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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

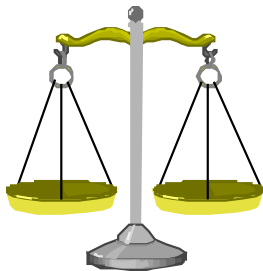
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 34 22 JANUARY 2013 PAGES 3638 TO 3740

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 22 JANUARY 2013]
 2 [09:38] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath. Adv Jele, I take it
 4 you've got some further questions.
 5 MS JELE: I do indeed, thank you,
 6 Chairperson. Good morning, Brigadier, how are you this
 7 morning?
 8 BRIG MKHWANAZI: Fine, thanks.
 9 MS JELE: Glad to hear it. Brigadier,
 10 yesterday we established the value of considering
 11 alternatives in policy from various sources, and what I
 12 want to turn to today are sources of information that might
 13 assist, that are home-grown, essentially, and these are
 14 specifically reported by the Human Rights Commission that
 15 directly deal with situations of use of force by law
 16 enforcement officials in South Africa. Are there any such
 17 reports that you are familiar with yourself, Brigadier?
 18 BRIG MKHWANAZI: Not at this stage, I
 19 haven't seen, from the Human Rights Commission no, I
 20 haven't seen any, except the one you indicated that I must
 21 go and read last night.
 22 MS JELE: Which one was that, Brigadier?
 23 BRIG MKHWANAZI: The one by the
 24 commissioner, Dr J Titus.
 25 MS JELE: That would be his witness

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1 statement, correct, Brigadier?
 2 BRIG MKHWANAZI: Ja, that's the one, ja.
 3 CHAIRPERSON: That has already been given
 4 an exhibit number, WW1.
 5 BRIG MKHWANAZI: Correct, yes.
 6 MS JELE: Brigadier, you're telling me
 7 that in your field of expertise you never even looked at
 8 the conclusions of this constitutionally established body
 9 in the tragic matter that led to the death of Andries
 10 Tatane for example?
 11 BRIG MKHWANAZI: I was following that
 12 one, yes. I was thinking maybe specifically another one,
 13 but I was following that one since it started, occurred,
 14 until the disposition.
 15 CHAIRPERSON: You say you were following
 16 it, but did you actually study the report FS/2011/0009, and
 17 did you make the report available to those who were
 18 attending courses that you were involved with?
 19 BRIG MKHWANAZI: No, I didn't.
 20 CHAIRPERSON: I asked a double question
 21 actually. It is my fault. Did you study the report, is
 22 the first question, and the second thing, and the answer to
 23 that is you didn't, then I imagine the second question
 24 falls away. The second question is did you draw the report
 25 to the attention of people attending your courses. I take

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1 it the answer to that is clearly no. Did you actually
 2 study the report? Was this report made available to you at
 3 any stage in the course of your work?
 4 BRIG MKHWANAZI: No. As I say, no I
 5 didn't and right from the beginning I didn't.
 6 MS JELE: Brigadier, having established
 7 that there is value in considering alternatives in policies
 8 that are developed across our borders, would you not agree
 9 that it would be an essential tool for Public Order
 10 Policing in South Africa if they were to pay close
 11 attention to those reports by bodies whose work can at the
 12 very least be respected, that directly deal with the work
 13 of Public Order Police?
 14 BRIG MKHWANAZI: That's correct. It's
 15 true that we need to read and look to those recommendation
 16 and whatever we do as well it will assist us, and we have
 17 done it before as well in different issues where we
 18 developed, and we'll have to definitely look at that. We
 19 can't just go on without doing that. It will help a lot,
 20 irrespective it's inside the country or outside the
 21 country.
 22 CHAIRPERSON: Ms Jele, may I ask you two
 23 questions at this point? Firstly, would you – or actually
 24 address two requests to you. Would you see to it that
 25 copies of all the reports you are now referring to are made

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1 available to the Commission, at least three copies because
 2 there are three of us, but I would suspect more because I
 3 imagine the evidence leaders would want them too, and also
 4 it might be sensible as a precautionary measure, regard
 5 being had to the fact that as we speak POP operations are
 6 taking place in the Free State, for you to send as a matter
 7 of high urgency these reports, copies of these reports to
 8 the section of which the witness was previously the head so
 9 that they can, if they're not doing so already, they can
 10 start taking into consideration in their planning and in
 11 their courses the points made in these reports. Are these
 12 requests that are capable of being complied with?
 13 MS JELE: Thank you, Chairperson. My
 14 attorney will be in a position to assist with the second
 15 request that you made. As regards the copies of the
 16 reports, they have been emailed, as I understand it, to the
 17 evidence leaders and it is hoped that they will be
 18 distributed henceforth to all the various parties, and
 19 naturally to the commissioners as well.
 20 CHAIRPERSON: According to Commissioner
 21 Hemraj suggested in regard to the police, probably if you
 22 pass them on to Mr Semenya he will be able to ensure that
 23 they reach the right address as soon as possible.
 24 MS JELE: I would certainly trust my
 25 colleague Mr Semenya to do so, thank you, Chairperson. As

<p style="text-align: right;">Page 3642</p> <p>1 I mentioned yesterday, Brigadier, there were four different 2 themes that I wanted to ask you questions on and we've 3 just, we've dealt with the first thing, the issue of 4 training and policy formulation. The second theme that I'd 5 like to talk to you about is that of planning. To the 6 extent that you were skills development facilitator and to 7 the extent that you yourself have experience in Public 8 Order Policing, the manner in which a plan is drawn up in 9 crowd management situations is, would you not agree, 10 critical to its success?</p> <p>11 BRIG MKHWANAZI: That's correct, yes.</p> <p>12 The plan should be compiled in such a way really that it 13 can be achievable and it can achieve actually the goal if 14 it has been compiled, put together. It must be in that 15 way. Critically it must be analysed and all the necessary 16 factors must be in place to make sure the plan is compiled 17 properly.</p> <p>18 MS JELE: And with regard to gatherings 19 that are spontaneous where there might be less opportunity 20 to plan, I'd like to refer you to then again exhibit R 21 which we were dealing with during the course of yesterday's 22 hearings, and specifically refer you to its page 20.</p> <p>23 BRIG MKHWANAZI: Got it.</p> <p>24 MS JELE: Brigadier, I'd like to make 25 specific reference to the first and second sentences of the</p>	<p style="text-align: right;">Page 3644</p> <p>1 correct?</p> <p>2 BRIG MKHWANAZI: You're correct, 3 Chairperson, and always with a spontaneous event it is 4 challenging because it comes up unplanned, no proper 5 information in place. However, as I said, Chairperson, we 6 must try by all means to follow procedures. Procedures is 7 to establish all necessary information - who are the 8 leaders, what is the purpose, everything. Out of that we 9 can be able now to deal with the situation. That means the 10 coming up of the plan will come within that position to say 11 how are we going to deal with the situation. But we'll 12 handle it as significance as all type of issues that come 13 out for crowd management issues.</p> <p>14 MS JELE: Thank you, Chairperson. One 15 imagines that was the intention of the plan that was being 16 drawn up and was presented to the JOC by Lieutenant-Colonel 17 Scott at Marikana.</p> <p>18 BRIG MKHWANAZI: Which one are you 19 referring ultimately, the date, if I may ask?</p> <p>20 MS JELE: Specifically the plan that was 21 relating to the three stages and how they would unfold 22 during the course of the days from the 15th onwards and the 23 plan that ended up being implemented on the afternoon of 24 the 16th of August.</p> <p>25 BRIG MKHWANAZI: That's correct.</p>
<p style="text-align: right;">Page 3643</p> <p>1 second paragraph, and I quote – 20, page 20, that, 2 "Spontaneous public protests on the other hand does not 3 provide the luxury of planning and sometimes call for 4 immediate reaction. Such situations call for sound 5 judgment and correct assessment of the situation." Would 6 you agree with that assessment?</p> <p>7 BRIG MKHWANAZI: I do agree.</p> <p>8 MS JELE: As a consequence, Brigadier, 9 the fact that a particular gathering was spontaneous does 10 not make it any less important to make absolutely sure that 11 the plan provides as per the standing order and follows the 12 national directives and guidelines.</p> <p>13 BRIG MKHWANAZI: Yes, there are 14 procedures that need to be followed in those issues where a 15 spontaneous gathering just comes up. However, the 16 procedure as far as the drawing of the, or drawing up of 17 the operational plan will have to be followed as it's 18 supposed to be.</p> <p>19 CHAIRPERSON: I take it these plans 20 you're talking about are drawn up before the event. You 21 scarcely have the luxury of time to draw up a operational 22 plan after a spontaneous gathering has taken place, so 23 you've got to have plans as it were available in the file, 24 or on the word processor, which could be activated 25 immediately a spontaneous gathering occurs. Isn't that</p>	<p style="text-align: right;">Page 3645</p> <p>1 CHAIRPERSON: The gathering on the 2 mountain, or koppie, was something that actually was in 3 existence for several days. Lots of people were there with 4 dangerous weapons. Some of them went home and they came 5 back the next morning. There was nothing spontaneous about 6 it. The plan that was drawn up wasn't to deal with any 7 spontaneous incident; it was to disperse and disarm, and 8 there were various stages set out. So I don't understand 9 the applicability of the point in relation to spontaneous 10 gatherings. There was some kind of spontaneous movement 11 towards the gap on the afternoon of the 16th, but I'm not 12 sure they can call those spontaneous gathering within the 13 meaning of the point covered on page 20 of exhibit R. So 14 I'm afraid you're going to have to take it more slowly up 15 to now so that I can follow it, because I'm afraid I'm lost 16 at the moment now. If you'll forgive me, but that's where 17 I am.</p> <p>18 MS JELE: I'll do that, thank you, 19 Chairperson. In situations such as that, that unfolded in 20 Marikana – and again I'm acutely aware of the fact that you 21 weren't there, Brigadier – would you not agree that certain 22 events might arise and take the police by surprise, certain 23 developments, certain choices of the protesters, as they go 24 about their particular business, that the police will have 25 to deal with as and when they arrive, and it's the fluidity</p>

<p style="text-align: right;">Page 3646</p> <p>1 of those situations that requires Public Order Policing's 2 specific attention? 3 BRIG MKHWANAZI: It is normal that it can 4 happen that way. Hence the crowd will start maybe 5 peaceful, can end up maybe violent, or something else can 6 happen. It's normal, it does happen. We're aware of those 7 things most of the time. 8 MS JELE: With respect specifically to 9 the plan that Lieutenant-Colonel Scott presented, Gary 10 White has a number of concerns and/or difficulties which 11 I'd like to address, specifically two that have not as yet 12 been dealt with in questions posed to you by some of my 13 colleagues. The first one is the fact that the plan was 14 seemingly being presented by Lieutenant-Colonel Scott, who 15 he himself is not a member of POP. Is that not in and of 16 itself a deviation in policy that might affect the value, 17 the format and the content of a plan being drawn up? 18 BRIG MKHWANAZI: I do agree. It has to 19 be actually drawn by somebody from Public Order Policing. 20 MR SEMENYA SC: Chairperson, I know we 21 call it the Scott plan, but the true evidence is that it 22 was a plan drawn by a team, including Public Order 23 Policing. 24 CHAIRPERSON: We haven't had that 25 evidence yet, but that's evidence that – this witness said</p>	<p style="text-align: right;">Page 3648</p> <p>1 for something. I missed something very important. Please 2 tell me what it was. 3 MR SEMENYA SC: He said Barry White, 4 who's a singer, was a singer. 5 CHAIRPERSON: I thought there's a 6 reference to Gary White MBE who is a gentleman from 7 somewhere in South Africa. 8 MS JELE: Indeed, Mr White's serious 9 concern relates to the fact that there seems to have been 10 no, at least from the minutes, discussion, debate, 11 challenge, to the presentation made of the plan that had 12 been drawn up. Would you not deem it appropriate in order 13 to make sure that all eventualities are covered and have 14 been dealt with in detail and anticipated, that that kind 15 of debate and discussion take place? 16 BRIG MKHWANAZI: Advocate, I really 17 understand the point that it should be critically analysed 18 during that process, or maybe in another position, but I 19 was not involved, but I'm not sure if it was not analysed 20 critically as you have indicated. The plan is being 21 compiled based on the information given and the information 22 given, of course it has to be analysed. So I'm not sure if 23 it was not done, because I was not there. 24 MS JELE: I appreciate you weren't there, 25 Brigadier, but in your various positions with SAPS, in your</p>
<p style="text-align: right;">Page 3647</p> <p>1 he gave hearsay on that because he didn't know himself. 2 We've had no evidence to that effect. He just said he was 3 told that. But the point you make is, I take will be taken 4 aboard by Ms Jele and she'll bear it in mind in her further 5 questioning. 6 [09:58] MS JELE: It indeed from our perspective 7 have not as yet been given in evidence and as indicated 8 very clearly at the outset of Gary White's statement, he 9 bases his analysis on what evidence is at present available 10 from the SAPS. 11 CHAIRPERSON: My impression from the 12 police presentation was that it was Colonel Scott's plan, 13 or primarily Colonel Scott's plan and he was the one who 14 explained it and so on, but anyway, these are matters which 15 Mr Semenya has very properly told us will be the subject of 16 further evidence, so we mustn't waste time on assumptions 17 which may be incorrect at this stage. 18 MS JELE: Indeed, thank you, Chairperson. 19 We certainly look forward to hearing that evidence. I'll 20 turn to the second concern that was expressed by Gary White 21 with respect specifically to the manner in which the plan 22 was dealt with at the JOC meeting. 23 MR SEMENYA SC: Not Barry White. 24 MR MAHLANGU: Gary. 25 CHAIRPERSON: I'm sorry, I was looking</p>	<p style="text-align: right;">Page 3649</p> <p>1 experience would you for example in formulating training 2 manuals and modules not include the obligation and the 3 value of – and I believe Mr White in our consultations with 4 him used the words "rip the plan to shreds in order to put 5 it back together perfectly again." Would it be your choice 6 to advise that such a process be followed to make 7 absolutely sure that every imaginable scenario has been 8 contemplated? 9 BRIG MKHWANAZI: I do agree. 10 MS JELE: Thank you, Brigadier. You just 11 mentioned the issue of information and intelligence and you 12 had established in your evidence-in-chief the fundamental 13 value of having adequate information in order precisely to 14 plan for how police might deal with a particular event that 15 required crowd management. I would like to refer you to 16 page 26 of Gary White's provisional statement. There Gary 17 White looks at the specific exhibits introduced that 18 contain the information that purportedly informed the plan 19 that was put together at Marikana, these being exhibits 20 TT5, TT4, TT3. 21 BRIG MKHWANAZI: Sorry, are you reading 22 at B or A? 23 MS JELE: Both, Brigadier. 24 BRIG MKHWANAZI: Okay, alright. Alright. 25 MS JELE: You will notice that Mr White</p>

