

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 30      18 DECEMBER 2012      PAGES 3166 TO 3283

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 3166</p> <p>1 [PROCEEDINGS ON 18 DECEMBER 2012]  2 [10:01] CHAIRPERSON: The Commission resumes.  3 Brigadier, you're still under oath. Mr Budlender, you're  4 still cross-examining?  5 MR BUDLENDER SC: Brigadier, good  6 morning.  7 BRIG MKHWANAZI: Morning.  8 MR BUDLENDER SC: I'd like to hand up two  9 further documents straightaway, which I'm going to, to  10 which I'm going to refer you in the course of your further  11 evidence. The first is a document headed "The briefing  12 minutes, Wednesday 15 August 2012 at 06:00, Marikana at  13 JOC."  14 CHAIRPERSON: Ms Pillay?  15 MS PILLAY: Chair, it will be TT3.  16 CHAIRPERSON: TT?  17 MS PILLAY: 3.  18 CHAIRPERSON: Thank you very much.  19 MR BUDLENDER SC: And at the same time,  20 Chair, the minutes of the meeting at 6 o'clock on the  21 following day, the 16th of August.  22 MS PILLAY: Which will be TT4.  23 MR BUDLENDER SC: TT3, Chairperson, is  24 the minutes of the JOC meeting on 15 August 2012 at 06:00,  25 and it is the minutes of the JOC meeting on Thursday, the</p>	<p style="text-align: right;">Page 3168</p> <p>1 look at the foot of the first page of TT3 you'll see it  2 says just above the subheading "Forward holding area 2," it  3 says "Group will be situated at the cross road at the BMR  4 Smelters." You see that?  5 BRIG MKHWANAZI: Yes, I see that.  6 MR BUDLENDER SC: That's where forward  7 holding area 1 was?  8 BRIG MKHWANAZI: I see that.  9 MR BUDLENDER SC: And then on the next  10 page we see where forward holding area 2 was, where it  11 says, "Group will be situated to eastern side of BMR  12 Smelters, about two kilometres away from forward holding  13 area 1." You see that?  14 BRIG MKHWANAZI: I see that.  15 MR BUDLENDER SC: And I think there has  16 already been evidence that they were about one and a half  17 kilometres away from what we call koppie 1.  18 BRIG MKHWANAZI: Information I got inside  19 here, yes.  20 MR BUDLENDER SC: Right, now will you  21 stay with TT4, that's the minute of the 16th of August, and  22 will you go to the foot of page 1 and you'll see one  23 paragraph above the foot of page 1 says the following, I'll  24 read it, "If the situation escalates stage 3 will be  25 implemented, but proper communication will be done with all</p>
<p style="text-align: right;">Page 3167</p> <p>1 16th of August, again at 06:00. Brigadier, if you could  2 have a look at – there are copies to be distributed to the  3 parties. Has that been done?  4 CHAIRPERSON: - got the copies yet. I  5 see they're eagerly awaiting them.  6 MR BUDLENDER SC: I think perhaps Mr  7 Semanya needs a copy first. He doesn't have a copy in  8 front of him. May I proceed, Chair?  9 CHAIRPERSON: Some of the counsel and  10 attorneys in the back row still haven't got exhibits yet.  11 The representative of the Human Rights Commission, who has  12 indicated an interest in this part of the case, will  13 obviously want a copy.  14 MR BUDLENDER SC: Now Brigadier, TT3, as  15 you'll see, is a document which is the briefing minutes of  16 the Marikana JOC held at 06:00 on Wednesday, 15 August  17 2012.  18 BRIG MKHWANAZI: I see that, Sir.  19 MR BUDLENDER SC: You referred in your  20 evidence last week to the fact that reserve members of the  21 POP were situated at the two forward holding areas. You  22 remember that?  23 BRIG MKHWANAZI: I remember that.  24 MR BUDLENDER SC: I want to refer to TT3  25 just to identify where those holding areas were. If you</p>	<p style="text-align: right;">Page 3169</p> <p>1 commanders when that decision is taken." You see that?  2 BRIG MKHWANAZI: Yes.  3 MR BUDLENDER SC: Now stage 3 was the  4 deployment of the barbed wire.  5 BRIG MKHWANAZI: That's what I was  6 briefed with, that it will be deployed, yes.  7 MR BUDLENDER SC: So the plan was that  8 the barbed wire will be deployed if the situation  9 escalates.  10 BRIG MKHWANAZI: I'm not sure as I got  11 the information before was that barbed wire will be  12 deployed for the purpose of the protection of media, as  13 well as the members.  14 MR BUDLENDER SC: Yes, I understand that,  15 but if you read that sentence, you'll see it says, "If the  16 situation escalates, stage 3 will be implemented." That  17 means if the situation escalates, the barbed wire will be  18 rolled out.  19 BRIG MKHWANAZI: I will not say yes into  20 the paragraph as it states, but I will state what I was  21 informed. What I was informed is two things, for the  22 purpose of media, as well as the protection of members and  23 some other people as well, obvious it will be deployed  24 because the situation maybe is starting to be differently,  25 but that will be my opinion.</p>

<p style="text-align: right;">Page 3170</p> <p>1 COMMISSIONER HEMRAJ: I'm so sorry, I 2 missed the question. I'm so sorry about that. 3 MR BUDLENDER SC: Let me ask it again 4 another way, if I may, Ms Hemraj. Brigadier, we know that 5 the implementation of stage 3 is the rollout of the barbed 6 wire. Is that correct? 7 BRIG MKHWANAZI: Even though I don't 8 remember in a mission as to say deploy barbed wire, it 9 talks about disperse, as I submit, disperse, encircle and 10 arrest. That is stage 3. However, the barbed wire is 11 deployed at that moment with the purpose of protecting 12 media as well as other people who are around and police 13 officials. That's what I'm informed. 14 CHAIRPERSON: It's clear that the 15 deployment of the barbed wire was part of stage 3. If you 16 look at slide 177 in exhibit L you'll see that phase 1 of 17 stage 3 was described as follows, "Enclose the neutral area 18 with barbed wire to prevent armed protesters from advancing 19 on to the SAPS and others," the others it appears in 20 something else later are the media people, amongst others, 21 "as well as to assist with the direction in which the 22 dispersion would take place, namely westwards." So that is 23 correct, is it not, that the first phase of stage 3 was the 24 deployment of barbed wire? 25 BRIG MKHWANAZI: I agree with the</p>	<p style="text-align: right;">Page 3172</p> <p>1 information you'd been given, how did the situation 2 escalate before stage 3 was implemented? 3 BRIG MKHWANAZI: Information given to me 4 is that the barbed wire was deployed after they realised 5 that the situation was changing and they pick up, or they 6 saw the media people coming at the back of the, moving out 7 as well and they start realising something is happening, 8 and they deployed barbed wire at that stage. 9 CHAIRPERSON: But you haven't answered 10 the question. The question was that according to your 11 information the situation escalated and it was therefore, 12 as I understood it, decided to deploy the barbed wire. Now 13 you've said that the media people were coming, situation 14 escalated, decision was taken, but the question was, in 15 what way can it be said that the situation had escalated? 16 Is that correct, Mr Budlender? 17 MR BUDLENDER SC: Yes, I thank you, 18 Chair. 19 BRIG MKHWANAZI: Yes, I will have a 20 problem, Senior Counsellor, to be in a position to indicate 21 clearly how the situation changes and became more 22 differently from where it was, but that's only part of the 23 information I'm getting. I don't have more information 24 into that, but I have this information that there was a 25 change, then they deployed the barbed wire.</p>
<p style="text-align: right;">Page 3171</p> <p>1 chairperson that in stage 1 it's where it's clearly 2 indicating that the barbed wire must be deployed – 3 CHAIRPERSON: Phase 1. Phase 1 of stage 4 3. 5 BRIG MKHWANAZI: Phase 1 – oh yeah, okay, 6 there on top, okay, enclosing. Ja, phase 1 of stage 3, I 7 agree on that. The only thing I had a problem is when we 8 refer to the escalation, that's a part I was not clear with 9 it, but so far phase 1 states clearly that barbed wire has 10 to be deployed, then goes to phase 3, then where the action 11 has to be taken. 12 MR BUDLENDER SC: So we're on the same 13 page then, if I can put it that way, that we agree that 14 phase 1, the first phase of stage 3 is deploying the barbed 15 wire? 16 BRIG MKHWANAZI: I do agree. 17 MR BUDLENDER SC: Now if we come back to 18 the minutes of the 16th of August, which we were looking at 19 a moment ago, then we now know that where it says if the 20 situation escalates stage 3 will be implemented, that means 21 if the situation escalates, stage 3 will be implemented and 22 the first phase will be rolling out the barbed wire. 23 BRIG MKHWANAZI: That's correct, as it 24 states. 25 MR BUDLENDER SC: Now according to the</p>	<p style="text-align: right;">Page 3173</p> <p>1 MR BUDLENDER SC: Now I want to put it to 2 you, Brigadier, that the real escalation took place when – 3 or rather let me put it differently. The real escalation 4 took place after the barbed wire was rolled out, not before 5 the barbed wire was rolled out. 6 BRIG MKHWANAZI: I will definitely say I 7 hear from your side, Counsellor, but this is the 8 information that was given to me. 9 MR BUDLENDER SC: And we agreed last week 10 when we spoke on Friday that it was in fact the deployment 11 of the barbed wire that was the trigger that led to all of 12 the violence. You remember that? 13 BRIG MKHWANAZI: If I remember properly, 14 Counsellor, my answer was when the barbed wire was 15 deployed, the participants breached the barbed wire. 16 That's where everything went wrong because that's a 17 position where they fail even to give the warnings and all 18 that. That was my answer around that position. 19 MR BUDLENDER SC: I don't want to retrace 20 what we discussed on Friday, but we'll refer to that in due 21 course. Let me then take you to page 3 of TT4. Do you see 22 paragraph 3.3.2, Legal Services? 23 BRIG MKHWANAZI: I see that. 24 MR BUDLENDER SC: What it says is, "Adv 25 Moolman confirmed that an application to cordon and search</p>

<p style="text-align: right;">Page 3174</p> <p>1 the mine hostels was prepared for consideration by the 2 provincial commissioner." You see that? 3 BRIG MKHWANAZI: I see that. 4 MR BUDLENDER SC: So we know that that 5 morning, by that morning an application had already been 6 prepared for the provincial commissioner for permission to 7 cordon and search the mine hostels. 8 BRIG MKHWANAZI: I see that. The only 9 part that it doesn't indicate when it was going to be 10 executed. 11 MR BUDLENDER SC: Exactly. Exactly. If 12 that had been executed, that would have been a lower risk, 13 you agreed last week, that would've been a lower risk 14 operation than confronting 3 500 people on the koppie. 15 [10:21] BRIG MKHWANAZI: I remember properly, 16 Counsellor, my answer was when you indicate that a few 17 number of people left during the course of the night, it 18 was going to be easy to cordon and maybe disarm them which 19 was going to assist as well. My point was I do agree with 20 you on that point. 21 MR BUDLENDER SC: Just to clarify, you 22 agree that it would've been a lower risk operation to 23 cordon and search the koppie than to confront – I beg your 24 pardon. Let me start again. You agree that it would've 25 been a lower risk operation to cordon and search the</p>	<p style="text-align: right;">Page 3176</p> <p>1 why we're struggling so much with this. The police make an 2 application to the provincial commissioner for permission 3 to cordon and search the hostels. Are you suggesting that 4 they – at the time when that application was made, they 5 hadn't planned, this was just an application in the 6 abstract? 7 BRIG MKHWANAZI: As I – 8 CHAIRPERSON: Mr Semenya, I see you've 9 turned your microphone on, do you wish to say something? 10 MR SEMENYA SC: Yes, Chair. The fair 11 treatment of the evidence though is that the cordon and 12 search was part of the plan but only at stage 6. 13 CHAIRPERSON: Yes. 14 MR BUDLENDER SC: Then can I clarify the 15 – 16 CHAIRPERSON: I think - 17 MR BUDLENDER SC: - I think that's a very 18 helpful point – 19 CHAIRPERSON: It's a very helpful point 20 actually but – 21 MR BUDLENDER SC: Yes. 22 CHAIRPERSON: - it means though you have 23 to reformulate your question slightly to accommodate it. 24 MR BUDLENDER SC: As Advocate Semenya, 25 points out to reading the plan as a whole, the cordon and</p>
<p style="text-align: right;">Page 3175</p> <p>1 hostels than it was to confront 3 500 people on the koppie? 2 BRIG MKHWANAZI: I remember my answer on 3 that time was as well that if it is done in the hostel, 4 proper information or intelligence gathering must be in 5 place that assists to say where exactly the people are in 6 the hostel. Hence it has got lot of rooms and is big, to 7 be able to execute that type of an operation, it needs a 8 lot of manpower or personnel to be able to deal with that. 9 That was my point. I even indicate that it will be 10 conducive if it is done during the course of the night 11 rather than during the day. 12 MR BUDLENDER SC: Brigadier, a plan had 13 already been or an application has already been made to the 14 provincial commissioner for permission to carry out that 15 operation. So we can assume that that planning had been 16 done. Or are you suggesting that an application would be 17 made to the commissioner to carry out something which 18 hadn't even been planned yet? 19 BRIG MKHWANAZI: It is the normal 20 procedure, there must be a plan in place, there must be 21 information as well gathered. The only thing I have 22 indicated from the beginning, the paragraph itself doesn't 23 indicate when. However for me to assume it would be 24 totally not correct - information. 25 MR BUDLENDER SC: Brigadier, I don't know</p>	<p style="text-align: right;">Page 3177</p> <p>1 search was stage 6 of phase 3, is that correct? 2 BRIG MKHWANAZI: It's correct. 3 MR BUDLENDER SC: Once stage 6 was 4 launched – I beg your pardon. Once phase 3 was – or stage 5 3 was launched it would culminate in the cordon and search 6 of the hostels. We see that at page 82 of L. Slide 82 or 7 slide 71. Do you see that, Brigadier? 8 BRIG MKHWANAZI: I see cordon and search 9 as the last one, stage 6. 10 MR BUDLENDER SC: Yes. So stage 6 had – 11 must've already been planned as part of the strategy. It 12 was going to be part of the strategy. 13 BRIG MKHWANAZI: Yes. As I sit here it 14 is indicated as part of the plan to say after everything 15 cordon and search must be executed as one of the stages 16 immediately after everything is finalised. 17 MR BUDLENDER SC: Ja. So we know, 18 Brigadier, that by the morning of the 16th, an application 19 had been made to the provincial commissioner for permission 20 to cordon and search and the cordon and search must've been 21 planned already because it was going to be part of the 22 operation. 23 BRIG MKHWANAZI: I do understand but I 24 think what is important, we need to understand stage 6, it 25 is a strategy. We need to operationalise the strategy. To</p>

<p style="text-align: right;">Page 3178</p> <p>1 do that you need to have a plan how are you going to enter 2 in the hostel, what you're going to do and how you're going 3 to do it. It must be a plan on that. That's why I have 4 this problem to say – for me to say the plan was ready is 5 totally really not correct for me. 6 MR BUDLENDER SC: Brigadier, have a look 7 at slide 71, L71. I really don't know why we're struggling 8 with this. We're going to be a long time if this is going 9 to give us so much trouble. This is an operational 10 overview of the operation, correct? 11 BRIG MKHWANAZI: Correct. 12 MR BUDLENDER SC: Stage 1 of the 13 operation is dialogue and monitor. 14 BRIG MKHWANAZI: Agree. 15 MR BUDLENDER SC: Stage 2 is the show of 16 force, stage 3 is the tactical option. Stage 4 is the 17 process arrested protestors. Stage 5 is intelligence 18 driven follow-up operations to arrest at places of 19 residence. And stage 6 is cordon and search of hostels. 20 So we have a 6 stage operation, do you accept that? 21 BRIG MKHWANAZI: I accept it. 22 MR BUDLENDER SC: And I'm sure you will 23 agree with me that it would not have been responsible of 24 the police to embark on the operation without having 25 planned each of the stages.</p>	<p style="text-align: right;">Page 3180</p> <p>1 I take it stage 1 was planned which is the dialogue and 2 monitor. Stage 2, the show of force was planned, right? 3 Stage 3, the tactical option to resolve the situation was 4 planned, right? 5 BRIG MKHWANAZI: Ja. 6 CHAIRPERSON: Stage 4, to process 7 arrested protestors, handle crime scenes, was planned. 8 BRIG MKHWANAZI: Correct. 9 CHAIRPERSON: Right. Stage 5, 10 intelligence driven follow-up operations to arrest at place 11 of residence was planned. 12 BRIG MKHWANAZI: Yes. 13 CHAIRPERSON: And then all that is left 14 is cordon and search of hostels and that would've also had 15 taken place that evening I take it. So it's a fair 16 assumption that the necessary planning must already have 17 been done. Otherwise it would've been foolish not to have 18 done it. All the other planning had been done. 19 BRIG MKHWANAZI: Chairperson, I have 20 already said that if all is in place, information is there, 21 everything, yes this was going to be the correct last part 22 of the operation cordon and search. The only thing I have 23 said it was going to be good if it is done during the night 24 and knowing exactly where it has to be executed, hence 25 hostel has got lot of rooms. That's my point. I don't</p>
<p style="text-align: right;">Page 3179</p> <p>1 BRIG MKHWANAZI: As I've said, it's 2 correct. The information is there. If it's there, 3 definitely they have to execute cordon and search. 4 MR BUDLENDER SC: To come back to where 5 we were when we – before we went on this long detour, it 6 would've been the cordon and search, if it was planned, 7 would've been a less risky operation than confronting 3 500 8 people on the koppie. 9 BRIG MKHWANAZI: As I have said from the 10 beginning, as long as the information is there and 11 definitely they go and execute cordon and search in the 12 hostel, it was going to be a fruitful operation if 13 everything is in place properly. I agree with you into 14 that. 15 MR BUDLENDER SC: But we know that the 16 way it was planned and implemented, the cordon and search 17 was not implemented before the people on the koppie were 18 confronted. 19 BRIG MKHWANAZI: You are correct. 20 CHAIRPERSON: Let me understand it, it 21 must've been planned in advance because once they had done 22 the – gone through the earlier stages and moved over to 23 cordon and search, they wouldn't have had time to plan it. 24 So I take it's a fair assumption that all the planning, in 25 respect of all the stages, had already been done. I mean,</p>	<p style="text-align: right;">Page 3181</p> <p>1 disagree with this at all. 2 COMMISSIONER HEMRAJ: Mr Budlender, is 3 the proposition being put to the witness, that the search 4 of the hostel should've not been at Stage 6, but it be 5 proceeded stage 3, that's the real proposition, isn't it? 6 MR BUDLENDER SC: That's the real – 7 that's correct, Commissioner, Hemraj. The real proposition 8 is that you start with the less risky options first and 9 that was the less risky option. 10 COMMISSIONER HEMRAJ: And can you comment 11 on that, Brigadier? 12 BRIG MKHWANAZI: Yes, correct, again, 13 Counsellor, what is important here is that I cannot, from 14 my position, to say yes it was going to be the better one 15 or not the better one. There was an overall commander, an 16 operational commander assisting the situation. With the 17 assessment of the situation, the other people who can be 18 able to say which one must come first from the other. I 19 was not part of the operation, but this is my opinion as I 20 have answered from the beginning. 21 MR BUDLENDER SC: Alright, I don't think 22 there's any point in debating this further with you, 23 Brigadier – 24 CHAIRPERSON: You made the point, I 25 suggest you move on to the next.</p>

