

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 80 25 APRIL 2013 PAGES 8466 TO 8557

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 8466</p> <p>1 [PROCEEDINGS ON 25 APRIL 2013] 2 [10:12] CHAIRPERSON: The Commission resumes. 3 This morning we were told that Mr Semenya intended to 4 cross-examine on the report of Mr Hendrickx and it was not 5 realised that that was not an exhibit, so we were asked to 6 delay coming into the auditorium until copies had been 7 prepared and been distributed and as you saw, about 30 8 seconds ago a copy was placed on the table in front of us 9 and we can now begin. I'm sorry about the delay. I 10 apologise to those who have been waiting here since half 11 past 9. U is nog steeds onder eed, Majoor-generaal. 12 GENERAAL-MAJOOR CHARL ANNANDALE: s.u.o. 13 CHAIRPERSON: Mr Semenya, before you 14 continue with your cross-examination, with your evidence- 15 in-chief, I want to welcome Mr Johnson who is with us. He 16 was sworn in this morning as an interpreter and he will 17 interpret from Afrikaans to English and the two other 18 interpreters who have been helping us will take turns to 19 interpret from English or Afrikaans to isiXhosa. You may 20 now proceed. 21 EXAMINATION BY MR SEMENYA SC (CONTD.): 22 Thank you, Chair. We now propose to deal with the 23 statement of Mr Hendrickx and perhaps Ms Pillay will ably 24 tell us what exhibit that will be. 25 MR BUDLENDER SC: I am delegated to say</p>	<p style="text-align: right;">Page 8468</p> <p>1 CHAIRPERSON: Perhaps the way forward is 2 if Mr Mahlangu doesn't mind carrying on for a little bit so 3 that Mr Johnson can get his, can get accustomed to the 4 proceedings and how things are working and then when he 5 feels more confident to proceed, he can do so. We will 6 continue, as we did yesterday, in monitoring the situation. 7 MR SEMENYA SC: Shall we try again? The 8 criticism is that the plan did not have the time axis that 9 should exist in a plan such as that one, i.e. it does not 10 have the four phases, that would be provention, prevention, 11 de-escalation and debriefing. 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 13 soos ek verduidelik het, die konsep is vir my vreemd, maar 14 ek sien dit as 'n proaktiewe voorkomende optrede waarna mnr 15 Hendrickx verwys. 16 MR SEMENYA SC: In relation to Marikana – 17 CHAIRPERSON: Can you repeat the last 18 sentence, Major-General, because I'm not sure that it was 19 precisely captured in the translation we were given. 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 met graagte, ja. Ek sien dit eerder as 'n kombinasie van 22 proaktiewe en voorkomende optrede, so half gekombineerd. 23 MR MAHLANGU: A combination - 24 CHAIRPERSON: As a combination of 25 proactive and preventative action. Is that –</p>
<p style="text-align: right;">Page 8467</p> <p>1 GGG2. I've been authorised to say GGG2, Chair. 2 CHAIRPERSON: It is so marked. 3 MR SEMENYA SC: Can I invite the General 4 – 5 CHAIRPERSON: I take it the witness has 6 had an opportunity to see the document. You've consulted 7 with him on it and I see it's 20 pages with annexures. 8 MR SEMENYA SC: Indeed, Chair. General, 9 can I invite you to go to page 13 of GGG2? There Mr 10 Hendrickx makes the following comment against sub-paragraph 11 21.1, he says "Operation Platinum," that would refer to the 12 plan, "is not consistent with the crowd management model in 13 that it is only concerned with the actual gathering, 14 particularly the flashpoint and not the three phases in the 15 time axis, i.e. the provention, prevention of conflict 16 resolution." What's your comment, General? 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 die konsep van "provention" is 'n taamlieke vreemde woord 19 vir my, ek sien dit as 'n tipe van 'n proaktiewe aksie, 20 anderster dan "prevention" maar hoe dit ookal sy, soos wat 21 ek dit lees in die konteks van mnr Hendrickx se verklaring 22 – 23 MR JOHNSON: Mr Chairperson, I'm still 24 uncomfortable. Can I just have some time to relax please? 25 I've just arrived and not yet settled.</p>	<p style="text-align: right;">Page 8469</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Dit is reg. 2 Maar Voorsitter, in die konteks van hoe hy uiteengesit is, 3 sien ek dit ook dan as aktiwiteite lank voordat daar enige 4 so 'n insident is. 5 MR MAHLANGU: Ek is jammer, as jy dit kan 6 herhaal asseblief? 7 GENERAAL-MAJOOR ANNANDALE: Dis 8 aktiwiteite voor die aanvang van die insident, so dan kan 9 ek sê voor die 10de Augustus. 10 MR MSIMANG: Chairperson, my learned 11 friend has just been reading on 21.1 and he said i.e. 12 provention, prevention and – that doesn't appear in what we 13 have. Does he have a separate – 14 CHAIRPERSON: No. The witness, as I 15 understand it, said that's the way he, the witness, has 16 understood him. He said that's the way he understood what 17 21.1 is talking about and where you talk about the three 18 phases of the time axis and not just the actual gathering, 19 then there are other things that go before and then he 20 explained what he understands that to mean. I don't think 21 he's – we'll find out, I don't – 22 MR SEMENYA SC: Can I - 23 CHAIRPERSON: Sorry, let me finish. I 24 don't think there's any other document that they've got 25 that we haven't got but if I'm wrong we'll be corrected</p>