<p style="text-align: right;">Page 3650</p> <p>1 specifically characterises the information contained in 2 these exhibits as being general and not containing much 3 that he in his experience would expect, specifically 4 containing views and/or information from senior officers 5 and not what is generally known as intelligence. 6 BRIG MKHWANAZI: I'm not sure, but I 7 think my answer will be it will depend what information you 8 need to be able to compile an operational plan in a certain 9 situation. Looking to the issue of Marikana, there's a 10 specific information you will be in need of to be able to 11 compile the operational plan. I'm not sure as Mr Gary 12 White, as he indicated that some of the information was not 13 there, if maybe he was of the opinion or position to say to 14 us this information was not there, of which I think it was 15 going to contribute a lot in a better plan. I was going to 16 be happy, but at the moment I'm not sure and I won't be 17 certain as well because I was not involved with the 18 planning itself of the team, exactly why they opted for 19 that type of information only to achieve the goal. But 20 what I know very well, no matter the information you have, 21 how small it is, you must make use of it because it may 22 help. So I cannot say this is big, this is small. If I 23 draw the plan I need each and every information. That's 24 why we will have information and I will have intelligence 25 as well to draw my operational plan.</p>	<p style="text-align: right;">Page 3652</p> <p>1 under the circumstances. 2 BRIG MKHWANAZI: I'm not sure, Advocate, 3 here if the information given is that it's 3 000 4 participants, that is mineworkers that were gathered at the 5 koppie at a time that is 6 o'clock, which will be the same 6 information as the time goes on. But normally if now the 7 gathering is known, as people were coming most of the time 8 in and out, if that information was obtained to say there 9 will be so many people coming in, I will agree with it, but 10 if it was not obtained then it will differ on that because 11 obviously if they come, not knowing how many will be, we 12 need just to actually see as they are coming in how many 13 are they coming, until we can come up and say roughly in 14 the midday there are so much. So maybe if it's like at 6 15 o'clock that this information was given, I will have a 16 problem, but I'm saying if it was known, information was 17 given, because can be maybe sources who are saying there 18 will be maybe so many people coming in, but I'm not talking 19 on behalf of the author or of the person who gave the 20 information. I say normally that's how it goes. 21 MS JELE: Which sources would you look to 22 in order to establish how the information that was provided 23 at the JOC was compiled? Would you expect certain 24 officials on the ground to have taken detailed notes that 25 might have been compiled to inform that information?</p>
<p style="text-align: right;">Page 3651</p> <p>1 MS JELE: I would like you to have a look 2 at exhibit TT5, if you might, Brigadier, and specifically 3 at the last page of TT5, which is where Crime Intelligence 4 input at the JOC at noon on the 16th of August is 5 described. 6 BRIG MKHWANAZI: Got it. 7 MS JELE: As you can see, Brigadier, it 8 is extremely succinct. It essentially identifies the 9 number of individuals more or less that are on the koppie, 10 that some of them have dangerous weapons, without any 11 detail as to how many, which, and that according to 12 information received they declined to surrender these 13 weapons, and that they refused to leave the koppie and the 14 situation is very tense, full stop, and then if one looks 15 at TT3, which supposedly incorporates in the minutes of the 16 meeting the information provided earlier that day at 6AM – 17 sorry, my apologies, Brigadier, that's TT4, and I'm 18 focussing on paragraph 2.1 of TT4. 19 BRIG MKHWANAZI: Yes, I see that. 20 MS JELE: And I would put to you the 21 proposition that the fact that there is nearly exactly the 22 same information at 6AM and then at 12 noon is at the very 23 least an indication that there was fundamentally 24 insufficient up-to-date flow of information to properly 25 inform what in your experience would be an appropriate plan</p>	<p style="text-align: right;">Page 3653</p> <p>1 BRIG MKHWANAZI: Normally sources we, in 2 this type of a situation we are actually talking about 3 where there will be other role players involved. Obviously 4 they can give information as well to say there will be so 5 many people into that particular gathering, because we talk 6 about the gathering that was going on and on. Obviously 7 there will be some communication that was taking place now 8 and maybe somebody could have given something, then can be 9 some sources, and maybe the leaders or can be normal people 10 as well, they can be able to give that information as well. 11 But maybe during meetings as well it can be confirmed at 12 that position as well if it happened. 13 MS JELE: Would you expect senior 14 officers who might later then need at JOC in order to draw 15 up a plan to have notes that might inform their specific 16 elements of information? 17 BRIG MKHWANAZI: Normally what happened 18 with crowd management issues, plan or not planned, always 19 the information will be gathered, and senior officers 20 especially sitting in a JOC, taking decisions, always they 21 will rely to the members on the ground to give the 22 information. That includes the role players as well, if 23 they are part of the meeting. It may happen as well 24 because normally with intelligence sometimes they will 25 reduce it on writing, which if it is reduced on writing it</p>

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1 will be with a senior officer to say okay, this information
 2 now can be given and we can plan upon it, or maybe it can
 3 be reduced to an instruction as well by that particular
 4 senior officer in that meeting or that JOC, which is a
 5 JOCOM meeting.

6 MS JELE: Accepting that there would be a
 7 need for that information to come in to be taken into
 8 account, there are two issues that I would submit to you,
 9 Brigadier, are raised by the contents of TT4 and the last
 10 page of TT5 specifically. The first is that in light of
 11 the fact that it is exactly the same information, the
 12 impression is given that no effort is made to update the
 13 information on a regular basis. In your experience, would
 14 that not be a fundamental flaw?

15 BRIG MKHWANAZI: I won't be sure,
 16 Advocate, that it can maybe differ or not differ. However,
 17 as the figures they go on being the same I will feel really
 18 maybe something is not okay, but as I've said, always the
 19 growing number of the crowd will change as the day
 20 progress. You cannot start with 3 000 in the morning,
 21 obviously it will build up, build up, and become 3 000
 22 midday or whatever day. So I'm saying definitely there
 23 will be always some sort of changes into everything, but
 24 I'm not sure why it was kept in that amount every time.

25 MS JELE: And the information, regardless

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1 of what actually happened at Marikana, if you were to have
 2 information regularly informing you that say for example,
 3 for argument sake there were 50 people on the koppie at
 4 6AM, and what you have is information that that crowd is
 5 building up slowly but surely, would that information – and
 6 again based on your experience – not be relevant to the
 7 planning of the intervention by the Public Order Police?

8 BRIG MKHWANAZI: It will affect the plan
 9 most of the time of course, and at the same time we'll have
 10 to adjust, or try to adapt to the situation. That's how it
 11 should be every time. You need to adapt to the situation
 12 and see whether the personnel you've got are still able to
 13 deal with the situation or not. All this type of things
 14 you need to adjust, but you cannot on continuous basis,
 15 otherwise before the end of the day you'll have five
 16 operational plan in place but the only thing is to say how
 17 do you adapt to make sure that your plan is flexible,
 18 address the problem before you.

19 [10:18] MS JELE: Thank you, Brigadier. I'd like
 20 to turn to now a different aspect of the planning theme,
 21 and that's the issue of numbers, is I think the best way to
 22 describe it, and I would like to turn to exhibit L, being
 23 the SAPS presentation, and specifically to slide 131. 131,
 24 Chairperson.

25 BRIG MKHWANAZI: Got it.

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1 MS JELE: You will note - and that slide
 2 specifically deals with the day of 16 August - that the
 3 second point states that there were 630 members of the
 4 police deployed on the dayshift.

5 BRIG MKHWANAZI: I see that.

6 MS JELE: And we're just looking to
 7 confirm the reference, but within exhibit L as well there
 8 is an assertion that there were around 160-odd of those
 9 deployed that were in fact POP members, and we'll just
 10 confirm the slide reference as soon as we are able.

11 Brigadier, my question, in your experience specifically in
 12 crowd management situations, as we confirm that there were
 13 less than a quarter of the members deployed that were
 14 actually specialised in crowd management, does that not
 15 seem like a fundamentally insufficient number, and would
 16 you not expect at the very least POP members to be in the
 17 majority of those deployed?

18 CHAIRPERSON: The number that you have?

19 MS JELE: The number that we have of POP
 20 members is 167, if I'm not mistaken. Ms Hardy is assisting
 21 me in finding the exact slide.

22 BRIG MKHWANAZI: Ja, my understanding,
 23 Advocate, is that on a holding area, which is the reserved
 24 holding area 1 and holding area 2, there were some of the
 25 members of Public Order Policing who were as well posted at

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1 that position as a reserve, with the purpose if anything
 2 happened they can be called in and reinforce the members
 3 who were actually before the situation where it was taking
 4 place, the access. So your question is will it be
 5 appropriate with the number you are talking about. I think
 6 with the presence of those members on the other side,
 7 always can be easy to call them up and reinforce those
 8 members maybe if they have problem or they get pressure
 9 whenever the situation goes otherwise.

10 CHAIRPERSON: Ms Jele, I found the
 11 numbers, I think.

12 MS JELE: I'm grateful to you,
 13 Chairperson.

14 CHAIRPERSON: If you start at 137, there
 15 are 45 POP members. If you go on to 139, there are 53. If
 16 you go on to 142, there are 8, and if you go on to 144,
 17 there's 70. If you add those numbers up you get 176.
 18 There may be others, but those are the ones that I found at
 19 a quick search while the witness's answer was being
 20 interpreted.

21 MS JELE: Thank you, Chairperson, I was
 22 informed that that's how we made that calculation. I'm
 23 obviously slightly dyslexic, 176, not 167.

24 CHAIRPERSON: How do you respond to the
 25 point being made to you that for what was a major POP

<p style="text-align: right;">Page 3658</p> <p>1 exercise dealing with 3 000 people at noon and presumably a 2 thousand in the morning, 176 POP members was rather a small 3 number of POP people to be involved? Now that's the point 4 I take it that's being made. Do you agree with it? 5 BRIG MKHWANAZI: Yes, Chairperson, if I 6 can answer the question directly I will say no – 7 CHAIRPERSON: You don't have to say if I 8 answer directly, just answer all the questions directly, 9 you'll save a lot of time. What's the direct answer to the 10 question? 11 BRIG MKHWANAZI: I said no, but I would 12 like to say something, Chairperson. If there was 176 13 before the access, meaning where the pressure is, and there 14 were other members, as I'm told that there were other 15 members on the holding areas, that's the part I was trying 16 to explain, and if the situation really becomes of, I mean 17 tense, that is not going to be handled, those other members 18 could be called in. But if it's only that and the 19 situation becomes out of hand and there's no other members 20 available, I would say no, was not sufficient. 21 CHAIRPERSON: The 176 includes 8 who were 22 in holding area number 1, that's slide 142, and 70 who were 23 at holding area number 2, which is slide 144. If you take 24 the holding area people away, you then get 98. So the 25 question is therefore, regard being had to the number of</p>	<p style="text-align: right;">Page 3660</p> <p>1 the ratio should be, but we do not have something that 2 speaks to the ratio of personnel, SAPS, per Regulation of 3 Gatherings Act that says how many members should be per the 4 situation or per participants that are participating in 5 that particular gathering or march. But normally we really 6 have to make sure that we have sufficient members that will 7 actually be able to deal with the situation at hand. 8 Looking to 3 000, yes really, as I've said with the number 9 we got it can be, not be sufficient to deal with the 10 situation. We'll have to look to the situation and be able 11 to have, but normally what tells us, or tells me most of 12 the time, is the type of threat because the threat means a 13 lot. You can have 3 000 marchers and who's marching, ZCC 14 people, I make an example, the church, 3 000, do you need 3 15 000 police officials for that type of a march? No, the 16 threat doesn't allow me. I'm making example – 17 CHAIRPERSON: Yes, you're not dealing 18 with the church militants in that type of – 19 BRIG MKHWANAZI: But maybe can I clean 20 this, please, to say I'm saying this with due respect, 21 maybe it can have people from the church's side, but I'm 22 making example to say these are the people always with the 23 bigger group. If they are marching, I cannot just take, 24 because they are 3 000, then I will take 3 000 police 25 officials. What will determine the number of police</p>
<p style="text-align: right;">Page 3659</p> <p>1 protesters who were being dealt with, is what was 2 essentially, or should be a POP operation, is it 3 appropriate to have only 98 in the sort of main area, with 4 another 78 in the holding areas, or would you, if you'd 5 been planning it, have arranged for more POP people to be 6 there? I think that's the question. Is that right? 7 BRIG MKHWANAZI: As, Chairperson, you 8 have said, if you remove them, I'm saying they were not 9 sufficient, as you said if you remove them. 10 MS JELE: Our next question then – 11 CHAIRPERSON: I have another question, 12 before you ask your next question. 13 MS JELE: Certainly. 14 CHAIRPERSON: Regard being had to the 15 fact that we're dealing with, in the midday operation, 3 16 000 protesters, what sort of ratio of POP members to 17 protesters would you consider appropriate and would you 18 have applied if you'd been in charge of the operation? 19 BRIG MKHWANAZI: What normally happens, 20 Chairperson, is that with Public Order Policing, especially 21 if we plan, we've got something on the Regulation of 22 Gatherings Act that speaks to the marshals. I may answer 23 your question wrong, but I will try to come at the end into 24 it, but I think I should start it this way. We've got 25 something that speaks to the marshals, how many marshals</p>	<p style="text-align: right;">Page 3661</p> <p>1 officials for us every time will be the threat at hand, 2 then we're going to say we need so many police officials to 3 deal with that situation. Always we need to look at that, 4 but only the Regulation of Gatherings Act talks into 5 marshals, how many marshals, because we are saying they 6 must manage themselves; police must be there to support the 7 situation. Then in that way we don't have any 8 confrontation. 9 MS JELE: Thank you, Brigadier. I think 10 my next question would relate to whether or not there 11 certainly are sufficient POP members in the entire country 12 to have made it feasible at Marikana, at the very least 13 feasible to have what I will submit to you was the best or 14 better scenario, that is a majority of POP members, a 15 majority of individuals whose specialisation is crowd 16 management. In order to deal with the specific issue I 17 would beg leave to hand up a document which sadly we 18 originally thought was part of the SAPS documents and we 19 realised at a later stage it had been sourced 20 independently. It is a presentation and a collection of 21 slides submitted to the parliamentary portfolio committee 22 on 30th August 2011, copies of which Ms Hardy will be 23 handing up at present. Could we perhaps mark it as an 24 exhibit, if possible? 25 CHAIRPERSON: Ms Pillay?</p>