<p style="text-align: right;">Page 3182</p> <p>1 MR BUDLENDER SC: Yes, I would like to do 2 that, Chair. I want to move to another topic now, 3 Brigadier. One of the matters which you teach public order 4 policing members is the various theories of group and crowd 5 behaviour. 6 BRIG MKHWANAZI: Come again, please. 7 MR BUDLENDER SC: One of the matters 8 which you teach POP members is the various theories of 9 group and crowd behaviour. 10 BRIG MKHWANAZI: That's correct, Sir. 11 MR BUDLENDER SC: Have you heard of the 12 term deindividuation? 13 BRIG MKHWANAZI: Come again. 14 MR BUDLENDER SC: Have you heard of the 15 term deindividuation? 16 BRIG MKHWANAZI: No. It's my first time 17 to hear about it. 18 MR BUDLENDER SC: Well let me – I'm 19 sorry. Let me tell you what it means and then you can tell 20 me whether you've heard of this phenomenon, if not under 21 that name. Deindividuation is said to be a person's loss 22 of his or her sense of individuality and personal 23 responsibility. People tend to lose some of their self- 24 awareness and self-restraint when in groups. Have you 25 heard of that phenomenon?</p>	<p style="text-align: right;">Page 3184</p> <p>1 "To summarise," he says, "using CF gas on a crowd, causes 2 some people to behave aggressively." Have you ever heard of 3 that? 4 [10:41] BRIG MKHWANAZI: Counsellor, it is my 5 first time to get it in that way. What I know is that when 6 teargas is used, normally people will definitely disperse 7 and actually try and actually move away from the position 8 where they were and in that way, we can be able to manage 9 the situation. I haven't met a situation before as you are 10 saying, whereby definitely people will lose, maybe fail to 11 control themselves maybe advance to other means. Yes of 12 course, people will be throwing stones, is normal, we know 13 about that. When the situation come to that, we need to 14 address it, but I haven't seen a situation whereby the 15 utilisation of CS can actually cause a person to embark to 16 another type of behaviour, rather than maybe to respond 17 positively. We have been successfully through that, that's 18 how I know most of the time. 19 MR BUDLENDER SC: We know that in this 20 case, Brigadier, on the 13th of August, when a group of 21 strikers were attacked with teargas and stun grenades, they 22 became aggressive and killed two policemen. 23 BRIG MKHWANAZI: I saw that, Counsellor. 24 MR BUDLENDER SC: Not always so 25 successful, is it?</p>
<p style="text-align: right;">Page 3183</p> <p>1 BRIG MKHWANAZI: That's correct, 2 Counsellor. As I mentioned from the beginning, I spoke 3 about it exactly that a person identity. 4 MR BUDLENDER SC: Right and now you train 5 members – you also train POP members in the use of teargas. 6 BRIG MKHWANAZI: Members are trained to 7 that, yes. 8 MR BUDLENDER SC: I want to read to you 9 what we have been advised by Professor Greeff of the head 10 of the Department of Pharmacology at the University of 11 Pretoria and I would ask you to comment on whether you've – 12 you're aware of what he says. He says - the teargas is 13 called CS Gas, you're aware of that? 14 BRIG MKHWANAZI: CS, yes. 15 MR BUDLENDER SC: This is what Professor 16 Greeff advises us. He says CS Gas activates sensory 17 neurons which mediate behavioural effects. It's a very 18 technical term. Let me go to the next sentence rather of 19 what he has told us. This is what Professor Greef says. 20 Exposure to CS Gas in a crowd will cause a high level of 21 physiological arousal, aggravating the feeling of anonymity 22 and decreased responsibility. This deindividuation causes 23 a reduction in self-awareness. This concomitant loss of 24 self-control, leading to aggressive behaviour. The larger 25 the group, the stronger the anti-social responses will be.</p>	<p style="text-align: right;">Page 3185</p> <p>1 CHAIRPERSON: Mr Budlender, Mr Semenya 2 wishes to make another contribution. 3 MR SEMENYA SC: Chair, again, I don't 4 know whether this witness, it's his area of competence to 5 discuss matters of pharmacological responses to the 6 application of CS gas. Of course, you will have to find 7 that premise to then - 8 CHAIRPERSON: - the point, because he is 9 an expert on public order policing and he lectures people 10 on public order policing, and trains them, so one would've 11 thought he would have this background. If he hasn't, then 12 I suppose it's a defect in his training, and which is 13 passed onto his students, but never mind, perhaps Mr 14 Budlender can investigate it further. But the point you 15 make is correct, if he hasn't got the knowledge then he's 16 not an expert on it, and it's inappropriate to ask him 17 questions about it. 18 MR BUDLENDER SC: All I am asking, I 19 accept that, Chair, the Brigadier is not an expert on 20 pharmacology, all I am asking him is whether he's aware of 21 the phenomenon which the expert describes and whether he 22 has seen it in practice. 23 CHAIRPERSON: I understood him to answer 24 that question already, to say he's not aware of it, the 25 first time he's heard of it, and he hasn't observed it</p>

<p style="text-align: right;">Page 3186</p> <p>1 himself in practice. You then put to him what happened on 2 the 13th, and of course he's got no personally knowledge 3 about himself, it's obviously a point that may well have to 4 be explored with other witnesses, but it doesn't seem any 5 point in exploring it further with him. 6 MR BUDLENDER SC: No, indeed, Chair. 7 COMMISSIONER HEMRAJ: Mr Budlender, I 8 have one other concern, has that sequence of events been 9 established by objective evidence? Is it clear to us, or 10 is that still to come? 11 MR BUDLENDER SC: I think that appears 12 from the – in fact from the police version of what happened 13 on the 13th, that there was a group of strikers who were, 14 after the meeting with General Mpembe, were heading off in 15 the direction of the koppie. Some of them are said to have 16 diverted towards the settlement, teargas and stun grenades 17 were used to attempt to stop that, and what followed 18 immediately afterwards, was the killing of two of the 19 policemen. 20 COMMISSIONER HEMRAJ: Are you saying that 21 that appears from the videos, because that part of the 22 evidence is not clear. It's just a concern I have that 23 there is no objective evidence as regards the sequence. 24 MR BUDLENDER SC: Commissioner, what I 25 think the video shows is a group of people marching, a</p>	<p style="text-align: right;">Page 3188</p> <p>1 BRIG MKHWANAZI: That is correct, with 2 the information one is getting will always be able to make 3 a proper decision. 4 MR BUDLENDER SC: And you need good 5 intelligence, you need to know for example, who are the 6 people who are in the gathering. 7 BRIG MKHWANAZI: It's correct, 8 information must be received every time. 9 MR BUDLENDER SC: You need to know who 10 their leaders are. 11 BRIG MKHWANAZI: In a normal and a proper 12 organised march or gathering, leaders will be identified 13 during the meeting. You will know exactly who are the 14 leaders, unless if it was not arranged properly, then it 15 will be a problem, but you will have to strive or try to 16 get exactly who are the leaders. 17 MR BUDLENDER SC: Yes, because this is 18 not an organised march in which the leaders identify 19 themselves, in this situation you need intelligence to tell 20 you who the leaders are. 21 BRIG MKHWANAZI: Getting the names of the 22 leaders or finding out the names of the leaders, you don't 23 have to really to say intelligence must tell you, you have 24 to find out yourself as an operational commander to say who 25 is the leader, so that you can talk to somebody, otherwise</p>
<p style="text-align: right;">Page 3187</p> <p>1 group veering off. There's then smoke which appears to be 2 teargas and after that, the attacks take place. It's not 3 shown in the detail one might like, but one sees that 4 sequence of events. 5 COMMISSIONER HEMRAJ: Thank you, Mr 6 Budlender. 7 CHAIRPERSON: What happened was also 8 summarised to some extent in exhibit L in the narrative, 9 that of course is subject to proof, and presumably – so you 10 can put it, I take it on the basis that's what's said in 11 exhibit L, but you can't state it as a fact that's already 12 proved, because that's something which presumably will 13 happen in – may happen in the course of the inquiry. 14 MR BUDLENDER SC: The police version in 15 that regard is at slide L47, Chair, and it is the version 16 which I put to the witness. 17 CHAIRPERSON: The point I am putting to 18 you, you are actually putting the content of slide 47 to 19 him, which has not yet been proved, but it's what the 20 police case is as it was presented to us. 21 MR BUDLENDER SC: Brigadier, can I then 22 move onto some other aspects? The first one I want to deal 23 with is the question of intelligence. You said previously 24 in your evidence that intelligence<sup>3</sup> will play a big role in 25 decision making in any operation.</p>	<p style="text-align: right;">Page 3189</p> <p>1 you won't be able to engage to all processes properly. 2 MR BUDLENDER SC: You need intelligence 3 to assist you to know what the intentions of the group are. 4 BRIG MKHWANAZI: As I've said from the 5 beginning, if it is well organised, we will have the 6 intention properly from the meeting, but it's not, the 7 intelligence will assist as well, but as soon as we have 8 identified the leaders, we will get the intention, what is 9 the intention. We cannot only rely to them only. 10 MR BUDLENDER SC: Brigadier, the – let's 11 just, we know that this was not an organised march which 12 followed the procedures in the Regulation of Gatherings 13 Act. 14 BRIG MKHWANAZI: I've got it. 15 MR BUDLENDER SC: So can we put those 16 situations out of my minds for the moment, and just deal 17 with the present sort of situation which is an unorganised 18 gathering which does not follow the procedures and the 19 Regulation of Gatherings Act. Alright? 20 BRIG MKHWANAZI: I heat it. 21 MR BUDLENDER SC: In this situation, you 22 need intelligence to know what the intentions of this 23 disorganised group are, and also what their vulnerabilities 24 are. 25 BRIG MKHWANAZI: Counsellor, I have</p>

<p style="text-align: right;">Page 3190</p> <p>1 answered the question around that, even though I started 2 from the back. I said you will establish who are the 3 leaders yourself as an Ops commander, you will as well rely 4 to your intelligence to assist, to those issues you can't 5 get. If definitely you get the leaders, they will 6 definitely tell you why are they coming together in that 7 position.</p> <p>8 MR BUDLENDER SC: But you are the man who 9 said good intelligence in order to plan the operation. So 10 now tell us, what intelligence would you need in order to 11 plan the operation, because everything I say, you say, no, 12 we would know that already. So what intelligence do you 13 need to plan a good operation, where you've got a 14 disorganised group like this?</p> <p>15 BRIG MKHWANAZI: Counsellor, it depends 16 what the organisation that is gathered on that day what was 17 the purpose of their gathering, and I would have to look at 18 that to say, what information do I need to deal with the 19 situation? I've already said this is not a hiding 20 situation. People have gathered in that hill, they are 21 together in that hill, and the only thing now you don't 22 know who's the leader, you have to find out who's the 23 leader, and the leader will be able to tell you why they 24 are there. Then now why should we definitely go back and 25 say, intelligence tell us. I will task intelligence on</p>	<p style="text-align: right;">Page 3192</p> <p>1 their background, which assist us as well to say how to 2 deal with them, and on the day as well, intelligence can 3 assist us to get that information to say what will be their 4 behaviour, or what are they planning to do and how can we 5 intervene with that, if possible, but normally we will have 6 to task them as well and there is information they can give 7 without tasking as well.</p> <p>8 MR BUDLENDER SC: Do you mean yes? 9 BRIG MKHWANAZI: Definitely, I've said 10 right from the beginning, intelligence gathering is 11 important.</p> <p>12 MR BUDLENDER SC: Brigadier, I don't want 13 to be offensive, but you seem to be having difficulty using 14 the word "yes" this morning. 15 CHAIRPERSON: - that question by saying 16 yes or no? 17 BRIG MKHWANAZI: Yes, Counsellor, I don't 18 know how to answer you. 19 MR BUDLENDER SC: That was a comment not 20 a question. Chair, can I just ask at what time you are 21 planning to take the tea adjournment? 22 CHAIRPERSON: I was proposing to go on to 23 quarter past 11, but if this is a convenient stage, because 24 I thought we wouldn't reach the stage for some time. If we 25 have reached a convenient stage, we can take the</p>
<p style="text-align: right;">Page 3191</p> <p>1 other issues I can't get, then they will tell me, depending 2 what I still want, Counsellor. I cannot just sit here and 3 say, I want 1, 2, 3, I must have a situation before me that 4 tell us what else do I need.</p> <p>5 MR BUDLENDER SC: Brigadier, if you had a 6 group like this, and you knew there one or two or three 7 firearms amongst them, and you didn't know where the 8 firearms were, would you want intelligence to help you to 9 find that out?</p> <p>10 BRIG MKHWANAZI: If we look to the 11 situation that took place on the 13th, where by the rifles, 12 nine millimetre pistol was taken, obviously the 13 intelligence will try and help and assist to say, where can 14 we get that firearm now, or that rifle is? If it is 15 amongst the crowd, we will get that information as well.</p> <p>16 MR BUDLENDER SC: You mean yes? 17 BRIG MKHWANAZI: Definitely yes. We need 18 that information.</p> <p>19 MR BUDLENDER SC: If you are dealing with 20 a group like this, and you didn't know what its 21 vulnerabilities were, would you like intelligence to help 22 you to tell you about that? 23 BRIG MKHWANAZI: Remember from the 24 beginning, I spoke about the historical background of the 25 organisation. If people are going to march, we look at</p>	<p style="text-align: right;">Page 3193</p> <p>1 adjournment now. I am in your hands.</p> <p>2 MR BUDLENDER SC: Chair, there is one 3 document which I would like the witness to read, perhaps I 4 can ask him one more question and then we could adjourn for 5 him to read the document.</p> <p>6 CHAIRPERSON: While we are on the subject 7 of a document, Mr Semenya, I think you were still – there 8 is a situation where you owe us some documents which you 9 promised. I don't know, they may not be available yet, but 10 I take it sooner or later we will get them.</p> <p>11 MR SEMENYA SC: Indeed, Chair. 12 CHAIRPERSON: If they are available now, 13 perhaps you can hand them before we take the adjournment. 14 I don't know whether anyone can look at them during the 15 adjournment but there are ways of relieving the tea and 16 doing the adjournment sometimes.</p> <p>17 MR SEMENYA SC: Yes, Chair, I still must 18 speak to Colonel Scott, and I will distribute the document. 19 [11:01] CHAIRPERSON: So are you not ready yet? 20 Put your documents to the witness, when he's got it, ask 21 him if he's got it and you'll get an answer, yes, and then 22 ask him if he'll read it over the adjournment, you'll get a 23 similar answer and we then adjourn. 24 MR BUDLENDER SC: Chair, you're a great 25 optimist. Chair, the document which I wish to hand in is</p>



<p style="text-align: right;">Page 3194</p> <p>1 another police document, it will be TT5 and it is the 2 Criminal Intelligence information/inputs. Chair, I believe 3 this document is in the IPID files that were provided to us 4 by the attorneys for the South African Police Services. 5 CHAIRPERSON: Anyway you're issuing 6 copies to the various people including the representative 7 of the Human Rights Commission who is interested in this 8 part of the case, and everyone can read it during the 9 adjournment. 10 MR BUDLENDER SC: Brigadier, do you have 11 the document, have you received the document? 12 BRIG MKHWANAZI: No, Sir. Oh, you mean 13 now, I thought you said before. I got it now, thank you. 14 MR BUDLENDER SC: Please read it during 15 the tea adjournment so that I can ask you some questions 16 about it after tea. 17 BRIG MKHWANAZI: I'll do that. 18 CHAIRPERSON: We will take the tea 19 adjournment now. The commission will adjourn. 20 [COMMISSION ADJOURNS COMMISSION RESUMES] 21 [11:24] CHAIRPERSON: The Commission resumes. 22 Brigadier, you're still under oath. Mr Budlender, are you 23 still cross-examining? 24 MR BUDLENDER SC: Yes, Mr Chair. 25 Brigadier, just to explain the origin of this document that</p>	<p style="text-align: right;">Page 3196</p> <p>1 occurrences, maybe I could be in a position to say it was 2 not sufficient, but with what I'm told, this is what I can 3 maybe work with. 4 MR BUDLENDER SC: Alright, shall we go 5 now to paragraph 9. "On 15 August 2012 at the PROVJOC 6 meeting a discussion took place with regard to the 7 disarming and dispersion of the striking mineworkers. 8 Brigadier Engelbrecht held a view in favour of negotiations 9 with the group who always gather at the koppie and disperse 10 during the evenings. A view was further based on an 11 analysis of the striking workers' behaviour during the 12 incident of 13th August 2012 where the police officers were 13 killed. They were all armed with different kinds of 14 dangerous weapons. They became agitated when their comfort 15 zone was threatened and made it clear that they will never 16 surrender their weapons as they needed the weapons to 17 protect themselves against NUM members." 18 Then paragraph 10 I'll read out as well. "On 16 19 August 2012 during a PROVJOC meeting where the disarming 20 and dispersing of the group at the koppie was discussed, 21 Colonel Isaacs, CI representative at the PROVJOC for the 22 day, advised that many strikers had dangerous weapons with 23 them and informers reported that they would not hand their 24 weapons to the police and that the situation was tense." 25 You see that?</p>
<p style="text-align: right;">Page 3195</p> <p>1 you've now read, the evidence leaders requested the 2 representatives of the South African Police Services to 3 provide them with all of the relevant intelligence 4 information which was received by the SAPS, and this is 5 what we were given. You understand that? 6 BRIG MKHWANAZI: Yes, I do. 7 MR BUDLENDER SC: Now if you'll go to 8 page 2, paragraphs 9 and 10 are the only paragraphs which 9 provide information about the 15th and 16th of August. Is 10 that correct? 11 BRIG MKHWANAZI: Yes. 12 MR BUDLENDER SC: And perhaps one should 13 read that with paragraph 8, which deals with the events, 14 deals with information on the 13th of August, because by 15 then some of the people were already on the koppie. 16 BRIG MKHWANAZI: Yes. 17 MR BUDLENDER SC: Now do you consider the 18 information in these two pages adequate intelligence for 19 planning an operation of this kind? 20 BRIG MKHWANAZI: Yes, but it must be 21 continuous, Sir. 22 MR BUDLENDER SC: But as it stands on a 23 day-to-day basis, you consider it adequate? 24 BRIG MKHWANAZI: I won't be in a position 25 to say yes or no. If I was part and I saw other</p>	<p style="text-align: right;">Page 3197</p> <p>1 BRIG MKHWANAZI: I see that. 2 MR BUDLENDER SC: And then on the last 3 sheet there is a Crime Intelligence input apparently made 4 at 12:00 on 16 August 2012. You see that? 5 BRIG MKHWANAZI: I see it. 6 MR BUDLENDER SC: It says, "Approximately 7 3 000 mineworkers are gathered at the koppie. Many of 8 these mineworkers are in possession of dangerous weapons 9 (spears, assegais and pangas). According to the 10 information received the group will decline to surrender 11 these dangerous weapons to the police. Information also 12 indicates that the mineworkers will not leave the koppie 13 and are prepared to fight if their demands are not met, 14 which includes resisting the police." It concludes, "The 15 situation is currently very tense." So now Brigadier, I 16 want to ask you this. From those reports, and particularly 17 paragraph 3 of the report of the 16th of August, it appears 18 that before phase 3 was commenced, or stage 3 was 19 commenced, the police knew that if they try to remove the 20 weapons from the people on the koppie, those people would 21 resist. Correct? 22 BRIG MKHWANAZI: I see, yes. 23 MR BUDLENDER SC: And they were prepared 24 to fight. 25 BRIG MKHWANAZI: I see like it's written.</p>

