could possible by so that we

21 also did not look at it thoroughly, but I am not quite

22 certain as to what the problems encountered are.

23 **CHAIRPERSON:** But if you were keeping

24 oversight of this matter yourself you would have picked it

25 up over the period, wouldn't you? When did you arrive in

1 the North West province, take over as Provincial

2 Commissioner?

3 **GENERAL MBOMBO:** August of 2010,

4 Chairperson.

5 **CHAIRPERSON:** So for two years from

6 August 2010 to August 2012, you were in charge and you

7 didn't pick up that – I do not know how many of these

8 courses that are referred to, the four courses referred to

9 in this list were before you arrived, but let us assume in

10 your favour they are all after you got there. Doesn't it

11 indicate that you, those who were assisting you in this

12 regard missed what appears to be a significant omission in

13 the training of the POP members under your command?

14 **GENERAL MBOMBO:** I would not deny that,

15 Chairperson, but let me also say that the members of the

16 police that appear on this list, Chairperson, it is possible

17 that quite a big number of them, of these people do not

18 come from the province where I am.

19 **COMMISSIONER HEMRAJ:** General, can we

20 just clear something about basic training? As I understand

21 it, every member of the force would have to go for basic

22 training. It's pretty much an entrance requirement, isn't

23 it?

24 **GENERAL MBOMBO:** It is correct,

25 Chairperson, correct, Commissioner. I can also not say

1 what happened on this issue.

2 **MS LE ROUX:** Provincial Commissioner, if

3 you could then stay with the POP shooters spread sheet. It

4 also indicates that POP members are trained far more often

5 in shooting practice and firearms training than they are in

6 crowd management or human rights. So if we look at the

7 column headed "Shooting practice or firearms training," we

8 see that there these members are trained in those 183 and

9 83 times respectively in the last five years. So what that

10 means is POP members are getting trained in shooting

11 practice and firearms training about four times as often as

12 they are in human rights and crowd management. Now of

13 course we accept that it is important that members are

14 properly trained in firearms handling and that they are

15 regularly tested in their competence at doing that, but why

16 is it prioritised to this degree over POP and human rights

17 training?

18 **GENERAL MBOMBO:** I would not be very

19 certain to know what exactly the reason is for that, but I

20 can see as you are indicating it now.

21 **MS LE ROUX:** And when you engage with

22 your system that monitors training in your province or you

23 set out your workplace skills plan, do those prioritise

24 shooting and firearms handling over Public Order Policing

25 and human rights?

1 **GENERAL MBOMBO:** If you would just repeat

2 that question?

3 **MS LE ROUX:** With respect to the system

4 you have described that monitors training in your province,

5 and you've also described the workplace skills plan that

6 you put together, do those prioritise firearm training and

7 shooting practice over human rights and crowd management

8 training for POP members?

9 **GENERAL MBOMBO:** I am not quite sure if

10 that is the position.

11 **CHAIRPERSON:** Ms Le Roux, it occurs to

12 me, I am not sure that the point you're busy with now is a

13 good point. If you attended a human rights course, I know

14 there weren't many who had, but if you attended a human

15 rights course presumably the knowledge you acquired will be

16 with you for some time. It doesn't need refreshing every

17 three months, whereas I would imagine that in the area of

18 firearms training and shooting practice the members have to

19 regularly practice, they have to go to shooting practice

20 regularly because these are skills that fall away, you

21 become less skilled in managing a firearm if you do not

22 practice regularly. So I would imagine there might well be

23 an important distinction between the frequency of shooting

24 practice compared with attending a course on human rights.

25 So I think that is probably – but anyway, let us hear what

1 the witness says. What do you say about that, Provincial

2 Commissioner? Is that a good point or a bad point?

3 **MS LE ROUX:** Chairperson, I must just first

4 clarify; we would accept that obviously we want police

5 officers trained in firearms handling and have regular

6 shooting practice, of course, and it may well be true that

7 human rights training needs to happen less frequently, but

8 we would not accept that proposition with respect to crowd

9 management training, and indeed the policy documents that

10 we started with contemplate refresher courses, regular

11 crowd management courses. Those, you know, we do not know

12 exactly what that frequency should be. Mr White does

13 indicate that in his experience there is at least an annual

14 revisiting around crowd management techniques, so I think

15 we would say with respect to crowd management it certainly

16 cannot be a once-off.

17 **CHAIRPERSON:** I understand that, but

18 let's accept a year is desirable, an annual course is

19 desirable for crowd management. You will probably find that

20 as far as shooting practice is concerned you should do it

21 far more frequently than that, and if you do it once a

22 quarter versus once a year, then you have times more

23 courses, which is probably the way things should be done.

24 Anyway, I do not know whether the witness can help us.

25 Maybe it's a matter that Mr White will be able to help us

1 on when he comes, but anyway, we must make sure the points  
2 that are being made are realistic points.

3 **COMMISSIONER HEMRAJ:** General, the  
4 shooting practice, I seem to recall that there is some  
5 protocol that is set down for how often shooting practice  
6 needs to take place.

7 **GENERAL MBOMBO:** That's correct, yes, but  
8 I have just said I have just forgotten how often we have to  
9 conduct shooting practice.

10 **COMMISSIONER HEMRAJ:** And where exactly  
11 does the shooting practice take place in relation to the  
12 police station or the unit where the member is stationed?

13 **GENERAL MBOMBO:** It's being done at their  
14 units.

15 **COMMISSIONER HEMRAJ:** And the crowd  
16 management courses, are those the ones that are run  
17 nationally?

18 **GENERAL MBOMBO:** Correct, Chairperson.

19 **COMMISSIONER HEMRAJ:** So would it be  
20 easier for members to have access to the shooting practice  
21 than to the crowd management courses?

22 **GENERAL MBOMBO:** That is correct.

23 **MS LE ROUX:** Provincial Commissioner, I had  
24 like you to turn now to the spread sheet that analyses the  
25 training records of the TRT shooters on the 16th of August,

1 that is LLL19, and there we see of the 56, there we –

2 **CHAIRPERSON:** Sorry, Ms Le Roux, we are

3 now concentrating on your question.

4 **MS LE ROUX:** Thank you, Chairperson.

5 Provincial Commissioner, in the analysis LLL19 that sets

6 out the TRT shooters' training records, there we see we

7 have 56 TRT members. Of those, we have two completed

8 courses in human rights in the past five years, zero in the

9 period preceding that, and then 189 and 42 respectively

10 with respect to shooting practice and firearms training,

11 and 161 courses in what we have called the specialist TRT

12 category completed. Now my question with respect to TRT

13 training is that it is not exceptional that TRT members will

14 be called in to support POP, is it? It often happens?

15 **GENERAL MBOMBO:** It is so.

16 **MS LE ROUX:** So why are TRT members not

17 given crowd management or POP-related training?

18 **GENERAL MBOMBO:** Just repeat the question

19 again.

20 **MS LE ROUX:** Sure. We see from the

21 training records the TRT members have done barely any crowd

22 management training, yet you expect that TRT are often

23 called in to support POP in a Public Order Policing

24 operation. So my question is why are not TRT members given

25 regular POP training, or in fact any POP training with

1 respect to most of them? Because surely it would be  
2 important that your TRT members understand crowd management  
3 principles and POP principles?

4 **MR SEMENYA SC:** Chairperson, my recollection of  
5 the evidence is that the TRT do not do crowd management  
6 operations themselves. Even on the 16th the contemplation  
7 was POP would do that element of the operation and the  
8 others would come for different reasons completely.

9 **CHAIRPERSON:** Yes, yes, I think there is  
10 evidence that on occasions, I think there was an incident  
11 that Colonel Vermaak wrote a letter about that on occasions  
12 in crowd management situations the TRT people were being  
13 called in to help as well. So you're correct, the basic  
14 idea is the POP people will do the crowd management.

15 **[12:47]** The TRT people are there as a backup or they do  
16 sweeping and cleaning and all sorts of things, but  
17 certainly as this Marikana itself illustrates, there are  
18 occasions when the TRT people have to play a role and I  
19 think the other instances, like the ones that Colonel  
20 Vermaak referred, or one Colonel Vermaak referred to are  
21 also instances where the TRT had to play a role. But of  
22 course the real question is how frequently did that happen,  
23 and that's something we do not know about.

24 **MR SEMENYA SC:** No Chairperson, I am referring  
25 to crowd management elements of the operation. You

1 remember we had the evidence of Brigadier Calitz who said,  
2 "Even when I was giving instructions, I was giving  
3 instructions in relation to hill 3 to POP members, never  
4 gave crowd dispersal instructions to the other units."

5 That is the correct evidence as I know it.

6 **MS LE ROUX:** Chairperson, we will make

7 submissions in due course. Obviously Provincial

8 Commissioner, the only point I want you to deal with is

9 given the TRT are often deployed in the same operation as

10 POP, and we see from the training records that most of them

11 do not even have one course in crowd management, in

12 understanding what the POP members would be doing, the

13 point is why wouldn't they be given even just one course in

14 POP so that when they are deployed together with POP

15 members they understand the crowd management principles

16 that are being used? Wouldn't it help the TRT members when

17 they are deployed together to know what the crowd

18 management principles are that the POP are busy using?

19 **GENERAL MBOMBO:** I think what you should

20 first understand, Chairperson, is if these people are

21 deployed, what are they really deployed to do. We do not

22 deploy the TRT for crowd management in the frontline. As

23 the Chairperson has said that in the one incident it did

24 happen, but that was not the purpose of their deployment.

25 **MS LE ROUX:** Provincial Commissioner, for

1 the record, we do not have to go there now but in Mr White's  
2 statement, page 122, section 8, he deals with the first aid  
3 that was provided or not provided to the wounded on the 16<sup>th</sup>  
4 and we're obviously dealing with respect to scene 1, and  
5 these are obviously the TRT members that he's criticising  
6 at that point. Could I ask you to look at the TRT shooters  
7 training analysis, because there we have added in a column  
8 that looks at when they received first aid training and  
9 what we see is from the 56 members of the TRT only three  
10 have received any first aid training. One of those was in  
11 2000. There is one member who completed two first aid  
12 courses during 2012, and then a third member who completed  
13 a first aid course in 2008. Do you accept that it would be  
14 necessary for TRT members to be trained in first aid, and  
15 can you explain why they have not been?