<p style="text-align: right;">Page 3662</p> <p>1 MS PILLAY: Chair, it will be WW4. 2 CHAIRPERSON: Thank you. 3 MS JELE: Thank you, Ms Pillay. If I may 4 also express my gratitude to my colleague, Mr Semenya, in 5 light of the fact that I was under the impression he would 6 have had prior possession of this document. I would like – 7 MR MAHLANGU: What is the document 8 number? 9 MS JELE: WW4. 10 BRIG MKHWANAZI: I don't have it. 11 MS JELE: Apologies, Brigadier, seemingly 12 you're the one person who was not provided with a copy. 13 BRIG MKHWANAZI: It makes my work easy. 14 MS JELE: You now have it? 15 BRIG MKHWANAZI: I've got it, thanks. 16 The exhibit number? 17 MS JELE: WW4, Ms Pillay said. Thank 18 you. Brigadier, if you would first turn to slide 5. It's 19 entitled "Background." 20 BRIG MKHWANAZI: I see it. 21 MS JELE: And do you see that it details 22 historically the number of forces within SAPS – 23 BRIG MKHWANAZI: I see that. 24 MS JELE: - that were responsible for 25 crowd management?</p>	<p style="text-align: right;">Page 3664</p> <p>1 slide number 6 which details the various POP units and 2 their strength as well as their locations, one sees for 3 example if one excludes the support numbers, that in 4 Johannesburg there are 308, in Pretoria 269, in Springs 5 256, for example. 6 [10:38] And as you turn the pages of the presentation, 7 the number of POP individuals in the Eastern Cape, Limpopo, 8 KZN, North West, Free State, Western Cape, Mpumalanga, 9 Northern Cape are detailed, you can see that Brigadier? 10 BRIG MKHWANAZI: I see that. 11 MS JELE: I would submit to you, 12 Brigadier, that looking at those numbers, in your 13 experience would the officials responsible at Marikana not 14 have had sufficient crowd management specialists at their 15 disposal to call upon to assist them as events unfolded? 16 BRIG MKHWANAZI: I agree with that part, 17 even though yesterday maybe I was told that I answered the 18 question upfront of the next question, but I think I must 19 definitely indicate I really asked to do that, that this is 20 my belief that with Marikana issue, yes, police officials 21 trained in crowd management, they could have been called as 22 quick as possible as it is happening even now, however we 23 have other service delivery protests in some other areas, 24 but some other provinces, yes, they were called in, like 25 Mpumalanga, they were called inside here during the process</p>
<p style="text-align: right;">Page 3663</p> <p>1 BRIG MKHWANAZI: I see that. 2 MS JELE: One of the issues is obviously 3 that in '95 seemingly there was a considerable number, 11 4 000 members, whose primary function was crowd management. 5 You can see that. 6 BRIG MKHWANAZI: Yes. 7 MS JELE: And seemingly, and this is a 8 SAPS presentation so we can trust their numbers, in 2011 9 less than half remained. There are 4 343, and even then 10 crowd management is now their secondary function. Do you 11 see that? 12 BRIG MKHWANAZI: I see that. 13 CHAIRPERSON: In fact the numbers have 14 gone up. In '95 there were 11 000. By 2002 there are 15 7 327. 2006, 2 595. By 2011 the numbers have gone up 16 again, there's now 4 343. So admittedly they were 17 substantially fewer than they were in '95, but obviously 18 the matter was already receiving attention and the curve 19 changed direction. That seems to be correct. 20 MS JELE: I accept that, Chairperson. I 21 would submit that combining that with the fact that these 4 22 000 individuals have crowd management as a secondary 23 function is relevant to at the very least there being a 24 lesser focus on crowd management in terms of staffing at 25 SAPS, and the question then becomes, if one then turns to</p>	<p style="text-align: right;">Page 3665</p> <p>1 as well. Some of them were called after to come and 2 assist. 3 CHAIRPERSON: While we're busy with that 4 point, Commissioner Hemraj has just drawn to the fact that 5 if you look at foot of page – of slide 7, you'll see that 6 there were 98 POP members in Rustenburg, and that's the 7 number we had outside the holding areas. You remember when 8 did that exercise with the number of POP people at Marikana 9 on the day? 10 BRIG MKHWANAZI: Yes. 11 CHAIRPERSON: They were 78 in the holding 12 areas and 98 in what one can call the operational areas. 13 So it looks as if – I'm not sure what the breakdown was 14 between those in the holding areas and those in the 15 operational areas, but it looks as if, from a point of view 16 of numbers, only another 76 or thereabouts were brought in 17 from outside. That seems to be correct. Would you agree 18 with that? 19 BRIG MKHWANAZI: Okay, if that is the 20 position, Sir. 21 MS JELE: Brigadier, you did indeed 22 anticipate my next question that was going to be that a 23 great number of support's members were brought in seemingly 24 from as far away as Umtata and the vast majority of them 25 were in fact not POP, but NIU, TIT, NFTF?</p>

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1 And if one looks at the hundreds of POP members
 2 available within driving distance of Marikana, the question
 3 then becomes – and I understand again you were not there –
 4 but if you were in operational command or if you were
 5 training a particular officer and advising him on what the
 6 deployment requests to make, would it not have been
 7 appropriate, taking into account naturally that forces may
 8 be engaged elsewhere, to ask for POP members close enough
 9 to get there sooner, I imagine that the Umtata or Durban
 10 NIU members reached there, to be brought forward to assist?
 11 BRIG MKHWANAZI: If I understand you
 12 right, I think Gauteng that is closer, advocate was called
 13 in. Mpumalanga as well was called in. I believe those
 14 were the closest provinces that were actually brought in as
 15 quick as possible. And your question is will I have to
 16 look at that, obvious you need to look closer to safe time
 17 and everything, who can be quicker to come in, looking as
 18 well to their commitment at their provinces, but I believe
 19 Gauteng, who part of this, were called in. Mpumalanga was
 20 called in. I think they were the very closest to be around
 21 here as quick as possible.
 22 CHAIRPERSON: Was anyone called in from
 23 your province, the Northern Cape?
 24 BRIG MKHWANAZI: Only after, Chairperson,
 25 after the 16th.

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1 CHAIRPERSON: Ja, and I see if one looks
 2 at slide 8, that you had 100 and – Uppington is quite far
 3 away, but you had a 128 people – POP people in Kimberley
 4 area, I see, that's directly under you. That's quite
 5 close, isn't it, comparatively?
 6 BRIG MKHWANAZI: That's correct, Sir. I
 7 was called after.
 8 MS JELE: Brigadier, could you could you
 9 go back to slide 6 of the presentation, that's WW4? If you
 10 were to look at the number of POP members that are
 11 available in Gauteng and Limpopo, now just on a quick
 12 calculation, that's 1 314 members available in Gauteng and
 13 Limpopo combined. That's double the total number of
 14 individuals who were actually deployed in the end,
 15 including the SIU, TIT and so on at Marikana.
 16 I would put to you that those resources, if they
 17 had been available, and naturally one would hope that we'll
 18 have evidence with regard to their availability, a choice
 19 being made not to call upon them was a fundamental flaw in
 20 the planning and the decision-making of SAPS at the time.
 21 BRIG MKHWANAZI: Advocate, I'm not sure
 22 with the call up of these members to come and reinforce
 23 what decision they took from the JOC hence I was not part
 24 of the planning or the part of the operation, however
 25 that's true that that's a lot of members in this different

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1 – or in these two provinces for Public Order Policing.
 2 CHAIRPERSON: The question is more
 3 specific than that. The question is asked to you in your
 4 capacity as an expert on Public Order Policing, and you're
 5 asked to, as I understood it, to make the assumption that
 6 POP people from Limpopo and Gauteng would have been
 7 available. Obviously if they weren't, then the point would
 8 fall away, but the question, as I understood it, was the
 9 assumption in which the question was asked, and you were
 10 then asked, in your capacity as an expert to say, if these
 11 people were available, the fact that they were not called
 12 and other people with from other disciplines and other
 13 training were called instead was a fundamental flaw in the
 14 plan. That's the question were asked and you haven't
 15 answered that. Perhaps you should do so now.
 16 BRIG MKHWANAZI: Okay. Advocate, as you
 17 said, if they were available, as I indicated from the
 18 beginning, there were other service delivery protest issues
 19 that were taking place. I'm not sure what was the position
 20 in Gauteng at that stage, Limpopo as well, however if there
 21 wasn't anything taking place there, this was going to be
 22 the easiest way to have members as quick as possible,
 23 therefore if they never called them, because there was
 24 nothing happening there, really it can be some sort of a
 25 sort of mistake on that.

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1 MS JELE: Brigadier, there was another
 2 difficulty I think that was raised by bringing so many
 3 different units from various specialisations from all over
 4 the country, and that's an issue of communication, and I
 5 would put it to you that it is invaluable that when diverse
 6 units are going to be working in such difficult situation,
 7 their ability to communicate with each other smoothly,
 8 their ability to, at the very least, know each other's
 9 operational commanders in the best case scenario, is
 10 crucial to make sure that a plan implemented correctly.
 11 BRIG MKHWANAZI: Advocate, I will differ,
 12 because why, I work with Public Order Policing. Any member
 13 in Public Order Policing, if the platoon arrived, they know
 14 exactly who is the operational commander. They will be
 15 briefed. They will know exactly what to do. And the
 16 platoon commander will know exactly how to do that
 17 particular task and communication channels will be given
 18 and everybody will be in that particular channel to operate
 19 with. And we definitely work in that structured manner and
 20 I don't know how it can be a problem to say if you bring
 21 another Public Order Policing from another province, it
 22 will actually cause a problem. We definitely – I don't
 23 think it will happen like that, because even the training
 24 itself, members they train together. You call Gauteng and
 25 call Northern Cape, they come, they train together. They

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1 work together. They know exactly how to work, and even if
 2 we give scenarios, they know exactly how to handle the
 3 issues. So I find it difficult to say how they can have a
 4 problem. And like if we talk about the integrated
 5 operation where we have other units which are not Public
 6 Order Policing, same thing will happen again: we'll be one
 7 line of channels – I mean of communication to everybody.
 8 It must be like that.

9 MS JELE: Brigadier, when I speak of
 10 communication, is it not also relevant whether or not the
 11 specific units brought in can communicate comfortably and
 12 easy with the community, know the community, and are known
 13 by the community within which a particular situation
 14 arises?

15 BRIG MKHWANAZI: Advocate, it's true. If
 16 you bring members from different provinces, obviously you
 17 will need to orientate those members. Those members will
 18 have to know the area, understand the area, and if the
 19 situation demands that there's no time of taking members
 20 around or showing them whatever they should know, at least
 21 there must be somebody from the local area to show the
 22 members where to go if they have to rush to a certain
 23 situation. It is a well-known situation that members from
 24 a different province won't know the place, but they must be
 25 orientated and if it comes to a push as quick as possible,

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1 then somebody must be with those members to show them
 2 exactly where they must be if they are actually sent to a
 3 specific place.

4 MS JELE: This is a question in two
 5 parts, Brigadier. The first is that if I may refer you to
 6 standing order 360, which is Exhibit SS2, and specifically
 7 to page 3 of Exhibit SS2?

8 BRIG MKHWANAZI: SS2.

9 MS JELE: I'm looking specifically at
 10 clause 3, sub 3, which is on that page.

11 BRIG MKHWANAZI: Ja, it's okay. Standing
 12 order 262, it's alright, it's fine, we can proceed, I'll
 13 manage. We can proceed, Advocate, I think I'll manage.

14 MS JELE: You know your standing orders,
 15 I appreciate that Brigadier. This particular section
 16 speaks of the need for partnership of the community and of
 17 building positive and constructive relationships with event
 18 organisers, community leaders, NGO's, and one would presume
 19 also obviously functioning local trade unions. The
 20 submission is as follows, if one combines a majority of
 21 local police force, whereas the majority of specialised
 22 crowd management units, one has the best possible deployed
 23 officers in order to attend to an event as dangerous as
 24 Marikana. Would you agree with that proposition?

25 BRIG MKHWANAZI: I do agree, Advocate,

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1 that we must work with the community and, as you indicate,
 2 that we need to know the leaders and everybody. It's a
 3 fact, we need to really to work with them, and people who
 4 can assist in that type of situation is the local police
 5 officials who know the area better, as well as knowing the
 6 people as well around that area. It's a lot of things we
 7 need to just to take into consideration, then you can
 8 definitely be successful.

9 MS JELE: The reality being that in the
 10 majority of situations one may not in fact need to bring in
 11 so much support from out of town. Would that not be the
 12 case?

13 BRIG MKHWANAZI: Advocate, I will
 14 disagree, because, as I've said or indicated from the
 15 beginning, that every situation will differ, or will be
 16 handled in terms of what is the threat we get - I mean we
 17 have before us, so we cannot definitely say because, yes,
 18 communities, their NGOs are there, there's no need now to
 19 call anybody to assist. Yes, they are there definitely to
 20 make our job easy, to assist us, to give us information to
 21 deal with the situation, but public order is still our own
 22 problem. We have to make sure that we have got sufficient
 23 members to deal with that specific problem as much as they
 24 are there. We will call them if there is a need.

25 [10:58] MS JELE: Certainly the need to have

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1 sufficient who are specialised in crowd management is a
 2 sentiment expressed also by the minister of police. So he
 3 would agree with you. Chairperson, might I ask if this
 4 would be an appropriate time for the adjournment as I will
 5 be turning to another issue –

6 CHAIRPERSON: I was on the point of
 7 asking you in two minutes if an appropriate stage had been
 8 reached. If you think it is appropriate at this point for
 9 the purposes of continuing with your cross-examination
 10 after the adjournment, we will take the tea adjournment
 11 now.

12 [COMMISSION ADJOURNS COMMISSION RESUMES]

13 [11:22] CHAIRPERSON: The Commission resumes.
 14 You're still under oath, Brigadier. Ms Jele, you're still
 15 cross-examining?

16 MS JELE: Thank you, Chairperson.
 17 Brigadier, I'm now going to turn to the third theme that I
 18 had introduced yesterday as the items that I would be
 19 dealing with, and that is specifically implementation of
 20 the plan. Now I will repeat this because I know it bears
 21 repeating, that you were not there on the day, but your
 22 expertise in this field, as well as your responsibility for
 23 training I think will allow you to answer these questions
 24 in light of the evidence that you gave in chief. The first
 25 issue I'd like to raise with you is the issue of the

<p style="text-align: right;">Page 3674</p> <p>1 briefing of members prior to implementation of a crowd 2 management plan, and I'd like to take you in this respect 3 again to SS2 and to its page 7, and if one has regard to 4 item 10(1), first of all it obviously confirms that members 5 must be properly briefed before they are deployed to 6 perform crowd management duties. You see that? 7 BRIG MKHWANAZI: I see it. 8 MS JELE: And I understand that to mean 9 each individual member and not just those in command. 10 BRIG MKHWANAZI: That's correct. 11 Everybody must have a proper briefing, ja. 12 MS JELE: And further if one looks at 13 10(2)(c), one of the directives is that the operational 14 commander must instruct all commanders or section leaders 15 to furnish detailed written plans on their specific tasks. 16 Do you see that? 17 BRIG MKHWANAZI: I see that. 18 MS JELE: Now to date we have not had the 19 privilege of seeing such written instructions, and we 20 certainly hope that we will see them in evidence, but as 21 regards the briefing of individual members I would like to 22 take you to, if I may, in the IPID documents - and I'm 23 hoping that Ms Pillay will be in a position to assist me; 24 I'm referring specifically to item A497, which is paginated 25 2236 in the IPID file.</p>	<p style="text-align: right;">Page 3676</p> <p>1 commission of oaths certificate in the middle of page 2. 2 MS JELE: I now see that, thank you, 3 Chairperson. 4 BRIG MKHWANAZI: I got it, yes, got it. 5 MS JELE: I'm glad to hear that, 6 Brigadier. I refer, as I mentioned, to the first sentence 7 of paragraph 3. 8 BRIG MKHWANAZI: Okay. 9 MS JELE: And that is where it is stated, 10 "Our commander and Nyala driver were called for briefing by 11 Brigadier Calitz." Do you see that? 12 BRIG MKHWANAZI: I see that. 13 MR MPOFU: Chairperson, sorry, I'm sorry 14 to interrupt my learned colleague. I just missed the 15 reference in the IPID file of this statement. 16 MS JELE: It's item A497 - 17 MR MPOFU: 497. 18 MS JELE: - at pages 2236, 2237. 19 MR MPOFU: Thank you, got it. 20 MS JELE: Brigadier, in this entire 21 statement seemingly only the Nyala driver received a 22 briefing and not the member making the statement, at the 23 very least according to its contents. Is that not 24 problematic? 25 BRIG MKHWANAZI: Normally, Advocate, with</p>
<p style="text-align: right;">Page 3675</p> <p>1 CHAIRPERSON: Will that be an exhibit? 2 MS JELE: I'm not sure at this stage if 3 it is in evidence. I thought it would have to be - 4 CHAIRPERSON: I say is it going to be an 5 exhibit, if it isn't, but I take it if you're going to 6 refer to it then it will have to get an exhibit number, if 7 it hasn't got one already. But perhaps Ms Pillay with her 8 customary efficiency can tell us whether it is an exhibit 9 already. Is it? 10 MS PILLAY: Chair, it hasn't been marked 11 as an exhibit, so it would be WW5. 12 CHAIRPERSON: Thank you. How does one 13 describe it? 14 MS JELE: I just handed my document - 15 CHAIRPERSON: How do we describe this 16 document? 17 MS JELE: It is a statement by Warrant- 18 Officer Makola, M-A-K-O-L-A. I cannot ascertain the exact 19 date from it, but hopefully I'll be able to do so shortly, 20 Chairperson. If I may refer you to paragraph 3, Brigadier 21 - 22 BRIG MKHWANAZI: I haven't received it. 23 MS JELE: Sorry, Brigadier. 24 CHAIRPERSON: It's dated the 24th of 25 August 2012, as far as I can see, if one reads the</p>	<p style="text-align: right;">Page 3677</p> <p>1 Public Order Policing we have a section commander or 2 tactical commanders. A section commander is the one that 3 is being called and receive briefing, and after they've 4 received the briefing they will go back and brief their 5 sections, or maybe you call the platoon commanders, which 6 is 32 members. The platoon commanders will be called, be 7 briefed, will go back and brief others as well. So it 8 depends what do you have at that time. But from what I'm 9 seeing here it's the section which is eight members, then 10 the section commander is called, is the one that will be 11 briefed and will come and brief the rest of the members to 12 say what needs to be done. So it's correct in this way. 13 MS JELE: My difficulty here, Brigadier, 14 is from this statement - and there are others, I'll refer 15 you to at least one other one - there is no indication of a 16 detailed briefing to the warrant-officer himself. 17 MR SEMENYA SC: Chairperson, might I 18 refer us to exhibit L - 19 CHAIRPERSON: Slides 181 - 20 MR SEMENYA SC: Correct. 21 CHAIRPERSON: Slides 181, 182 and 22 following. Now I think that the point being made in cross- 23 examination is never mind what's in exhibit L; it may be 24 borne out by the statements, the IPID statements to which 25 she's referring, but I think, I can't stop her at this</p>