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1 quickly. Mr Burger?

2 MR BURGER SC: Chair, I share my learned
3 friend's frustration. Those words come, I think, from page
4 4 in paragraph 13 but I haven't had the benefit of reading
5 the document. I get shown the document when we start
6 hearing evidence, the witness is prepared and the cross-
7 examiner is prepared and it really makes the process very
8 difficult.

9 CHAIRPERSON: The evidence-in-chief is
10 prepared, there's a difference.

11 MR BURGER SC: It's not always a
12 difference in this inquiry, but I take your guidance,
13 Chair.

14 CHAIRPERSON: I'm happy to give it to
15 you. When was this document in fact circulated, this
16 morning? Because I see it's dated the 1st of February. I
17 was approached in chambers and told that it was thought it
18 had already been handed in as an exhibit and therefore I
19 was asked to wait until it has been copied and distributed
20 but –

21 MS PILLAY: Chair, the Hendrickx
22 statement has been distributed since the 3rd of February
23 this year.

24 CHAIRPERSON: That's the document we have
25 now?

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1 MS PILLAY: That's correct, that's GGG1,
2 GGG2.

3 CHAIRPERSON: So that's your answer, Mr
4 Burger.

5 MR BURGER SC: No, with respect, not,
6 Chair. With this was distributed thousands of documents
7 over the time. We weren't aware that this document is
8 going to be addressed today, so we spent last night not
9 preparing on this.

10 CHAIRPERSON: I must say we also asked,
11 as Commissioners, whether the documents that were going to
12 be referred to could be given to us the day before so we
13 could spend the evening beforehand preparing. That didn't
14 happen but the solution, I think, is not to waste time.
15 Let Mr Semanya proceed for the moment. If anyone who is
16 cross-examining is prejudiced thereby and wishes extra
17 time, an application can be made and will be considered but
18 Mr Semanya, I think you appreciate the points that have
19 been raised are points of substance and I take it you'll do
20 your best to ensure that in future we don't have problems
21 of this kind.

22 MR SEMENYA SC: Chair, we give notice
23 immediately that in the conduct of these hearings we will
24 use, from time to time, all documents that have been
25 discovered by all the parties.

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1 CHAIRPERSON: I don't think that's good
2 enough. Mr Burger has said that thousands of documents
3 have been discovered, so to say that Mr Burger must spend
4 the evening before you continue the examination-in-chief
5 going through the hard drive and looking at thousands of
6 documents is not a practical way of moving forward, but
7 apart from that we, the Commission, haven't considered it
8 advisable to study all the documents on the hard drive and
9 so we've asked that where documents are going to be
10 referred to, they should be given to us the day before so
11 we can prepare and make a meaningful contribution to the
12 proceedings. So I think you must bear that in mind in
13 future please, Mr Semanya.