16 **CHAIRPERSON:** No, that is two questions.

17 Let her answer one at a time.

18 **MS LE ROUX:** Do you accept that it's

19 important for TRT members to be trained in first aid?

20 **GENERAL MBOMBO:** I think it should be so

21 if there is a chance, if there is chance for them to undergo

22 such training.

23 **COMMISSIONER HEMRAJ:** Well, are you

24 saying that it is necessary for them to undergo first aid

25 training to be able to do whatever it is they are required

1 to do in the execution of their task? Is that what you are  
2 saying?

3 **GENERAL MBOMBO:** No, no, that is not what  
4 I am saying, Commissioner. That is why I am saying if there  
5 is a chance to do so.

6 **MS LE ROUX:** Provincial Commissioner, let  
7 me take to you to Mr White's statement. That will be the  
8 fairest and easiest way to do this. So Mr White's final  
9 statement JJJ178, page 122 and paragraph 8.1.3, there Mr  
10 White explains why it's important that the equivalent of  
11 TRT members in the Marikana operation receive firearms  
12 training. He says, "Specialist firearms officers," which  
13 is the TRT here, "receive additional training in  
14 administering first aid for those with bullet wounds. This  
15 is done on the principle that if you provide an officer  
16 with a firearm, you increase the likelihood that gunshot  
17 injuries might arise, therefore to mitigate this the police  
18 should provide those officers with the basic first aid  
19 skills to assist any person that they have been forced to  
20 shoot with that firearm." He goes on to then say that,  
21 "Footage from the recent high-profile murder of a soldier  
22 in Woolwich, London, is instructive. Firearms officers are  
23 seen shooting both suspects, but within a matter of seconds  
24 the same officers provide urgent first aid attention to  
25 those suspects and by doing so may have saved both of their

1 lives." So the point of Mr White's criticism here is that  
2 the TRT members present at Marikana, precisely because they  
3 are specialist firearms officers, should have received  
4 first aid training. Do you have a comment on that  
5 criticism?

6 **GENERAL MBOMBO:** I say, Chairperson, if  
7 there is a chance of doing so, that could be done. There  
8 could be possibly some problems that our training possibly  
9 have, which I have no knowledge of as of now.

10 **MS LE ROUX:** Provincial Commissioner, I  
11 understand you may not be able to explain why only three  
12 TRT members received first aid training, but do you accept  
13 that they should receive that first aid training?

14 **GENERAL MBOMBO:** If it is possible for  
15 them to get the training I see no problem with that.

16 **CHAIRPERSON:** No, no, but possible is one  
17 thing. Desirable is another. You see, if you read what Mr  
18 White says here, he explains how if an officer has a  
19 firearm it is likely, as he puts it, that gunshot injuries  
20 may arise. He then goes on to say that to mitigate this  
21 the police should provide those officers with the basic  
22 first aid skills to assist any person that they had been  
23 forced to shoot with that firearm, and then in an  
24 interesting footnote he says, 350, the following, "Footage  
25 taken by Captain Ryland shows Lieutenant Colonel McIntosh

1 apparently providing immediate first aid to what I am told  
2 is body C near scene 2. However," he says, "there's no  
3 evidence of such immediate first aid being provided at  
4 scene 1."

5 Now the reason I am asking you the question is I am  
6 looking ahead; one of the things we have to do in this  
7 Commission is make recommendations for the future and  
8 clearly we're going to be asked by the Human Rights  
9 Commission who presented us with Mr White's report, clearly  
10 they're going to ask us to recommend that officers who are  
11 provided with firearms, particularly people like the TRT,  
12 should be given first aid training so that they can do the  
13 kind of things that are described in this paragraph and  
14 what Lieutenant Colonel McIntosh very properly did at, near  
15 scene 2.

16 So when you answer my question, do not necessarily  
17 look backwards at what did not happen because a question may  
18 arise about that, but you know, hindsight they say is

19 20/20. We are busy now looking ahead. So looking ahead  
20 into the future, would you support a recommendation that  
21 TRT members, generally speaking officers equipped with  
22 firearms, particularly firearms of the nature we are dealing  
23 with here, should receive basic first aid training so they  
24 can act in the manner in which Colonel McIntosh acted at  
25 scene 2?

1 **GENERAL MBOMBO:** I think, Chairperson, if  
2 something like that has to be designed, there would be  
3 no problem with it.

4 **CHAIRPERSON:** You would support it?

5 **GENERAL MBOMBO:** I would support it,  
6 Chairperson.

7 **CHAIRPERSON:** Alright. Well, that seems  
8 a suitable note, Ms Le Roux, for us to take the lunch  
9 adjournment.

10 **MS LE ROUX:** Thank you, Chairperson.

11 **CHAIRPERSON:** I would like people to try  
12 to be back here by quarter to 2. I know these things  
13 are not always easy to arrange, but we have to try to be  
14 punctual to save time and use the time we have profitably.  
15 We now take the lunch adjournment.

16 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

17 **[14:00] CHAIRPERSON:** The Commission resumes.

18 I have been asked by the authorities here to say that if  
19 there's a further outage and the light goes out people are  
20 asked to please not rush out of the chamber but to go out  
21 slowly because it's feared that there might be problems if  
22 people do not do as I have asked them to do. If the lights go  
23 out do not all rush for the door, wait, go through slowly.  
24 I hope that will not happen but one cannot be too sure.  
25 Provincial Commissioner, you are still under oath. Ms Le

1 Roux.

2 **MS LE ROUX:** Thank you, Chairperson.

3 Provincial Commissioner, I'd now like to explore the  
4 consequences of failing particular courses and I want to  
5 start with shooting practise. Now am I correct that  
6 shooting practise faces two different skills. The first is  
7 the ability to accurately hit a target and the second is  
8 the ability to distinguish between threats, so to  
9 distinguish when to shoot. Whether there is a lethal threat  
10 or non-lethal threat it is an element of judgment. Am I  
11 correct that those are the two skills that shooting  
12 practise tests, accuracy of hitting a target and judgment  
13 as to when to shoot?

14 **GENERAL MBOMBO:** Mr Chairperson, I am not sure  
15 about that. Yes, I know that one of them – I know one  
16 objective is to aim at the target, but I am not sure about  
17 all the objectives that you put.

18 **MS LE ROUX:** Other than shooting practise  
19 are you aware of any other way in which the SAPS tests or  
20 trains members on that second element, the judgment element  
21 as to when to shoot or not to shoot?

22 **GENERAL MBOMBO:** Can you repeat the  
23 question please?

24 **MS LE ROUX:** Sure. As I understand your  
25 answer you accept that the SAPS shooting practise, that you

1 know of, tests accuracy, tests the ability to hit the  
2 target. You do not know if shooting practise tests the  
3 judgment element. So I am asking you whether there is some  
4 other way other shooting practise that you know of that  
5 SAPS test the judgment element of when to shoot.

6 **GENERAL MBOMBO:** What you have put before  
7 the Commission could be the case, but as I said I am not  
8 sure. I do not have the full knowledge about the shooting  
9 aspect.

10 **MS LE ROUX:** Thank you, Provincial  
11 Commissioner, we will follow up with the facts to establish  
12 whether shooting practise tests both accuracy and judgment.  
13 But if we can assume for the purposes of my questioning  
14 that it does test both, that shooting practise is both  
15 accuracy and judgment. That would then mean that if a  
16 member fails shooting practise that means that either the  
17 member cannot hit the target accurately and or it means that  
18 they cannot reliably judge and distinguish between different  
19 types of threats and establish when to shoot, you would accept  
20 that.

21 **MR SEMENYA SC:** No, Chairperson, there's no  
22 basis to make that assumption. In the first place, I see  
23 we are exploring this subject at length, but exhibit Q will  
24 tell us what basic training entails.

25 **MS LE ROUX:** Chairperson, this is not basic

1 training, this is shooting practise that members continue  
2 to go through.

3 **COMMISSIONER HEMRAJ:** Well let's ask the  
4 General. Shooting practise, when you speak of shooting  
5 practise is that what you envisage takes place at the  
6 police station level?

7 **GENERAL MBOMBO:** That is so, Mr Chairperson.

8 **COMMISSIONER HEMRAJ:** And at that stage  
9 what are they practising, the actual shooting of the  
10 targets and accuracy?

11 **GENERAL MBOMBO:** That is why I am saying  
12 I am not sure whether accuracy is part of this exercise, but  
13 aiming at the target is one.

14 **COMMISSIONER HEMRAJ:** And this is  
15 conducted on the shooting range, this practise, this  
16 shooting practise?

17 **GENERAL MBOMBO:** That is correct.

18 **MS LE ROUX:** Thank you, Provincial  
19 Commissioner, so let us just focus on the accuracy. So  
20 shooting practise is being able to hit the target. If a  
21 member fails shooting practise what are the consequences?  
22 Does it mean they cannot carry a firearm when they are on  
23 duty?

24 **GENERAL MBOMBO:** There is a difference, Mr  
25 Chairperson, I do not know whether this shooting practise is

1 connected to the maintenance, shooting practise, the  
2 shooting practise that is done at station or unit level. I  
3 do not think that is counted in our system, registered in  
4 our system. And the maintenance shooting practise, if you  
5 are referring to that, if one fails that practise he or she  
6 will then be given another opportunity to try again every  
7 quarter. The person can redo the exercise over a period of  
8 12 months.

9 **MS LE ROUX:** And, Provincial  
10 Commissioner, I understand you're saying that if I fail the  
11 maintenance shooting practise I can try again in the next  
12 quarter, that is correct?

13 **GENERAL MBOMBO:** That is so, yes.

14 **MS LE ROUX:** And for the period of time  
15 where I have failed the maintenance shooting practise and  
16 before I try again in the next quarter can I carry a  
17 firearm in that period?

18 **GENERAL MBOMBO:** You must remember, Mr  
19 Chairperson, the maintenance shooting practise does not determine  
20 whether you are fit or unfit to carry a firearm. When they  
21 do that practise it is already known that they can carry a  
22 firearm of a particular calibre or nature. That is why you  
23 are given the chances so that you eventually pass that  
24 exercise.