<p style="text-align: right;">Page 3678</p> <p>1 stage but you sounded a warning that this point may not be 2 a good one, if one reads it in the light of those slides. 3 MS JELE: If I may then take up Mr 4 Semenya's point and let us go to exhibit L, specifically 5 slide 182 for starters, it specifically – 6 CHAIRPERSON: You're running your cross- 7 examination. Do what you consider appropriate. 8 MS JELE: Indeed, but Mr Semenya is 9 always of such great assistance. If one looks at slide 182 10 of exhibit L, it refers to commanders of the teams being 11 briefed, and it refers to them having briefed their 12 officers. The query is that the requirement is that every 13 single member that is part of that particular operation 14 ought to be briefed. That is the proper interpretation of 15 the standing order directive, is it not? 16 BRIG MKHWANAZI: That's correct, the way 17 it is written on the standing order 262, Advocate. 18 However, procedurally what we normally do to make sure that 19 everybody understands, gets information properly, because 20 at the end of the day somebody must be able to ask 21 questions. We spoke about issues of orientation and all 22 that, and if you've got a bigger group, you won't be able 23 to orientate them properly. You need to have a small 24 number of the commanders which can be easily be orientated, 25 know exactly the layout of the area, give proper briefing</p>	<p style="text-align: right;">Page 3680</p> <p>1 the Nyala driver outside of the Nyala, but that in and of 2 itself would be a problem. 3 MR SEMENYA SC: Chair, the criticism is 4 unfair. It does not necessarily follow. The problem may 5 be that the statement is incomplete. You cannot – 6 CHAIRPERSON: Isn't that an answer the 7 witness should give? 8 MR SEMENYA SC: Well the witness – 9 CHAIRPERSON: A nice direct clear answer 10 that we expect from the witness? 11 MR SEMENYA SC: Chair, the witness has 12 not been shown the statement, does not have any 13 conversation with the witness who's making that statement. 14 That information can't lie within his mind. The 15 extrapolation which is being made is that because a witness 16 was given a statement – 17 CHAIRPERSON: I've got the point, yes. 18 Ms Jele, isn't the point this, that this is a hearsay kind 19 of thing. You're cross-examining him on statements which 20 may not be accurate, may not be complete. Presumably when 21 the commanders come you can ask them about it. They will 22 either say yes, we did only, in this particular case only 23 brief the Nyala driver and not the other people on the 24 Nyala, but you know, regard being had to the time 25 constraints under which we're operating I'm not sure that</p>
<p style="text-align: right;">Page 3679</p> <p>1 to them, then at the same time they can do their drawings 2 as well, they can have their small tactical plan, go back 3 and be able to actually brief the members. Yes, it's 4 correct exactly what the standing order 262 is saying, 5 which as well allows the overall commander, or the 6 operational commander as well, to have everybody, address 7 everybody, but not on specific with the operation itself. 8 But when it goes to the operation, those leaders or the 9 commanders will be called to go in details with them, but 10 he can address everybody with the operation itself, but at 11 the end must be in detail, then the commanders are called 12 forward to come forward and be able to be briefed properly. 13 Otherwise you won't be able to orientate everybody 14 properly. If there's a question you've got a lot of 15 people, it's not going to be easy to have every information 16 properly to everybody given. 17 MS JELE: Brigadier, the difficulty is 18 that while I accept that commanders were briefed, and in 19 certain instances there are affidavits within the IPID file 20 that refer to Captain Kidd certainly having briefed his 21 officers directly, but there are some members that were 22 participating in the operation that were not directly 23 briefed of the details of the strategy ahead, and even if 24 there were some members not so briefed, at the very least 25 they don't refer to any briefing other than that given to</p>	<p style="text-align: right;">Page 3681</p> <p>1 this is a profitable line of cross-examination with this 2 witness. It may be a good point, but I suggest you cross- 3 examine witnesses more directly involved with the briefing 4 aspect when they come and give evidence. So I don't think 5 that I can fail to uphold Mr Semenya's objection at this 6 stage. 7 MS JELE: If I may – 8 CHAIRPERSON: The way to do it is to put 9 it shortly to the witness on the basis that if it's correct 10 that they weren't briefed, that's a defect and so on, and 11 leave it at that. Then whether the assumption upon which 12 the question is based is correct or not, is something he 13 can't tell us about anyway. That will have to be followed 14 up with the witnesses directly involved in the briefing or 15 non-briefing, as the case may be. 16 MS JELE: Chairperson, I accept that. I 17 think the difficulty with regard to this specific issue 18 raises a broader one, and that is that one of the aspects 19 of Gary White's expert opinion rests on the lack of 20 evidence precisely of the briefing of individual members, 21 which in his expert opinion is directly relevant. Now the 22 challenge for the Human Rights Commission's team in being 23 able to prepare an expert opinion's provisional statement 24 which is of relevance to the factual evidence being brought 25 at this stage, without the evidence for example that Mr</p>

<p style="text-align: right;">Page 3682</p> <p>1 Semenya refers to, cannot be underemphasised, and it is 2 this particular challenge that we'd have face – 3 CHAIRPERSON: I'm not quarrelling with 4 that, but my point is – and I think it's Mr Semenya's 5 point; if it isn't his point, it should be – that this is 6 the wrong witness to address these questions to and it's 7 wasteful of valuable time - we may have to sit a bit longer 8 to make up for the time spent on this today - because he's 9 not going to help us. The most he can say is they should 10 have been briefed; if they weren't, it's a defect. Once 11 you've made that point you can move on to the next one, I 12 would have thought. 13 MS JELE: Thank you, Chairperson. Then 14 perhaps I can ask the brigadier to answer the question as 15 put by yourself. 16 CHAIRPERSON: Brigadier, you've heard the 17 debate between counsel and me – 18 BRIG MKHWANAZI: Ja, I did. 19 CHAIRPERSON: And I'm keen to save time. 20 So I take it you'd agree that if it's correct that all the 21 members weren't briefed, that would have been a defect? 22 BRIG MKHWANAZI: That's correct, yes. 23 CHAIRPERSON: Whether they were briefed 24 or not, is a matter you don't know anything about. 25 BRIG MKHWANAZI: Correct, yes.</p>	<p style="text-align: right;">Page 3684</p> <p>1 the helicopter. 2 CHAIRPERSON: I suggest you look at the 3 foot of page 40, top of page 41, before you persist with 4 this objection. He said he had a radio. The point is it 5 is suggested he didn't use it. So whether that's correct 6 or not, we will discover when he goes in the witness box. 7 But meanwhile I suggest that Adv Jele reformulates the 8 question based upon what is at the foot of page 40, at the 9 top of page 41, and then again on the assumption that it's 10 correct, get a short answer from the witness and then move 11 on to the next point. 12 BRIG MKHWANAZI: Of which exhibit? 13 CHAIRPERSON: WW2. Ms Jele is at the 14 moment cross-examining on the basis of what Mr White says 15 and it's under the heading "Lack of leadership," or 16 something. That's page 40 and following. 17 MR SEMENYA SC: That's precisely the 18 objection, Chair. If that opinion is based on incorrect 19 reading of the evidence, it cannot be put as a proposition 20 of fact that that is a defect that was there. If Mr 21 White's information is incorrect, he cannot propose to put 22 it as a matter of fact to this witness that there was the 23 operational commander without radio contact. 24 CHAIRPERSON: He already said he had a – 25 I've gone beyond that. What's at the foot of page 40 is he</p>
<p style="text-align: right;">Page 3683</p> <p>1 MS JELE: Brigadier, another issue with 2 respect to implementation of the plan is what Gary White 3 refers to as a lack of leadership, and my question to you, 4 Brigadier, is in your experience in crowd management 5 issues, clearly the shape, as well as leaders that have 6 direct access to up-to-date information is essential in 7 order for the police to do their job correctly, is it not? 8 BRIG MKHWANAZI: That's correct, I agree 9 with the comment. However, I believe especially in Public 10 Order Policing always we have normally people who are 11 trained as platoon commanders, as section commanders, and 12 those are the people who lead and who know exactly what has 13 to be done, especially when the operational commander gives 14 instruction what's supposed to be done at that time. 15 MS JELE: The issue, Brigadier, is that 16 as a consequence the operational commander needs to be in a 17 position to know how events are unfolding in order to be 18 able to make the order you have just mentioned. Does he or 19 she not? 20 BRIG MKHWANAZI: That's correct. 21 [11:42] MS JELE: Being in a helicopter without 22 radio communication may in fact have been a bad decision by 23 someone in that position, in your opinion? 24 MR SEMENYA SC: Chair, again the evidence 25 is even of General Mpembe will be that he had a radio in</p>	<p style="text-align: right;">Page 3685</p> <p>1 did have a radio, but – 2 MS JELE: Can I perhaps assist, 3 Chairperson? 4 CHAIRPERSON: I think your question – 5 MS JELE: It was referenced in a written 6 statement of General Mpembe. 7 CHAIRPERSON: Ja, I think your question 8 may have been inappropriately phrased in the light of what 9 appears at the foot of page 40. The real point is whether 10 he had a radio or not, it's suggested he didn't use it and 11 your point would be, I take it, that that was a defect. 12 Whether he had a radio or not, whether he used it or not, 13 is a matter that will depend on the evidence. If you put 14 it on a conditional basis then you can get a helpful 15 answer; we won't spend anymore time on it and we can 16 proceed with something else. 17 MS JELE: The evidence that White had in 18 his possession was the written statement provided to us by 19 the SAPS by General Mpembe, and it's in relation to the 20 statements made in that specific written statement and 21 specifically to the fact that he was – and I would refer to 22 paragraph 49 of that written statement – he does indeed 23 confirm he had a radio with him. However – 24 CHAIRPERSON: You put he didn't have a 25 radio, and what I'm saying is that was wrong. But move</p>

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1 beyond that. Even if he had a radio, it's suggested by Mr
 2 White that he didn't use it and that may or may not be
 3 denied by him, but put the question on the basis that if
 4 the statement is correct, would it be a defect. You'll get
 5 an answer and we can move on. We can't get involved in
 6 dogfights every 10 minutes on every one of these details,
 7 which are in any event conditionally put on the assumption
 8 that certain evidence will or will not come forward later,
 9 not so?

10 MS JELE: Brigadier, we've mentioned the
 11 value of having an operational commander in a position
 12 where he is able to communicate to people on the ground,
 13 and I do want to refer now specifically to the statement of
 14 General Mpmembe, if you would look at it, please. Page 21
 15 of the statement, as at paragraph 49 and following.

16 CHAIRPERSON: Again it's not something
 17 that we have, so it will have to be an exhibit at some
 18 stage, but let's not waste time further on it. I see Ms
 19 Pillay is going to show it to the witness on her laptop.
 20 The witness can give the answer and we can get the document
 21 in due course.

22 MS JELE: Perhaps I might then read from
 23 these paragraphs in order to assist, Chairperson.

24 CHAIRPERSON: May I suggest that
 25 certainly from now on and certainly after the lunch

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1 adjournment, if you're still busy, in future if you want to
 2 ask questions based on documents you should make sure that
 3 they are before us, or that Ms Pillay has copies to
 4 distribute, because otherwise we waste an awesome amount of
 5 time. But anyway, proceed as you propose for the moment.

6 MS JELE: We had indeed been assured that
 7 these documents would at the very least be made available,
 8 but thank for that, Chairperson. As regards paragraph 49,
 9 General Mpmembe specifically states, "Both Brigadier
 10 Tsiloane and I took along our handheld radios and we could
 11 follow the communication on the SAPS radio. The Protea
 12 Coin helicopter flew above three SAPS helicopters. I could
 13 see groups of people dispersing from the koppie and moving
 14 in a north and north-westerly direction. I could also see
 15 the arrival of, and engagement by, the water canons at
 16 koppie 3. As the helicopter flew around the area I looked
 17 at the protesters who may have been regrouping. I then
 18 heard Lieutenant-Colonel Vermaak reporting over the radio
 19 that there were bodies down. It was not clear where." Now
 20 paragraph 50, "Soon thereafter I heard Brigadier Calitz
 21 instruct members to get out of the Nyalas and effect
 22 arrests. I instructed the pilot to return me to the JOC to
 23 make sure that the medical personnel at hand were enough to
 24 attend to those said to be lying on the ground and to
 25 prepare for the processes of those being arrested." My

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1 proposition is this, this statement at the very least
 2 suggests that he was not aware that shots had been fired,
 3 but seemingly firstly that bodies were down, and secondly
 4 the communicating the commands that were necessary and that
 5 he himself refers to, required that he return to the JOC,
 6 and the question is would a person in his position not be
 7 best placed therefore by remaining in the JOC and not
 8 making the choice to proceed, as General Mpmembe did.

9 BRIG MKHWANAZI: Advocate, my answer to
 10 this will be, I will actually answer comparing it into two
 11 type of scenarios where we talk about the sporting events,
 12 as well as we talk about this type of operations. On
 13 sporting events we are definitely saying that a person must
 14 be in the VOC, or in the JOC. That is the overall
 15 commander, the operational commander, all these people must
 16 be there to assist each other to take a decision. However,
 17 in that position it's easy for them, they are in the VOC,
 18 the stadium or the field is right in front of them. They
 19 can be able to see whatever is happening. They can as well
 20 take decision. But coming to this type of an operation, I
 21 would say it's not safe to say should you be there in the
 22 JOC, not have a chance to see exactly what is happening,
 23 however it's important to have communication, of which at
 24 the moment I cannot say whether General Mpmembe could at
 25 that time be able to hear or to see what was happening, but

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1 if he got communication he can be able to hear what is said
 2 because if a person gives information to the JOC that
 3 somebody has been injured or what position, he can hear
 4 from his radio at the same time. That means it can be
 5 communicated to everybody. So I'm not sure what had
 6 happened in this position, hence I was not there. But I'm
 7 saying it's not fixed to say you must just be there, but
 8 you can orientate yourself as an overall commander to see
 9 what is happening because it's easy in a situation in a
 10 stadium where you see everything in front of you, but in
 11 this type of a situation it is challenging that you can't
 12 see anything, but as you flew and check, but if you got
 13 communication it's easy to be able to see. If
 14 communication is not there, it becomes a problem because
 15 decisions must be taken.