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1 MR BUDLENDER SC: What was the  
 2 contingency plan if that happened?  
 3 BRIG MKHWANAZI: Counsellor, I won't be  
 4 able to say what is the contingency on this, but I can talk  
 5 to the plan we have that has got reserve in place that will  
 6 be able to attend to issues that actually, that goes  
 7 totally different from the main plan that is planned.  
 8 That's one I can talk of, but contingency to say was there  
 9 any for this particular part, I didn't see it.  
 10 MR BUDLENDER SC: We know that at the  
 11 koppie, scene 1, at the time that the contingency plan was  
 12 – I beg your pardon, at the time that stage 3 was  
 13 implemented, the police on the scene were principally  
 14 Public Order Police, TRT, and some STF. Is that correct?  
 15 BRIG MKHWANAZI: I got that information.  
 16 MR BUDLENDER SC: And to the extent that  
 17 the additional POP members might be useful, the ones in  
 18 reserve, they were about one and a half kilometres away in  
 19 the forward holding areas.  
 20 BRIG MKHWANAZI: That's correct.  
 21 MR BUDLENDER SC: So we know that if the  
 22 POP members were not able to control the situation, the  
 23 only remedy, the only immediate remedy was the TRT and STF  
 24 members.  
 25 BRIG MKHWANAZI: Depending to what

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1 situation it is at that moment.  
 2 MR BUDLENDER SC: Yes, well if the people  
 3 on the koppie start fighting, as was predicted in the  
 4 intelligence report, then the only immediate response  
 5 available, other than the existing POP people who are  
 6 there, are TRT and STF.  
 7 BRIG MKHWANAZI: For me to say yes,  
 8 difficult. The only thing I can say, it will depend to the  
 9 assessment made at that moment by the particular  
 10 operational commander who is there, who sees what is the  
 11 situation, who must intervene. For me to say it will be  
 12 TRT, it will be Special Task Force, these are the unit with  
 13 special type of training. If they intervene, they must  
 14 intervene on that particular part. So it will depend who  
 15 must intervene at that moment. If I was there, yes I could  
 16 say this Special Task Force will intervene. It must  
 17 definitely indicate for me what type of a situation I bring  
 18 in Special Task Force in that situation.  
 19 MR BUDLENDER SC: Brigadier, either you  
 20 don't want to answer my question or you haven't answered  
 21 it, but let me put it differently to you. The people on  
 22 the scene at the time when – when I say the scene I mean at  
 23 the koppie. The people on the scene at the time when stage  
 24 3 was implemented were POP members, TRT members and some  
 25 STF members.

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1 BRIG MKHWANAZI: I agree with you.  
 2 MR BUDLENDER SC: And perhaps also NIU.  
 3 It's not altogether clear whether they were there at that  
 4 time. Let me just show you what – have a look at TT4.  
 5 Have a look at page 2, and under the heading,  
 6 "Dispersion/Encirclement group," do you see that, the fifth  
 7 line? You see the fifth line on page 2?  
 8 BRIG MKHWANAZI: Yes, I see on top  
 9 there's a "Dispersion/Encirclement group."  
 10 MR BUDLENDER SC: Right, and four lines  
 11 down we are told who is in that group. "In this group  
 12 there will be 5 POP Nyalas, 43 POP members, 2 negotiators.  
 13 They will be supported by 8 TRT vehicles with 48 members,  
 14 as well as STF members." So those are the people who were  
 15 on the scene when phase 3 was initiated. The others were  
 16 in reserve at the forward holding areas.  
 17 BRIG MKHWANAZI: Counsellor, I'm not sure  
 18 because what I know is that in a reserve, the holding area,  
 19 we have two reserves. There was Special Task Force, TRT,  
 20 as well as NIU, and my point was that what I've been  
 21 informed was that POP was part of it as well. Canine was  
 22 there. So when they start to activate level 3, I'm not  
 23 sure whether the same group from the different reserve  
 24 position were called in, or they were having other POP or  
 25 other - sorry, other TRT, Special Task Force at the scene,

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1 whereas they still have others on the other side, which is  
 2 one kilometre away. I'm not sure about that.  
 3 MR BUDLENDER SC: The forward holding  
 4 areas 1 and 2 contain the reserves who will be brought into  
 5 play if it becomes necessary. Is that correct?  
 6 BRIG MKHWANAZI: That's correct. I do  
 7 agree. The only point is we are talking about level 3,  
 8 where level 3 is being activated, and Public Order Policing  
 9 is in the frontline. At the back we have Special Task  
 10 Force, TRT and NIU. My concern is, I'm not sure were the  
 11 same members called up now or we're having other members of  
 12 Special Task Force, NIU, TRT, in the scene, whereas we  
 13 still have the other one on the other side.  
 14 MR BUDLENDER SC: Brigadier, would you  
 15 look at slide L79? Sorry, slide L80.  
 16 BRIG MKHWANAZI: Got it.  
 17 MR BUDLENDER SC: Let's go first to L78.  
 18 You see there that it talks about addressing the  
 19 protesters, disperse into smaller groups, encircle and  
 20 disarm. You see that?  
 21 BRIG MKHWANAZI: I see it.  
 22 MR BUDLENDER SC: I'm sorry, Chair, would  
 23 you bear with me for one moment? Chair, thank you, I have  
 24 taken some good advice. Would you go to slide L80 now, do  
 25 you have that?

<p style="text-align: right;">Page 3202</p> <p>1 [11:44] BRIG MKHWANAZI: Got it.  2 MR BUDLENDER SC: This is what it says,  3 "Should the protesters attack the members of POP in a  4 dispersion line who would be outside their Nyalas, a second  5 line of armed members of the Tactical Response Team, TRT,  6 backed by the NIU and the STF and following behind the POP  7 line, would respond proportionately to address the threat."  8 You see that?  9 BRIG MKHWANAZI: I see that.  10 MR BUDLENDER SC: Now we know that the  11 police were told by Intelligence that if they try to take  12 the weapons from the people on the koppie, the people on  13 the koppie would fight them. Correct?  14 BRIG MKHWANAZI: That's correct.  15 MR BUDLENDER SC: And the paragraph I  16 have read you tells you what will happen if the protesters  17 do fight with or attack the members of the POP. Response  18 will be by the TRT, the NIU and the STF. Correct?  19 BRIG MKHWANAZI: I see that, yes.  20 MR BUDLENDER SC: The TRT and the NIU and  21 the STF carry sharp weapons.  22 BRIG MKHWANAZI: That's correct.  23 MR BUDLENDER SC: If they use them,  24 fatalities are likely.  25 BRIG MKHWANAZI: Yes.</p>	<p style="text-align: right;">Page 3204</p> <p>1 BRIG MKHWANAZI: It's not for me to say,  2 Counsellor. I was not there.  3 MR BUDLENDER SC: No Brigadier, it is for  4 you to say; you're the expert. What other responses were  5 open to them? Teargas had failed. Rubber bullets had  6 failed, and at any rate, TRTs don't carry rubber bullets.  7 The only thing that the TRT and the NIU and the STF had at  8 their disposal was sharp weapons. Is that not correct?  9 BRIG MKHWANAZI: Reading at slide 80 it  10 states clear that these units will actually respond on  11 proportionate to the threat, meaning the operational  12 commander will be the position to say when to act and how  13 to act. It's not for me sitting here to say they were  14 going to shoot the people if they don't respond properly to  15 them.  16 MR BUDLENDER SC: What other responses  17 were available to the TRT, the NIU and the STF other than  18 to shoot?  19 BRIG MKHWANAZI: The last task given to  20 NIU, to Special Task Force, as well as to TRT, as I'm  21 reading the whole thing, including Public Order as well, is  22 that they will disperse, they will arrest – I mean they  23 will disarm and they will arrest. That is the last task  24 given to them.  25 MR BUDLENDER SC: Brigadier, you're not</p>
<p style="text-align: right;">Page 3203</p> <p>1 MR BUDLENDER SC: What we have is the  2 following situation. The police were told that if you do  3 what you are planning to do, namely take away the weapons,  4 they will fight and resist. Correct?  5 BRIG MKHWANAZI: Ja, looking to the  6 briefing at the PROVJOC, information is given.  7 MR BUDLENDER SC: Look at paragraph 3,  8 the one signed by, of the document prepared by Colonel  9 Isaacs.  10 BRIG MKHWANAZI: Yes, I see.  11 MR BUDLENDER SC: Anyone reading  12 paragraph 3 will know that there is a real risk, to put it  13 at the lowest, that if you go and try to take the weapons  14 off these people they will resist and they will fight.  15 Correct?  16 BRIG MKHWANAZI: Correct with what is  17 written in paragraph 3, it's clear.  18 MR BUDLENDER SC: And if they resist and  19 fight, the answer is to shoot them. There's no other  20 answer proposed.  21 BRIG MKHWANAZI: I don't agree,  22 Counsellor. What I see is that they would respond  23 proportionate to address the threat.  24 MR BUDLENDER SC: What else could they  25 have done other than shoot?</p>	<p style="text-align: right;">Page 3205</p> <p>1 answering my question. What could they have done other  2 than shoot? Just answer that question.  3 BRIG MKHWANAZI: Disarm and arrest.  4 MR BUDLENDER SC: And how were they going  5 to do that with people who are fighting? They're called  6 into play because the POP have not been able to disarm and  7 arrest and because they are now fighting. How are they  8 going to disarm and arrest?  9 BRIG MKHWANAZI: Respond in proportionate  10 to the threat, Counsellor. I have said already, and my  11 further explanation is if I'm there I will be in a position  12 to see what else can be utilised and the operational  13 commander present on the day, those are the people who will  14 be in a good position to be able to say what can be done  15 besides shooting to the people, or shooting to the people,  16 what can be done. For me sitting here to say what else  17 they can use, I was not there, Counsellor.  18 MR BUDLENDER SC: Brigadier, let's stop  19 playing games. Let's just, just answer the question. Let  20 me read to you what you said on Friday. Page 3129 of the  21 record, question by me, "And if the TRT and NIU and STF had  22 to be brought into play, there was a real risk of  23 fatalities because they are people who carry sharp  24 weapons?" Your answer, "It is a fact, Counsellor, that if  25 you bring TRT, National Intervention, as well as Special</p>

<p style="text-align: right;">Page 3206</p> <p>1 Task Force, they carry live ammunition." Then you said,  2 "and to take that decision you must know exactly when and  3 why they must intervene." Then question, "Yes, because if  4 they do intervene, given the nature of the weapons that  5 they carry and the nature of their functions, it's likely  6 that some people will be killed," and your answer, "It is  7 normal. It is possible." So now let's get back to where  8 we were. The police were told that it was likely that some  9 of the strikers would fight and resist if an attempt was  10 made to remove their weapons. Correct?  11 BRIG MKHWANAZI: Paragraph 3 says so,  12 yes.  13 MR BUDLENDER SC: The people who would  14 then intervene would be the TRT, STF and NIU. We've seen  15 that on the slide. Correct?  16 BRIG MKHWANAZI: It's correct. I saw it  17 already.  18 MR BUDLENDER SC: And I put it to you,  19 Brigadier, let's not waste any more time in this. It was  20 an inevitability, or at least a probability, or at the very  21 least foreseeable that if the TRT and the NIU and the STF  22 were called in to deal with these people who were fighting,  23 some people would be shot and killed.  24 BRIG MKHWANAZI: Counsellor, as I've  25 said, it's there in slide 80; it's clear they will respond</p>	<p style="text-align: right;">Page 3208</p> <p>1 possession they cannot use it or they can use it. What I  2 know, what type of weapons Special Task Force is carrying,  3 NIU is carrying, as well as TRT is carrying. Then if you  4 ask if there was another one, then definitely for me it  5 will be totally wrong; I will be misleading the Commission.  6 MR BUDLENDER SC: Do the TRT, STF and NIU  7 carry any equipment for exercising force other than sharp  8 weapons with sharp ammunition?  9 BRIG MKHWANAZI: On my knowledge, no.  10 MR BUDLENDER SC: Let me read you, just  11 remind you what you said on Friday. Page 3128 of the  12 record, question, "Though sharp weapons are really the only  13 means that those units have of dealing with the situation  14 when they are called in, they don't carry non-lethal  15 weaponry?" and your answer was, "That is correct."  16 BRIG MKHWANAZI: I still do agree with  17 you, Counsellor.  18 MR BUDLENDER SC: Good.  19 CHAIRPERSON: Mr Semanya, you've turned  20 your microphone light on.  21 MR SEMENYA SC: Ja, I was going to say  22 then the real objection is the question has been asked and  23 answered. Why should he be revisiting the same question?  24 CHAIRPERSON: Mr Budlender, it seems Mr  25 Semanya thinks you've made your point.</p>
<p style="text-align: right;">Page 3207</p> <p>1 proportionate to the threat. They will address it  2 proportionately. It's written, it's there. For me to say  3 yes is very difficult because I was not there.  4 CHAIRPERSON: Brigadier, I think what  5 counsel wants to know from you, shortly put, is what does  6 "respond proportionately" mean in this context?  7 BRIG MKHWANAZI: Chairperson, what  8 actually, my understanding what it means if we talk about  9 proportionate to the threat is that, if I may make an  10 example, it's not possible that I can just shoot an unarmed  11 person as a police official, but if a person is armed and  12 he definitely is in that position to say he's doing  13 something of the same sort, definitely people have to act  14 in terms of necessity, self as well as private defence. So  15 my point is here, is that only the operational commander  16 will be in that position, who was in the scene, to be able  17 to say what happened at that position.  18 MR BUDLENDER SC: And you can't suggest  19 anything which they could have – well, let me put it  20 differently. They had no equipment to deal with the  21 situation proportionately, as you put it, other than sharp  22 ammunition?  23 BRIG MKHWANAZI: Once more, Counsellor,  24 on the day of the situation I was not there. I cannot say  25 with the type of the weapon or whatever they have in their</p>	<p style="text-align: right;">Page 3209</p> <p>1 MR BUDLENDER SC: I also think I've made  2 my point –  3 CHAIRPERSON: Do you want to move on to  4 something else?  5 MR BUDLENDER SC: Yes. The reason I  6 asked it again was because I got a different answer this  7 time.  8 CHAIRPERSON: Before you move away from  9 the point, I'd like to ask a question about it. Brigadier,  10 have you got exhibit SS3 there? It's part of the annexures  11 for Thursday the 16th –  12 BRIG MKHWANAZI: I've got it. I've got  13 it.  14 CHAIRPERSON: Well, if you turn to page,  15 I think it's 1709, you'll find a document headed "Plan  16 revised 14:00 on 16 August '12." Have you got that  17 document?  18 BRIG MKHWANAZI: 1709? I think I've got  19 it, that "Plan reserved, 14:00."  20 CHAIRPERSON: This appears to be the plan  21 which the commander on the spot drew up, revised in fact at  22 2 o'clock in the afternoon on the 16th, I take it one can  23 assume in the light of the intelligence information and the  24 intelligence input that he received at noon on that day.  25 Would that be a fair assumption?</p>