14 MR SEMENYA SC: General, let's go to page
15 4 so that we can accommodate Mr Msimang. Against paragraph
16 12 says Mr Hendrickx there, "Crowd management, as opposed
17 to crowd control model, understands public order policing
18 in terms of a time axis which can be split into three
19 phases, preparation or planning, the gathering and the
20 aftermath." And then it says those are split, against
21 paragraph 13, "There are four phases in any crowd
22 management event, provention, prevention, de-escalation and
23 debriefing." With that in mind arises some of the
24 criticism of the plan which we see on page 13 and the
25 criticism is that Operation Platinum, which is the plan,

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1 does not involve provention. Now General, you were giving
2 us an answer to that.

3 GENERAAL-MAJoor ANNANDALE: Voorsitter,
4 dankie. Addisioneel tot die getuienis wat ek reeds gelewer
5 het op die punt, ek bevestig dat ek eers op die 13 de
6 Augustus gearriveer het en dan as ek die woord in Afrikaans
7 kan vertaal soos wat ek dit verstaan, die provensie aksies
8 was dan uiteraard – voorkoming –

9 CHAIRPERSON: There's a difference
10 between provention and prevention. It's a technical term
11 apparently used by Colonel Hendrickx and his colleagues, so
12 we must listen carefully to this distinction between
13 provention and prevention. Yes, please carry on, Major-
14 General.

15 GENERAAL-MAJoor ANNANDALE: Voorsitter
16 ja, dis aktiwiteite wat dan uiteraard moes plaasgevind het
17 selfs maande en die weke voordat ek gearriveer het, maar in
18 gesprekvoering met spesifiek Generaal-majoor Mpembe, het hy
19 my verseker dat daar forums in plek is. Hy het pertinent
20 na die Marikana gemeenskap polisiëringsforum en hy het ook
21 gemeld dat daar 'n probleem was, synde dat lede van die
22 uitvoerende komitee van hierdie forum wat lede van die
23 breër gemeenskap is, was aktief betrokke by hierdie
24 staking. Hy het my ook verwys na 'n plaaslike owerheid
25 forum wat hy na verwys het as 'n konflik resolusie forum