16 MS JELE: Thank you, Brigadier. I now
 17 turn to the last issue that I would hope to cover with
 18 yourself in cross-examination. That's the issue of
 19 debriefing. I appreciate that you've already been asked a
 20 number of questions on the meeting at Potchefstroom and I
 21 will limit mine to those that have not yet been answered,
 22 Brigadier. The first is to your knowledge did anybody come
 23 to Potchefstroom with a document prepared for the purpose
 24 of a presentation to be made at Potchefstroom?

25 BRIG MKHWANAZI: As I've answered before,

<p style="text-align: right;">Page 3690</p> <p>1 Advocate, hence the question came, was that for me to be 2 there, there was a purpose. People were there for nine 3 days. However, I was there for three days and our purpose 4 was simple why we were there, we're just focussing only 5 into that. There's no time whereby myself I check if 6 somebody got any document or anything in his or her 7 possession because when we arrive there people were divided 8 into groups and to compile the information for the 9 submission for the Commission. Ours was only to come 10 together and look to the final product.</p> <p>11 MS JELE: You've mentioned these groups 12 before. Is there any chance, Brigadier, that you recall 13 how the groups were separated? Was it by theme perhaps or 14 by specialisation? Do you remember the distinction made 15 for each group and perhaps the number of those groups?</p> <p>16 BRIG MKHWANAZI: Advocate, I didn't check 17 whether they were actually put in accordance with their 18 expertise. However, as I've said, they were there for nine 19 days. We came only for three days. Already they were in 20 their groups. So as we said starting everything was only 21 that they will have to break up into their groups. But 22 whether they were in their expertise, like to say maybe 23 Special Task Force alone, National Intervention alone, 24 Public Order Policing alone, I didn't check on that part at 25 all. But I presume that it should be maybe they were</p>	<p style="text-align: right;">Page 3692</p> <p>1 is exhibit L, is really talking to the police function 2 properly.</p> <p>3 MS JELE: Brigadier, if I could refer you 4 now to paragraph 6 of your original statement, SS1 – 5 BRIG MKHWANAZI: Got it. 6 MS JELE: The paragraph indicates that 7 you at the time would be responsible for supervising and 8 monitoring the training, to ensure not only that policies 9 and standards are being implemented and followed, but also 10 to compile a report with recommendations - I presume where 11 shortcomings had been observed.</p> <p>12 BRIG MKHWANAZI: That's correct. 13 MS JELE: As you indicated to us 14 yesterday, your choices with regard to any further action 15 after shortcomings have been reports, depend to a great 16 deal upon the instructions you receive. Is that not 17 correct?</p> <p>18 BRIG MKHWANAZI: Advocate, there I was 19 referring where we were talking about the ministry policy, 20 that there division HRD, Human Resource Development, they 21 are actually the people who can come up with the 22 instruction to say what needs to be done, and when there is 23 a need an invitation is given to us as well, we'll 24 participate. However, I can initiate, but they are the 25 people who can actually come forward and say no, this can</p>
<p style="text-align: right;">Page 3691</p> <p>1 mixed. It can be possible as well, because they were all 2 working together to be able to get the situation going, but 3 I didn't check on that.</p> <p>4 MS JELE: Brigadier, can you at least 5 tell me what group you were in?</p> <p>6 BRIG MKHWANAZI: We were, as I've said we 7 were about seven or eight, ourselves, and our leader was 8 Major-General Geldenhuys from Legal Services and ourselves, 9 we're just only eight of us in that group only with 10 specific task to say as soon as everything is finalised 11 we'll come together, join the group and look to the 12 product, the final product. That's all.</p> <p>13 MS JELE: Brigadier, could you describe 14 that specific task to the extent that it was relevant to 15 the proceedings before this Commission? What was that 16 specific task you just referred to?</p> <p>17 BRIG MKHWANAZI: Ja, our task was to look 18 to issues of policies. Especially we look as well to 19 national instruction, to standing orders, and to see 20 everything is in place properly with the document itself 21 that needs to be submitted for the Commission. As I've 22 said from the beginning as well was that we were there 23 sitting together with the group after everything has been 24 finalised. Mostly what we look at was the issue of 25 terminologies, checking that actually the document, which</p>	<p style="text-align: right;">Page 3693</p> <p>1 be done or not be done.</p> <p>2 MS JELE: In the process of supervising 3 and monitoring the training to make sure that policies and 4 standards are being implemented and followed, you mentioned 5 during your evidence-in-chief that this includes compiling 6 reports and recommendations as a result of events – I 7 believe you made reference to Ellis Park for example.</p> <p>8 BRIG MKHWANAZI: That's correct, yes. 9 MS JELE: And such processes internal to 10 the SAPS are part of the practice and in the long term 11 viewed as – from your opinion – beneficial to the SAPS, are 12 they not?</p> <p>13 BRIG MKHWANAZI: That's correct. 14 MS JELE: To your knowledge, have any 15 debriefings, as one would call them, or analyses of events 16 ever informed amended training formats or been incorporated 17 into forms of upgraded training?</p> <p>18 [12:02] BRIG MKHWANAZI: It really happened most 19 of the time. If something happened - if I may make an 20 example, we have one such situation is Jeppestown where 21 police officials were killed and we came up with a change 22 and we came up with a document, we call it TST, which is 23 tactical training for the members to say what type of 24 training we can give to those members. Definitely it 25 assists a lot, because there what we do, members will go</p>

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1 and definitely find out how actually the incident happened,
 2 and out of that we can come up with a plan to say how
 3 members can be trained to avoid the situation to happen
 4 again.

5 MS JELE: And indeed this process being
 6 followed by SAPS internally would be beneficial in the long
 7 term regardless of the conclusions and/or additional
 8 conclusions that a commission such as this one might come
 9 to, would it not?

10 BRIG MKHWANAZI: Normally the most of the
 11 issues I'm actually talking about is whereby the Commission
 12 is not going to be involved. That's why we come up with
 13 our own recommendation and we can move forward and come up
 14 with some programme and make sure that we train members, we
 15 make some changes, but at the same time if it comes from
 16 the side of the Commission, we can consolidate as well the
 17 recommendations by the Commission and come up with a
 18 programme. That's why I made an example with Ellis Park as
 19 well, that it contributed a lot into that and we managed to
 20 come up with a better change.

21 MS JELE: I suppose as a precursor for
 22 such a process the SAPS would have to appreciate at the
 23 outset, as indicated in paragraph 57 of my colleague, Mr
 24 Semenya's opening statement, that if needs be changes need
 25 to be made. That acknowledgement and that appreciation at

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1 the outset would need to be there otherwise why consider
 2 make any changes at all. Would you accept that?

3 BRIG MKHWANAZI: Of course really I do
 4 agree that there will be changes after the Commission.
 5 With the recommendation, we will definitely have to come up
 6 with some sort of changes in our programmes and everything.
 7 Obviously the recommendation by the Commission will be very
 8 much of great assistance.

9 MS JELE: Before I ask you my next
 10 question, I would like to ask Ms Pillay to assist. We had
 11 indicated yesterday that we wish to have a specific video
 12 shown, and I'm hoping that she was in position to queue it.

13 MS PILLAY: - is ready with the video.

14 MS JELE: The video sourced from the SAPS
 15 hard drive and we've indicated its precise location and the
 16 list of documents that we've provided to the SAPS.

17 CHAIRPERSON: Before we see it, what does
 18 it show broadly, what's it supposed to indicate?

19 MS JELE: There's a speech by the
 20 Commissioner – the National Commissioner, Chairperson.

21 CHAIRPERSON: I see. On what date?

22 MS JELE: I'm not sure of the dates, but
 23 it is certainly post the event, it is at memorial for
 24 individuals were sadly killed during the process.

25 CHAIRPERSON: Thank you.

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1 [VIDEO SHOWN]
 2 MS JELE: - at this stage.

3 CHAIRPERSON: We must give the
 4 interpreter an opportunity to interpret the key section. I
 5 don't know if he has the text in front of him.

6 MS JELE: I would like to assist him. I
 7 do have a copy of what we have transcribed, perhaps that
 8 might be of assistance to him.

9 CHAIRPERSON: May I suggest you give him
 10 the transcript so that he can interpret to those in the
 11 auditorium who would understand it better if it were
 12 interpreted into isiXhosa and I don't know whether he has
 13 to interpret it into Sesotho as well.

14 MS PILLAY: Chairperson, while the
 15 interpreter is being given the document, that clip hasn't
 16 been given an Exhibit number as yet. So if I could ask
 17 that that be marked WW5 and the clip involved is SAPS
 18 external hard drive –

19 CHAIRPERSON: Hang on, I thought the
 20 statement by Warrant Officer Makola -

21 MS PILLAY: I apologise, Chair, it's WW6.

22 CHAIRPERSON: WW6, and what do we call
 23 it? The video clip?

24 MS PILLAY: It's the National
 25 Commissioner's speech.

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1 CHAIRPERSON: National Commissioner
 2 speech.

3 MS PILLAY: And the pathway for the rest
 4 of the parties, Chair, is SAPS external hard drive\SAPS
 5 video\post event\0036XVID.

6 CHAIRPERSON: Do we know the date on
 7 which the speech was made, because we can then identify it
 8 as National Commissioner's speech on such and such a day.
 9 Do we know the date?

10 MS PILLAY: We don't have the specific
 11 date –

12 CHAIRPERSON: It sounded as if the date
 13 was mentioned in the beginning by a voiceover before she
 14 started speaking, but anyway that's something we can be
 15 sorted out later.

16 MS PILLAY: Well, we can try and –

17 CHAIRPERSON: WW6 is a video clip of the
 18 National Commissioner's speech post-Marikana, I suppose we
 19 can say.

20 MS PILLAY: Yes.

21 MS JELE: I was informed by my legal
 22 team, Chairperson, that it's dated 20 August. Perhaps the
 23 SAPS can just confirm that.

24 CHAIRPERSON: Alright, well let's
 25 provisionally give it that date.

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1 MS JELE: Thank you, Chairperson. It
 2 sounded like something like that. Perhaps Mr Semenya can
 3 take instructions and help us. We must give this – your
 4 transcript to the transcribers and they've already – I take
 5 it they've already recorded the soundtrack of this video,
 6 but still it will have to be on the transcript of the
 7 proceedings what was said in the speech.
 8 MS JELE: Fortunately that was prepared
 9 for us is an electronic copy, so we'd be in a position to
 10 send it through to the evidence leaders for that purpose.
 11 CHAIRPERSON: Before we interpret it,
 12 really do we know in what languages he must interpret this
 13 speech? Obviously isiXhosa. Are there people here – I
 14 don't know if they can understand my English, but are there
 15 people here who would like it to be interpreted into
 16 Sesotho as well?
 17 MR MAHLANGU: There doesn't seem to be
 18 anyone.
 19 CHAIRPERSON: Do they want it interpreted
 20 into Tswana – into Setswana?
 21 MR MAHLANGU: May I then start?
 22 CHAIRPERSON: - if you'd read it now to
 23 us in English, because I had difficulty in hearing it
 24 clearly when the video was being shown. So if you could
 25 read it to us, please, I'd be grateful.

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1 MR MAHLANGU: Yes. Speech by the
 2 National Commissioner, "Good morning." She says, "Is this
 3 on? Alright. Good morning. Grateful for God for giving
 4 us the sun today. I trust that you have had time just to
 5 brief because that is all you could do for the first few
 6 days. Did you get time to brief?" The answer coming from
 7 the crowd is No. "I did not hear you. Did you get time to
 8 brief?" Again a No. "I think first and foremost let us
 9 just be grateful that we still have," and then it's
 10 inaudible here, "time just to brief." It goes on to say,
 11 "I am here really to say to all of you stay strong. I'll
 12 start there by just saying stay strong. We recognise, as a
 13 leadership and as this country, that all you are going
 14 through very tough and trying times and very challenging
 15 times. I come before you to say trying as it may be,
 16 mourning as we are, let us take note of the fact that
 17 whatever happened represents the best of responsible
 18 policing. You did what you did because you were being
 19 responsible.
 20 [12:22] You were making sure that contend to lead your
 21 oath of ensuring that South Africans are safe and that you
 22 equally a citizen of this country and safety starts with
 23 you. So for you – so for that I just want once more to
 24 thank you for having done what you did, for having endured
 25 the challenges that were endured. As mourn as a country

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1 let us remember that the pain that everybody is feeling is
 2 felt by all of us but all we did was to do our job and to
 3 do it in the manner that we are trained in. That we know
 4 it should be done responsibly, caringly and focusing on
 5 that which is our core responsibility. Thank you.
 6 CHAIRPERSON: Thank you very much, Mr
 7 Mahlangu. You want to ask some questions based upon the
 8 speech of the National Commissioner to you?
 9 MS JELE: To the extent that it relates
 10 to issues of debriefing and learning lessons from a full
 11 appreciation of events that might have taken place, whether
 12 it's in the death of Andries Tatane, Ellis Park or
 13 Marikana, would it not be appropriate not to, at the very
 14 least, wait until a process such as any kind of debriefing,
 15 even internal, is made before making a judgment call before
 16 one's own members about the quality of the work that was in
 17 fact given. In terms of the value of debriefing and the
 18 place of debriefing, Brigadier, is my question, would you
 19 not wait until after you have had an opportunity to apply
 20 your mind to what took place before coming to conclusions
 21 about a description of the manner in which this particular
 22 work took place?
 23 BRIG MKHWANAZI: Advocate, I want to
 24 indicate that really as much as I can have my own feeling
 25 in how it should be done, but I would like to request that

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1 I don't comment on this please.
 2 CHAIRPERSON: Advocate Jele, I was going
 3 to ask you the same question. I can understand the
 4 question and why you ask it, but with great respect to the
 5 witness, is his answer going to help us very much? It's a
 6 matter upon which we may well be called upon to make
 7 comments and possibly make a finding, but is any answer
 8 that he gives, and I say this with – not that I mean any
 9 disrespect to him, something that's really going to help us
 10 to formulate such comments as we're going to make ourselves
 11 and it puts him in a very embarrassing position. Unless he
 12 says wholeheartedly he agrees with every word the minister
 13 says – the commissioner says, sorry. And he doesn't go
 14 that far then it could be very embarrassing, he might
 15 receive all sorts of repercussions for himself. I wonder
 16 whether it's a question that you really wish to persist in
 17 or wish to press as far as the witness, whatever he says –
 18 I'm getting it wrong. In relation to what the commissioner
 19 says, whatever he says is it going to help us to say what
 20 we will have to say in due course about that speech? It
 21 will be dealt with in arguments by the parties, but isn't
 22 the matter really for evidence from a witness. Is it a
 23 matter in which his expertise which justifies him to give
 24 opinion evidence really count? I take it the commissioner
 25 herself is going to give evidence. She may have to give

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1 evidence even if Mr Semenya - and then the question can be
 2 asked of her.
 3 MS JELE: I suppose, Chairperson, this is
 4 another example of the difficulties we had faced under
 5 these circumstances. I sincerely look forward to further
 6 evidence from SAPS with respect to the events at
 7 Potchefstroom and any other debriefing process that did or
 8 did not take place so that we might ask pertinent questions
 9 at that stage.
 10 CHAIRPERSON: I'm told by Mr Semenya, he
 11 conceded as I understand it, the review envisaged in the
 12 standing order hadn't taken place. He conceded that. So
 13 we don't need to spend any more time on that. The
 14 relevance of your question relates to the comments made by
 15 the commissioner in the absence of such a debriefing and
 16 review process, but that's more for a matter of argument.
 17 Alternatively a matter to ask her about when she gives
 18 evidence. If she gives evidence.
 19 MS JELE: Chairperson, certainly we
 20 accept that Potchefstroom is the process seemingly that the
 21 location at which and these 9 days are the time at which
 22 certain amount of analysis have been made and we do look
 23 forward to having evidence in that respect. To the extent
 24 that this is the only evidence that we had at present of
 25 any statement relating to the specific functions of the

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1 Brigadier in terms specifically of what focus would
 2 recommendations in going future. That's was the reason for
 3 the showing of this particular video clip, but I understand
 4 the chairperson's difficulties.
 5 CHAIRPERSON: The commissioner made this
 6 speech on the 20th of August which is before the
 7 Potchefstroom process took place in any event. But in the
 8 circumstances I take it you don't press – don't insist on
 9 the witness giving the answer to the question?
 10 MS JELE: I don't, no, Chairperson.
 11 Thank you. I would now like to turn and I'm hoping my
 12 colleagues will be happy with me considering the time, to
 13 the last document I'd like to refer you to, Brigadier.
 14 It's the shooting report compiled by Govender and
 15 sufficient copies for both the evidence leader, yourself
 16 and the commissioners were provided to Ms Pillay by Ms
 17 Hardy yesterday.
 18 CHAIRPERSON: Ms Pillay – what's it
 19 called.
 20 MS PILLAY: Shooting report is the title
 21 in the file.
 22 MS JELE: Would it be WW7, Ms Pillay?
 23 MS PILLAY: Yes, WW7.
 24 CHAIRPERSON: The heading is actually
 25 shooting incident as far as I can see.