<p style="text-align: right;">Page 3210</p> <p>1 BRIG MKHWANAZI: That's correct, Sir.  2 CHAIRPERSON: This document shows was the  3 plan as revised involved firstly the protection of the SAPS  4 and the media by deploying the barbed wire between the  5 protesters and the SAPS safe area. Is that right?  6 BRIG MKHWANAZI: That's correct, Sir.  7 CHAIRPERSON: Thereafter the dispersion  8 action was to be proceeded with in accordance with the  9 force continuum.  10 BRIG MKHWANAZI: Correct.  11 CHAIRPERSON: The last item in respect of  12 that dispersion action would have involved the armed  13 officers approaching the protesters and instructing them  14 verbally and with hand motions to lay down their weapons  15 and to lie on the ground for searching and securing.  16 BRIG MKHWANAZI: I have that.  17 CHAIRPERSON: The Crime Intelligence  18 input indicated what their response would be to such an  19 approached by the armed officers. They were prepared to  20 fight and to resist the police. Is that right?  21 BRIG MKHWANAZI: I see that, Sir, yes.  22 CHAIRPERSON: The next bullet tells us  23 what would have happened then. Would you like to read it?  24 BRIG MKHWANAZI: Yes, I see that it's  25 written clearly what was going to happen after the</p>	<p style="text-align: right;">Page 3212</p> <p>1 themselves.  2 CHAIRPERSON: Thank you.  3 MR BUDLENDER SC: Brigadier, I am going  4 to move on a different, though related topic. We know that  5 before the 16th of August, the strikers repeatedly said, was  6 that they wanted the Lonmin management to come to the  7 koppie to speak to them. Are you aware of that?  8 BRIG MKHWANAZI: I got that information a  9 little bit, Counsellor.  10 MR BUDLENDER SC: Are you aware that they  11 also repeatedly said that they did not have any quarrel  12 with the police?  13 BRIG MKHWANAZI: Yes, I got that  14 information as well.  15 MR BUDLENDER SC: And you are aware that  16 for more than 48 hours before the incident on the afternoon  17 of the 16th of August, there had been no violence.  18 BRIG MKHWANAZI: Yes, we spoke about it  19 last week, and my indication was the only thing should be  20 some activities but I am not aware of them, between that.  21 MR BUDLENDER SC: And the Public Order  22 Police were dealing with the matter and dealing with the  23 strikers and they were handling the situation.  24 BRIG MKHWANAZI: That is correct.  25 MR BUDLENDER SC: We know that Public</p>
<p style="text-align: right;">Page 3211</p> <p>1 resistance by the participant that TRT, NIU, Special Task  2 Force, will be deployed in protecting of Public Order  3 Policing.  4 CHAIRPERSON: And read the next two  5 words.  6 BRIG MKHWANAZI: Come again, Sir.  7 CHAIRPERSON: Read the next two words  8 after the words, "in protection of POP."  9 [12:04] BRIG MKHWANAZI: They will actually  10 process and transport suspects to the holding cells.  11 CHAIRPERSON: No, no.  12 BRIG MKHWANAZI: Private defence, okay,  13 that's private defence.  14 CHAIRPERSON: The bullet says, TRT, NIU  15 and TSF deploy in protection of POP – private defence.  16 BRIG MKHWANAZI: Ja, that's private  17 defence.  18 CHAIRPERSON: What does private defence  19 mean?  20 BRIG MKHWANAZI: My understanding,  21 Chairperson, is that as I spoke about the force has to be  22 proportionate, that is deployed of – employed to the  23 participants on that time, it should be actually  24 proportionate, it's in other words, if it happened that  25 their life as well is in danger, they will have to protect</p>	<p style="text-align: right;">Page 3213</p> <p>1 Order Police are trained in planning operations.  2 BRIG MKHWANAZI: Yes, in crowd  3 management, yes.  4 MR BUDLENDER SC: And we know that there  5 were, we are not going to rehearse all of that, that there  6 were a number of low risk methods of attempting to deal  7 with the situation.  8 BRIG MKHWANAZI: That is correct.  9 MR BUDLENDER SC: At that stage, before  10 the 16th of August, 15th/16th August there was no high risk  11 threat. Things were relatively stable.  12 BRIG MKHWANAZI: I am not sure,  13 Counsellor, if you say there wasn't any, maybe referring to  14 what, Sir?  15 MR BUDLENDER SC: What I am saying is  16 that there was, there had been no violence for more than 48  17 hours and the situation was relatively stable, there was at  18 that time no high risk threat.  19 BRIG MKHWANAZI: If you mean from the  20 15th, I will agree, because I couldn't pick up anything from  21 the people I spoke to.  22 MR BUDLENDER SC: Now could you have a  23 look, do you have exhibit Q which is the training manual.  24 We will put it up on the screen, could we have slide Q88  25 please. Do you see that? That sets out the mission</p>

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1 statement of the strategic task force, the special task  
 2 force. Do you see that?  
 3 BRIG MKHWANAZI: I see it.  
 4 MR BUDLENDER SC: They deal with hostage  
 5 situations.  
 6 BRIG MKHWANAZI: Yes.  
 7 MR BUDLENDER SC: There was no hostage  
 8 situation? Your answer?  
 9 BRIG MKHWANAZI: Yes, correct.  
 10 MR BUDLENDER SC: They deal with acts of  
 11 terror. And there was no acts of terror.  
 12 BRIG MKHWANAZI: Correct.  
 13 MR BUDLENDER SC: They deal with  
 14 sabotage.  
 15 BRIG MKHWANAZI: There was nothing.  
 16 MR BUDLENDER SC: They deal with sieges.  
 17 There was no such, correct?  
 18 BRIG MKHWANAZI: Correct, yes.  
 19 MR BUDLENDER SC: And they deal with  
 20 other high risk threats.  
 21 BRIG MKHWANAZI: It is correct.  
 22 MR BUDLENDER SC: And you've just agreed  
 23 that at least by the 15th of August, there was no high risk  
 24 threat.  
 25 BRIG MKHWANAZI: Ja, it is correct, I

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1 said I never received anything around the 15th.  
 2 MR BUDLENDER SC: Yet on the 14th, Colonel  
 3 Scott of the STF was instructed to prepare a plan for the  
 4 operation. Correct?  
 5 BRIG MKHWANAZI: Correct.  
 6 MR BUDLENDER SC: None of the situations  
 7 which are shown on Q88, existed at the time that Col Scott  
 8 prepared his plan. Correct?  
 9 BRIG MKHWANAZI: Maybe before I say  
 10 correct or not correct, because this "correct" is getting  
 11 dangerous to me. Maybe I should say this, that from the  
 12 beginning, Counsellor, if you remember properly, is that I  
 13 indicated that on the 13th we have the life of people taken,  
 14 talking about the police as well as from the side of the  
 15 participants, the small group of the people that were  
 16 actually moving along the railway line and were already  
 17 killed, and if we talk about people murdered, you know, you  
 18 cannot now sit down and say, let it to go on, and all means  
 19 that are available has to come into play to assist to make  
 20 sure that such a situation is being actually stopped. I  
 21 believe without doubt maybe calling all those disciplines  
 22 was just to look to those issues.  
 23 MR BUDLENDER SC: Brigadier, the STF deal  
 24 with extreme situations and they sometimes have to take  
 25 extreme measures to do so.

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1 BRIG MKHWANAZI: I will agree if we talk  
 2 about the main task, as the main function appearing there.  
 3 That's what they deal with but I am not clear if you say  
 4 they have to take extreme measures, what do you mean?  
 5 MR BUDLENDER SC: Well, let me give you  
 6 an example. Look at the first situation, the hostage  
 7 situation.  
 8 BRIG MKHWANAZI: I see that.  
 9 MR BUDLENDER SC: Now if the STF are  
 10 called into a hostage situation, I assume the first thing  
 11 they will do, is try to persuade the hostage-taker to hand  
 12 over the hostages.  
 13 BRIG MKHWANAZI: It is correct.  
 14 MR BUDLENDER SC: But if that fails, the  
 15 hostages are always at risk if an attempt is made to storm  
 16 the hostage-taker. That is correct, isn't it?  
 17 BRIG MKHWANAZI: Yes, it depends to the  
 18 situation.  
 19 MR BUDLENDER SC: Yes. But if the  
 20 hostage-taker can't be persuaded and is not - and can't be  
 21 quickly surrounded and arrested, then what the STF have to  
 22 do is to shoot the hostage-taker, that's the only remedy  
 23 open to them.  
 24 BRIG MKHWANAZI: I think, Counsellor, the  
 25 word "to shoot" for me is too big, and maybe too deep, I'd

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1 rather really have it, you know, maybe if I can go for that  
 2 if maybe you can allow me to say really, to use the word if  
 3 they can't they will shoot, you know, for me, it's totally,  
 4 it's not the way we should do our job.  
 5 MR BUDLENDER SC: But the situation I am  
 6 dealing with is an extreme situation, and they have only an  
 7 extreme solution to deal with it.  
 8 BRIG MKHWANAZI: But there are processes,  
 9 Counsellor, that they will go through them, and they arrive  
 10 to that position. We cannot sit here and say if it doesn't  
 11 happen, shoot.  
 12 MR BUDLENDER SC: The point I really want  
 13 to make Brigadier, is that this plan that was put in place,  
 14 which is put up the barbed wire, go in and tell them to  
 15 hand over their weapons, and if they fight, as we know they  
 16 may do, he TRT, NIU and STF, that's the classic STF type  
 17 plan, and extreme measures would be used to put an end to  
 18 the situation.  
 19 BRIG MKHWANAZI: Once more, Counsellor, I  
 20 will have a problem again, maybe it's the way you would  
 21 like to put this to me, maybe to understand it better, but  
 22 it confuses me, I must say the truth, because if we talk  
 23 right from the beginning, I said when the barbed wire was  
 24 deployed my understanding when they explained to me,  
 25 whoever I was talking with is that the barbed wire was

<p style="text-align: right;">Page 3218</p> <p>1 deployed for the purpose of giving warning to the people on 2 their own voluntarily to leave the place, of which it never 3 happened, because people started to breach, then they 4 started to have the situation that came to that position. 5 Now from what you are saying now, is that the plan was a 6 special task which was actually ultimately planning to use 7 extreme force or whatever really, I don't agree – I don't 8 get it right.</p> <p>9 MR BUDLENDER SC: The STF plan did not 10 provide for the less risky methods which we've discussed.</p> <p>11 BRIG MKHWANAZI: Sorry, Chair, I don't 12 know what the STF plan is, really, I haven't been told.</p> <p>13 MR BUDLENDER SC: Colonel Scott's plan.</p> <p>14 BRIG MKHWANAZI: No, but that plan has 15 various stages of force continuum.</p> <p>16 CHAIRPERSON: The point is that Colonel 17 Scott drew up the plan, and he is the STF man. I think 18 that's Mr Budlender's point. If I am misunderstanding him, 19 he will correct me.</p> <p>20 MR BUDLENDER SC: Colonel Scott's plan 21 did not provide for any of the less risky methods which you 22 and I discussed on Friday, and again this morning, the 23 cordoning, the going onto the koppie at night, all of 24 those, those weren't provided for before -</p> <p>25 MR SEMENYA SC: No, objection.</p>	<p style="text-align: right;">Page 3220</p> <p>1 already they are armed to stop them from going to the 2 koppie, too disarm them in that fashion, it was going to be 3 very dangerous. I explained that part, that's why I agree 4 at the end to say, to disarm them during the night was 5 going to be the very best one. I agreed with you on that 6 one.</p> <p>7 MR BUDLENDER SC: Well, I am not going to 8 rehash what we debated last week, the record will speak for 9 itself. Col Scott's plan also did not provide for 10 cordoning and searching the hostels until after the people 11 had been confronted on the koppie.</p> <p>12 BRIG MKHWANAZI: It is correct.</p> <p>13 MR BUDLENDER SC: Will you not agree with 14 me, Colonel, that the STF plan was – I beg your pardon, 15 that Colonel Scott's plan which involved – well, let me put 16 it this way, Colonel Scott's plan involved confronting 17 3 500 strikers with the police outnumbered 5 to 1. We know 18 there were about 700 police on site.</p> <p>19 BRIG MKHWANAZI: You mean on the 16th?</p> <p>20 MR BUDLENDER SC: On the 16th, yes.</p> <p>21 BRIG MKHWANAZI: My understanding, there 22 were stages even then the time the barbed wire was 23 deployed, that people would be warned, those voluntarily 24 who leave the koppie will leave, and as a result, we spoke 25 even last week, that some of the people left the koppie,</p>
<p style="text-align: right;">Page 3219</p> <p>1 MR BUDLENDER SC: - can I just finish, 2 before the barbed wire was rolled out.</p> <p>3 MR SEMENYA SC: I object still, Chair.</p> <p>4 CHAIRPERSON: Mr Semenya wants to object, 5 let's hear what his objection is, and if it's correct, we 6 will have to uphold it.</p> <p>7 MR SEMENYA SC: The so-called Scott plan, 8 has various stages, including negotiations which are less 9 than the proposition that has been put to the witness.</p> <p>10 CHAIRPERSON: Mr Semenya is right, I 11 think you should reformulate your proposition, the 12 objection he raised.</p> <p>13 MR BUDLENDER SC: Let's take it step, 14 Colonel Scott's plan did not provide for going on the 15 koppie at night, and removing the small core group who were 16 there.</p> <p>17 BRIG MKHWANAZI: Counsellor, we have 18 agreed last week.</p> <p>19 MR BUDLENDER SC: Col Scott's plan did 20 not involve putting a line of police around the koppie and 21 preventing people from gaining to the koppie if they were 22 armed.</p> <p>23 BRIG MKHWANAZI: My comment on that 24 particular part, Counsellor, was it was going to be 25 dangerous to place members at that position, hence people</p>	<p style="text-align: right;">Page 3221</p> <p>1 they were not stopped from leaving the koppie.</p> <p>2 MR BUDLENDER SC: Let me sum up, 3 Brigadier, I want to bring this to an end. You initially 4 said, when you started your evidence that you had not 5 identified what led to this operation going so tragically 6 wrong.</p> <p>7 BRIG MKHWANAZI: I think my supporting 8 statement was that I was not there, hence I was not there, 9 it is difficult to say what had happened. I even went 10 further talking even with the plan to say, if I was part of 11 the planning I could have given advice, I could be able to 12 do something about it.</p> <p>13 [12:24] MR BUDLENDER SC: What I want to put to 14 you is that, and I will explain to you why I say that, is 15 in your evidence, you have now in fact identified a number 16 of factors which will be of assistance to the Commission in 17 understanding why things went wrong as they did. Let me 18 list them for you. We have identified through Professor 19 Waddington's work a number of factors which, if they were 20 present, were conducive to violence.</p> <p>21 BRIG MKHWANAZI: If I remember the point 22 you read and asked if I do agree with them and those point 23 were saying that if the following is done will lead to the 24 following of which I think, really, for me to sit here now 25 and say this, if it is was done according to that, it was</p>

<p style="text-align: right;">Page 3222</p> <p>1 going to be this position. We must remember we talk about 2 South Africa here. Of course we need to benchmark to other 3 countries. We can't isolate ourselves as well, then it's 4 important for me to say I'm talking about a crowd here in 5 South Africa, not in Belgium.</p> <p>6 MR BUDLENDER SC: Brigadier, when you 7 gave your evidence, I listed a long series of factors and I 8 said do you agree that if those factors were present, that 9 would be conducive to violence and you agreed yes. But 10 you're now say that was wrong. We are talking about 11 Marikana, not Belgium you know that, are you aware of that?</p> <p>12 CHAIRPERSON: Mr Budlender, I think that 13 sarcasm isn't necessary.</p> <p>14 BRIG MKHWANAZI: Counsellor, when we 15 started going through that document, it was clear that 16 we're not using it in terms of Marikana. We were going 17 through it – yes, it was in terms of what the document is 18 saying, but we are not saying if this was done in Marikana, 19 it was not going to happen in terms of the document. If 20 you can show me that part that you say – I want to say to 21 you this is what so and so is saying in terms of these in 22 Marikana, it was not going to happen. It was not about 23 that.</p> <p>24 MR BUDLENDER SC: I'll try to ask a 25 question, a question without sarcasm. When I ask you about</p>	<p style="text-align: right;">Page 3224</p> <p>1 in a operation.</p> <p>2 MR BUDLENDER SC: And we've agreed that 3 in order to make that decision, they needed to have regard 4 to the situation on the ground at that time, at the time of 5 the decision. We agreed that difficult decisions such as 6 this need to be made by people with a lot of operational 7 experience. We've agreed that the operational plan made 8 the choice of going for the high risk option of confronting 9 3 500 strikers on the koppie before trying certain low risk 10 options which were available. Correct?</p> <p>11 BRIG MKHWANAZI: Just repeat your 12 question.</p> <p>13 MR MAHLANGU: Repeat the question, I'm 14 also not clear.</p> <p>15 MR BUDLENDER SC: The operational plan 16 made the choice for the high risk option of confronting 3 17 500 strikers on the koppie before trying certain low risk 18 options which were available.</p> <p>19 MR SEMENYA SC: Chair -</p> <p>20 CHAIRPERSON: Mr Budlender, there's been 21 an objection. Mr Semenya, yes, what's your objection?</p> <p>22 MR SEMENYA: Again, Chair, there were 23 various options introduced including negotiation and 24 persuading the people to disarm.</p> <p>25 CHAIRPERSON: Isn't - the witness must</p>
<p style="text-align: right;">Page 3223</p> <p>1 those things, did you give your answer not understanding 2 that I was seeking to apply those principles to Marikana? 3 Did you think I was talking about another country?</p> <p>4 BRIG MKHWANAZI: It was all about the 5 document that talked to another person, not to Marikana 6 issue. Your first question is have you read. That's why 7 you have a pile of books with you asking me if I ever read 8 those books before. It has nothing to do with Marikana 9 side. Yes, we can make use of whatever is there, but you 10 never measure the two to the Marikana situation.</p> <p>11 MR BUDLENDER SC: You didn't think I was 12 asking you those questions because they were relevant to 13 Marikana?</p> <p>14 BRIG MKHWANAZI: Because you never made a 15 single picture to say you are actually now measuring 16 Marikana to that book.</p> <p>17 MR BUDLENDER SC: Fine, let's move on. 18 We've agreed that the critical decision to remove the 19 strikers from the koppie needed to be made by the overall 20 commander and the operational commander, correct? The 21 operational commander and the overall commander.</p> <p>22 BRIG MKHWANAZI: Maybe to do what, Sir?</p> <p>23 MR BUDLENDER SC: The decision to remove 24 the strikers from the koppie.</p> <p>25 BRIG MKHWANAZI: That's my understanding</p>	<p style="text-align: right;">Page 3225</p> <p>1 give, not you.</p> <p>2 MR SEMENYA: No, but, Chair, it is now 3 established evidence. Where are we going, I must ask with 4 respect?</p> <p>5 CHAIRPERSON: Mr Budlender, you heard 6 what Mr Semenya said. I think there's maybe some substance 7 in what he says. Maybe you must reformulate that question.</p> <p>8 MR BUDLENDER SC: Chair, I don't even 9 want to reformulate it.</p> <p>10 CHAIRPERSON: It took –</p> <p>11 MR BUDLENDER SC: I made it again and 12 again.</p> <p>13 CHAIRPERSON: Alright.</p> <p>14 MR BUDLENDER SC: It's enough already, as 15 they say. Let me just put it this way. The decision – the 16 operation – the decision to go for the option of 17 confronting 3 500 people on – the strikers on the koppie, 18 was made before trying lower risk options such as going in 19 at night or cordoning and searching the hostels. Is that 20 correct?</p> <p>21 BRIG MKHWANAZI: Counsellor, I will say 22 no. We have started with negotiations, dialogue with the 23 people, going for less lethal. Everything has been done, 24 it started from that, they never jumped to the last part.</p> <p>25 CHAIRPERSON: Mr Budlender, I think</p>