<p style="text-align: right;">Page 8474</p> <p>1 wat deur 'n direkteur or 'n direksie binne-in hierdie 2 plaaslike owerheid bedryf was. Ek het ongelukkig nie meer 3 detail oor die, oor wat die presies behels nie en ek dink 4 Generaal Mpembe kan meer duidelikheid gee.</p> <p>5 CHAIRPERSON: After it's been interpreted 6 into isiXhosa – carry on interpreting, have you finished 7 interpreting.</p> <p>8 MR HANABE: I have finished.</p> <p>9 CHAIRPERSON: I would be grateful, Mr 10 Semenya, if you could tell us the difference between 11 provention and prevention because I'm not quite sure about 12 it myself and I suspect that many of the other people 13 present in the auditorium share my difficulty.</p> <p>14 MR MAHLANGU: Thank you, Chair. I also 15 had that problem unfortunately and I was about to ask the 16 Chairperson.</p> <p>17 MR SEMENYA SC: As the Chair says, this 18 seems to be a concept of a particular meaning. Mr 19 Hendrickx seems to deal with it against paragraph 21.2.1.1 20 as steps which he says may have been taken as a provention 21 method. Firstly he says there, "This would have included 22 meetings with, and establishing relationships with the 23 relevant stakeholders including the trade unions, Lonmin 24 management and community leaders." As my learned junior 25 says, it may relate to proactive prevention.</p>	<p style="text-align: right;">Page 8476</p> <p>1 addisionele patrollies daargestel ook in 'n sektor 2 polisieringskonsep model.</p> <p>3 MR MAHLANGU: We had additional 4 deployment.</p> <p>5 CHAIRPERSON: Additional patrols in a 6 sector policing model, I think he said.</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Dit het ons 8 gedoen deur die hele gebied, die groter Marikana-gebied het 9 ons opgedeel in sones. Dit het 'n hoër sigbaarheid 10 daargestel.</p> <p>11 MR MAHLANGU: It made it possible – 12 MAJOR-GENERAL ANNANDALE: Visibility.</p> <p>13 CHAIRPERSON: We put in place a high 14 visibility – ons het daargestel.</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Dis korrek, 16 mnr die Voorsitter. En dit het ook die polisie die 17 geleentheid gegee om van verskeie punte af te reageer. Ek 18 het vroeër in my getuienis pertinent verwys na die hoër 19 sigbaarheid op die pertinente roetes van busse, maar ook 20 die tipiese werkersroetes, so die roetes wat die mense 21 gebruik om na en van hulle werkstasies te beweeg.</p> <p>22 MR SEMENYA SC: Then Mr Hendrickx lists a 23 whole range of things on page 14, including setting up a 24 working group with the aim to study and propose 25 preventative measures.</p>
<p style="text-align: right;">Page 8475</p> <p>1 CHAIRPERSON: That seems to be reasonably 2 clear. I hope that the people sitting in the auditorium 3 understand it. Alright, is there anything else you want to 4 say about this, Mr Semenya? Shall we carry on then in the 5 meanwhile.</p> <p>6 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 7 dankie. Dan, ek sien mnr Hendrickx verwys na patrolering 8 van die area.</p> <p>9 MR SEMENYA SC: Before we deal with that, 10 shall we deal with 21.2.1.2 which is setting up contact and 11 negotiation channels between the different parties and the 12 SAPS.</p> <p>13 [10:32] GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 dit het vir seker plaasgevind, as ek kan verwys na Generaal 15 Mpembe se interaksie met Lonmin, met AMCU en met NUM, maar 16 ek verstaan ook dat dit nie die eerste interaksie was 17 tussen die polisie en Lonmin byvoorbeeld of dan en/of die 18 unies nie en dat daar vorige interaksies was pertinent 19 tussen Lonmin en provinsiale bestuur.</p> <p>20 MR SEMENYA SC: Patrolling the area?</p> <p>21 GENERAAL-MAJOOR ANNANDALE: Mnr die 22 Voorsitter, dit is 'n sektor polisieringskonsep en dis deel 23 van die benadering wat ons het in die polisie tot 24 misdaadbekamping- en voorkoming. Met die ontplooiing vanaf 25 pertinent die 14de wat ek oor kan getuig, het ons</p>	<p style="text-align: right;">Page 8477</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 daar was so 'n werkgroep. Ek het ook verwys na die GPF en 3 na die plaaslike owerheid, ook die samespreking met 4 Generaal Mpembe, Lonmin en dan die unies.</p> <p>5 MR MAHLANGU: And also the discussions 6 between General Mpembe and the unions.</p> <p>7 CHAIRPERSON: Lonmin, discussions between 8 General Mpembe, Lonmin and the unions.</p> <p>9 MR MAHLANGU: I omitted Lonmin. Lonmin 10 and the unions, yes.</p> <p>11 GENERAAL-MAJOOR ANNANDALE: En dan ook 12 hierdie, die beplanning wat ons gedoen het, het ook gekyk 13 na voorkomende maatreëls maar dit het ook ingesluit die 14 sekuriteit van Lonmin in terme van kontrolepunte wat hulle 15 op verskeie roetes. Hulle het die kontrolepunte beman. 16 Hulle was dan ook, daardeur was hulle ons oë en ore gewees 17 en hulle het ook vir ons attent gemaak deur hulle CCTV wat 18 hulle gemoniteer het in terme van groeperings of insidente. 19 Dankie, Voorsitter.</p> <p>20 MR SEMENYA SC: Mr Hendrickx also refers 21 to consulting with the Police Minister. I don't know what 22 he means by that but do you normally consult with the 23 police, Minister of Police in relation to operations?</p> <p>24 GENERAAL-MAJOOR ANNANDALE: Nee, 25 Voorsitter.</p>