25 **CHAIRPERSON:** Does that mean you go on

1 carrying your firearm during this year period when you have  
2 been given the chance to pass the test, is that correct?

3 **GENERAL MBOMBO:** Yes, the firearms that  
4 you are proficient in, yes.

5 **COMMISSIONER HEMRAJ:** What is the import  
6 of failing this test, that you are a bad shot?

7 **GENERAL MBOMBO:** I did not get the  
8 question.

9 **COMMISSIONER HEMRAJ:** Yes what is the  
10 import, what does it mean when you fail this test, that you  
11 cannot shoot accurately at a target?

12 **GENERAL MBOMBO:** I think that is the  
13 case, Mr Chairperson, but I do not know what exactly they look at  
14 during those exercises.

15 **COMMISSIONER HEMRAJ:** That does not  
16 include that you are a danger to anyone that you are  
17 carrying that firearm?

18 **GENERAL MBOMBO:** I do not think so, Mr  
19 Chairperson, because the people who attend that exercise had  
20 already been tested, they are able to carry firearm, they  
21 know how to fire. They are just attending in order to  
22 keeping up practise of the shooting.

23 **CHAIRPERSON:** Now you are talking about  
24 maintenance shooting practise. Now there is another course  
25 just called shooting practise. What does that involve,

1 does that mean the ability to hit the target?

2 **GENERAL MBOMBO:** I did not get the

3 question, Chairperson.

4 **CHAIRPERSON:** It appears that there's

5 another course simply called shooting practise. There are

6 some courses called maintenance shooting practise and there

7 are courses simply called shooting practise. Now you have

8 told us you do not know what exactly maintenance shooting

9 practise involves. So we cannot ask you any further

10 questions about that, but in the case of a course called

11 shooting practise what does that involve?

12 **GENERAL MBOMBO:** That is the practise

13 that is done at station or unit level, Mr Chairperson.

14 **CHAIRPERSON:** Does that involve aiming at

15 the target?

16 **GENERAL MBOMBO:** That is part of it, Mr

17 Chairperson, but as I said I am not sure. I am sure that it

18 enables people to continue carrying the firearm.

19 **CHAIRPERSON:** You see the reason that

20 these questions are being asked to you is that when we look

21 at LLL22 we see details of shooters who had failed most

22 recent shooting practise or firearms training and the

23 second person on the list is Constable Mabasa or the TRT

24 who according to this schedule fired six bullets from an R5

25 at scene 2. And we see that, again according to the

1 schedule, I take it if it was incorrect our attention would  
2 have been drawn to it, on the 1<sup>st</sup> of February 2011 and again  
3 on the 24<sup>th</sup> of August 2012 Constable Mabasa failed  
4 shooting practise. Now what does that mean? And I see, if  
5 one looks at the list, at the actual founding document or  
6 underlying document upon which this entry was – on which  
7 the schedule was based, I see the shooting practise that he  
8 failed appears to have been a course called, it looks like  
9 shooting practise medium risk group. Now do you know what  
10 that involved?

11 **GENERAL MBOMBO:** Where are you reading,  
12 Mr Chairperson?

13 **CHAIRPERSON:** Well I am referring you  
14 firstly to LLL22 and then we haven't actually numbered the  
15 documents, they are all part of the sequence from LLL25 1 to  
16 22. They arrange alphabetically. One of the documents  
17 relates to Constable Mabasa of the TRT and it is in respect  
18 of him that we have these entries here on LLL22 and  
19 according to the schedule LLL22 he failed shooting practise  
20 twice as I have said, once in February and once in August  
21 2011. Now if one looks at the founding document it looks  
22 as if they are talking about a course called shooting  
23 practise medium risk group. Am I correct, Ms Le Roux?

24 **MS LE ROUX:** That is correct, Chairperson.

25 **CHAIRPERSON:** Now do you know what

1 shooting practise medium risk group means or involves?

2 **GENERAL MBOMBO:** No, I do not know it, Mr

3 Chairperson, I do not even have the document here.

4 **CHAIRPERSON:** The course of 1st of

5 February 2011 it appears, according to the list, as being

6 maintenance shooting practise risk group high. You do not

7 know what that means. And the other one, the one in August

8 2011 that's maintenance shooting practise medium risk

9 group, that is the way it is described. You do not know what

10 those involve.

11 **GENERAL MBOMBO:** I do not have the

12 document before me, Mr Chairperson, I also do not have any

13 knowledge about those details mentioned in that document.

14 **COMMISSIONER HEMRAJ:** Mr Semenya, aren't

15 these protocols all set out in writing as to what each of

16 these courses are?

17 **MR SEMENYA SC:** They are and I was going

18 to propose that perhaps we give you a witness on the

19 various meanings of this failure to –

20 **CHAIRPERSON:** I take it an affidavit

21 should be enough, we do not **[inaudible]**. An affidavit with

22 the protocols attached. You see but what concerns me is

23 that here you have this Constable Mabasa who's not

24 completed maintenance shooting practise in November 2009 or

25 in December and then has failed, according to the schedule

1 of shooting practise in February 2011 and August 2011 and  
2 failed in service firearms training in September 2011, yet  
3 he is sent off to scene 2. He is a member of TRT and he's  
4 sent off to scene 2, armed with an R5 rifle and he fires it  
5 six times. Now unless we know the significance of his  
6 consistent failures of these various courses it does tend  
7 to cause alarm bells to ring. Now can you help us on that?

8 **MR SEMENYA SC:** That is the type of  
9 evidence I propose to make available to the Commission.  
10 For instance, maintenance shooting entails the proficiency  
11 of the use of three types of firearms. You fail one  
12 because you have failed the course but all this evidence  
13 I shall put on affidavit for the benefit of the –

14 **CHAIRPERSON:** Ms Le Roux, it does sound  
15 from what we have heard as if the present witness is not going  
16 to be able to help us, but it may be that in the light of  
17 the extra information which Mr Semenya proposes to put  
18 before us that we will be able to deal constructively with  
19 this point. Would you agree with that?

20 **MS LE ROUX:** Yes, Chairperson, and we will  
21 certainly engage with the police legal team about getting  
22 that explanation of what is entailed in the different  
23 courses. The next question, I just have one more question  
24 on this which is do you have any system or process whereby  
25 you receive the results of these shooting practise

1 exercises? So do you get told when a member has failed a  
2 shooting practise and do you – that is the first question.  
3 Do you get told that a member has failed the shooting  
4 practise?

5 **GENERAL MBOMBO:** We get reports of the  
6 TRT courses members. We were supposed to be getting  
7 reports for the Public Order members but we do not. There  
8 are certain problems which are being attended to. And all  
9 the other police officials who attend training  
10 interventions in the province I get reports for them.

11 **MS LE ROUX:** And, Provincial  
12 Commissioner, when your office receives that information to  
13 the extent you do, you receive information saying these  
14 members have failed their most recent shooting practise or  
15 maintenance shooting practise, does that information affect  
16 how they are deployed in any way?

17 **GENERAL MBOMBO:** If the information has  
18 got a problem with the way in which they are deployed, yes  
19 it might affect it.

20 **MS LE ROUX:** Let me ask the question a  
21 different way. If a member fails a maintenance shooting  
22 practise does it have any consequences for them carrying a  
23 firearm when they are deployed on duty?

24 **GENERAL MBOMBO:** Let me explain it by way  
25 of an example.

1 **[14:20]** Maintenance shooting is done by someone who is  
2 already proficient in carrying and using of a firearm. As  
3 counsel explained, it is done by means of three firearms,  
4 an R5, shotgun, and a 9mm. Initially when you were tested  
5 in those three different firearms and you fail one, you  
6 were regarded as having failed the course, the shooting  
7 course. That was then changed to say if you pass one or  
8 two of those tests or different firearms, then you are  
9 regarded as having passed that particular calibre. You are  
10 then given a chance, a remedial chance for the firearms  
11 that you have not passed. So I can say that there is no  
12 way that we will deploy an officer with a firearm that he  
13 is not able to use as he's supposed to be, or a firearm  
14 that he is not permitted to use.

15 **MS LE ROUX:** Provincial Commissioner, I  
16 understand you saying that you are tested as being  
17 proficient and then this maintenance shooting practice  
18 tests you on the three weapons. Does there ever come a  
19 point though where repeatedly failing maintenance shooting  
20 practice means you are no longer proficient, or once you have  
21 been declared proficient once to carry a firearm, is that  
22 good forever? Is there any consequence to repeatedly  
23 failing shooting practice?

24 **GENERAL MBOMBO:** At the moment we do not  
25 have anything in place as to what should be done with such

1 a person, except when there are signs that he is not able  
2 to use that particular firearm. The police officials are  
3 looked at every quarter to ensure that they are still fit  
4 to carry that firearm, even if that officer had failed the  
5 maintenance shooting.

6 **MS LE ROUX:** Provincial Commissioner, one  
7 more question on this and then I am moving on to the next  
8 point. From LLL22 we see 20 members who failed their most  
9 recent shooting practice that were in possession of and  
10 fired firearms at Marikana and 18 of them fired live  
11 ammunition despite some of them having failed their  
12 firearms training. Now –

13 **MR SEMENYA SC:** Chairperson, wouldn't this be  
14 better spent with a witness who is able to give us  
15 meaningful answers?

16 **CHAIRPERSON:** Yes, that's right, and –  
17 well, you said better spent with a witness. I mean I would  
18 hope we would simply get an affidavit giving the information  
19 and attaching the protocols and we will then see how  
20 serious the deficiency in the person's abilities is, then  
21 form a judgment as to whether the person should have been  
22 allowed out into the field, as it were, with a firearm.  
23 Anyway, but the point taken is we do not know, and as the  
24 witness has explained she can't tell us what the  
25 consequence of failing these tests is and even what the

1 degree of deficiency in a person's ability is. So the  
2 point Mr Semenya makes, as you've heard, he's not  
3 suggesting that the point should be dismissed out of hand,  
4 but we should only revert to it once we have information as  
5 to what exactly these things mean.