<p style="text-align: right;">Page 3226</p> <p>1 you've made your point. I think you've got as much juice 2 out of this lemon as you can. I suggest you move on to 3 another level.</p> <p>4 MR BUDLENDER SC: I would like to, Chair. 5 You'll remember, Brigadier, that we discussed the report of 6 the panel which advised the Goldstone Committee which 7 talked about the need to consider all scenarios from the 8 most likely to the least likely. Do you remember that?</p> <p>9 BRIG MKHWANAZI: That's correct. 10 MR BUDLENDER SC: And we've agreed that 11 the operational plan did not identify any such 12 alternatives.</p> <p>13 BRIG MKHWANAZI: Counsellor, you're too 14 wide with your question. What is important we discussed 15 before was that the threat analysis, some of the issues 16 like the breaching were not covered in it. That's what we 17 agreed upon, me and you, but now it's like I'm agreeing in 18 everything now.</p> <p>19 MR BUDLENDER SC: Brigadier, you've 20 already mentioned that we've agreed that the operational 21 plan did not identify the risk, that some of the strikers 22 might attack the police.</p> <p>23 BRIG MKHWANAZI: Yes, no. What we 24 discussed last week, we discussed the issue of breaching. 25 The attack, it comes now. Maybe you can ask that question</p>	<p style="text-align: right;">Page 3228</p> <p>1 that? Do you agree with that? 2 BRIG MKHWANAZI: Maybe our understanding 3 or is totally different into this. I'm talking about the 4 breaching. Your question was, was that identified? I said 5 it was not identified. That is my answer. There's at no 6 stage I said it was not identified that the participant 7 will attack the police. I never handled that position in 8 that way.</p> <p>9 MR BUDLENDER SC: Well, Brigadier, the 10 record will speak for itself. I'm not going to rehearse 11 all of that either. Brigadier, do you remember when you 12 gave your evidence in chief, you explained the rule of 13 situation appropriateness. That rule is that if the police 14 intervene, they must not create a bigger problem with an 15 outcome which is not acceptable. Do you remember that?</p> <p>16 BRIG MKHWANAZI: It's correct. 17 MR BUDLENDER SC: Will you at least agree 18 with me that the – in the light of what happened, the 19 intervention which was undertaken was not situationally 20 appropriate? Because it made matters worse, 34 people were 21 killed and more than 70 were injured. Do you agree with 22 me?</p> <p>23 BRIG MKHWANAZI: I think I answered this 24 question even if it was not the same way you are placing 25 it, but it was I think the first question you asked me when</p>
<p style="text-align: right;">Page 3227</p> <p>1 if maybe I thought of that. I don't remember us talking 2 about attack of the participant to the police.</p> <p>3 MR BUDLENDER SC: Alright - 4 BRIG MKHWANAZI: Because just recently we 5 were discussing one of the slide that talk about if 6 participant attack the police. It's there, it's written. 7 How could I come now and say they were not anticipating 8 that they will attack the police?</p> <p>9 MR BUDLENDER SC: Brigadier, you pointed 10 out to us, you were the person that drew our attention to 11 the fact that the risk analysis didn't mention the risk of 12 a possible attack on the police. You're the one who drew 13 it to our attention.</p> <p>14 BRIG MKHWANAZI: Counsellor, maybe it's 15 wrong what I'm doing, but my apology. The issue of threat 16 analysis was brought by you, Sir, to me and my answer was 17 this was not anticipated. I think so, because it's not 18 included there. We have to page through and check, it was 19 not included. The issue of people breaching through, it 20 was not indicated at that position.</p> <p>21 MR BUDLENDER SC: Brigadier, and finally, 22 we – just let me put to you that when you were talking 23 about risks, the failure to identify risks, you were 24 talking about attacks on police, not on breaching a barbed 25 wire. That's clear from the record. Do you agree with</p>	<p style="text-align: right;">Page 3229</p> <p>1 you start questioning me on Wednesday where you said 34 2 people died. I indicated clearly that as I was not there, 3 it's not easy for me to answer to that part because I must 4 be able to have all facts – what happened at the end we 5 have that situation. What I'm doing, I'm explaining how it 6 was supposed to be done, but how it went wrong to that 7 position, I'm not sure what actually went wrong. For me to 8 sit here and say this is wrong, it's going to be very 9 difficult for me to do that. I said right from the first 10 time, it was your first question if I'm correct.</p> <p>11 MR BUDLENDER SC: Brigadier, I just – I 12 don't want to go on and on, round and round in circles but 13 let me just put it to you. You have studied – you 14 participated in Potchefstroom and for three days in a 15 meeting at which the events of the 16th of August were 16 discussed and analysed. Correct?</p> <p>17 BRIG MKHWANAZI: I mentioned clearly I 18 was there for three days and I mentioned the purpose as 19 well why I was there.</p> <p>20 MR BUDLENDER SC: Come on, Brigadier, 21 what was going on for those three days was that they were 22 discussing – reporting on discussing and analysed what – 23 analysing what happened on the 16th of August. We all know 24 that. Are you saying that they weren't doing that? 25 BRIG MKHWANAZI: Counsellor, my answer to</p>

<p style="text-align: right;">Page 3230</p> <p>1 you was when I was called there, we were going to look to  2 the issues of policies, issues of national instructions,  3 standing orders and groups were divided. They put  4 everything which is actually the presentation we've got  5 here. Our task was to look at it as a final product and  6 give our input and I have said clearly, when I was sitting  7 there, I gave more input on terminologies, police  8 terminologies, that's what I gave as my input on that. I  9 understand that you know very well, but I don't know  10 myself.</p> <p>11 CHAIRPERSON: Brigadier, the way I see  12 it, for the moment – if I'm wrong you can correct me – is  13 that you took part in three days of that process. Partly  14 to give advice as to whether the standing orders had been  15 complied with. Is that correct?</p> <p>16 MR BUDLENDER SC: It's correct,  17 Chairperson, as we were there, we were looking to  18 everything that took place at that time to say what says  19 standing order 262. All those things, that's all what we  20 were supposed to look at.</p> <p>21 CHAIRPERSON: I think that's Mr  22 Budlender's point. That in order to give your input as to  23 whether the standing orders had been complied with, you had  24 to be informed of the things that had happened. So  25 therefore you know, not obviously from your own knowledge,</p>	<p style="text-align: right;">Page 3232</p> <p>1 BRIG MKHWANAZI: It is not to say I am  2 not intending to say anything, whether there was something  3 wrong the police did on the day, I remember when I answered  4 this question last week was that if definitely that's where  5 the police did wrong, I will be in a position to criticise  6 if there isn't, there isn't and even at this stage I am  7 still maintaining to say, definitely if there is something  8 not okay I would be able to say but I don't think it is  9 fair to say I must look to what happened before and now,  10 then be able to say what had happened. I am saying the  11 people who were involved in the situation who know the real  12 facts what happened on that day, they will be in a position  13 to say whatever to that particular question. For me I  14 don't think I should say anything.</p> <p>15 MR BUDLENDER SC: Thank you, Chair, I  16 have no further questions.</p> <p>17 CHAIRPERSON: Before the representative  18 of Lonmin asks questions Commissioner Hemraj would like to  19 ask you a few questions, Brigadier.</p> <p>20 COMMISSIONER HEMRAJ: Brigadier, the plan  21 insofar as it relates to the deployment of the barbed wire  22 does not make any provision for the breaching of the police  23 line at that stage, or what the police called breaching of  24 the police line.</p> <p>25 BRIG MKHWANAZI: That's my understanding,</p>
<p style="text-align: right;">Page 3231</p> <p>1 but on the basis of what you learnt over that three day  2 exercise at Potchefstroom what happened. Is that the point  3 you're making, Mr Budlender?</p> <p>4 MR BUDLENDER SC: Thank you, Chair, yes.</p> <p>5 CHAIRPERSON: Well perhaps you can take  6 it further from there.</p> <p>7 MR BUDLENDER SC: And you've also studied  8 the documents which the police legal representatives gave  9 you to inform you better yet about what happened on the 16th  10 of August and the days preceding it.</p> <p>11 BRIG MKHWANAZI: Yes. The document which  12 is actually the PowerPoint presentation by Lieutenant  13 Colonel Scott is the one that was put before us as a final  14 product. All of us, we look at it, we put our own – we  15 gave our own input on it. That's definitely I know the  16 whole information from that position.</p> <p>17 [12:44] MR BUDLENDER SC: And this was an  18 operation which had the result that 34 people were killed  19 and more than 70 people were injured.</p> <p>20 BRIG MKHWANAZI: That's correct.</p> <p>21 MR BUDLENDER SC: And on the basis of  22 your expertise and your participation at Potchefstroom and  23 your studying the documents and all of the discussion we've  24 had over the last two and a half days, you're not prepared  25 to say that the police did anything wrong?</p>	<p style="text-align: right;">Page 3233</p> <p>1 Counsellor.</p> <p>2 COMMISSIONER HEMRAJ: And Mr Budlender  3 has sketched a number of factors that points to the  4 behaviour of the crowd prior to the 16th which include their  5 refusal to put down their arms, refusal to listen to the  6 police, the killing of policemen and other civilians.</p> <p>7 BRIG MKHWANAZI: That's correct.</p> <p>8 COMMISSIONER HEMRAJ: Now given that  9 background the question is, should there have been any  10 provision in the plan for the breaching of that police  11 line? Given the history of the behaviour of that crowd, is  12 it something that was likely to have happened?</p> <p>13 BRIG MKHWANAZI: Counsellor, what  14 normally do happen in crowd management if you deploy the  15 barbed wire, especially when the purpose will be to channel  16 the participants to a certain direction, always you will  17 have members at the back of the barbed wire to protect that  18 nobody must maybe try and pull the barbed wire to the side  19 and go through. In other words if any one tried to breach,  20 obviously somebody will stop that, but in the circumstances  21 it is a little bit different, Counsellor, because as they  22 often deploy people they are moving in, normally the barbed  23 wire will be deployed and finally deployed, members of SAPS  24 will be at the back of the barbed wire protecting or  25 policing a certain situation, but in these circumstances</p>

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1 they were still deploying and they were moving in. So the  
 2 question before was that, was there a plan on that, is  
 3 there any analysis to say where they going to breach it?  
 4 When we went through the plan itself it was not identified,  
 5 of which I agree that it was not identified as a problem  
 6 but in a normal situation that's how we work. We will  
 7 protect the barbed wire by members themselves to make sure  
 8 that nobody pulls the hole through so that people can pass  
 9 through.  
 10 COMMISSIONER HEMRAJ: Do I understand  
 11 that answer to mean that that so called breaching is not  
 12 something that could have been foreseen as something likely  
 13 to happen given the behaviour, the history of the behaviour  
 14 for that crowd?  
 15 BRIG MKHWANAZI: I agree with you.  
 16 COMMISSIONER HEMRAJ: Assuming that  
 17 breach was foreseen by the planners, foreseeable by the  
 18 planners, what would have been the contingency plan for  
 19 that?  
 20 BRIG MKHWANAZI: As I've said,  
 21 Counsellor, normally if there is that situation that it can  
 22 happen members will be placed behind that position to make  
 23 sure nobody comes through into that.  
 24 COMMISSIONER HEMRAJ: Members of which  
 25 team would be placed there?

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1 BRIG MKHWANAZI: It will be the same  
 2 members that are actually in the front portion, in the  
 3 front line. As it happened on the day I believe the same  
 4 members are the same members who tried to push people back,  
 5 using stun grenades, use the teargas to get the people  
 6 away.  
 7 COMMISSIONER HEMRAJ: In your experience  
 8 with crowd control, when barbed wire is rolled out and  
 9 deployed as you call it, is there any experience that the  
 10 crowd approach the barbed wire?  
 11 BRIG MKHWANAZI: Normally it doesn't  
 12 happen the way it did, but it can sometimes really,  
 13 Commissioner, that people will try to go through where they  
 14 see there is a hole to pass through they will do that, it  
 15 is normal, it can happen.  
 16 COMMISSIONER HEMRAJ: Thank you,  
 17 Brigadier.  
 18 CHAIRPERSON: Commissioner Tokota also  
 19 wishes to ask a few questions.  
 20 COMMISSIONER TOKOTA: Brigadier, it is  
 21 just for my own clarification, you were shown on the  
 22 screen, I think it is slide 89 of Exhibit Q, do you have  
 23 Exhibit Q in front of you?  
 24 BRIG MKHWANAZI: Q, no.  
 25 COMMISSIONER TOKOTA: But it was shown on

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1 the screen –  
 2 BRIG MKHWANAZI: No, I don't have it –  
 3 COMMISSIONER TOKOTA: - about the Special  
 4 Task Force.  
 5 BRIG MKHWANAZI: I unfortunately do not  
 6 have it.  
 7 CHAIRPERSON: Sorry, what page is it?  
 8 COMMISSIONER TOKOTA: Ja, there.  
 9 BRIG MKHWANAZI: Oh, yes.  
 10 COMMISSIONER TOKOTA: That is slide 89  
 11 and you were asked by Mr Budlender as to whether any of  
 12 those facts were there identified.  
 13 BRIG MKHWANAZI: Yes.  
 14 COMMISSIONER TOKOTA: It could not be  
 15 identified?  
 16 BRIG MKHWANAZI: No, they were not.  
 17 COMMISSIONER TOKOTA: The way I read  
 18 that, he said that the Special Task Force strives to be the  
 19 model of excellence for tactically paramilitary policing  
 20 operations in dealing with those items. It looks like, it  
 21 is not necessarily the functions of the special STF, is  
 22 that so? Then they include those aspects, not necessarily  
 23 that they are exhaustive.  
 24 BRIG MKHWANAZI: I will agree,  
 25 Commissioner, on that, I will agree.

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1 COMMISSIONER TOKOTA: Could you look at  
 2 slide 92 please, because under cross-examination it was put  
 3 to you that none of those things were present and therefore  
 4 the suggestion perhaps, although it was not expressly done  
 5 so, that it was not necessary for them to be there, slide  
 6 92.  
 7 BRIG MKHWANAZI: 92, I've got it, yes.  
 8 COMMISSIONER TOKOTA: Have you got it?  
 9 BRIG MKHWANAZI: I've got it, yes.  
 10 COMMISSIONER TOKOTA: There I see it  
 11 says, functions within the mandate, those are the functions  
 12 of STF, are they?  
 13 BRIG MKHWANAZI: Correct.  
 14 COMMISSIONER TOKOTA: The sequence of  
 15 events, do you see that?  
 16 BRIG MKHWANAZI: I see that, yes.  
 17 COMMISSIONER TOKOTA: Have you got that?  
 18 BRIG MKHWANAZI: Ja, in 92, yes, I see  
 19 sequence of events.  
 20 COMMISSIONER TOKOTA: No, no, I am  
 21 talking about this Exhibit Q.  
 22 BRIG MKHWANAZI: Ja, I don't have it,  
 23 Commissioner, I don't have it.  
 24 COMMISSIONER TOKOTA: That person there,  
 25 can you show us slide 92?

<p style="text-align: right;">Page 3238</p> <p>1 CHAIRPERSON: 92 of Exhibit Q.  2 COMMISSIONER TOKOTA: No, that's not  3 slide 92.  4 CHAIRPERSON: That's 93. What we see at  5 the moment is 93, the one immediately before that is 92.  6 COMMISSIONER TOKOTA: Looking at that it  7 seems to me that the functions of the STF include  8 operational assistance within the SAPS for criminal related  9 high risk operations where specialised skills and equipment  10 are required.  11 BRIG MKHWANAZI: Correct.  12 COMMISSIONER TOKOTA: There are other  13 functions specified there which are not actually all of  14 them are, not all of them are there in that slide which was  15 shown to you under cross-examination, not so?  16 BRIG MKHWANAZI: I agree with you,  17 Commissioner.  18 COMMISSIONER TOKOTA: Thank you very  19 much.  20 CHAIRPERSON: Just to round off this  21 point, I would be grateful if we could be shown slide 88 of  22 Exhibit Q, that deals with the mission of the Special Task  23 Force. That 89, beneath the one before that, the mission  24 is to provide a specialised and impartial service to the  25 community by handling the high risk operations beyond the</p>	<p style="text-align: right;">Page 3240</p> <p>1 the deployment of the barbed wire?  2 BRIG MKHWANAZI: It differs,  3 Commissioner, because as I've said in a normal situation  4 where we are engaging ourselves with crowd management  5 sometimes you will deploy barbed wire prior to that. For  6 an example let's talk about a Shell house incident. In a  7 Shell house incident we will deploy barbed wire around to  8 ensure that we isolate the structure, we protect the  9 structure. That means people maybe will be walking through  10 or moving through a certain street which passes through the  11 building, then we will have police officials there to  12 protect if anybody approaches the barbed wire and open and  13 goes through there, that's the only part, that's the only  14 part we have.  15 COMMISSIONER HEMRAJ: Perhaps I didn't  16 make myself clear, has your experience been in the past  17 that this sort of number and formation approached the  18 deployment of the barbed wire?  19 BRIG MKHWANAZI: The formation itself?  20 COMMISSIONER: And the number, yes.  21 BRIG MKHWANAZI: I was in the wrong slide  22 but I see it.  23 COMMISSIONER HEMRAJ: Ja, it is 198.  24 BRIG MKHWANAZI: Ja, 198, I see it as  25 they pass through the Nyala. Yes, I've got it, I've got</p>
<p style="text-align: right;">Page 3239</p> <p>1 scope of classic policing in a professional and responsible  2 manner. So what appears from that is that basically the  3 job of the Special Task Force is to provide a particular  4 service namely the handling of high risk operations that  5 falling beyond the scope of classic policing. Is that  6 correct?  7 BRIG MKHWANAZI: Correct.  8 CHAIRPERSON: And that has to be done in  9 a professional and responsible manner?  10 BRIG MKHWANAZI: Yes.  11 CHAIRPERSON: My colleague, Adv Hemraj  12 wants to put a further point to you before we ask the  13 Lonmin representative if he has any cross-examination.  14 COMMISSIONER HEMRAJ: Brigadier, just to  15 be fair to you with regards to your answer that it has  16 happened in the past that protestors or crowds that  17 approach the barbed wire, will you please look at slide 198  18 of Exhibit L, please?  19 BRIG MKHWANAZI: I've got it.  20 COMMISSIONER HEMRAJ: Do you see that,  21 Brigadier, and do you see the caption above it?  22 BRIG MKHWANAZI: Ja, I see it.  23 COMMISSIONER HEMRAJ: Yes, just to be  24 fair to you, has that sort of situation being encountered  25 before in public order policing with the crowd approaching</p>	<p style="text-align: right;">Page 3241</p> <p>1 it, Commissioner. Yes, I've got it, I've got it,  2 Commissioner.  3 COMMISSIONER HEMRAJ: You have 198?  4 BRIG MKHWANAZI: I've got it now, yes.  5 COMMISSIONER HEMRAJ: Yes, have the  6 experience with public order policing –  7 BRIG MKHWANAZI: No, not at all in this  8 manner.  9 COMMISSIONER HEMRAJ: Not in a similar  10 manner?  11 BRIG MKHWANAZI: Not in this manner, not  12 at all.  13 COMMISSIONER HEMRAJ: Thank you.  14 CHAIRPERSON: Who is representing Lonmin  15 today?  16 MR MOTAU SC: Chair, and members of the  17 commission, my name is Terry Motau on behalf of Lonmin.  18 CHAIRPERSON: Yes, you have represented  19 them before for us.  20 MR MOTAU SC: Yes.  21 CHAIRPERSON: I am not asking you to  22 start cross-examination, I just want to ask you, have you  23 got any cross-examination for the witness?  24 MR MOTAU SC: Yes, I do.  25 CHAIRPERSON: Alright, can we do that at</p>