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1 MS JELE: Indeed, the title is – I'm
 2 referring to the file – the pdf file that's electronic, but
 3 shooting incident report. Do you have it Brigadier?
 4 BRIG MKHWANAZI: I've got it thank you.
 5 MS JELE: You will notice that it's put
 6 together by Captain Govender.
 7 BRIG MKHWANAZI: I see that, it's
 8 inquiry.
 9 MS JELE: And the office of the station
 10 commander at Marikana Police Station.
 11 BRIG MKHWANAZI: I see that.
 12 MS JELE: You will also see it is dated
 13 17 August 2012.
 14 BRIG MKHWANAZI: I see that.
 15 MS JELE: It is also addressed to the
 16 provincial commissioner as well as the cluster commander,
 17 Rustenburg Cluster.
 18 BRIG MKHWANAZI: I see that.
 19 MS JELE: Significantly, Brigadier, you
 20 will see that in the first paragraph reference is made not
 21 only to the shooting incident of 16 August 2012, but also
 22 to the fact that it involved and I quote "unknown members
 23 of the SAPS".
 24 BRIG MKHWANAZI: I see that.
 25 MS JELE: If I were to scroll down to

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1 paragraph 1.2, it's indicated that once these members who
 2 were involved in the incident had been identified, they
 3 will be informed, for example, of their right to consult a
 4 legal representative.
 5 BRIG MKHWANAZI: I see that.
 6 MS JELE: In your experience, such a
 7 shooting incident report would only refer to those facts
 8 that are available at the time it was drafted would it not,
 9 Brigadier?
 10 BRIG MKHWANAZI: Can you repeat your
 11 question please?
 12 MS JELE: Captain Govender would only
 13 write anything in this report that he knows and has been
 14 established at that time, would he not? For example if he
 15 has not had the opportunity to identify the members
 16 involved in the shooting incident, he therefore
 17 coincidentally also would not have had an opportunity to
 18 discuss these incidents with them.
 19 BRIG MKHWANAZI: Ja, advocate, I would
 20 like to comment properly as you asked me the questions and
 21 I understand as I'm seeing from the beginning this side, it
 22 shows unknown members of the SAPS and it goes down as it
 23 indicating that it would be provided this time to the legal
 24 representatives of the state and I'm having a problem to
 25 say, really, maybe if I can have a chance to read

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1 everything, I can be able to understand what he was this
 2 thing all about. Here we talk about Marikana, now we are
 3 at a police station. This matter that brought us here, it
 4 is a provincial issue which ended becoming a national
 5 issue. So for me really to have comment to a station issue
 6 now because it was – it started in a cluster, it has moved
 7 to provincial, moved to a national. Now I've got this
 8 statement now, I must comment in this way. It gives me a
 9 problem really. I don't understand how we end up in this
 10 position. I'm not sure. So I can't comment properly into
 11 this document. Because really, with due respect, Advocate,
 12 it's my first time now to see strictly a letter from the
 13 station and we have been engaging here with an issue which
 14 is a national issue Marikana and I believe if it is a
 15 statement by the member, the member will be in a position
 16 to answer the question here why it was still unknown. For
 17 me to come forward now and criticise these and say how it
 18 was supposed to be – really I feel strongly that it's
 19 uncalled for. It will be difficult.

20 MS JELE: Perhaps we shall have the
 21 opportunity during the preferring of SAPS' evidence to
 22 establish the true context of this document but what I
 23 would like to ask you at this specific stage, since you
 24 were at one time responsible for looking into – for my
 25 present purposes, Brigadier, if I might ask you to just

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1 read the paragraph at 2.1.1 entitled a short description of
 2 the incident without unnecessary repetition of other facts.
 3 Can you see that? It is a paragraph that reads "on
 4 Thursday, 2012-08-16, from approximately 7 there was a mass
 5 gathering of striking Lonmin employees at a koppie at
 6 Middlekraal near Village, Wonderkop. The group was armed
 7 with dangerous weapons and firearms. The group was
 8 identified to be violent and in the past few days have
 9 murdered, assaulted and brutally attacked several other
 10 persons. They were given a warning to hand over all
 11 weapons and to disperse from the area they were gathered
 12 at. At 15:45 the police officials took action to disperse
 13 the mob. The mob charged the police officials with
 14 firearms and dangerous weapons. The police officials acted
 15 in self defence. In the process several persons were
 16 killed and injured". You saw that paragraph, Brigadier?

17 BRIG MKHWANAZI: Ja, I see it, ja.

18 MS JELE: Brigadier, in your previous
 19 position being responsible for reporting and providing
 20 recommendations as a result of events such as, again, Ellis
 21 Park and Marikana, would you not consider it entirely
 22 inappropriate for anyone whether or not this particular
 23 document, accepting that it reflects the conclusions of an
 24 individual who may or may not testify, but seemingly does
 25 not know which members shot, but asserts the police

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1 officials acted in self defence. When you have had
 2 opportunity to review incidents such as this, would you not
 3 consider it inappropriate to come to such a conclusion
 4 having not so much as identified members involved?

5 CHAIRPERSON: Mr Semenya has indicated he
 6 wishes to say something.

7 MR SEMENYA SC: Chair, the opinion of
 8 this witness about an opinion of another witness is
 9 entirely unhelpful.

10 CHAIRPERSON: I'm inclined to uphold that
 11 objection unless you can argue to the contrary. It's a
 12 matter obviously we'll have to decide and again I say,
 13 without any disrespect to the Brigadier, whatever he says
 14 will be his opinion. It's not necessarily a matter in
 15 which he has any special expertise. His opinion will take
 16 the matter no further than that of other people. We will
 17 ultimately be called upon to make a finding and we will
 18 have the benefit of argument from counsel but I'm not sure
 19 that anything that he may say on the point will assist us
 20 one way or another in coming to the conclusion which we may
 21 be asked to come to.

22 MS JELE: Again, the difficulty of when
 23 what evidence has been preferred, chairperson, to the
 24 excepts that SAPS provided this document among the bundles
 25 of documents that they provided, the assumption we made and

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1 it might be an incorrect assumption, I accept that, was
 2 that this is a document that they took into account in
 3 assessing the events of Marikana themselves and in
 4 preparing for this event and to the extent –

5 CHAIRPERSON: - I don't know how this
 6 witness's answer to the question you've asked him is going
 7 to help us. I mean there are a number of questions that,
 8 in my mind, occur from a perusal of this document and one
 9 of the issues may be that initially there was a failure by
 10 the police to indicate that there already were two scenes
 11 or two phases of what happened and this document may well
 12 afford some support for that suggestion. But that's a
 13 matter that can be looked at, at the appropriate time, but
 14 I'm not sure, with respect, the Brigadier's going to help
 15 us one way or another.

16 MS JELE: I suppose, Chairperson, I had
 17 assumed that the Brigadier, having participated on his
 18 examination in chief in formulating the recommendations and
 19 the lessons for the future that we have been discussing,
 20 that he would have come across some of the documents and be
 21 in a position to comment, at the very least, on their place
 22 value or on his opinion thereof, I accept the chairperson's
 23 –

24 [12:42] CHAIRPERSON: Marginally that may be
 25 right, but that sound very much like a fishing expedition.

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1 I would have thought that more focussed questions along
 2 those lines can be asked of other people at a later stage
 3 possibly, but I don't propose to allow you to go fishing
 4 with this particular question. I suggest you move on to
 5 the next question.
 6 MS JELE: I appreciate that, Chairperson,
 7 and in that case might I state that those are our questions
 8 for the Brigadier. What we would hope for perhaps to be
 9 dealt with in the upcoming meeting is some indication of
 10 when we might expect the further evidence that seemingly is
 11 relevant.
 12 CHAIRPERSON: You don't have to make a
 13 speech at this point. Thank you.
 14 MR NCONGWANE SC: Chair, it's me Chair on
 15 behalf of the Bapo Ba Mogale royal family.
 16 CHAIRPERSON: You indicated to me
 17 yesterday that you -
 18 MR NCONGWANE SC: That's correct, Chair.
 19 CHAIRPERSON: Put yourself on record, in
 20 case you're not on record. Has there been a change of
 21 representation by your client – on the part of your client?
 22 MR NCONGWANE SC: That's indeed so.
 23 CHAIRPERSON: Put yourself on record and
 24 then proceed with your question, but before you do so, is
 25 there anyone else who wants to ask questions as well? And

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1 I suggest possibly – I take it Mr Tip won't mind if you sit
 2 next to him, you'll then be able to see the witness better
 3 and he'll be able to see you better. You will be the last
 4 cross-examiner, will you?
 5 MR NCONGWANE SC: Thank you, Mr Chairman
 6 and the commissioners. My name is Tami Ncongwane. I'm
 7 appearing on behalf of the royal family of Bapo Ba Mogale.
 8 I'm assisted by Karabo Kgoroadira – Advocate Karabo
 9 Kgoroadira and Advocate Lizzy Boloyi-Mere. And we are
 10 also assisted by the attorneys, Mr Kgomo – Obakeng Kgomo,
 11 as well as Elson Kgaka. Good day, Brigadier.
 12 BRIG MKHWANAZI: Good day.
 13 MR NCONGWANE SC: Brigadier, I'm
 14 obviously going to exhaust you any further than it's
 15 necessary. The issue on which I intend to question you,
 16 Brigadier, is quite limited, and it relates to the
 17 involvement of local community as one of your techniques
 18 that are to be used by the POP.
 19 That particular issue, Brigadier, you'll recall
 20 it has already been canvassed by my learned friend from the
 21 Lawyers for Human Rights, and the nub of its relevance when
 22 it was canvassed is when you readily admitted that indeed
 23 the local community must be involved in the crowd
 24 management control strategies that are perceived by the
 25 POP.

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1 BRIG MKHWANAZI: That's correct, maybe if
 2 I may explain, what I mean on that is that when we talk
 3 about well-organised marches or gathering, it's where we
 4 will have to ensure that the organisers' proper
 5 consultation with the communities around where the whole
 6 event they will take place, they are informed, they know
 7 what is happening. If there shops or whatever, we know
 8 exactly how to deal with that, meaning business people
 9 there, they are involved, they know that there will be a
 10 march and if anything happens how to assist on that to make
 11 sure there are no looting or anything. So that's how we
 12 actually - here.
 13 MR NCONGWANE SC: Thank you, Brigadier,
 14 for that clarification, and what is specifically on record
 15 from your examination and throughout the course of your
 16 testimony is that there would be opening of dialogue or
 17 discussions with the leaders of march, not so?
 18 BRIG MKHWANAZI: That's correct.
 19 MR NCONGWANE SC: And largely there will
 20 be involved discussions with the community, not so?
 21 BRIG MKHWANAZI: Normally there are
 22 leaders that lead in that particular march or in that
 23 gathering. Obviously there will be some interaction.
 24 MR NCONGWANE SC: Brigadier, you must be
 25 well aware that predominantly the community around

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1 Wonderkop is a traditional community?
 2 BRIG MKHWANAZI: I've got that
 3 information.
 4 MR NCONGWANE SC: Invariably this
 5 traditional community would have traditional leaders.
 6 BRIG MKHWANAZI: I agree with that. It
 7 should be like that.
 8 MR NCONGWANE SC: Those traditional
 9 leaders, Brigadier, will fall within the category of the
 10 leaders you've referred to which, or i.e. the leaders with
 11 whom dialogues or discussions would be opened with them?
 12 BRIG MKHWANAZI: Normally, as I said,
 13 there will be leaders for that particular group or people
 14 who are going to march and obviously will be some questions
 15 asked if all people involved knows about that particular
 16 march that is going to take place. Obviously they can be
 17 on board sometime, or it can happen that they can be
 18 informed. That's how it goes.
 19 MR NCONGWANE SC: If I understand your
 20 testimony well, Brigadier, the leaders you're referring to
 21 with whom negotiations will be held, would also include the
 22 traditional leaders?
 23 BRIG MKHWANAZI: Advocate, I will explain
 24 the role of SAPS into this matter, especially with the
 25 Regulation of Gathering Act, because we need to make sure