6 **MS LE ROUX:** I understand the point,  
7 Chairperson, but the difficulty is my learned friend objected  
8 before the question came. So all I had said is that we have  
9 20 members who failed their most recent shooting practice  
10 with firearms at Marikana, 18 of them shoot live  
11 ammunition. The question to the Provincial Commissioner is  
12 whether she has any comment on whether the fact that they  
13 had failed has any relevance to what they did at Marikana,  
14 in your opinion. Is there anything relevant to how they  
15 conducted themselves on the 16th that we should draw from  
16 the fact that they had failed shooting practice?

17 **COMMISSIONER HEMRAJ:** But Ms Le Roux,  
18 are not we going back to the same question if we do not quite  
19 know what it is that they were tested for and in what  
20 aspect they failed? Is not that a basic problem with this  
21 approach?

22 **CHAIRPERSON:** Well, she was just asking  
23 the Provincial Commissioner – if the Provincial  
24 Commissioner says she does not know, well then that is where  
25 it ends, but the Provincial Commissioner may say something

1 else. Provincial Commissioner, what do you say about –  
2 you've heard the question; are you able to comment on the  
3 point or is it a matter which you have to leave unanswered  
4 because you do not know what these things mean?

5 **GENERAL MBOMBO:** Mr Chairperson, I think I  
6 tried to explain what I know and I also said I do not have  
7 the knowledge about how the training is done, the details  
8 of the training.

9 **MS LE ROUX:** Provincial Commissioner, let  
10 me move on then. If you could turn to LLL23, this is a  
11 summary with respect to Warrant Officer Motlabane. Now in  
12 line with the point that has been taken, I understand your  
13 answer may be that you simply do not know, but here we have  
14 Warrant Officer Motlabane who fails his most recent POP  
15 course, but on the 16<sup>th</sup> of August he's on duty in a POP  
16 operation with a shotgun and he shoots rubber at scene 1.  
17 Do you have any knowledge or comment on that that can  
18 assist the Commission?

19 **GENERAL MBOMBO:** This information I see  
20 here surprises me because according to me what I know most  
21 of the Public Order officers were trained in crowd  
22 management and they passed it. Since I do not know what  
23 happened in this particular individual's case I would ask  
24 for a chance to investigate that.

25 **MR SEMENYA SC:** Chairperson, do we know whether

1 that failure at section level relates to POP management or  
2 to the section leader of a particular POP unit? Because  
3 the conclusions we are likely to draw from this evidence  
4 may be unhelpful unless we understand what it entails –

5 **MS LE ROUX:** Chairperson, all I –

6 **CHAIRPERSON:** The witness has said that  
7 she wants to find out what it involves and she will then be  
8 able to express an opinion on that. Isn't that right?

9 Prima facie it doesn't look good, but it may be that the  
10 important words are "on section level" and it may be the  
11 inability to pass, or the failure to pass the test at  
12 section level may not disable someone, or disqualify  
13 someone from acting as an ordinary foot soldier, as it  
14 were, carrying a shotgun and firing rubber balls, but that  
15 person might not be able to exercise any kind of command  
16 over a section, but we do not know. It is something we are  
17 going to find out.

18 **MS LE ROUX:** Yes, Chairperson, and obviously we  
19 only have the evidence that SAPS has disclosed to us, but  
20 we will follow up to establish what that means. But  
21 Provincial Commissioner, one more question then on this; do  
22 you know of any consequences for failing a POP course?  
23 Does it affect your – can that member still be deployed in  
24 a POP operation if they failed a POP course? Do you know?

25 **GENERAL MBOMBO:** What I know is that when

1 police officers have failed a course that is core in their  
2 duties, an important course, they are given what is called  
3 a remedial opportunity and if they fail all those  
4 opportunities they will then be stationed in functions that  
5 are alternative places that are not the core functions of  
6 their training.

7 **MS LE ROUX:** Thank you, Provincial  
8 Commissioner. If we can then move on to LLL24, which  
9 relates to –

10 **COMMISSIONER HEMRAJ:** Ms Le Roux, before  
11 you do that, this warrant officer failed the course on 22  
12 June 2012, then in your analysis on page 2 you have him  
13 attending two crowd management courses between the period  
14 2007 and 2012, on the second page of your analysis.

15 **MS LE ROUX:** Commissioner, the first is  
16 on the 30th of January 2009 –

17 **COMMISSIONER HEMRAJ:** Where does that  
18 appear?

19 **MS LE ROUX:** In his training record,  
20 which falls in the LLL25-series.

21 **CHAIRPERSON:** If one looks at that  
22 document, I do not know what it – we haven't done the  
23 exercise yet, we should have done it while the power was  
24 off to see where it fits in, in the LLL25-series, but he's  
25 passed quite a lot of courses. He has passed shooting

1 practice and the use of firearm and so on. It is the crowd  
2 – POP course described as “Crowd management on section  
3 level,” and then on the next page it goes on, “Institution  
4 divisional training, in-service training PSS,” whatever  
5 that stands for. There it says, “Completed, failed.” Then  
6 he has passed, he has completed other tests, shooting practice  
7 for example he has completed and so forth, so it may be that  
8 it is not a problem in giving him a shotgun and letting him  
9 shoot rubber balls, but he shot, passed the shooting  
10 practice. It would depend therefore what exactly the  
11 course that he failed involved, but again that is something  
12 we would have to find out in due course, isn't it?  
13 **MS LE ROUX:** Yes, and of course, Chairperson,  
14 all we were highlighting is his failure of the most recent  
15 crowd management course that he took when he was on POP,  
16 deployed –  
17 **CHAIRPERSON:** Yes, yes, I understand  
18 that, but I mean you know, if he was a mere foot soldier,  
19 as it were, in a crowd management operation under the  
20 command of someone who had passed and all he had to do really  
21 was fire rubber balls from a shotgun, then maybe there  
22 isn't a problem, but if he had to exercise some kind of  
23 judgment, as it were, in the management of a crowd then the  
24 point you make may have some substance. But we do not know  
25 the answer to that yet, do we?

1 **MS LE ROUX:** Correct, Chairperson. We will need  
2 to get clarity on what section level means. So Provincial  
3 Commissioner, if we can turn then to LLL24, which are  
4 documents that relate to Constable Pakati. Now he's a  
5 member of TRT Soweto and perhaps it is easiest to start not  
6 with the CALS summary but with the actual disciplinary  
7 record that we were provided by the SAPS. That sets out an  
8 offence, it's recorded as 23 April 2012, offence SAPS Reg  
9 20(e). Now if we go to regulation 20, which we have now  
10 marked as LLL17, if we can show that, regulation 20(e)  
11 states that – if we can get there, regulation 20(e) states  
12 that, "An employee will be guilty of misconduct if he or  
13 she among other things," and then (e) is, "endangers the  
14 lives of others by disregarding safety rules or  
15 regulations." So on the 26<sup>th</sup> of April 2012 Constable Pakati  
16 seems to have been found guilty of the offence of  
17 endangering the lives of others by disregarding safety  
18 rules or regulations –

19 **CHAIRPERSON:** Ms Le Roux, I am sorry to  
20 interrupt you. I think you may be misreading it because  
21 it is the offence dated 26 April 2012. If you look at the  
22 sentence imposed it involved the declaration that he was  
23 unfit to handle a firearm for five years until 8/10/2017.  
24 So it looks as if – again perhaps the witness can tell us  
25 or we can find out from SAPS, but it looks to me as if he

1 did something on the 26<sup>th</sup> of April 2012 which endangered the  
2 lives of others, by disregarding safety rules and it looks  
3 to me as if he was then before a disciplinary tribunal  
4 which found him guilty and declared him unfit to handle a  
5 firearm for five years from the 8<sup>th</sup> of October 2012 – sorry,  
6 the 8<sup>th</sup> of October 2012 to the 8<sup>th</sup> of October 2017. So the  
7 point appears to be that he was the subject of a  
8 disciplinary inquiry which had this result, but in respect  
9 of something that had happened on the 26<sup>th</sup> of April 2012,  
10 and the question would be was it appropriate to send  
11 someone who was facing a charge of that kind to take part  
12 in the activities at, police operations at Marikana where  
13 he was called upon to fire an R5 and did so five times at  
14 scene 1.

15 **MS LE ROUX:** Yes, Chairperson –

16 **CHAIRPERSON:** Sorry to interrupt you, but

17 I think that is right. He is a TRT member. I do not know  
18 where – do you know where he came from?

19 **GENERAL MBOMBO:** Soweto.

20 **MS LE ROUX:** Soweto.

21 **CHAIRPERSON:** Yes, I am sorry, I am wrong.

22 I am shown the document which relates to him and the offence  
23 is recorded – I do not quite understand this – oh, the  
24 offence is recorded as having happened on the 23<sup>rd</sup> of April  
25 2012. He was fined on the 26<sup>th</sup>, so he had already been

1 convicted in April 2012 and then what stood over was the  
2 inquiry as to his fitness to handle a firearm and that  
3 appears to have been dealt with on the 8<sup>th</sup> of October 2012,  
4 but the fact is a man who'd been really convicted of this  
5 offence – I assume it is a man – and fined for it, was still  
6 entrusted with an R5 while this inquiry as to his fitness  
7 to handle a firearm was still pending, and put into the  
8 field, as it were, at Marikana in August 2012. That's your  
9 point, is it? No, he hadn't yet been declared unfit, but  
10 he'd been convicted of the offence and –

11 **MS LE ROUX:** And already fined.

12 **CHAIRPERSON:** And fined, and the inquiry  
13 as to his fitness was still pending, it would seem.

14 **MS LE ROUX:** Well, I wanted to establish  
15 with the Provincial Commissioner if that is the way in  
16 which we should read this disciplinary record. Do you – I  
17 mean you have obviously seen these far more frequently than I  
18 have. Is that what the different dates mean, that he  
19 commits the offence 23 April 2012, a verdict is imposed 26  
20 April 2012, and then unfit to handle a firearm is imposed  
21 on the 8th of October 2012. Is that what the record – is  
22 that how to read that record?