<p style="text-align: right;">Page 3242</p> <p>1 two o'clock?</p> <p>2 MR MOTAU SC: Chair, in fact what we've</p> <p>3 agreed is, Mr George Bizos will go first.</p> <p>4 CHAIRPERSON: Alright, yes, I am aware of</p> <p>5 that. Mr Bizos, will you be ready to start cross-examining</p> <p>6 at two o'clock?</p> <p>7 MR BIZOS SC: Yes.</p> <p>8 CHAIRPERSON: The commission will adjourn</p> <p>9 until two o'clock.</p> <p>10 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>11 [14:02] CHAIRPERSON: The Commission resumes.</p> <p>12 Brigadier, you're still under oath. Mr Bizos.</p> <p>13 MR BIZOS SC: Thank you, Mr Chair.</p> <p>14 Brigadier, you spent seven years at the Internal Stability</p> <p>15 Unit, the more euphemistic name of the Riot Squad, for a</p> <p>16 period of seven years.</p> <p>17 BRIG MKHWANAZI: Yes, Sir.</p> <p>18 MR BIZOS SC: In Alex in Johannesburg?</p> <p>19 BRIG MKHWANAZI: Correct.</p> <p>20 MR BIZOS SC: At the time when every</p> <p>21 gathering in Alex was considered as a riot, thus the name</p> <p>22 of the branch that you served in.</p> <p>23 BRIG MKHWANAZI: Yes.</p> <p>24 MR BIZOS SC: When was the euphemistic</p> <p>25 name Stability Unit name change take place?</p>	<p style="text-align: right;">Page 3244</p> <p>1 Sharpeville in 1960 during the apartheid regime every</p> <p>2 gathering of black people started off on that it was</p> <p>3 illegal and rioters and it required tough policing to keep</p> <p>4 it in order?</p> <p>5 BRIG MKHWANAZI: That's correct, Sir.</p> <p>6 MR BIZOS SC: What was your rank at the</p> <p>7 time of the fundamental change of 1994?</p> <p>8 BRIG MKHWANAZI: If I'm correct I was a</p> <p>9 warrant with the change to Public Order Policing, a warrant</p> <p>10 officer.</p> <p>11 MR BIZOS SC: A warrant officer. For the</p> <p>12 years that you served during the apartheid regime, did you</p> <p>13 take part in any breaking up of unlawful gatherings or</p> <p>14 meetings or riots?</p> <p>15 BRIG MKHWANAZI: Yes, I did.</p> <p>16 MR BIZOS SC: Were they violent, the</p> <p>17 police intercessions violent?</p> <p>18 BRIG MKHWANAZI: Maybe I won't be sure</p> <p>19 with maybe being violent from the side of the police, but</p> <p>20 yes, there were situation where police will intervene at</p> <p>21 that stage as well.</p> <p>22 MR BIZOS SC: Break up meetings?</p> <p>23 BRIG MKHWANAZI: Breaking up meetings, in</p> <p>24 my presence, no, Counsellor, it never happened in my</p> <p>25 presence.</p>
<p style="text-align: right;">Page 3243</p> <p>1 BRIG MKHWANAZI: If I'm correct it was</p> <p>2 immediately after '94, if I recall properly, Sir.</p> <p>3 MR BIZOS SC: Was the Riot Squad still</p> <p>4 the name at that time of the unit that you served in?</p> <p>5 BRIG MKHWANAZI: No Sir, it was Riot</p> <p>6 Unit, changed into Internal Stability, then –</p> <p>7 MR BIZOS SC: Internal Stability, yes,</p> <p>8 another euphemism. Yes? Any other euphemism that was</p> <p>9 changed to?</p> <p>10 BRIG MKHWANAZI: Then it was changed</p> <p>11 after Internal Stability, if I'm not correct, it went</p> <p>12 twice. We were Riot Unit, Internal – no, no, Riot Unit and</p> <p>13 only called Operational Response Services, changed, become</p> <p>14 Internal Stability, and we changed, it became Public Order</p> <p>15 Policing.</p> <p>16 MR BIZOS SC: I can understand the change</p> <p>17 to Public Order Policing after '94, but any reason for the</p> <p>18 changes in its name before '94?</p> <p>19 BRIG MKHWANAZI: I will definitely not be</p> <p>20 sure, Counsellor, because I was still serving there, I</p> <p>21 think if I'm correct, as an Internal Stability I was a</p> <p>22 sergeant, if I'm correct, and I was not more on management</p> <p>23 issues. I'm not sure why it was changed to those names at</p> <p>24 that stage.</p> <p>25 MR BIZOS SC: You know that ever since</p>	<p style="text-align: right;">Page 3245</p> <p>1 MR BIZOS SC: Be that as it may, do you</p> <p>2 recall Mr Mandela's words shortly after his release on the</p> <p>3 violence during gatherings in Natal, that everybody must</p> <p>4 throw their weapons into the sea? You remember that?</p> <p>5 BRIG MKHWANAZI: I recall that, yes.</p> <p>6 MR BIZOS SC: And also he added that as</p> <p>7 violence begets violence, it was important that there</p> <p>8 should not be any violence against the people of South</p> <p>9 Africa. You remember that?</p> <p>10 BRIG MKHWANAZI: Correct.</p> <p>11 MR BIZOS SC: Did you come across a</p> <p>12 gentleman called Eddie Hendrickx? I'll spell it, Mr</p> <p>13 Chairman. The name H-E-N-D-R-I-C-K-X, Hendrickx, come</p> <p>14 across that name?</p> <p>15 BRIG MKHWANAZI: No, not exactly. I</p> <p>16 can't remember. Maybe with issues maybe, or occurrences</p> <p>17 maybe I remember. I can't remember the name at all.</p> <p>18 MR BIZOS SC: Let me try and remind you</p> <p>19 that shortly after the fundamental political changes that</p> <p>20 took place in '94, Colonel, then Colonel Hendrickx, a</p> <p>21 Belgium, came to South Africa at the invitation of the</p> <p>22 South African government in order to reform the police</p> <p>23 force. You remember that?</p> <p>24 BRIG MKHWANAZI: I remember it,</p> <p>25 Counsellor, even though I was not directly involved with</p>

<p style="text-align: right;">Page 3246</p> <p>1 them as they were in South Africa, but maybe with the 2 train, the trainer and everything, it's where I came in to 3 receive training. 4 MR BIZOS SC: Yes. He was not alone. A 5 committee was formed of South Africans and others from the 6 European Union, the United Kingdom, the United States, in 7 order to advise the government to fundamentally change the 8 nature of the South African Police. Did you live through 9 that? 10 BRIG MKHWANAZI: I remember that. 11 MR BIZOS SC: And you will accept from me 12 that Mr Hendrickx was the most experienced police officer, 13 particularly in relation to policing public gatherings? 14 BRIG MKHWANAZI: That's correct, Sir, 15 even though I cannot much attest, but looking to the 16 product we have immediately after that, hence he was more 17 involved with head office. I'll agree with you. 18 MR BIZOS SC: Did you attend these 19 tutorials or lectures or meetings where the fundamental 20 change to the South African Police attitude towards the 21 public should be transformed? 22 BRIG MKHWANAZI: I did, Sir. Some of 23 them yes, I did really attend it. 24 MR BIZOS SC: Did you become an 25 enthusiastic adherent to these transformation procedures</p>	<p style="text-align: right;">Page 3248</p> <p>1 Police under the leadership of Mr Mandela as president, Mr 2 Mufamadi as the Minister of Police, and Mr Fivaz as the 3 Commissioner. 4 BRIG MKHWANAZI: That's correct, Sir, I 5 remember. 6 MR BIZOS SC: He also because of the 7 services that he rendered to South Africa, he was invited 8 for two years to prepare the South African Police as to how 9 they behave vis-à-vis crowds for the World Cup. He has 10 been kept informed, he has been here to consult with us. 11 He has been informed of what is happening here almost on a 12 daily basis, and what I am going to put to you are not my 13 ideas; they are primarily the ideas of Mr Hendrickx. He 14 helped to draft the policing policy, including the standing 15 orders, many of which are still at least on paper in force. 16 BRIG MKHWANAZI: I hear that, Sir. 17 MR BIZOS SC: He designed the curriculum 18 for public order training and delivered training to the 19 trainers, something similar to your job, focussing on 20 middle-level operational field commanders and the design of 21 operational plans. I will not take time by giving the 22 Commission anymore about his curriculum vitae. He will say 23 that to his regret most of the fundamental changes that 24 were agreed upon and applied during the five years that he 25 was here, have apparently been substantially abandoned and</p>
<p style="text-align: right;">Page 3247</p> <p>1 that were taking place in the South African Police Force? 2 BRIG MKHWANAZI: Yes, I did. 3 MR BIZOS SC: You must have, because you 4 will recall that no less than 4 000 of your erstwhile 5 colleagues were removed from the South African Police Force 6 because of their authoritarian attitude to the public of 7 South Africa. 8 BRIG MKHWANAZI: Maybe my answer, 9 Counsellor, there is that yes, I witnessed that some of the 10 police officially left, even though I was not sure what 11 were the reasons. 12 MR BIZOS SC: You don't dispute the 13 correctness of my assertion that they were actually 14 rendered superfluous because of their attitude to the 15 fundamental changes that were taking place, which were not 16 to their liking? 17 BRIG MKHWANAZI: I don't dispute it, Sir. 18 MR BIZOS SC: Now the reason why I've 19 asked you these questions, or one of the reasons is that Mr 20 Eddie Hendrickx is going to be a witness in this 21 Commission. 22 BRIG MKHWANAZI: I hear that, Sir. 23 MR BIZOS SC: He spent five years in 24 South Africa when the fundamental change took place, and 25 played an important role in transforming the South African</p>	<p style="text-align: right;">Page 3249</p> <p>1 he will say that having regard to the information that has 2 been led in evidence before this court, and more 3 particularly documents which have not yet been introduced 4 as exhibits, the plan by Colonel, or Lieutenant-Colonel 5 Scott was fundamentally flawed. Let me read to you a 6 summary of some of his views and ask you whether you agree 7 or disagree. They relate to crowd management. He will 8 say, "A public order situation is a sequence of events and 9 the role of the police is to minimise or eliminate 10 flashpoints of conflict and confrontation. If a flashpoint 11 occurs, minimal force, and never, never lethal force, must 12 be used." 13 [14:22] Before you answer the question I must ask you to 14 assume that we will deal with the so called private 15 defence, we are talking about crowd control. Never must 16 such force be used for crowd control situations. Would you 17 agree that private defence is for situations of one or two 18 or three policemen being confronted by two or three robbers 19 or hijackers or whatever it is and you can't expect them 20 not to defend themselves for their lives, we are not 21 talking about that situation, we are talking about the 22 situation of crowd control, never hard ammunition, never 23 shoot to kill situation. 24 CHAIRPERSON: Before you answer that 25 question Mr Semanya has an objection. Mr Semanya?</p>

<p style="text-align: right;">Page 3250</p> <p>1 MR SEMENYA SC: Chair, the questions are  2 compound and some elements of that question are  3 objectionable, that private defence is limited to specific  4 few individuals against a few individuals.  5 CHAIRPERSON: Well, of course it is a  6 double question, the general proposition was put, it was  7 then said private defence of course is different, we're not  8 talking about that and then a statement was made about when  9 private defence applies, so strictly speaking the witness  10 should be given an opportunity to deal with each  11 proposition separately. Perhaps you could put the  12 propositions separately and when you come to a proposition  13 Mr Semenya objects to, we will then hear from him and I'll  14 have to rule in the light of what he says and you say.  15 MR BIZOS SC: Thank you, Mr Chairman, I  16 was ahead of myself. I will just ask the question, that in  17 relation to crowd control never must lethal force be used,  18 would you agree with that?  19 BRIG MKHWANAZI: On my understanding,  20 Counsellor, is that we need to engage on minimum force in  21 all circumstances if we are actually coming across a  22 situation whereby the use of force has to be utilised. At  23 the same time we need to –  24 CHAIRPERSON: The answer amounts to, yes.  25 MR BIZOS SC: Yes, thank you. Yes, so</p>	<p style="text-align: right;">Page 3252</p> <p>1 something that we noted that Mr Hendrickx will say to the  2 commissioner. There are four phases in any public order  3 event, prevention, de-escalation and debriefing and by way  4 of explanation, prevention is concerned with conflict  5 resolution and addressing the structural and root courses  6 of conflict where as prevention is concerned with conflict  7 management, do you understand that? Do you agree?  8 BRIG MKHWANAZI: I know about it, yes.  9 MR BIZOS SC: Then he says, proper  10 information is critical to the successes of any public  11 order operation. Information gathering, intelligence, even  12 the use of informers, proper communication systems, for  13 example good radio contact and recording, videos, cameras  14 and photographers, would you agree?  15 BRIG MKHWANAZI: I do agree.  16 MR BIZOS SC: You agree?  17 BRIG MKHWANAZI: Yes.  18 MR BIZOS SC: You know one, you agree, it  19 is important, is it not, that what the briefing minutes of  20 Thursday, the 16th of August 2012 at 06 in the morning in  21 the Marikana JOC meeting, Major General Annandale welcomed  22 all commanders present to briefing session, TT4 –  23 CHAIRPERSON: Brigadier, that's Exhibit  24 TT4.  25 BRIG MKHWANAZI: Yes.</p>
<p style="text-align: right;">Page 3251</p> <p>1 that we are agreed that in trying to manage a crowd you  2 respect the sanctity of the lives of all the people in the  3 crowd, would you agree with that?  4 BRIG MKHWANAZI: That's correct.  5 MR BIZOS SC: Okay, thank you. The  6 reason, it is a simple one, isn't it, in a crowd that you  7 want to manage practically universally there will be  8 different people with different agendas, different  9 attitudes, legally or illegally, you can't distinguish  10 amongst those that have a violent agenda, you can't open  11 machine guns which are R4s and R5s on a crowd, would you  12 agree with that?  13 BRIG MKHWANAZI: Yes, I do agree on that,  14 the only position is to say what's the situation at that  15 time, I do agree.  16 MR BIZOS SC: Of course if there is a  17 large crowd and there is one person with a firearm you  18 don't spray bullets right across the crowd if you can do it  19 in another way, have a sharp shooter and shoot the person  20 who is armed, not necessarily even to kill him but to  21 disarm him rather than opening a machine gun onto a crowd.  22 This is what Mr Hendrickx will say, would you agree with  23 him or would you disagree with him?  24 BRIG MKHWANAZI: I do agree  25 MR BIZOS SC: Thank you. I will read out</p>	<p style="text-align: right;">Page 3253</p> <p>1 MR BIZOS SC: Remember the time, this is  2 a meeting taken place at six o'clock in the morning  3 according to the minutes.  4 BRIG MKHWANAZI: I see that.  5 MR BIZOS SC: And Crime Intelligence is  6 that Lieutenant Colonel Isaacs informed the meeting on the  7 following, that there are currently about 3 000 mine  8 workers that were gathered at the koppie, many of these  9 mine workers are in possession of dangerous weapons,  10 spears, assegais and pangas. According to information  11 received the group will decline to surrender these  12 dangerous weapons to the police. Information also  13 indicates that the mine workers will not leave the koppie  14 and are prepared to fight if their demands are not met  15 which includes resisting the police.  16 CHAIRPERSON: Mr Interpreter, have you  17 got a copy of Exhibit TT4? Ms Pillay, have you got one  18 that you can give the interpreter? It will be easier for  19 the interpreter to –  20 MR BIZOS SC: I am sorry, I thought the  21 witness had a copy.  22 CHAIRPERSON: No, no, so did I but  23 Commissioner Hemraj pointed out to me that the witness has  24 got one but the interpreter hasn't, so I thought it would  25 help if we got him one.</p>

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1 MR BIZOS SC: May I proceed, Mr Chair?  
 2 CHAIRPERSON: Counsel is referring to the  
 3 first page of Exhibit TT4.  
 4 MR HANABE: Yes.  
 5 MR BIZOS SC: Thank you. May I proceed?  
 6 Now at six o'clock in the morning it is noted here in the  
 7 police document that there were 3 000 people there. Either  
 8 Mr Isaacs was a profit as to what was going to happen in  
 9 the future, or the document is a false document, would you  
 10 agree?  
 11 BRIG MKHWANAZI: I notice that everything  
 12 -  
 13 MR BIZOS SC: Because I draw your  
 14 attention to this because you expressed view about the  
 15 reasonableness or otherwise of the police conduct in  
 16 Exhibit L, is it? In Exhibit L, this is a document which  
 17 we were told was put together during the nine days at  
 18 Potchefstroom in which the author of the plan, Lieutenant  
 19 Colonel Scott played an important part in putting it  
 20 together as this is the State's case before the commission.  
 21 CHAIRPERSON: The State hasn't got a  
 22 case, this is the case of the South African Police  
 23 Services.  
 24 MR BIZOS SC: I am sorry, I forget  
 25 myself. You expressed an opinion repeatedly that on the