<p style="text-align: right;">Page 3714</p> <p>1 we work in accordance with that; that we will have a 2 meeting, as I said, it must be well planned march or a 3 gathering. If it's well planned, we'll have leaders who 4 will be leading that particular march. Obviously, we will 5 look to other people as well who can be involved, attached, 6 depending where the march will be. We will ask questions 7 on that, as I made an example about business people around 8 the area where the march will take place or the gathering 9 will be to make sure everybody understands what's going to 10 happen at that particular time.</p> <p>11 It's obvious if definitely it has to go to that 12 extent that the leaders in the community at that level, 13 traditionally if there's a need that they can be involved 14 or informed, they will be informed, if it comes to that 15 position.</p> <p>16 MR NCONGWANE SC: Have you established as 17 to whether in this particular case, taking into the events 18 that led to the shooting on the 16th of August, have you 19 established as to whether the traditional leaders might 20 have played a positive role in assisting the quelling of 21 the insurrection?</p> <p>22 BRIG MKHWANAZI: No, really I haven't 23 established that. Since we started with this whole 24 situation, I couldn't maybe have any situation whereby I 25 find out whether they were involved or whether is there any</p>	<p style="text-align: right;">Page 3716</p> <p>1 then, Brigadier, in the event – let's accept or 2 hypothetically accept that it did not happen, would you 3 then agree that this would amount to a fundamental omission 4 of one of your vital considerations in the implementation 5 by the POP of its plan?</p> <p>6 BRIG MKHWANAZI: I will be maybe making a 7 mistake if I can say yes again or no into that question, 8 because, as I've said, I'm not sure, hence this matter 9 started from the cluster, building up provincially and 10 nationally as well. I'm not sure what had happened there. 11 If I can now come up and say they never done or they did, 12 as you say now maybe let's say they never done, I don't 13 think it would be fair for me to come up and say, yes, they 14 never done, if they never done, they did wrong.</p> <p>15 CHAIRPERSON: No, no, I'm sorry, 16 Brigadier, I don't think that's the question. The question 17 is if – what counsel wants to know is that if they made no 18 attempt to involve the traditional leaders in the area, 19 would that be an omission. I think – obviously you don't 20 know whether they did or they didn't, but he says if they 21 didn't, would be an omission. I think that's the question. 22 Is that correct?</p> <p>23 MR NCONGWANE SC: That's correct, Mr 24 Chairman.</p> <p>25 BRIG MKHWANAZI: Chairperson, I do agree</p>
<p style="text-align: right;">Page 3715</p> <p>1 contribution they made into this, I didn't find out.</p> <p>2 MR NCONGWANE SC: Well, Brigadier, from 3 your evidence and from the documentation made available by 4 SAPS, it's explicit that there was no attempt at all to 5 implement a vital consideration of the steps that, inter 6 alia, to be taken by the POP in the involvement of the 7 traditional community at Wonderkop. Do you accept that 8 proposition?</p> <p>9 BRIG MKHWANAZI: Advocate, it would be 10 difficult for me to say yes or no. I'm not sure, hence it 11 may happen that maybe it was done, but from my side I never 12 established that part, but it may happen that it was done, 13 but I'm not sure about it. I cannot definitely say it was 14 not done. I'm not sure about it.</p> <p>15 MR NCONGWANE SC: Brigadier, just the 16 proposition I make to you, which a submission will be made 17 to the Commission, that there was no attempt at all.</p> <p>18 CHAIRPERSON: He doesn't know. 19 Presumably there will be other witnesses called by SAPS who 20 were directly involved to whom you can address that 21 question. - if he tells you he doesn't know. He was in 22 Kimberley at the time.</p> <p>23 MR NCONGWANE SC: Thank you, Mr Chairman, 24 I appreciate that. Well, we'll deal with it when that 25 other witness comes forward, Chairman. Will you agree</p>	<p style="text-align: right;">Page 3717</p> <p>1 or understand, but I have a problem with this type of 2 question, because at the end of the day it's like I concede 3 and really I have a problem on that. I cannot just say 4 yes, it was going to be like that. I'm saying clearly the 5 matter started from the cluster, provincial to national. 6 I'm not sure what happened around that. If there was a 7 need that the traditional leaders must be informed with 8 what is taking place within the area, they will be 9 informed. I think so. If they were not informed, really 10 somebody will come forward and say they were not informed, 11 but for me to sit here and say it was wrong if they were 12 not informed, tomorrow I concede. I cannot concede 13 something I don't know. I was not part of that. I don't 14 know about it.</p> <p>15 CHAIRPERSON: Now, there are factors as 16 well of course, because according to the evidence many, if 17 not all of the rock drill operators were migrant labourers 18 from – in most cases from Pondoland, in some cases from 19 Lesotho and a few other neighbouring territories as well, 20 living in hostels or in shacks in the vicinity. What 21 allegiance they owed, if any, to the local traditional 22 leaders and what contact they had with them, what influence 23 the local traditional leaders had over them, these are all 24 matters on which we at this stage know nothing. I take it 25 those would also be factors that would be relevant for you</p>

<p style="text-align: right;">Page 3718</p> <p>1 to know the answer to, before you could even begin to 2 comment on the question that's being asked. Is that 3 correct? 4 [13:02] BRIG MKHWANAZI: I don't have really any 5 information on that. 6 CHAIRPERSON: Do you have more questions? 7 And if so is it appropriate for us to take the lunch 8 adjournment or is there a couple of questions you want to 9 ask it and it would be the end of your cross-examination, 10 you can ask them now but if you are going to be longer then 11 you can resume after the lunch adjournment. 12 MR NCONGWANE SC: Chair, I think the 13 question might take a little bit more say to about 10 to 15 14 minutes and I would suggest that it would perhaps be better 15 that we all be fortified. 16 CHAIRPERSON: That sounds sensible. We 17 will now take the adjournment, the lunch adjournment. At 18 half past 1 there will be a meeting between the 19 Commissioners, the evidence leaders and representatives of 20 the parties, in the, it's the room next door, nearby which 21 Mr Madlanga will be able to indicate to the parties. I 22 don't know how long the meeting will be, it's to consider 23 the way forward particularly in the light of the extension 24 of the period of operation of the commission, but as soon 25 as it's, the meeting is completed we will then resume in</p>	<p style="text-align: right;">Page 3720</p> <p>1 CHAIRPERSON: I can't say - 2 MR MADLANGA SC: What I will do, 3 Chairman, is to talk to them again and ask them to arrange 4 that other room. Then at twenty five past I will indicate 5 to colleagues whether we are going there or whether the 6 venue is somewhere else. 7 CHAIRPERSON: Otherwise we will have to 8 have the meeting here. 9 MR MADLANGA SC: Yes. 10 CHAIRPERSON: Obviously closed. 11 MR MADLANGA SC: Yes. 12 CHAIRPERSON: The members of the public 13 won't be able to be present. Alright, at this point we 14 will adjourn, take the lunch adjournment. We will resume 15 at some time after 2 o'clock when the meeting to which I 16 have referred to, has taken place. 17 [COMMISSION ADJOURNS COMMISSION RESUMES] 18 [15:18] CHAIRPERSON: The Commission resumes. I 19 apologise to those who've been waiting for the, those in 20 the auditorium who were waiting for the Commission to 21 continue. We had a meeting, a very important meeting, with 22 the representatives of the parties to chart the way forward 23 and work out ways of making sure that the Commission works 24 efficiently and makes maximum use of the time available. 25 That's the reason for the delay, but I apologise to those</p>
<p style="text-align: right;">Page 3719</p> <p>1 the auditorium with the cross-examination of the witness 2 and his re-examination. I don't know how long that will 3 take. Mr Tip, you are going to call the witness after 4 this? 5 MR TIP SC: Yes, I will. 6 CHAIRPERSON: Is your witness - 7 MR TIP SC: After the re-examination has 8 been done. 9 CHAIRPERSON: Yes, yes, obviously. 10 MR TIP SC: Yes. 11 CHAIRPERSON: And we don't know how long 12 that will be. But your witness is ready with bat in hand 13 and padded and so on, ready to face such bowling as he may 14 have to face? 15 MR TIP SC: Yes, he is ready for any 16 bowling at all, Chair, yes. 17 CHAIRPERSON: Right. 18 MR MADLANGA SC: Through you 19 Commissioners, may I request colleagues to be here in the 20 auditorium at twenty five past 1 instead of going to that 21 room? When I requested the administrative staff to arrange 22 for that room, they said that the Commissioners has 23 indicated that we would meet here and that the room would 24 just be cleared, that is the auditorium would just be 25 cleared.</p>	<p style="text-align: right;">Page 3721</p> <p>1 who've been waiting all this time. 2 I apologise to those in the auditorium who were 3 waiting for us to resume. We had a lengthy but very 4 profitable meeting. You were one of those who was 5 inconvenienced and had to wait for a long time. I 6 apologise to you also. I remind you, you're still under 7 oath, and you're going to cross-examine, continue your 8 cross-examination. 9 MR NCONGWANE SC: Brigadier, when we 10 adjourned your evidence, which I appreciate, is that you 11 were not aware whether the traditional community was 12 consulted or not. Correct? 13 BRIG MKHWANAZI: Ja, I indicated that I 14 never have an opportunity to get that part to say whether 15 they were actually part of the process that was taking 16 place. 17 MR NCONGWANE SC: Let me just piggyback 18 on your indication that the community must be involved, and 19 I'm doing this in order to ascertain if we share the same 20 understanding by what you mean as a community in this 21 particular circumstances. Brigadier, around Wonderkop, 22 which is the Marikana area popularly known, there are 23 migrant workers residing around the area from other 24 provinces, correct? 25 BRIG MKHWANAZI: I hear that, yes.</p>

<p style="text-align: right;">Page 3722</p> <p>1 MR NCONGWANE SC: There are families of 2 those migrant workers as well, correct? 3 BRIG MKHWANAZI: Yes. 4 MR NCONGWANE SC: And then there's an 5 indigenous traditional community. 6 BRIG MKHWANAZI: That's correct. 7 MR NCONGWANE SC: My understanding, and 8 in fact those are my instructions, are that all of those 9 would form part of the traditional community in its 10 entirety. Do you dispute that? 11 MR MAHLANGU: Do I understand, the 12 migrant workers together with the indigenous, with the 13 local people forming – you say they form one community? 14 CHAIRPERSON: That is to say they form an 15 indigenous community, is that correct? Or traditional 16 community. 17 MR NCONGWANE SC: That's correct, Mr 18 Chairman. 19 CHAIRPERSON: Indigenous? 20 MR NCONGWANE SC: Indigenous community, 21 that's right. 22 BRIG MKHWANAZI: According to 23 information, yes. 24 MR NCONGWANE SC: Mr Chair, may I just 25 correct just one understanding? My learned junior has just</p>	<p style="text-align: right;">Page 3724</p> <p>1 the 9th and the 16th of August last year – there were in 2 the past violent incidents that occurred around Wonderkop. 3 Are you aware of that? 4 BRIG MKHWANAZI: I have been briefed that 5 there were some other issues that took place prior the 6 11th, that took place. I'm not sure if we'll be talking 7 about the same thing. 8 MR NCONGWANE SC: Evidence will be led in 9 this Commission that there were instances of unrest in 10 August 2011. Did you hear anything about that? 11 BRIG MKHWANAZI: I may not be sure. As I 12 said, I heard there were some before, but I'm not sure 13 about the date precisely to say which one we may actually 14 refer to, but I know there were some other incident that 15 took place prior the 11th. 16 MR NCONGWANE SC: And the evidence would 17 also be to an indication that those unrests also would 18 refer to ones which occurred on the 7th of March 2012, and 19 the 10th of July 2012. Are you aware of those? 20 BRIG MKHWANAZI: Are we talking about 21 2012? 22 MR NCONGWANE SC: Correct, 2012. 23 BRIG MKHWANAZI: It may happen that maybe 24 it can be one of those, but I can't say yes or no, but I 25 heard that there were some of the incidents that took</p>
<p style="text-align: right;">Page 3723</p> <p>1 brought it to my attention that my question regarding the 2 indigenous community in fact is with reference to the 3 indigenous traditional community. Put it differently, the 4 indigenous inhabitants. 5 CHAIRPERSON: Is that Tswana speaking? 6 MR NCONGWANE SC: Yes. 7 CHAIRPERSON: As opposed to the isiXhosa 8 and Sesotho speaking people? 9 MR NCONGWANE SC: That will be so. 10 CHAIRPERSON: It will also be siSwati as 11 well, by anyway. The Sesotho and isiXhosa [inaudible] are 12 migrant labourers. Your question relates to the Setswana 13 people who owe allegiance to the royal family for whom you 14 appear. Is that right? 15 MR NCONGWANE SC: That's correct, Mr 16 Chairman. 17 BRIG MKHWANAZI: I hear that. 18 MR NCONGWANE SC: And that would be 19 reference to the subjects, those people who are allegiant 20 to the Bapo Ba Mogale Royal Family. Do you understand 21 that? 22 BRIG MKHWANAZI: I hear that. 23 MR NCONGWANE SC: Now I don't know if 24 you're well aware, Brigadier, that there has in the past – 25 now by the past I mean prior to the events ranging between</p>	<p style="text-align: right;">Page 3725</p> <p>1 place, unrest, before that. 2 CHAIRPERSON: I'm not sure that this 3 evidence will be relevant. You say it will be led. It 4 will only be led if you satisfy me it's relevant. If they 5 will definitely involve the rock drill operators, I 6 probably won't allow it, but anyway, carry on in the 7 meanwhile. I don't want to give you the false impression 8 that the evidence will necessarily be admitted – it may not 9 be. I understand there'd been unrest in the area. Whether 10 in the past, whether it relates to the rock drill operators 11 and their particular grievances which are the subject of 12 the present inquiry, is not clear, but please bear that in 13 mind when you continue with your cross-examination. 14 MR NCONGWANE SC: Mr Chair, we're of the 15 view that the relevancy would in fact be covered by the 16 term of reference which provides for events or factors that 17 may directly or indirectly have led to – 18 CHAIRPERSON: If it led directly or 19 indirectly then it's relevant. I'm just saying to you, the 20 mere fact that there was unrest doesn't in itself per se 21 lead to a finding of relevance, but I'm not saying it's not 22 irrelevant, I'm just saying when you tender the evidence 23 you'll have to satisfy us that it's relevant and we may or 24 we may not admit it, depending upon whether you can satisfy 25 us it's relevant. All I'm saying to you at this stage,</p>

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1 it's not self-evident that it's relevant I just ask you to
 2 bear that in mind with the questions you ask.
 3 MR NCONGWANE SC: Thank you, Mr Chairman.
 4 We'll make sure we keep that at the forefront of our
 5 forehead. Brigadier, we know that from your evidence and
 6 from the standing orders that community involvement is
 7 paramount in the implementation of your POP, not so?
 8 BRIG MKHWANAZI: That's correct. In all
 9 issues of policy, community must be involved.
 10 MR NCONGWANE SC: Now you may not be in a
 11 position to give a positive answer to my next question,
 12 because my next question is that during those unrests which
 13 I've referred to earlier, there was a consistent and
 14 systematic disregard of any required negotiation with the
 15 traditional community. Do you know anything about that?
 16 And that will be by the other units of the police service.
 17 BRIG MKHWANAZI: I don't have a knowledge
 18 of that. What I know is that there is a cluster with the
 19 station; if we talk about issues that emanate within the
 20 community, the station definitely will have to involve the
 21 members or the role, the main role players of the community
 22 if there is a need into that. But for me to say it was
 23 done or not done, I cannot say really. I would say maybe
 24 they can be in a better position to indicate whether they
 25 have neglected that part. I'm not sure about it.