23 **MR SEMENYA SC:** Chairperson, may we again give  
24 this information? We are talking about a constable in  
25 Soweto. The witness is in North West. We can give

1 accurate information relating to this rather than solicit  
2 an answer from the Provincial Commissioner.  
3 **MS LE ROUX:** Chairperson, I'd welcome accurate  
4 information about this particular member, but to the extent  
5 that this is the way SAPS records disciplinary incidents in  
6 a member's employment history, if the Provincial  
7 Commissioner could assist us to explain how to read this  
8 record, I would be grateful to her.

9 **[14:40] CHAIRPERSON:** Yes, I am sorry, Ms Le Roux,  
10 please proceed. My colleague is drawing something to my  
11 attention.

12 **MS LE ROUX:** Thanks, Chairperson. Provincial  
13 Commissioner, can you assist the Commission in  
14 understanding Constable Pakati's disciplinary record? Are  
15 we reading it correctly that the offence is committed on 23  
16 April, there's a verdict imposed three days later and then  
17 later in October is when his fitness to carry a firearm is,  
18 that he has declared unfit to carry a firearm? Is that how  
19 we should read that statement? Can you help us?

20 **GENERAL MBOMBO:** Mr Chairperson, I think  
21 Counsel Semenya was correct, was telling the truth that we  
22 would, the person who could be able to give us a correct  
23 answer is someone from Gauteng.

24 **MS LE ROUX:** Provincial Commissioner,  
25 sorry to interrupt you, but I understand that may be true

1 with respect to this particular member, but is this a  
2 format of a disciplinary record that you are familiar with?  
3 Have you seen a SAPS disciplinary record that looks like  
4 this and can you help us in understanding the different  
5 dates that are entered?

6 **GENERAL MBOMBO:** According to me I have  
7 never seen such a situation. A person commits an offence  
8 on the 23<sup>rd</sup>, sentenced on the 26<sup>th</sup>, it looks like the time  
9 is too short, taking into account the investigations that  
10 should be done.

11 **COMMISSIONER HEMRAJ:** Madam, do you know  
12 whether the inquiry as to being able to carry a firearm is  
13 a separate inquiry, like in the criminal courts it's a  
14 separate inquiry from the actual incident of guilt. Do you  
15 know that from disciplinary proceedings?

16 **GENERAL MBOMBO:** That is so, Mr Chairperson.

17 **MS LE ROUX:** Provincial Commissioner,  
18 does it usually take six months for that fitness exercise  
19 to be completed?

20 **GENERAL MBOMBO:** It is not normally like  
21 that.

22 **MS LE ROUX:** What is the normal situation  
23 to investigate and establish whether a member is fit to  
24 carry a firearm?

25 **GENERAL MBOMBO:** If someone has been

1 convicted in connection with that firearm or an act  
2 concerning that firearm, it would normally take us a month  
3 or maybe at the longest two months to finalise the fitness  
4 process. Maybe they might have their own reasons which are  
5 unknown to me.

6 **MS LE ROUX:** And in that period where  
7 you are evaluating their fitness to carry a firearm, are  
8 they nevertheless permitted to carry a firearm?

9 **GENERAL MBOMBO:** According to the law  
10 we're supposed to suspend that person in using a firearm if  
11 they have been convicted.

12 **MS LE ROUX:** So if Constable Pakati's  
13 disciplinary record reflects that in April 2012 he was  
14 found guilty of the offence of endangering the lives of  
15 others by disregarding safety rules or regulations, and he  
16 was then in a period where his fitness to carry a firearm  
17 was being assessed, he should have been suspended?

18 **GENERAL MBOMBO:** Not being suspended from  
19 duty, but the use of firearm is suspended. He cannot use a  
20 firearm.

21 **MS LE ROUX:** And so your understanding of  
22 how that suspension would work, he certainly would not be  
23 deployed with an R5 rifle?

24 **GENERAL MBOMBO:** I think so, Mr Chairperson.

25 **MS LE ROUX:** Thank you, Provincial

1 Commissioner. Provincial Commissioner, one more question  
2 on Constable Pakati; assuming he was in the phase of having  
3 his fitness evaluated and that he should have been  
4 suspended from using a firearm, yet we know that he was in  
5 Marikana with an R5 rifle and he fired five rounds, who  
6 would be responsible for him being deployed with a firearm  
7 on the 16<sup>th</sup> of August? Who would have been able to make  
8 that deployment decision?

9 **GENERAL MBOMBO:** When we get members we  
10 get them when they come with their commanders, if they come  
11 and assist in an operation. It would then be that  
12 commander that is commanding them who will be able to know  
13 all those details about all the members that are with him.

14 **MS LE ROUX:** Provincial Commissioner, I am  
15 sure you'll be pleased to know I am on to my final topic of  
16 cross-examination, and this –

17 **GENERAL MBOMBO:** Chairperson, can I  
18 correct something before counsel moves to the next topic?  
19 When we were talking about the training of the POP, I was  
20 asked how frequent this training is done, especially the  
21 refresher course I was talking about. I then said I was  
22 not sure, it could be a month or maybe a quarter, but I was  
23 not sure, and I further said we do it in our province. I  
24 discovered that even the refresher course is done on our  
25 behalf by the trainers from national office. What we do is

1 just provide the figures, or numbers of members who we need  
2 trained in the refresher course.

3 I further said, Mr Chairperson, last year we had better  
4 figures of members who were sent for the training. I said  
5 I was not sure about the exact number, but I said around  
6 hundred. I then verified that information and it is 130  
7 people who were trained, but again they were trained in  
8 refresher course, because I am told that the formal crowd  
9 management course, as far as that is concerned they are  
10 still finalising the enhancement of the curriculum. There  
11 are plans to train a significant number of police officers  
12 as soon as that curriculum is finalised. I wish to  
13 apologise to the Commission for misleading it first, the  
14 first time.

15 **MS LE ROUX:** Provincial Commissioner, let  
16 me record that we obviously appreciate that you have  
17 clarified the position and been able to place the  
18 additional information before the Commission, but I must  
19 ask you who you consulted with. Where did you get this  
20 information during the course of your cross-examination  
21 today that you are able to now provide it to the Commission?

22 **GENERAL MBOMBO:** I got that information  
23 from the documents that I have, but what I really wanted  
24 from Brigadier Pretorius was the numbers, the figures that  
25 I was asked about.

1 **MS LE ROUX:** So you discussed these  
2 questions with Brigadier Pretorius. Did you do that over  
3 the lunch adjournment?

4 **GENERAL MBOMBO:** I asked them for the  
5 numbers of the people who were trained in the Public Order  
6 only.

7 **MS LE ROUX:** Did you discuss anything  
8 else with Brigadier Pretorius about your cross-examination?

9 **GENERAL MBOMBO:** No, I did not discuss  
10 anything else.

11 **MS LE ROUX:** Right, so then let's move on  
12 to my final topic, which your statement deals with – so  
13 LLL1, page 17, paragraphs 50 to 52, these are the  
14 allegations relating to Warrant Officer Myburgh. Do you  
15 have it, Provincial Commissioner? Page 17, paragraph 50 to  
16 52 of your statement.

17 **GENERAL MBOMBO:** Paragraph?

18 **MS LE ROUX:** Commencing at paragraph 50,  
19 top of the page, page 17.

20 **GENERAL MBOMBO:** I see it, Mr Chairperson.

21 **MS LE ROUX:** Now, Provincial  
22 Commissioner, when you had the meeting with Warrant Officer  
23 Myburgh on the 1<sup>st</sup> of October 2012 were you aware at that  
24 time that the account that he gave you was broadly  
25 consistent with the allegations made by some of the

1 strikers who were arrested at scene 2? Did you know that  
2 at that time?

3 **GENERAL MBOMBO:** No, I did not know at  
4 that time, Mr Chairperson.

5 **MS LE ROUX:** And were you aware that some  
6 of the strikers who were arrested had alleged that SAPS  
7 members had shot some of the strikers dead while they were  
8 surrendering? Were you aware of that?

9 **GENERAL MBOMBO:** At that time no, I did  
10 not.

11 **MS LE ROUX:** Now, Provincial  
12 Commissioner, you know that those allegations were widely  
13 reported in the media at the time. Did you not become  
14 aware of them through the media at least?

15 **GENERAL MBOMBO:** I am not sure if I met,  
16 or became aware of that even in the media.

17 **MS LE ROUX:** But are you aware as you sit  
18 here today that allegations have been made that SAPS  
19 members shot strikers while they had surrendered and they  
20 were being arrested? Are you aware of those allegations as  
21 you sit here today?

22 **GENERAL MBOMBO:** I hear about those now.

23 **MS LE ROUX:** But only in the Commission  
24 process, correct?

25 **GENERAL MBOMBO:** That is correct, yes.

1 **MS LE ROUX:** Now we understand from your  
2 statement and from your earlier evidence that with respect  
3 to Warrant Officer Myburgh you referred the matter to IPID  
4 and you hoped that they would take a statement from him,  
5 but were you interested to establish whether anyone else in  
6 the SAPS could corroborate what Warrant Officer Myburgh had  
7 said?

8 **GENERAL MBOMBO:** I did not say IPID  
9 should take a statement. I am the one who sent someone to  
10 take the statement.

11 **MS LE ROUX:** Right, thank you for that  
12 clarification. So you direct him to IPID to take the  
13 statement. Did you make any enquiries from anyone else  
14 within the SAPS to corroborate what Warrant Officer Myburgh  
15 had told you?

16 **GENERAL MBOMBO:** When he told me he came  
17 to me with General Naidoo, or was brought by General Naidoo  
18 and I was with the National Commissioner at that time.

19 **MS LE ROUX:** Right, I understand that,  
20 but once he had made his report to you and you told him to  
21 make a statement to IPID, did you do anything else to  
22 enquire of any other SAPS members whether they could  
23 corroborate what Warrant Officer Myburgh reported to you?

24 **GENERAL MBOMBO:** I personally did not do  
25 that. I regarded that as a duty of IPID to investigate

1 what he was saying.