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1 information given to you the police did nothing wrong. My  
 2 learned friend has the right to put hypothesis to you and  
 3 to ask you to express an opinion on the basis that the  
 4 facts are correct. Before given them a clean bill of  
 5 health, if I were to ask you to take into consideration a  
 6 number of factors which appear to contradict the  
 7 credibility of the information in Exhibit L, I will give  
 8 you some examples and ask you whether you persist in giving  
 9 an unqualified bill of good of health to the police or not.  
 10 Exhibit L assumes that the police will attack at phase one  
 11 and they shot in self defence where 14 people were killed.  
 12 Were you told either at Potchefstroom or in preparation of  
 13 you going into the witness box to give evidence in this  
 14 commission, that there are a number of written statements  
 15 taken by the Independent Police Investigation Unit in which  
 16 they say categorically that they tried to escape from  
 17 encirclement by the police through the gap at the end of  
 18 the razor wire. Now assume for a moment, they will give  
 19 evidence, I presume, statements were taken from them,  
 20 assume that that is true would you still continue saying  
 21 that you can see nothing wrong that the police have done?  
 22 BRIG MKHWANAZI: Counsellor, in my answer  
 23 I gave last week was that where police did wrong I would  
 24 criticise, because the question was, what can I criticise.  
 25 I indicated that where it is definitely supposed, with the

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1 statement, Counsellor, you are talking about, I haven't  
 2 seen them. It is my first time to hear about that.  
 3 MR BIZOS SC: Now that I have brought to  
 4 your attention the possibility that there is another  
 5 version that may prevail and be the truth and that the  
 6 facts set out in Exhibit L by the State as the defence  
 7 contains untruths, what will your answer be to the question  
 8 by my learned friend that the police did nothing wrong?  
 9 [14:42] BRIG MKHWANAZI: If definitely I can be  
 10 in a position to have that information read and listened to  
 11 it, I will be in a position to comment, Counsellor, but at  
 12 this stage, I haven't, is like the statements you are  
 13 mentioning is that there are statements that indicate that  
 14 people tried to come out of the encirclement and what was  
 15 given to me was that the deployment of the barbed wire was  
 16 to protect the media as well as the police officials and  
 17 other VIPs. So this information I am commenting about, if  
 18 there's something above that, if it's given to me then  
 19 definitely maybe my answer can be different.  
 20 MR BIZOS SC: Well, in fairness to you,  
 21 Brigadier, the fact that you were asked an opinion without  
 22 any qualification as to whether the facts that you were  
 23 given were true or not, has led you to repeatedly say that  
 24 you can see nothing wrong. I will give you other examples,  
 25 and ask you the same question, had you known the facts like

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1 what the people that were there, and survived, say about  
 2 their purpose, that you will withdraw the, they did nothing  
 3 wrong, what, it may be correct, but if they are believed,  
 4 if the police are believed and the evidence is to the  
 5 contrary is rejected, it is not for me to judge, it is for  
 6 the members of the Commission to find the facts, and to  
 7 decide, not for me. But the way your evidence actually  
 8 came out, the way it was led, seemed to be a plan to tell  
 9 the Commission and the country at large that the police did  
 10 no wrong. You couldn't say that, could you?  
 11 BRIG MKHWANAZI: Counsellor, as I've said  
 12 from the beginning, the question asked, do I have anything  
 13 to criticise? I indicated to say if there's something I  
 14 must criticise, I will, and always there's two sides of the  
 15 story. What I heard now, what I've given my opinion is  
 16 what I have heard. However, if there's something else that  
 17 comes as we are going on, I will be in a position really to  
 18 say, this is what I feel, or my opinion is that police  
 19 should have done. I would definitely say that. I never  
 20 keep on clinging to say police were right, even though  
 21 there's a position whereby there is something that shows  
 22 that something went wrong at this position. But what is  
 23 important, Counsellor, is that when we were discussing  
 24 this, we were not talking in overall, we were talking step  
 25 by step with all stages that were followed on the day



<p style="text-align: right;">Page 3258</p> <p>1 during the operation, to say, was it correct for  2 negotiation by Major Gen Mpmembe? Was it correct for this?  3 That's where I come up and say, yes, it is correct because  4 it's based on this. But I cannot be now to say, this is  5 what is – a thing I am clinging on it forever. No, if  6 there's some other issues I will definitely have to look at  7 and say, is it correct or not?  8 MR BIZOS SC: Brigadier, I think that you  9 and I understand each other quite well, thank you for that,  10 but let me give you some other facts which may persuade you  11 to qualify your view of the case that was presented at  12 Potchefstroom and which has been, I might as well say it,  13 dolled up for the purposes of this Commission, in that  14 document exhibit L. They say that they were defending  15 themselves because their lives was in danger and property  16 was in danger, and it was their statutory duty to defend  17 themselves and property and law and order, that's what they  18 say. Are you aware of the fact in relation to whether  19 their lives were in danger or not, that approximately two-  20 thirds of the people that have been killed or injured, were  21 injured in the back?  22 BRIG MKHWANAZI: I got that information,  23 Sir.  24 MR BIZOS SC: They?  25 BRIG MKHWANAZI: I got that, I heard</p>	<p style="text-align: right;">Page 3260</p> <p>1 sufficient that I can make a better position to say what  2 had happened.  3 MR BIZOS SC: Could I, without having a  4 very clear memory as to how you may have qualified your  5 answer to my learned friend, Mr Semanya, now that you have  6 been told about that, those figures, of how many people  7 were shot at the back, as an experienced Brigadier in the  8 South African Police Force, are you prepared to say that  9 the police on the day in question acted in self-defence?  10 BRIG MKHWANAZI: Once more, Counsellor,  11 my answer right from the beginning was, I heard about the  12 situation, and I do not even, if we talk about the figures,  13 how many people who were actually injured or shot at the  14 back, and the information, I am saying for me is not  15 sufficient to make any position to say, whether was it in  16 self-defence, was it in private defence, I cannot say  17 because I was not there. The person who's there can be in  18 a position definitely to say this is what happened, because  19 I cannot talk on behalf of somebody else in that position.  20 It's very, very difficult for me to do that.  21 MR BIZOS SC: There are other numerous  22 examples where, to use lawyers' language, there will be a  23 conflict of fact, it's not for you to judge who is telling  24 the truth, so that I have a general answer that if you were  25 understood to say that the police were blameless, in</p>
<p style="text-align: right;">Page 3259</p> <p>1 that.  2 MR BIZOS SC: I am sorry, I didn't hear.  3 BRIG MKHWANAZI: Yes, your question,  4 Counsellor, was do I have information that some people were  5 injured at the back.  6 MR BIZOS SC: Yes.  7 BRIG MKHWANAZI: Yes.  8 MR BIZOS SC: Assume for a moment that  9 that is correct –  10 BRIG MKHWANAZI: I am saying, I did have  11 that information that there is some people –  12 MR BIZOS SC: Oh, you heard about it  13 before?  14 BRIG MKHWANAZI: Ja.  15 MR BIZOS SC: What do you say about the  16 self-defence story? Are you prepared to say that what –  17 that they acted in self-defence?  18 BRIG MKHWANAZI: As I have said from the  19 beginning, when the question was asked of me, regarding  20 that particular position, which I believe it took place,  21 and my point was, it's difficult for me to comment on a  22 situation, I only get information on it. But if I was  23 involved, I saw all this, then I can be able to have a good  24 answer on that. I don't know what happened on that time.  25 I can only talk on what I am seeing, and it's not</p>	<p style="text-align: right;">Page 3261</p> <p>1 relation to these deaths, in view of the fact that you now  2 hear of facts which would prove the contrary, you are  3 unable to express an opinion as to who is telling the  4 truth, you are not a judge, you are a witness.  5 BRIG MKHWANAZI: Counsellor, I don't  6 think that I got any fear at all, I don't have any fear,  7 the only thing is I must talk facts, and I think it is  8 important for me not to sit here and lie, I must talk the  9 truth. That's what I am prepared to do. Definitely, if I  10 am going to be pushed to say something that is not from my  11 understanding, I have a problem with that, Counsellor.  12 What is my point here is that on the day, as you said, this  13 is what had happened, these are the issues that really you  14 must be able to witness to be able to say something on it,  15 because for me, to sit here and say, this was done and it  16 was wrong or it was right, I am not sure. We talk about  17 private defence here, we talk about self-defence, or  18 necessity, depending what the situation is, and for me to  19 say now, someone was wrong, I cannot come into that  20 position and say that situation. It is difficult for me.  21 I would like to talk the truth and I would like to remain  22 doing that.  23 MR BIZOS SC: Once you have raised this,  24 and I accept what you say, Brigadier, I want to ask you  25 this, whose idea was it that you should be a witness in</p>

<p style="text-align: right;">Page 3262</p> <p>1 this Commission?</p> <p>2 BRIG MKHWANAZI: The Provincial</p> <p>3 Commissioner.</p> <p>4 MR BIZOS SC: You were not at Marikana,</p> <p>5 you didn't attend the full meeting. You came here because</p> <p>6 you are a trainer.</p> <p>7 BRIG MKHWANAZI: That is correct, I came</p> <p>8 here because I was actually co-ordinating all the training</p> <p>9 of the specialised units.</p> <p>10 MR BIZOS SC: Who is your successor for</p> <p>11 public order facilitation in the national office?</p> <p>12 BRIG MKHWANAZI: Maybe I should explain</p> <p>13 that I was not co-ordinating only public order policing. I</p> <p>14 was co-ordinating all specialised training units, meaning</p> <p>15 the office I left now as I am no more in that office, there</p> <p>16 is a person who is acting at this moment who is actually</p> <p>17 co-ordinating there, but people are changing every time. I</p> <p>18 won't know at this stage who is acting as I am sitting</p> <p>19 here.</p> <p>20 MR BIZOS SC: Who holds your position in</p> <p>21 the North West Province?</p> <p>22 BRIG MKHWANAZI: You mean in the same</p> <p>23 position I am holding now?</p> <p>24 MR BIZOS SC: Yes.</p> <p>25 BRIG MKHWANAZI: Are you referring to the</p>	<p style="text-align: right;">Page 3264</p> <p>1 before you came here.</p> <p>2 CHAIRPERSON: I am told that I misread</p> <p>3 it, it's actually the 4th. It looks like a "9" but –</p> <p>4 MR BIZOS SC: It doesn't matter.</p> <p>5 CHAIRPERSON: - it's either the 4th or the</p> <p>6 9th of December 2012.</p> <p>7 MR BIZOS SC: Yes.</p> <p>8 CHAIRPERSON: It's signed by the witness</p> <p>9 and confirmed under oath.</p> <p>10 MR BIZOS SC: Yes, will you confirm that</p> <p>11 you only made this statement in December?</p> <p>12 BRIG MKHWANAZI: Yes, it's the 4th of</p> <p>13 December.</p> <p>14 CHAIRPERSON: Mr Bizos, when it's</p> <p>15 convenient for you, we will take the short afternoon</p> <p>16 adjournment but – when it's convenient, tell me, and we'll</p> <p>17 take the -</p> <p>18 MR BIZOS SC: No, just one question to</p> <p>19 scratch out that paragraph in my notes, please, Mr</p> <p>20 Chairman. You were invited to Potchefstroom to advise on</p> <p>21 the legislation regulation and standing orders.</p> <p>22 BRIG MKHWANAZI: It is correct.</p> <p>23 MR BIZOS SC: Did anybody give you any</p> <p>24 reason why you were chosen as a person to do that?</p> <p>25 BRIG MKHWANAZI: Counsellor, maybe I</p>
<p style="text-align: right;">Page 3263</p> <p>1 position I am holding now?</p> <p>2 MR BIZOS SC: Yes, but who is your</p> <p>3 counterpart in this province?</p> <p>4 BRIG MKHWANAZI: It is Brigadier Calitz.</p> <p>5 MR BIZOS SC: Was Advocate Moolman at the</p> <p>6 meeting in Potchefstroom?</p> <p>7 BRIG MKHWANAZI: I am not sure if he was</p> <p>8 there, but I don't know him, I haven't –</p> <p>9 MR BIZOS SC: Is it he or she?</p> <p>10 BRIG MKHWANAZI: I am not sure about it,</p> <p>11 as I have said. I am not sure.</p> <p>12 MR BIZOS SC: You were called according</p> <p>13 to the very short unsigned statement that we have, unsigned</p> <p>14 and undated statement which we have, to give advice –</p> <p>15 CHAIRPERSON: Mr Bizos, my copy is</p> <p>16 signed, and on each every page.</p> <p>17 MR BIZOS SC: Well, we only got unsigned</p> <p>18 copies, but if it has been signed, I'd be helped – and it's</p> <p>19 actually great to have the date.</p> <p>20 CHAIRPERSON: He actually also swore that</p> <p>21 it was correct. It's dated the 9th of December 2012.</p> <p>22 MR BIZOS SC: It's blank in our – 9th of</p> <p>23 September?</p> <p>24 CHAIRPERSON: December.</p> <p>25 MR BIZOS SC: 9th of December shortly</p>	<p style="text-align: right;">Page 3265</p> <p>1 should correct this, it was not only me, called there. If</p> <p>2 I am correct, we were six or seven called in, in the same</p> <p>3 position, and our purpose was the same thing we were</p> <p>4 supposed to look at. It was not only me.</p> <p>5 MR BIZOS SC: Thank you, Mr Chairman, it</p> <p>6 may be a –</p> <p>7 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>8 [15:23] CHAIRPERSON: The Commission resumes.</p> <p>9 Brigadier, you're still under oath. Mr Bizos, you're still</p> <p>10 cross-examining.</p> <p>11 MR BIZOS SC: I want to return to what Mr</p> <p>12 Hendrickx will say and ask you whether you agree or</p> <p>13 disagree, Brigadier, and Mr Hendrickx will say that he</p> <p>14 agrees with the view of one David Waddington, the brother</p> <p>15 of the person mentioned by our learned friend Mr Budlender</p> <p>16 yesterday, and he will tell the Commission that disorder</p> <p>17 often involves ordinary members of the public who do not</p> <p>18 otherwise commit criminal acts. Would you agree with that</p> <p>19 principle?</p> <p>20 BRIG MKHWANAZI: Ja, if we talk,</p> <p>21 Counsellor, about people who are gathering or who are</p> <p>22 marching, there are procedures in South Africa we need to</p> <p>23 follow and if it happened that they were, they had gathered</p> <p>24 without proper procedures being followed, obviously</p> <p>25 something is not okay with that type of gathering. In</p>

<p style="text-align: right;">Page 3266</p> <p>1 other words, we need to check if the Regulation of 2 Gatherings Act was followed properly and if it happened 3 during that gathering something wrong is taking place, 4 maybe there is damage to property or something, obviously 5 there will be some sort of criminal cases being opened 6 against those people. But I won't be in a position to say 7 people gathered, even if there's something wrong that is 8 happened, there is no criminal offence. But if it is, 9 Counsellor, it's peacefully, nothing is happening there 10 which is wrong, then there's nothing wrong to say there's 11 criminal offence that's committed on that, except to say 12 did they follow the procedures as per Regulation of 13 Gatherings Act.</p> <p>14 MR BIZOS SC: Let me read it again. 15 Please listen carefully. "Disorder often involves ordinary 16 members of the public who do not otherwise commit criminal 17 acts." The general principle, would you agree with that?</p> <p>18 BRIG MKHWANAZI: Ja, only a problem I'm 19 having is the consequences. Yes, if you say it is just as 20 you are putting it, but my concern, what is the 21 consequences –</p> <p>22 MR BIZOS SC: Deal with what I'm putting. 23 Deal with what I'm putting, that there may be people in a 24 gathering, even if it is an unlawful gathering – and we'll 25 deal with whether this was an unlawful gathering – there</p>	<p style="text-align: right;">Page 3268</p> <p>1 provision of the Regulation of Gatherings Act, definitely 2 we have to make sure nobody is injured or any property 3 damaged. We have to make sure such things doesn't happen.</p> <p>4 MR BIZOS SC: Surely there must be a 5 distinction between a large gathering in an urban area 6 where there are motorcars and cycles and shops and that 7 sort of thing, that you have to behave, but this is an open 8 piece of ground. Would you agree?</p> <p>9 BRIG MKHWANAZI: Depend what we want to 10 achieve with the question, but the bottom line is, is that 11 no matter can be in rural, can be in urban, I think we have 12 to look to say what has happened. In this type of a 13 situation we talk about people who have lost life before 14 even it continue to the 16th.</p> <p>15 MR BIZOS SC: Whilst we are on this, 16 there is evidence – I don't remember by whom, but I 17 remember the words very clearly – that the police declared 18 it as a security zone. You are an expert in the 19 legislation, you've told us. Where do the police get the 20 authority to declare an area a security zone?</p> <p>21 MR SEMENYA SC: Chairperson, that 22 statement was not uttered by the police. It was uttered by 23 Lonmin official advising Mathunjwa not to go to that area.</p> <p>24 CHAIRPERSON: I think the bishop said a 25 similar thing. There was a statement made by Lonmin</p>
<p style="text-align: right;">Page 3267</p> <p>1 are people who are innocent of any crime that find 2 themselves in the middle of a crowd.</p> <p>3 CHAIRPERSON: Mr Bizos, I think the 4 passage you put doesn't quite say that, because the key 5 word was "otherwise," that ordinary citizens who do not 6 otherwise commit crimes are sometimes involved in illegal 7 gatherings. In other words, the only crime they commit is 8 being at an illegal gathering, but for the rest they're 9 highly respectable ordinary citizens. I –</p> <p>10 MR BIZOS SC: That is what I want to put. 11 Thank you, Mr Chairman.</p> <p>12 BRIG MKHWANAZI: I do agree in that way.</p> <p>13 MR BIZOS SC: Here we're dealing with a 14 crowd of 3 000 or 3 500, or somebody said 4 000. The 15 common reason for being there is that they want a 16 substantial – comparatively – increase to their wages. 17 That's not a crime, is it?</p> <p>18 BRIG MKHWANAZI: It's not a crime at all, 19 only the procedures that need to be followed, that's all.</p> <p>20 MR BIZOS SC: Yes, so even if there are 21 some in the crowd who carry, unlawfully, dangerous weapons, 22 the duty of the police is not only to disarm those who have 23 dangerous weapons, but not to expose any of the people in 24 the crowd any punishment, and certainly not death.</p> <p>25 BRIG MKHWANAZI: It is correct, with the</p>	<p style="text-align: right;">Page 3269</p> <p>1 official twice actually, once to Mr Mathunjwa, twice at 2 least, once to Mr Mathunjwa and once to the bishop, but it 3 wasn't a statement made by the police. So the question 4 must be reformulated in the light of that information.</p> <p>5 MR BIZOS SC: Do you know of any 6 provision in any piece of legislation giving the police 7 authority to declare a piece of land, a number of square 8 kilometres, as a security zone? Do you know of any such 9 provision in any legislation?</p> <p>10 BRIG MKHWANAZI: Are we referring during 11 the operation?</p> <p>12 MR BIZOS SC: Well, I don't know what 13 operations mean in this context, but before there was any 14 violence and before there was any danger to any person, 15 have the police authority at approximately 12 or 12:30 to 16 say that you can't go there because we have declared it a 17 police zone?</p> <p>18 BRIG MKHWANAZI: Counsellor, I'm not 19 sure. What I know under the gathering and everything is 20 that yes, we have something called neutral zone or – yes, 21 neutral zone, whereby at least we need to identify an area 22 where there is a crowd, like they are at that hill, we need 23 to have a position where our vehicles will be, which we can 24 say is safe, our members will be, which we'll say is safe 25 and be able to deal with the situation. Actually we talk</p>