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1 MR NCONGWANE SC: Well, I put it to you
 2 that it did not happen.
 3 CHAIRPERSON: What's the point of putting
 4 to him it didn't happen if he doesn't know anything about
 5 it? If he says it did happen you could then put it to him
 6 it didn't, but if he says he doesn't know anything about
 7 it, what's the point of putting anything to him about it?
 8 I think that's an unnecessary waste of time, but please
 9 proceed to your next question.
 10 MR NCONGWANE SC: Mr Chairman, it is
 11 purely with a view to argue it at a later stage.
 12 CHAIRPERSON: Certainly you can put the
 13 question to a witness who's able to deal with it, if such a
 14 witness is called. But my only point is it's no use
 15 putting it to this witness because he can't give you an
 16 answer one way or the other.
 17 MR NCONGWANE SC: Thank you, Mr Chair.
 18 Brigadier, you probably again might not know anything about
 19 this. There has been a systematic exclusion of the
 20 traditional leaders of the traditional community at
 21 Wonderkop regarding the events that occurred from the 9th
 22 of August. You dispute that?
 23 BRIG MKHWANAZI: I'm not in a position
 24 really to say yes or no into that because I'm not sure what
 25 happened. As I've said right from the beginning that all

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1 planned gatherings, marches, always will have proper
 2 identification of the role players who're supposed to be
 3 part and be notified. So if it never happened really, I
 4 won't have an idea on that why, hence really I was not
 5 there definitely into a lot of these things.
 6 MR NCONGWANE SC: That tendency,
 7 Brigadier, from the members of the POP was maintained
 8 throughout from the 9th until the occurrence of the fatal
 9 shooting on the 16th. Any comment on that?
 10 CHAIRPERSON: The witness has already
 11 said over and over again, he doesn't know anything about
 12 this. He can't comment on it. So what's the point of
 13 continuing to asking him questions about something he
 14 already said he knows nothing about? You may well have a
 15 witness who does know something about it to whom you can
 16 ask the question, but I understand why you want to ask the
 17 questions, why you contend they're relevant, but it doesn't
 18 help to ask questions of a witness who's not able to answer
 19 them because he doesn't know.
 20 MR NCONGWANE SC: Well, Mr Chair, the
 21 witness has only given an answer only in respect of the
 22 date of the 9th.
 23 CHAIRPERSON: I hear what you say, you
 24 understand the point that's being made that over this whole
 25 period their traditional leaders weren't involved in any

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1 way in attempts to resolve the issues. Do you know
 2 anything about that?
 3 [15:38] BRIG MKHWANAZI: I have no knowledge,
 4 Chairperson.
 5 MR NCONGWANE SC: Brigadier, as is
 6 required by your standing orders the traditional
 7 community's contention is that there would've been of
 8 future systems had they been given an opportunity by having
 9 doors opened for them for the dialogue to be put in place
 10 regarding those unrests.
 11 BRIG MKHWANAZI: I do not dispute that,
 12 Advocate. The only thing I'm saying I'm not having a clear
 13 answer if they were supposed to be involved why they were
 14 not involved. I have a hope that those were involved with
 15 the planning and everything. They are in a better position
 16 to answer on that.
 17 MR NCONGWANE SC: Thank you, Brigadier.
 18 Mr Chair, that's the end of -
 19 MR SEMENYA SC: No, Chair. With respect,
 20 no. These are the dangerous sweeping statements that are
 21 made by counsel that the community's consultation would've
 22 had a huge assistance to the operation and they're not told
 23 one detail about how what assistance it is and how huge it
 24 would be to have avoided this problem.
 25 CHAIRPERSON: The witness says he's not

<p style="text-align: right;">Page 3730</p> <p>1 able to deal with the point because he doesn't know 2 anything about it anyway. So I suggested to counsel that 3 he ask the questions of where witness come we can deal with 4 it. 5 MR SEMENYA SC: Chair, if the proposition 6 is correct that the consultation of the community as 7 counsel is purporting to assert would have hugely changed 8 the circumstances that we are about. We need to know what 9 those are. What assistance was available that the police 10 ignored. To just leave a sweeping statement like that is 11 very hurtful. 12 CHAIRPERSON: And that but the problem is 13 even if he puts the full detail, the witness will say I 14 know nothing about that. I can't answer one or the other. 15 But you've made your point which you can possibly deal with 16 in re-examination as well but your complaint is that 17 counsel for the royal family hasn't given the necessary 18 detail. 19 MR SEMENYA SC: Correct, Chair. 20 CHAIRPERSON: The royal family are a 21 party to these proceedings. They were permitted to 22 participate and in terms of the meeting we had earlier 23 today, they have to indicate by the 25th what witnesses 24 they would like to call and by the 1st they have to give 25 statements of what the witnesses will say. Now the</p>	<p style="text-align: right;">Page 3732</p> <p>1 the community could've done which they were not permitted 2 to do because the police didn't approach them. I take it 3 you agree to all that, do you? 4 MR NCONGWANE SC: That is so, Mr 5 Chairman. That's the correct. 6 CHAIRPERSON: Now Mr Semenya is concerned 7 that because you put the allegation without any supporting 8 detail that the witness wasn't able to answer. The fact 9 that you put the question it could go out into the world as 10 the statement potentially damaging to his client unless you 11 give some detail at this stage of what you say the 12 community could've done. I will give you an opportunity to 13 indicate briefly what it is that you say your clients 14 could've done to deal with the problem and any – in other 15 words the particulars that Mr Semenya has requested. 16 MR NCONGWANE SC: Mr Chair, I take it 17 that requires a response to that objection and which to cut 18 it to the chase, Mr Semenya has got the response right 19 within his own clients in the sense that there's a 20 requirement to negotiate with the traditional leaders. 21 CHAIRPERSON: What paragraph of the 22 standing order are you referring to? The reason I asked 23 you this is I couldn't see it but maybe it's there and I 24 missed it. 25 MR NCONGWANE SC: It's Exhibit SS2, Mr</p>
<p style="text-align: right;">Page 3731</p> <p>1 information that you seek will be available in that way. I 2 don't think it necessary for counsel to ask a question of a 3 witness who knows nothing about it to then give full 4 details of the matter by which the witness says he has no 5 knowledge, but you will certainly get that knowledge and 6 get that information by the 1st of February when you get 7 the statement from the royal family. But saying what you 8 said, you've indicated that the, I take it, that the 9 allegation that has been put by counsel is not accepted by 10 your client. Is that correct? 11 MR SEMENYA SC: No, Chair. The cross- 12 examination is predicated on saying there are – standing 13 order 262 which requires you to engage with the community. 14 Our community was not engaged. Had it been engaged it 15 would have been of huge assistance and to leave it there. 16 I'm not able to answer in what respect the police were 17 remiss in not engaging with people who on, our argument 18 later will show they were not part of the problem or part 19 of the solution. 20 CHAIRPERSON: Mr Ncongwane, two points I 21 would put to you. The one is I take it you're going to 22 give us notice by the 25th of what witnesses you propose to 23 call and by the 1st of February you will give us full 24 statements of what your witnesses will say. I take it that 25 those statements will contain the details of what you say</p>	<p style="text-align: right;">Page 3733</p> <p>1 Chair, the standing order – 2 CHAIRPERSON: Yes, SS2 is standing order 3 general 262 of the South African Police, it's heading crowd 4 management during gatherings and demonstrations. Now where 5 in this standing order do we find a reference of necessity 6 to liaise with the traditional leaders of the area? 7 MR NCONGWANE SC: It's page 16, but the 8 reference is not traditional leaders but it's referenced to 9 leaders of community, Mr Chair, but – 10 CHAIRPERSON: Page 16, my copies has only 11 got 11 pages. What page are you – what paragraph are you 12 referring to? 13 MS PILLAY: Isn't it paragraph 3, sub- 14 paragraph 3 that you're looking at, Counsel? 15 CHAIRPERSON: Are you referring to the 16 reference in para 33A to positive and constructive 17 relationships to be built with event organisers, community 18 leaders and non-governmental organisations? 19 MR NCONGWANE SC: It's paragraph 14.1 of 20 the standing order, G262. 21 CHAIRPERSON: Paragraph 14 is headed 22 first member at the scene of unforeseen spontaneous 23 gathering and it's only got two sub-paragraphs. So maybe 24 you're referring to some other standing order, but it 25 doesn't look as if – so far as if it relates to standing</p>

<p style="text-align: right;">Page 3734</p> <p>1 order General 262 unless you're referring as I've said to 2 the reference to in 33A to community leaders. You were 3 asked to provide details of what you say the traditional 4 leaders could've done and why - to prevent the problem and 5 why it was remiss of the police not to consult with them or 6 deal with them at all and you've given me – attempted to 7 give me references in the standing order which don't say 8 that, but you don't have to refer to the standing order, 9 just tell me so that Mr Semenya has it on record what you 10 say your clients could've done which the police didn't ask 11 them to do which led to the trouble. You must understand 12 that the way this commission works is counsel put 13 propositions to witnesses. For understandable reason, and 14 I'm not criticising at all, the media then reports what's 15 put by counsel. Sometimes it turns out what was put by 16 counsel can't be substantiated and counsel in fact 17 sometimes has to withdraw what was put, but in the 18 meanwhile a lot of damage is being done because the 19 unsubstantiated statement that was put is all over the 20 world and that's why Mr Semenya raises the point. 21 MR NCONGWANE SC: Well, Chair, in its 22 endeavour to promote public peace one will expect the 23 police to engage the traditional committee and our – 24 CHAIRPERSON: The question asked is what 25 could, in this particular case, the traditional community</p>	<p style="text-align: right;">Page 3736</p> <p>1 CHAIRPERSON: At one point you corrected 2 yourself and you said you had spoken to your junior and 3 your junior had drawn your attention to something and you 4 then reformulated your question and I understood the 5 reformulated question excluded the migrant labourers from 6 the indigenous community. As I say if I misunderstood you, 7 I apologise but that misunderstanding, if it did exist, 8 doesn't help us in respect of the information that Mr 9 Semenya says he's entitled to get from you in order to 10 correct what he says is an unfortunate misleading and 11 potentially damaging suggestion in relation to his client. 12 So ignore the misunderstanding between you and me for the 13 moment if there was one and just concentrate on giving the 14 point – answering the point that Mr Semenya raised. 15 MR NCONGWANE SC: Mr Chair, our 16 submission stemming from the evidence that will be led is 17 that the subjects of the traditional leadership around the 18 community who have allegiance to that traditional 19 leadership would have been in a position to be more willing 20 to listen to the traditional leaders if they had an 21 opportunity to communicate with them. 22 CHAIRPERSON: No, that isn't the point. 23 The point is the people who were on the koppie, who were 24 carrying the dangerous weapons, who were involved in the 25 police operation, who were also involved in what amounts to</p>
<p style="text-align: right;">Page 3735</p> <p>1 and its traditional leaders have done if the police had 2 consulted them to prevent 3 000 rock drillers, most of whom 3 come from Pondoland and Lesotho and other place who are 4 migrant labourers in the area and you yourself said the 5 indigenous community does not include the migrant 6 labourers. So what could the traditional community, 7 particular to leaders, the royal family and others, have 8 done to bring the dispute between the migrant labourer rock 9 drill operators and the mining company to a peaceful 10 conclusion? 11 MR NCONGWANE SC: Thank you, Mr Chairman. 12 May I just start by making a correction on the statement 13 that the Chairman made which appears arise out of a 14 misunderstanding from what I said earlier. What I have 15 proposed to the brigadier is that the traditional community 16 would also include the migrant labourers. 17 CHAIRPERSON: I'm sorry, I thought I 18 understood you to say that initially and then you will do 19 it. You said you had spoken to your junior and the light 20 of what she put to you, you changed it and you excluded the 21 migrant labourers. If I misunderstood you on that I 22 apologise, but I'm pretty clear that's what you said. 23 MR NCONGWANE SC: Mr Chair, I think the 24 brigadier understood it to be meaning all inclusive to form 25 the traditional community.</p>	<p style="text-align: right;">Page 3737</p> <p>1 a wage dispute with their employer were rock drill 2 operators and according to the evidence, the vast majority 3 of them came from the Eastern Cape and some came from 4 Lesotho and I think some came from Swaziland. It's not 5 suggested, as I understand it, if I'm wrong you can correct 6 me, but it's not suggested that there were any of the local 7 people who were working as rock drill operators – I 8 understood in fact from something I read that one of the 9 complaints of your client was that the local people weren't 10 given an opportunity to work at the mine in that way. But 11 anyway that's a side issue. The point is if this is a – 12 almost like a bubble of migrant labourers who are living in 13 a Setswana speaking community but they are themselves come 14 from a different group, they are as a unity, the people in 15 the bubble, involved in a dispute with their employer and 16 they take certain action. It's not self evident that the 17 local traditional leaders to whom they owe no allegiance 18 would be able to do anything to restrain them from acting 19 as they did and – but Mr Semenya – you put effectively the 20 contrary proposition and Mr Semenya says well what do you 21 say your traditional – Setswana speaking traditional 22 leaders could've done to prevent the trouble that arose 23 between this group of migrant labourers on the one hand and 24 Lonmin and the police on the other. That's the point, is 25 it, Mr Semenya?</p>

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1 [15:58] MR NCONGWANE SC: Mr Chair, what we say
 2 is in fact, Mr Chair, there were members of the Tswana
 3 community around Wonderkop who also died at the shooting
 4 incident and who are, who were the miners at Lonmin.
 5 Although predominantly the people who are employed as
 6 miners at Lonmin are from other areas, Pondoland and the
 7 like, migrant labourers the traditional community as Bapo
 8 ba Mogale does have a fair number of people also employed
 9 at the mine and some of those people have actually died in
 10 unrest incidents that have occurred prior to the shooting
 11 of the 16th.
 12 CHAIRPERSON: Mr Ncongwane, did they die
 13 in the period from the 9th to the 16th of August?
 14 MR NGONGWANE SC: That is correct.
 15 CHAIRPERSON: They did?
 16 MR NGONGWANE SC: Yes. And these are
 17 incidences that are in fact the traditional core and the
 18 values of that community as a traditional community which
 19 are incidents which do not only happen once, they happen as
 20 a chain of incidents of unrest. The vital partner in terms
 21 of the standing orders and the evidence of the Brigadier
 22 there, we say the traditional leaders should have been
 23 involved at least in attempting to mediate the situation.
 24 CHAIRPERSON: Anything you want to add
 25 about that? Anything you want to add? Or is that it, is

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1 that what you are putting?
 2 MR NCONGWANE SC: I beg your pardon, Mr
 3 Chair?
 4 CHAIRPERSON: Is there anything you want
 5 to add or is that what you are putting in response to Mr
 6 Semenya's query?
 7 MR NCONGWANE SC: That is what I'm
 8 putting to Mr -
 9 CHAIRPERSON: It sounds to me -
 10 MR NCONGWANE SC: Otherwise it would
 11 amount to me taking the stand. I don't wish to do that.
 12 CHAIRPERSON: No, I'm just asking, give
 13 details of what submission you put. It sounds to me as if
 14 you are substantially withdrawing the major part of what
 15 you put to the Brigadier. What was put to the Brigadier
 16 was that if the traditional authority had been given the
 17 opportunity to do something, they could have made all the
 18 difference. I understand you now to modify that and to say
 19 that they could have at least done something which may well
 20 have assisted. Is that a fair summary? So you have
 21 restricted what you initially put, which I think goes quite
 22 fair to meet Mr Semenya's objection, is that correct?
 23 MR NCONGWANE SC: Well as reformulated,
 24 Mr Chair, I would agree. It might be a correct reflection
 25 of that until, it will remain as one of those hanging until

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1 this evidence, Mr Chair.
 2 MR SEMENYA SC: That's okay, Chair.
 3 CHAIRPERSON: Are -
 4 MR NCONGWANE SC: I do, Chair. I don't
 5 know we are going to sit until when.
 6 CHAIRPERSON: Sorry, I know it's
 7 difficult to predict how long the questions and the answers
 8 will be but, how long do you think it would be?
 9 MR NCONGWANE SC: I would be surprised if
 10 I'm less than an hour.
 11 CHAIRPERSON: Well in that event I think
 12 we should take the adjournment. So the commission will
 13 adjourn until 9:30 tomorrow morning. I'm sorry Brigadier,
 14 that you have to come back again. I take it as a Brigadier
 15 you're not getting meaningful witness fees so we are
 16 inconveniencing you for another day, I'm sorry about that
 17 but I'm afraid it's one of these things that happen.
 18 [COMMISSION ADJOURNED]
 19 .
 20 .
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 22 .
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