2 **MS LE ROUX:** But Provincial Commissioner,

3 why did not you make further enquiries? Because I

4 understand you would expect IPID to do its investigation,

5 but by then we knew there was going to be a commission of

6 inquiry and we'd covered this morning, more than 250

7 members of the police that were at Marikana still have not

8 given any sort of statement. So –

9 **MR SEMENYA SC:** Chairperson –

10 **MS LE ROUX:** Why didn't you pursue

11 whether anyone could corroborate what Warrant Officer

12 Myburgh had told you?

13 **MR SEMENYA SC:** Chairperson, we dealt with this

14 subject at length and you even told Mr Mpofu that IPID is

15 an independent institution, the police are not supposed to

16 interfere in that type of investigation. We are going back

17 to the same subject.

18 **MS LE ROUX:** Chairperson, I am not enquiring as

19 to whether the Provincial Commissioner interfered with IPID

20 or pursued anything through the IPID process. I am asking

21 whether she made any other enquiries, knowing there would

22 be a commission of inquiry, to corroborate what Warrant

23 Officer Myburgh had told her.

24 **CHAIRPERSON:** I think, Mr Semanya, it

25 sounds as if the question can be asked, provided it's

1 limited in the way that Adv. Le Roux has now indicated and  
2 it does not involve any suggestion of interference with  
3 IPID, which is the point you made.

4 **MR SEMENYA SC:** Well, I understand the  
5 question to say have you now, you're doing the  
6 investigation, are you talking to other people about  
7 whether there is corroboration. Obviously, when you do that,  
8 if I am IPID I shall get cross. I shall say what are you talking  
9 to my potential witnesses about?

10 **CHAIRPERSON:** Yes, no, well anyway she's  
11 asked the question. Let's see what answer she gets and  
12 depending on the answer, the points may fall away. So  
13 let's – I do not want to stifle this cross-examination on  
14 this point. Carry on with the question.

15 **MS LE ROUX:** Thank you, Chairperson.  
16 Provincial Commissioner, let me restate the question. I  
17 understand that you referred Warrant Officer Myburgh to  
18 IPID and you respect the independence of IPID and its  
19 investigation of that information that it would have  
20 received. My question is whether you have done anything else  
21 to corroborate what Warrant Officer Myburgh told you,  
22 including something like seeing whether any of the other  
23 members who could provide statements to the Commission had  
24 been, were engaged with, with respect to corroborating what  
25 Warrant Officer Myburgh told you?

1 **GENERAL MBOMBO:** Mr Chairperson, when a police  
2 officer has done something or reporting an act that  
3 involved the police, especially if one carefully looks at  
4 Myburgh's statement, we do not go into that matter again.  
5 We hand it over to IPID.

6 **MS LE ROUX:** And Provincial Commissioner,  
7 where you knew there would be a commission of inquiry and  
8 what Warrant Officer Myburgh had told you would clearly be  
9 important to the Commission's work, did you make any  
10 efforts internally to see if anyone could corroborate what  
11 Warrant Officer Myburgh had told you for the Commission?

12 **[15:00] GENERAL MBOMBO:** I did not do that  
13 because I knew the Commission had discovered Myburgh's  
14 statement.

15 **MS LE ROUX:** Let me move on. Provincial  
16 Commissioner, at the end of paragraph 51 in your statement  
17 Myburgh told you that in September he had referred the matter  
18 to "a white man working at the Air Wing." Do you know who  
19 that white man working at the Air Wing was?

20 **GENERAL MBOMBO:** At the moment I think he  
21 had told Colonel Vermaak about it because we asked him if  
22 he can point out this white man.

23 **MS LE ROUX:** You asked him when you met  
24 with him on the 1<sup>st</sup> of October if he could point out the  
25 white man?

1 **GENERAL MBOMBO:** That is so, yes.

2 **MS LE ROUX:** And did he then point out

3 Colonel Vermaak?

4 **GENERAL MBOMBO:** He described him, did

5 not point him out, but he described him.

6 **MS LE ROUX:** Have you spoken to Colonel

7 Vermaak about what Warrant Officer Myburgh told you?

8 **GENERAL MBOMBO:** General Naidoo spoke to

9 Colonel Vermaak and asked him about those details and

10 discovered that even Myburgh was brought by Vermaak to

11 General Naidoo.

12 **MS LE ROUX:** Right, but Provincial

13 Commissioner, my question was have you discussed with

14 Colonel Vermaak what Warrant Officer Myburgh told you?

15 **GENERAL MBOMBO:** Not me personally, but

16 General Naidoo.

17 **MS LE ROUX:** Thank you. Now you will agree

18 with me that assuming what Warrant Officer Myburgh reported

19 to you, that it was a very brave thing for him to come and

20 tell you that he had seen a SAPS member shooting a

21 protester? You will agree with me that it will be a brave

22 thing for Warrant Officer Myburgh to have done?

23 **MR SEMENYA SC:** I think an inference can

24 be drawn that the person was shot, but Warrant Officer

25 Myburgh is not saying "I saw a policeman shoot a striker."

1 **CHAIRPERSON:** Well, I do not think the  
2 question is in any way wrong. The witness is being asked  
3 for her opinion as to Myburgh's conduct in doing what he  
4 did. There are a number of inferences which can actually  
5 be drawn, but I shall allow the question, but you heard the  
6 question? Would you agree with counsel it was a brave  
7 thing for Warrant Officer Myburgh to come forward with the  
8 allegation that he made? Do you agree with that, or do not  
9 you agree?

10 **GENERAL MBOMBO:** Mr Chairperson, it is not easy  
11 for me to say whether it is brave or not because I take it,  
12 it was the duty of the police officers to tell us  
13 everything that happened there and we have been trying for  
14 some time to get information as to what had happened there.

15 **MS LE ROUX:** Provincial Commissioner, as  
16 we understand what Warrant Officer Myburgh did, he was  
17 acting in the role of what we know as a whistle-blower. Are  
18 you familiar with the term whistle-blower?

19 **GENERAL MBOMBO:** That is correct, Mr  
20 Chairperson.

21 **MS LE ROUX:** And I am correct that SAPS  
22 has no whistle-blower policy, am I not?

23 **GENERAL MBOMBO:** We use a public service  
24 policy.

25 **MR SEMENYA SC:** Chairperson, I must confess my

1 confusion. A police officer who witnesses a crime cannot be  
2 a whistle-blower. Maybe I shall have a look at the statute.

3 **COMMISSIONER HEMRAJ:** Isn't he under a  
4 legal duty, Mr Semenya, to report any such act?

5 **CHAIRPERSON:** Anyway, I could understand  
6 if a junior police officer sees a general doing something  
7 wrong and reports that, you argue he has duties and so  
8 on, but nevertheless he might be subject to all kind of de  
9 facto sanctions for blowing the whistle, as it were, on the  
10 general, but where he is making a report about another  
11 member who may even be his junior I think, I do not  
12 understand the scope for it being suggested that he's a  
13 whistle-blower, but in any event, you've referred us to the  
14 Protected Disclosures Act. Would that not bind the police?  
15 It is LLL16. It talks about employers and employees. "An  
16 employee means any person, excluding an independent  
17 contractor, who works for another person or for the State,"  
18 so prima facie it would cover a member of the police  
19 service and the definition of the employer doesn't exclude  
20 the State.

21 **MS LE ROUX:** Yes, and Chairperson, then the  
22 definition of disclosure, which is why we consider Warrant  
23 Officer Myburgh to be a whistle-blower, is that it means,  
24 "The disclosure of any information regarding any conduct of  
25 an employer or an employee of that employer, made by any

1 employee who has reason to believe that the information  
2 concerned shows or tends to show one or more of the  
3 following," and one of those is that "Criminal offences  
4 being committed, has been committed, is being committed, or  
5 is likely to be committed; (b), that the person has failed,  
6 is failing, or is likely to fail to comply with any legal  
7 obligation to which that person is subject; that a  
8 miscarriage of justice has occurred, is occurring, or is  
9 likely to occur; that the health or safety of an individual  
10 has been, is being, or is likely to be endangered, or any  
11 other matter that has been, is being, or is likely to be  
12 deliberately concealed."

13 So taking Warrant Officer Myburgh's account of  
14 him seeing another SAPS member on his version as set out in  
15 your statement, that he sees an injured - he passes an  
16 injured striker leaning against a rock. One he passed him  
17 he heard a gunshot behind him. When he turned to look he  
18 saw an NIU member put his firearm in the holster, asked the  
19 member what he was doing and the member answered to the  
20 effect that "These people deserve to die."

21 The Human Rights Commission submits that that  
22 would qualify as the type of disclosure covered by the  
23 Protected Disclosures Act and therefore that it is a  
24 whistle-blowing incident –

25 **CHAIRPERSON:** Yes, but if you –

1 **MS LE ROUX:** But of course, I do not need  
2 to convince the Provincial Commissioner of that fact or  
3 version –

4 **CHAIRPERSON:** Is it suggested that the  
5 warrant officer suffered any occupational detriment in  
6 consequence of this disclosure? You see, the whistle-  
7 blowing act says if you blow the whistle, in other words  
8 you make a disclosure and it's a protected disclosure, and  
9 your employer then subjects you to an occupational  
10 detriment, then there's, consequences follow. There are  
11 remedies available to the employee who is being subjected to  
12 the occupational detriment, which are set out in section 4  
13 of the act. Now –

14 **MS LE ROUX:** Chairperson, if I am permitted to  
15 continue with my cross-examination, we are going to get to  
16 the statement of another member which –

17 **CHAIRPERSON:** Yes, I know. I am –

18 **MS LE ROUX:** - the Human Rights  
19 Commission submits that it appears as if what is happening  
20 with respect to that other member potentially when it's  
21 addressed to Warrant Officer Myburgh amounts to precisely  
22 this type of harassment, intimidation, or other adverse  
23 treatment that whistle-blowers should be protected from.

24 **CHAIRPERSON:** Well, you can carry on with  
25 the line of questioning, but you must answer my question

1 though at some stage. If in fact, it is not suggested that  
2 there's occupational detriment suffered by Myburgh, then I  
3 do not see that there is a problem under the act. You will  
4 notice the statement of Warrant Officer Swartz, according  
5 to paragraph 13 thereof was provided to the evidence  
6 leaders at their request. But anyway, carry on with the  
7 questioning in the meanwhile. I do not want to stifle the  
8 point because I am not quite sure what it is, but I have  
9 indicated to you that I have certain problems which I would be  
10 grateful if they were explained to me in due course. But  
11 carry on for the time being.