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1 about freedom of action, the operational commander can be  
 2 able to say so and so, so and so, do me the following.  
 3 That's how I know, but as is the place as you say now that  
 4 we'll declare it, I haven't met it. I would be lying at  
 5 this stage, maybe I –  
 6 MR BIZOS SC: Well, what authority, if  
 7 any, have the police got to tell a bishop that he can't go  
 8 to a place where there is no violence –  
 9 MR SEMENYA SC: Objection, Chair. The  
 10 bishop was not told by the police anything like this.  
 11 CHAIRPERSON: That's correct, Mr Bizos –  
 12 MR BIZOS SC: Well, he was told that he  
 13 can't go –  
 14 CHAIRPERSON: He was told that by Lonmin  
 15 official who was –  
 16 MR BIZOS SC: On the authority of the  
 17 police.  
 18 CHAIRPERSON: Purportedly on the  
 19 authority –  
 20 MR BIZOS SC: This is what the evidence  
 21 was –  
 22 CHAIRPERSON: Purportedly on the  
 23 authority –  
 24 MR BIZOS SC: That the police were,  
 25 rather the Lonmin person said that the police have declared

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1 it a zone and that you can't go there. This is how I  
 2 recall the evidence.  
 3 CHAIRPERSON: The point you make is that  
 4 the police haven't got authority to do that.  
 5 MR BIZOS SC: Yes.  
 6 CHAIRPERSON: Either if they said that to  
 7 the Lonmin official who passed the message on, they were  
 8 arrogating to themselves a power they didn't have –  
 9 MR BIZOS SC: Yes.  
 10 CHAIRPERSON: Alternatively the Lonmin  
 11 person reported something that was not correct. But you're  
 12 entitled to establish that if that's what was said by the  
 13 police, it wasn't justified, which I think you've  
 14 established. So -  
 15 MR BIZOS SC: Yes, I will leave it at  
 16 that. The other is, what authority have the police in  
 17 terms of what do they have to prevent a person from  
 18 addressing a gathering and they say you've got to do it  
 19 from inside one of our vehicles, despite his objections?  
 20 Where do they get that authority from?  
 21 BRIG MKHWANAZI: Counsellor, I'm not sure  
 22 how it happened, but on my understanding is that, with my  
 23 experience doing this job is that we will have to assist a  
 24 person to talk to the crowd if definitely that person will  
 25 have an influence to solve the problem, to assist, and if

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1 it happened definitely that there is danger maybe that can  
 2 be identified, we need just to protect that person. But  
 3 how it has to be protected, it will depend to you as the  
 4 person in charge on the day to say if that person come and  
 5 stand in front of everybody and do whatever he's supposed  
 6 to do and get injured, then it won't be okay. But I  
 7 haven't seen a part in any document I've gone through that  
 8 a person will have only to talk inside a vehicle. No, I  
 9 haven't seen that part, but I'm saying if there is a  
 10 position to say a person has to be protected, it will  
 11 depend how they do it. I'm not sure about it, why they  
 12 engage on that.  
 13 MR BIZOS SC: One other matter which Mr  
 14 Hendrickx will address is that far from being innocent  
 15 bystanders or victims, the police usually play a  
 16 significant role in forestalling or provoking disorder.  
 17 Would you be –  
 18 BRIG MKHWANAZI: If I understand the  
 19 statement, Counsellor, is that we are talking about people  
 20 who are not involved with the big group, who are just  
 21 watching what is happening, the bystanders, and your  
 22 question is, is it correct that police can maybe provoke  
 23 the situation. I won't agree with that. Maybe I can say  
 24 sometimes it happen in a situation where police has to  
 25 intervene and maybe the understanding of what police want

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1 to achieve, it goes in a total different way and it end up  
 2 maybe causing a problem, but to say we, the police can  
 3 cause disruption when somebody is standing and is not part  
 4 of the march, that's why we are saying even we're going to  
 5 disperse people, at least give that warning twice to allow  
 6 the bystanders to move away from that particular place  
 7 because they are not involved with that.  
 8 MR BIZOS SC: Either I didn't phrase my  
 9 question correctly, or you misunderstood it. That's not  
 10 what I'm dealing with. It's the conduct of the police in a  
 11 particular situation may provoke the crowd to hostility  
 12 towards the police. Could I illustrate it by example  
 13 relating to the facts of this case. There was no love lost  
 14 between the mining company and the workers. Will you  
 15 accept that as an apparent common cause fact?  
 16 BRIG MKHWANAZI: Ja, I still have a  
 17 problem, Counsellor, you know, to be able to answer your  
 18 question properly. Yes, I understand you have tried to  
 19 change your question, but I still maintain the position  
 20 that when police intervene, of course there will be a  
 21 problem that really sometimes depending what means are  
 22 being used to deal with the situation maybe cause  
 23 misunderstanding between the police and the people who are  
 24 actually marching. But I'm not sure with the example you  
 25 try to give to me, especially with the employee as well as

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1 the employer. To me it doesn't give me a clear indication  
 2 exactly how can I answer your question.  
 3 [15:43] MR BIZOS SC: If the police show any  
 4 bias, assume that, if the police show any bias in favour of  
 5 the employer in a labour relations situation the anger of  
 6 the crowd may lead to unfortunate consequences, or apparent  
 7 cooperation between the employer and the police which the  
 8 workers will consider unfair that they seem to be too  
 9 friendly to the employer and inimical to the interests of  
 10 the workers, would that possibly, what Mr Hendrickx will  
 11 say is that the police must not do anything which will  
 12 provoke disorder in showing bias towards one side maybe -  
 13 BRIG MKHWANAZI: Counsellor, from my  
 14 experience doing this job is that if you intervene as the  
 15 police official in a rank or a position that actually  
 16 subjected to do that, you need to make sure that you are  
 17 actually in between, you balance the situation -  
 18 MR BIZOS SC: Yes -  
 19 BRIG MKHWANAZI: You don't be in the side  
 20 of the employer or in the side of the employer, what is  
 21 your task, is to bring the two parties to negotiate and  
 22 talk about the situation if you can definitely, that's what  
 23 you need to do, that's all.  
 24 MR BIZOS SC: He will also say that the  
 25 purpose of an operation and the size of a gathering

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1 determine the number of police required. For a defensive  
 2 operation the ratio is three protestors to every one  
 3 policeman and for an offensive operation, that is disarm  
 4 and arrest in this case, operation, the ratio is one  
 5 protestor for every three policeman.  
 6 BRIG MKHWANAZI: Counsellor, I will agree  
 7 with the statement, the example you made, the only thing I  
 8 will just add to that is to say it will depend on the  
 9 situation. If we talk about defensive, defensive is of  
 10 course when people are still peacefully and manageable,  
 11 even though maybe they may try to move to another direction  
 12 and all that, but they are still manageable, that is  
 13 defensive and when we talk about offensive it is when  
 14 action has to be taken as well and it will depend as well  
 15 to the operational commander to say how to actually balance  
 16 the two, because if really we talk about a volatile  
 17 situation that needs intervention of different expertise,  
 18 sometime it will totally actually have a different approach  
 19 that you will need to come up as well.  
 20 MR BIZOS SC: We will also say that  
 21 trying to arrest people in a hostile gathering is hardly  
 22 ever successful.  
 23 BRIG MKHWANAZI: Counsellor, I will agree  
 24 with that part but normally what we do is that if we  
 25 identify somebody within the crowd and that somebody we can

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1 use other alternative which means to say how can we arrest  
 2 that person later, rather than getting inside the crowd and  
 3 it will aggravate the crowd and can somebody be killed,  
 4 members can be killed or somebody can be killed as well.  
 5 So we have to look at that, we have to check those  
 6 positions if definitely there is something that we see that  
 7 is wrong within the crowd.  
 8 MR BIZOS SC: You appear to be on the  
 9 same page as Mr Hendrickx in that answer. He goes further  
 10 and says that there are techniques of actually arresting  
 11 the person by having him photographed because they are  
 12 almost invariably, the police have that facility of  
 13 photographing people and identifying him later and  
 14 arresting him, and this is particularly so where there is  
 15 an angry and emotional crowd starting with this effective  
 16 soccer matches to industrial disputes where attempts are  
 17 made to arrest the person there on the spot. You know who  
 18 the person is, you know from a photograph how you can  
 19 identify him for committing an unlawful act, don't try and  
 20 do it on the spot because you are going to have the crowd  
 21 being incensed and greater violence will follow.  
 22 BRIG MKHWANAZI: That's correct,  
 23 Counsellor, we talk about an individual here amongst the  
 24 crowd, we see that he is going to cause problems, we can  
 25 take a video of that person, we can take a picture of that

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1 person, we can actually come up and say what time that  
 2 person can be arrested and what actually helped the most is  
 3 that if the convenor or the organiser actually work hand in  
 4 hand with the police, he can assist the police as well, how  
 5 that person can be apprehended and it is easy on that. In  
 6 some or other situation sometime with the convenor you can  
 7 definitely talk to the convenor in the same situation, they  
 8 can definitely assist you at the same time to say this can  
 9 be handled in this way, but these talk only and only if, to  
 10 gatherings or marches that are well planned.  
 11 MR BIZOS SC: Leaving aside individuals,  
 12 do you know from your readings, from your expertise of any  
 13 attempt anywhere in the world for an attempt to arrest  
 14 three or three and a half thousand people, disarm them and  
 15 charge them?  
 16 BRIG MKHWANAZI: No.  
 17 MR BIZOS SC: Well, it is apparently  
 18 unprecedented according to Mr Hendrickx and you will agree  
 19 with him, completely unprecedented and if I may use one of  
 20 his words, if I recall he said it is a crazy plan, you may  
 21 not want to use the word, but you can say that it was not  
 22 wise and impossible to actually put into operation.  
 23 MR SEMENYA SC: Chair, again to the  
 24 evidence, there was never an attempt to arrest 3 000  
 25 people.

<p style="text-align: right;">Page 3278</p> <p>1 CHAIRPERSON: Well, I didn't understand –</p> <p>2 MR SEMENYA SC: The plan was to disperse</p> <p>3 and circle them in small groups, disarm those and arrest</p> <p>4 those. It was never planned to arrest 3 000 people.</p> <p>5 MR BIZOS SC: Well, I don't know what the</p> <p>6 evidence is going to be but –</p> <p>7 CHAIRPERSON: I think you put it on the</p> <p>8 basis that that was going to be the evidence or that has</p> <p>9 been the evidence and what Mr Semenya says is a bit more</p> <p>10 subtle than that, so perhaps you can reformulate the</p> <p>11 question in a way which, it means that Mr Semenya doesn't</p> <p>12 have to object again and I don't have to rule on his</p> <p>13 objection.</p> <p>14 MR BIZOS SC: Well, I'll use the, that it</p> <p>15 is completely impossible to arrest a large number of people</p> <p>16 in a disaffected crowd, in an angry crowd and disarm them</p> <p>17 and arrest them, would you agree? If it is not all, they</p> <p>18 were going to, we were told that the majority of the people</p> <p>19 there were armed, they were going to be broken into small</p> <p>20 groups, I don't know how, they say in their statements that</p> <p>21 they tried to get away but be that as it may, at that scale</p> <p>22 have you ever heard of a plan where it was intended to</p> <p>23 arrest hundreds of people, disarm them and arrest them?</p> <p>24 BRIG MKHWANAZI: I think I have answered</p> <p>25 the question, even though maybe you are rephrasing it,</p>	<p style="text-align: right;">Page 3280</p> <p>1 third page of Exhibit TT4 reference is made to a statement</p> <p>2 made by Brigadier Seboloke who says apparently that there</p> <p>3 will be space for a 170 possible detainees in cells at five</p> <p>4 police stations in the area, there were also six trucks</p> <p>5 available for transporting the detainees if needed. So if</p> <p>6 more than a 170 people were being detained there would have</p> <p>7 been a problem, because there wouldn't have been cells to</p> <p>8 put them in and I am not sure if there would even have been</p> <p>9 trucks to take them to the non-existing cells to which they</p> <p>10 were going to be put, but it doesn't look as if 3 000</p> <p>11 people were going to be arrested, but maybe I misread it.</p> <p>12 Now there are two things that flow from that, the first is</p> <p>13 that, apparently I think 270 were arrested, I don't know</p> <p>14 where they were detained but certainly there wasn't a plan</p> <p>15 to arrest 3 000, would that be right?</p> <p>16 BRIG MKHWANAZI: My understanding,</p> <p>17 Chairperson, about 270 were arrested after and I am not</p> <p>18 sure how they were handled, especially with the position</p> <p>19 where to detain them and everything, I do not have</p> <p>20 information on that one.</p> <p>21 MR BIZOS SC: Chairman, I will modify my,</p> <p>22 - let us assume that there were only a few hundred that</p> <p>23 were intended to be arrested, having regard to the</p> <p>24 difficulties that you agreed with the ratio of how many</p> <p>25 policemen you need in order to arrest, it would have been a</p>
<p style="text-align: right;">Page 3279</p> <p>1 however I want us to avoid the situation that came up</p> <p>2 previously when we were going on today whereby I was</p> <p>3 thinking that we are referring to books, whereas you are</p> <p>4 referring to Marikana and I believe in this one as well we</p> <p>5 need to be clear that we are on Marikana so that I can be</p> <p>6 able to have my understanding well organised into answering</p> <p>7 the counsellor's question. However I think we are</p> <p>8 definitely based on Marikana where we say 3 000 people are</p> <p>9 there, is it appropriate to arrest 3 000 people. I think</p> <p>10 that's where everything is going. My answer into that is</p> <p>11 to say in my entire time working, doing the same job that</p> <p>12 has never happened, however looking to the plan which is</p> <p>13 drafted by Lieutenant Colonel Scott, it says that people</p> <p>14 will be dispersed which is the purpose and to split them</p> <p>15 into smaller groups, people will be encircled, disarmed and</p> <p>16 be arrested. So it is totally different in everything, but</p> <p>17 just to see people sitting as a bigger group and you go,</p> <p>18 you encircle, you arrest them, then that can be a total</p> <p>19 disaster. It will be a big problem into that, but to split</p> <p>20 them into smaller group and all that, then you arrest them,</p> <p>21 it can be really achievable on my understanding.</p> <p>22 CHAIRPERSON: To bring it back to</p> <p>23 Marikana, it appears from page 3 of Exhibit TT4 that it may</p> <p>24 be that it was only envisaged that about a 170 people would</p> <p>25 be detained, because if you look at paragraph 3.3.3 on the</p>	<p style="text-align: right;">Page 3281</p> <p>1 very difficult task to perform, would you agree with that?</p> <p>2 BRIG MKHWANAZI: It is always a problem,</p> <p>3 especially to deal with a group of that ratio, Counsellor,</p> <p>4 as you talk it can be a 100. Yes, it will be definitely</p> <p>5 challenging but my experience especially with the</p> <p>6 gatherings and marches is that normally, yes, we've dealt</p> <p>7 with those numbers but not as a 100. When you come to that</p> <p>8 position, sometime if there is no resistance everything is</p> <p>9 easy and people on their own, the just get into a truck and</p> <p>10 actually be taken to the next police station, but into this</p> <p>11 position I am not sure looking to the situation that people</p> <p>12 were armed and they were in possession of assegais, pangas</p> <p>13 and spears, that was going to be a challenge of course but</p> <p>14 I think with the plan to say disperse them first, make them</p> <p>15 a smaller group, then they can be able to deal with the</p> <p>16 situation.</p> <p>17 MR BIZOS SC: For the reasons advanced by</p> <p>18 my learned friend, Mr Budlender, did you expect that such a</p> <p>19 plan could be carried out that an angry, hungry, thirsty,</p> <p>20 large group of people with what they believed to be a</p> <p>21 reasonable grievance in relation to the amount they were</p> <p>22 paid, that they would be docile and allow themselves to be</p> <p>23 arrested.</p> <p>24 [16:03] BRIG MKHWANAZI: Counsellor, as I've</p> <p>25 said, I was making just an example. I was not actually</p>

1 talking to the situation we have on the day to say normally  
 2 it can happen in that way, but if you say it could, I won't  
 3 be in a position, because it was not tested on the day,  
 4 because of the situation, the way things happened.

5 MR BIZOS SC: Just one question, further  
 6 question for this afternoon, the police were careful to  
 7 list the, what was necessary for them in order to carry out  
 8 his plan, am I correct in that?

9 BRIG MKHWANAZI: Counsellor, I am not  
 10 sure, as I was not part of the planning team, but what I  
 11 will talk normally, if I am involved, is to say you need to  
 12 plan so that you don't fail at the end of the day.

13 CHAIRPERSON: The plan was in writing, so  
 14 we've seen the documents, the plan was in writing, so you  
 15 should be able to answer Mr Bizos's question, perhaps if  
 16 you repeat it.

17 MR BIZOS SC: Yes. We have not seen any  
 18 provision of handcuffs, how many pairs of handcuffs did  
 19 they take with them?

20 BRIG MKHWANAZI: I am not sure,  
 21 Counsellor, because maybe if we can check again because  
 22 there's a plan and an annexure, maybe we never went to that  
 23 part to check whether – because should be co-ordinating  
 24 instruction should be EIs maybe should be a position for  
 25 the provisioning, what equipment must be taken as well, but

1 we never went through to that. I am not sure, if maybe I  
 2 check.

3 MR BIZOS SC: Well, perhaps my learned  
 4 friend –

5 CHAIRPERSON: Perhaps we can take the  
 6 adjournment at this stage and the search for the handcuffs  
 7 can continue on the morrow. We will adjourn.

8 [COMMISSION ADJOURNED]

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