12 **COMMISSIONER HEMRAJ:** Before we go there,  
13 can we have some assistance with that part of the Police  
14 Act which refers to the obligation of a police officer to report  
15 any criminal act, Mr Semenya? I think that makes it clear  
16 beyond any doubt what he is obliged to do legally.

17 **MR SEMENYA SC:** We will get to it.

18 **COMMISSIONER HEMRAJ:** You're shaking your  
19 head, Mr Budlender. Do you have something –

20 **MR BUDLENDER SC:** Well, Chairperson, a person  
21 who is under an obligation to make a disclosure may  
22 nevertheless be a whistle-blower, whether or not persecuted  
23 for it, and if persecuted is entitled to protection, but  
24 the fact that somebody is under an obligation to make a  
25 disclosure doesn't mean that that person may not also be a

1 person who falls under the Protected Disclosures Act. So  
2 the Protected Disclosures Act deals with people who  
3 disclose information, as Ms Le Roux has described, and what  
4 this act does is protect them from any harassment, and it  
5 may be that they're wrong in what they did – there's a  
6 whole series of things dealt with in the Protected  
7 Disclosures Act, but with great respect, I can't see that  
8 the fact that you're under a duty to disclose something  
9 excludes you from the protection which you're given by the  
10 Protected Disclosures Act.

11 **CHAIRPERSON:** That seems to be right, but  
12 my problem was I do not know whether Warrant Officer Myburgh  
13 is being subjected to an occupational detriment, but that's  
14 a matter which –

15 **MR BUDLENDER SC:** Chairperson, with respect,  
16 that also, with great respect, is not yet the question.  
17 The first question is whether the disclosure was a  
18 protected disclosure.

19 **CHAIRPERSON:** Yes.

20 **MR BUDLENDER SC:** If it was then he was  
21 entitled to the protection under the Protected Disclosures  
22 Act. Second question, did he receive the protection to  
23 which he was entitled –

24 **CHAIRPERSON:** Well, did he –

25 **MR BUDLENDER SC:** But you're a

1 whistle-blower whether or not you are prejudiced. You're a  
2 whistle-blower by making a protected disclosure.

3 **CHAIRPERSON:** There are a number of  
4 questions. The first one, was he a whistle-blower.

5 **MR BUDLENDER SC:** Yes.

6 **CHAIRPERSON:** In other words did the act  
7 apply to the disclosure that he made. Right, the second  
8 question is was he – clearly if he was, if he is a  
9 whistle-blower covered by the act, he's entitled to the  
10 protection which the act affords and it applies clearly to  
11 the police service as well, even though they may – we are  
12 told they do not have a policy, but it applies to employees  
13 in the private and the public sector. So the presumption  
14 that the act doesn't apply to the State is rebutted by  
15 that.

16 The next question is, once you accept he's a  
17 whistle-blower he has entitled to protection. The next  
18 question is, does he need the protection in the sense that  
19 has he been exposed to any occupational detriment? That's  
20 the question we're going to get to in due course, but Ms Le  
21 Roux is going to carry on for the time being and eventually  
22 all these matters will be clear to us.

23 **MS LE ROUX:** Thanks, Chairperson, and I am  
24 indebted to my learned friend for his intervention.  
25 Provincial Commissioner, have you provided any particular

1 support to Warrant Officer Myburgh to prevent him being  
2 intimidated or harassed in any way? Have you, are you  
3 aware of any steps taken to protect Warrant Officer  
4 Myburgh?

5 **GENERAL MBOMBO:** After he had reported  
6 this we found out through the commander, his commander,  
7 that he has a tendency of not being at work. We then sent  
8 our psychologist. Captain Boshoff, who is our  
9 psychologist, was working with him. After his resignation  
10 the file was taken over by Colonel Mills and his commander  
11 also tried to assist where he could. He even removed him  
12 from the duties that he was doing in order to assist him.

13 **MS LE ROUX:** And Provincial Commissioner,  
14 in light of that answer are you aware of any steps that  
15 have been taken to monitor Warrant Officer Myburgh until  
16 today? I understand the interventions you have described.  
17 Has anything further been done to monitor or protect  
18 Warrant Officer Myburgh?

19 **GENERAL MBOMBO:** From what I know, yes,  
20 they are still working with him. But remember, Mr Chairperson,  
21 it is still his responsibility to report to his commander  
22 if he does not feel happy or he feels harassed in any way.

23 **MS LE ROUX:** Provincial Commissioner, I  
24 now want to move on to the topic of the statements that  
25 have been provided by Warrant Officer Swartz to the extent

1 they relate to what Warrant Officer Myburgh has reported to  
2 you. So if we can start in LLL14, which is the new  
3 statement by Warrant Officer Swartz, and in particular if  
4 we look at paragraphs 30 to 36, commencing on page 6, and  
5 then 39 to 43, do you have that, Provincial Commissioner?

6 **GENERAL MBOMBO:** Not yet. LLL?

7 **MS LE ROUX:** LLL14, which is the new  
8 statement submitted by Warrant Officer Swartz –

9 **GENERAL MBOMBO:** I have it.

10 **MS LE ROUX:** - and commencing on page 6  
11 of that document, paragraph 30, if we just read through  
12 briefly, 30, "The police member with the K9 badge told me  
13 there is another striker in the bushy area at hill 3 and  
14 that he shot him. He further on told me he thought that  
15 the striker was dead. I asked him where the man that he  
16 shot is and he showed me in the direction of the big rocks  
17 and the bushy area of hill 3. When the paramedics and  
18 other personnel come to me I told them they must go and  
19 look for the other striker that was shot by the unknown K9  
20 member. The paramedic that came to me was from the mine  
21 medics. After a short while, they brought a wounded man  
22 that was shot in his pelvic. They applied first aid. They  
23 searched the man, could not find any other weapons. After  
24 a short time had lapsed Captain Kidd came to me from the  
25 left-hand side and I told him what had happened and I

1 specifically told him what the sergeant of K9 had told me.  
2 He made some notes thereof and walked away.”  
3 And then he leaves the scene, then goes to the  
4 JOC on the 18<sup>th</sup> and 19<sup>th</sup> of August and then from paragraph  
5 39 he states, “While we were waiting for the lawyers to  
6 take our warning statements some of us were smoking and  
7 chatting with other police members. I saw the sergeant of  
8 K9 and immediately recognised him as the man who told me  
9 he would shot the striker. I made a joke and told him that he  
10 said he killed one of the strikers, but it seemed to me  
11 that he cannot shoot very well. The sergeant of K9, who was  
12 unknown to me, only grinned and walked away.  
13 Later the year we were called up to Siesta Impala  
14 Mine to consult with the legal team of SAPS in Rustenburg.  
15 I was asked by Captain Aucamp if I knew who Sergeant  
16 Myburgh is. I told him that I do not know him. He then  
17 showed us a photo of where we were on the 16<sup>th</sup> of August  
18 2012 and we had to point out where we were standing on that  
19 day. I was sitting with Constable Mabe and Constable  
20 Sebayane and other members. I asked them whether they knew  
21 Sergeant Myburgh. They then showed me who he is and then I  
22 immediately recognised him as the sergeant of K9 who was  
23 talking to me at the scene and told me that he had killed  
24 somebody inside the bushy area of hill 3. I remember  
25 very well that I went to the scene with the police expert,

1 Mr De Rover, at scene 2 and I was present when Warrant  
2 Officer Breedt of K9 showed Mr De Rover where he saw  
3 Sergeant Myburgh turned into the rocks at scene 2.”  
4 So Provincial Commissioner, what this new by  
5 Warrant Officer Swartz says is that Myburgh admitted to him  
6 that Myburgh had shot the person at scene 2, and laughed  
7 about it. Now of course that is a very serious allegation.

8 Can I ask you to turn though to LLL13, which is  
9 the initial statement that we received in the Commission  
10 from Warrant Officer Swartz. This is the manuscript  
11 statement. Now Chairperson, it runs to four pages, but  
12 Provincial Commissioner, nowhere in the initially statement  
13 does Warrant Officer Swartz say anything at all about the  
14 allegations he makes against Warrant Officer Myburgh.

15 There is simply no reference to anything even like that.

16 I then need you to turn to exhibit LLL15, which  
17 is the pocketbook completed by Warrant Officer Swartz, and  
18 if we turn to the page marked 68 –

19 **CHAIRPERSON:** There is a passage there  
20 that has been highlighted so completely that we cannot read  
21 it. Do you know what the highlighted words are?

22 [15:20] **MS LE ROUX:** In the pocketbook, Chairperson,  
23 no, we do not know. That is how we received it.

24 **CHAIRPERSON:** The trouble is if you  
25 photostat a document that's been highlighted sometimes the

1 highlighted portions do not come out. I wonder whether that  
2 can be looked into – it is time to take the tea adjournment  
3 and I know there are people who have problems with sitting  
4 for a long time and suffer discomfort if we go on sitting  
5 for too long. So we'll take the tea adjournment now and I  
6 hope that attempts can be made to obtain the original of  
7 the diary because I – I mean the pocketbook, because  
8 presumably the highlighted words will then be visible, or  
9 readable on the original. But we will take the tea  
10 adjournment now.

11 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

12 **[15:40] CHAIRPERSON:** The Commission resumes.

13 Provincial Commissioner, you are still under oath.

14 **MIRRIAM NOSAZISO ZUKISWA MBOMBO:** s.u.o.

15 **MR BUDLENDER SC:** Chairperson, may I just  
16 clarify, during the adjournment I just checked up what the  
17 history is of these statements that were made. What  
18 happened is the following – excuse me, I am out of breath,  
19 I have run from the other end. Our investigators, in fact Mr  
20 Van Tonder interviewed a number of police members who were  
21 at scene 2. One of those he interviewed was Mr Swartz –

22 **CHAIRPERSON:** Warrant Officer Swartz.

23 **MR BUDLENDER SC:** Warrant Officer Swartz.

24 During the course of that interview Warrant Officer Swartz

25 said that Warrant Officer Myburgh had come out and said

1 "I have just shot somebody." What we then did was, he  
2 reported that to us and we reported that to the SAPS legal  
3 team and we asked them to arrange for a statement to be  
4 taken from Warrant Officer Swartz, and the statement, the  
5 typed statement of Warrant Officer Swartz which you have is  
6 the consequence of that enquiry which we initiated. Thank  
7 you, Chairperson.

8 **CHAIRPERSON:** Now the question, the other  
9 question I want to know is, do we know what the words are  
10 that were highlighted which we can't read on the photostat?

11 **MR BUDLENDER SC:** Mr Pretorius informs me  
12 that they have requested Brigadier Pretorius to make the  
13 original available and we are waiting for that.

14 **CHAIRPERSON:** It does not appear to be  
15 blocked out. My understanding is over many years battling  
16 with these things, that people highlight documents,  
17 highlight things on documents and then photostat the  
18 document, the highlighted section cannot be read. But it  
19 doesn't mean that you can't read it if you have the  
20 original because it will be highlighted on the original.

21 So that problem is in the process of being solved. Where  
22 is Brigadier Pretorius? Is she –

23 **MR SEMENYA SC:** She is at our JOC. There  
24 are whole hundreds of pocketbooks that are in a box, so we  
25 will attempt to get the box to – if we cannot find it

1 legible, then we will probably go to Swartz for him to help  
2 us reconstruct the document.

3 **CHAIRPERSON:** Alright. Well, I do not  
4 know whether Ms Le Roux needs the highlighted illegible  
5 section for purposes of her cross-examination.

6 **MS LE ROUX:** Fortunately not, Chairperson.

7 **CHAIRPERSON:** Now I understand, Adv.  
8 Hemraj tells me that these pocketbooks were put onto – was  
9 this the police hard drive? - were somehow put onto some  
10 hard drive and if this was done before the highlighting was  
11 done then we will be able to retrieve it from the hard  
12 drive. But anyway, that's a matter which apparently  
13 does not concern Ms Le Roux. She has other fish to fry at  
14 this stage, so we will leave it to her to do what she wants  
15 to do.

16 **CROSS-EXAMINATION BY MS LE ROUX (CONTD.):**

17 Thank you, Chairperson. Provincial Commissioner, in LLL15, this  
18 is the pocketbook of Warrant Officer Swartz, and this  
19 pocketbook does not have any mention of a member identified  
20 as being part of K9 and there's no mention that this  
21 sergeant from K9 said to him that he had shot a man and  
22 thought that the man was dead. All that we see in the  
23 pocketbook that seems to come close to dealing with these  
24 issues appears at page 68 through page 69 where Warrant  
25 Officer Swartz refers to "seeing a sergeant emerge from the

1 rocks and noting that the sergeant said there was a wounded  
2 man in the rocks." So just to recap where we are, because  
3 I know we have had the adjournment in between, is the latest  
4 statement by Warrant Officer Swartz has the full detail, or  
5 fuller detail, and he says that it's Warrant Officer  
6 Myburgh who he identifies as doing, alleged to have done  
7 the shooting. Initial statement of Warrant Officer Swartz,  
8 there's no mention of any of this at all, and then we have  
9 this pocketbook where there seems to be some important  
10 aspects missing from the account, would be the way I would  
11 describe it. So he doesn't mention anything about the  
12 sergeant reporting that he had shot the man or thought that  
13 the man was dead.

14 Now, of course there are two possibilities here,  
15 and the Human Rights Commission cannot establish which of  
16 these is true, but you'll agree with me that there are at  
17 least two possibilities here. So the one possibility is  
18 that Warrant Officer Swartz's account in his second  
19 statement is true and he failed to give a full and truthful  
20 account in his first statement, because he omitted it  
21 completely, and then a deficient account in his pocketbook.  
22 So you will accept that that is one possibility as to what  
23 could have happened here, that Warrant Officer Swartz  
24 merely failed to put it into his first statement or record  
25 it with all its material details in his pocketbook? You

1 accept that is one possibility?

2 **GENERAL MBOMBO:** I hear you, Chairperson,

3 as you are putting it.

4 **MS LE ROUX:** And Provincial Commissioner,

5 would you agree with me that if that were true, if it's

6 true that Warrant Officer Swartz simply failed to put this

7 into his first statement at all and only recorded the

8 deficient account in his pocketbook, so it is only 16 months

9 later that we get a full account of what he claims he knows

10 about what happened, that would be very serious? You

11 accept that?

12 **GENERAL MBOMBO:** I think so, Chairperson.

13 **MS LE ROUX:** So you would be concerned

14 that a member was aware of wrongdoing at Marikana but for

15 16 months didn't bring it to anyone's attention, didn't

16 disclose it? You would agree that that is very concerning?

17 **GENERAL MBOMBO:** It is correct, yes.

18 **MS LE ROUX:** But Provincial Commissioner,

19 of course there's another possibility here, which is that

20 what Warrant Officer Swartz says in his second statement is

21 not true. Would you accept that possibility?

22 **GENERAL MBOMBO:** I would not know,

23 Chairperson.

24 **MS LE ROUX:** I understand you do not know

25 whether the second statement is true or not. I am merely

1 asking you whether you would accept that there's a  
2 possibility that what Warrant Officer Swartz says in his  
3 second statement is not true.

4 **GENERAL MBOMBO:** It could happen. It  
5 could be so.

6 **MS LE ROUX:** So given that the  
7 allegations made in the second statement come more than 16  
8 months after what he saw, and given that it is inconsistent  
9 in material respects with the statements and the  
10 pocketbooks that are more contemporaneous, and given that  
11 what he says in the second statement are allegations that  
12 are made against the only individual who is a member of the  
13 SAPS who has given evidence about unlawful acts by SAPS at  
14 Marikana, do you accept the possibility that this second  
15 statement by Warrant Officer Swartz could amount to  
16 precisely the type of harassment, intimidation or other  
17 adverse treatment that the Protected Disclosures Act –

18 **MR SEMENYA SC:** No, no, no, no –

19 **CHAIRPERSON:** No, I am sorry, Ms Le Roux –

20 **MS LE ROUX:** - is designed to protect  
21 whistle-blowers –

22 **CHAIRPERSON:** I do not understand the  
23 basis on which this question can be asked. What you are  
24 asking really is the witness's opinion as to whether  
25 certain hypothetical facts constitute occupational

1 detriment under the act. Now I have ruled over and over  
2 again in this Commission that whoever asks the question, I  
3 do not allow it. If you ask a question of a witness to draw  
4 an inference which this Commission is in a position to draw  
5 equally as the witness is, I do not allow the question. If  
6 you ask the witness for the witness's opinion as to the  
7 law, I disallow the question. Now that is what is happening  
8 here.

9 **MS LE ROUX:** Chairperson, let me –

10 **CHAIRPERSON:** I understand you can –

11 **MS LE ROUX:** Let me then ask the

12 question –

13 **CHAIRPERSON:** I understand you can argue

14 points later, if necessary, but I do not think I should

15 allow you to ask the witness for her views, because we

16 will not be bound by her views anyway. They may be right,

17 they may be wrong, but we are obliged, I think, to form our

18 own opinion on this matter. So anyway –

19 **MS LE ROUX:** Chairperson, let me rephrase the

20 question then –

21 **CHAIRPERSON:** Yes, maybe –

22 **MS LE ROUX:** - not asking the Provincial

23 Commissioner as to whether she believes this falls foul of

24 the Protected Disclosures Act or not. But Provincial

25 Commissioner, do you accept the possibility that Warrant

1 Officer Swartz's second statement which names Warrant  
2 Officer Myburgh as the very member who shoots and kills one  
3 of the strikers, do you accept the possibility that Warrant  
4 Officer Swartz may be saying that about Warrant Officer  
5 Myburgh because Warrant Officer Myburgh is the only SAPS  
6 member who is alleged anything unlawful? Do you accept that  
7 possibility exists?

8 **GENERAL MBOMBO:** I am not sure,  
9 Chairperson, whether Warrant Officer Swartz was aware of  
10 Warrant Officer Myburgh's disclosure, and that for me makes  
11 it difficult to believe what you are putting to me.

12 **MS LE ROUX:** Provincial Commissioner,  
13 you have met Warrant Officer Myburgh, but have you met  
14 Warrant Officer Swartz?

15 **GENERAL MBOMBO:** No, I do not even know  
16 him.

17 **MS LE ROUX:** When you met Warrant Officer  
18 Myburgh and you had the interaction where he reported to  
19 you what he saw, did you believe him to be telling you the  
20 truth?

21 **GENERAL MBOMBO:** What was important for  
22 me, Chairperson, was that I should accept what he was  
23 telling me at the time as being the truth.

24 **CHAIRPERSON:** I was not going to allow you  
25 actually to ask the question whether she believed it, but

1 she gave the answer which would have been an answer to the  
2 question if you had phrased it correctly, that she took it  
3 sufficiently seriously to attach importance to it.

4 Alright, you can carry on.

5 **MS LE ROUX:** Chairperson, I could carry on, but

6 I have no further questions for the Provincial

7 Commissioner. Thank you very much, Provincial

8 Commissioner.

9 **GENERAL MBOMBO:** Thank you, Counsel.

10 **CHAIRPERSON:** Alright, Mr Semenya, it's

11 now 7 minutes to 4. I take it you would like to – I mean

12 you can start your re-examination now if you wish, but if

13 you want me to postpone until 9 o'clock on Thursday so

14 maybe you can collect your thoughts, I will do so, but I am

15 in your hands.

16 **MR SEMENYA SC:** My untrained background

17 tells me that the Provincial Commissioner must be fatigued

18 now. She did intimate at one point that she is really

19 tired.

20 **CHAIRPERSON:** No, I understand. I can

21 understand her being tired and I sympathise with her

22 entirely, but I would have thought that your questions are

23 likely to cause her less distress than perhaps questions

24 asked in cross-examination. But you will be in a better

25 position than I to judge about that. But we will adjourn

1 until Thursday at 9 o'clock.

2 **MR SEMENYA SC:** I shall be indebted, Chairperson.

3 **[COMMISSION ADJOURNED]**