<p style="text-align: right;">Page 8478</p> <p>1 MR SEMENYA SC: There are no police 2 prescripts that require consultation with the Minister in 3 relation to operations, is there? 4 GENERAAL-MAJOOR ANNANDALE: Nee, 5 Voorsitter. 6 MR SEMENYA SC: Mr Hendrickx says there 7 ought to have been also gathering of appropriate 8 intelligence. As a matter of fact, was this done? 9 GENERAAL-MAJOOR ANNANDALE: Ek merk dit 10 so op, dis reg. 11 MR SEMENYA SC: Was there any 12 intelligence gathered? 13 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 14 daar was intelligensie wat versamel was, maar ek het ook 15 verduidelik die pertinente probleem wat ons gehad het. Mnr 16 die Voorsitter, ek weet nie of ek dit weer moet herhaal, in 17 detail moet ingaan nie. 18 CHAIRPERSON: He dealt with that in his 19 evidence before. Having set out what is desirable in para 20 21.2, Mr Hendrickx I see goes on to deal with his 21 criticisms later on and in relation to information he 22 doesn't say there was no information gathered, his 23 complaint in 21.5 is there was scant and inadequate 24 information. That's a point the witness has already dealt 25 with. He explained the problems they had and so forth. So</p>	<p style="text-align: right;">Page 8480</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 daar was seker. Daar was ook 'n groot span van 3 intelligensie analiste en ook versamelaars en hulle het nou 4 saamgewerk met die ondersoekbeamptes en ook met Lonmin om 5 potensieel hierdie individue te identifiseer. 6 MR SEMENYA SC: There are other 7 criticisms Mr Hendrickx makes which were also made by Mr 8 White. I will not deal with those but under paragraph 26, 9 21.6.1 says Mr Hendrickx there, "Armed protesters could 10 have been prevented from gathering, rather than waiting for 11 them to gather before attempting to disperse them." Was 12 this considered? 13 GENERAAL-MAJOOR ANNANDALE: Dit was een 14 van die oorwegings, dis korrek, Voorsitter. 15 MR SEMENYA SC: And why was that not 16 implemented? 17 CHAIRPERSON: He gave that evidence 18 before, Mr Semenya. I don't think there's any point in his 19 repeating it, unless there's something he specifically 20 wants to say in this context. 21 MR SEMENYA SC: The point I'd like to 22 cover with you, General, is whether you could stop these 23 people leaving the hostels, for instance? 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 dit was 'n saak van amper onmoontlikheid, want die</p>
<p style="text-align: right;">Page 8479</p> <p>1 I don't know if it's necessary to deal with this as fully 2 as you are at the moment, but I don't want to hamper you in 3 presenting your case but I am entitled to advise from time 4 to time. 5 MR SEMENYA SC: I heeded the advice, so 6 let's just go to page 15, General. There you'll see Mr 7 Hendrickx is dealing with preventive measures and he says, 8 "Those would have included actively and visibly pursuing 9 criminal investigations into the events on Monday and 10 effecting arrests." I just want to know whether, as a 11 matter of fact, this happened or did not. 12 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 13 daar is 'n speurspan, 'n substansiële speurspan wat 14 ondersoek doen na die gebeure, nie net op die Maandag nie 15 maar vooraf gebeure wat insluit ander moorde, gevalle van 16 ernstige aanranding en aanranding, intimidasie en 17 saakbeskadiging. Voorsitter, en ek weet daar was ook 18 arrestasies uitgevoer. 19 MR SEMENYA SC: Well, in relation to the 20 13th we will talk to General Mpembe, whether or not there 21 was any debriefing, but the other thing that Mr Hendrickx 22 refers to is that there ought to have been identified 23 leaders of the miners and, if necessary, taking action 24 against them. Do you know if there were any attempts at 25 identifying the leaders of the miners?</p>	<p style="text-align: right;">Page 8481</p> <p>1 protesteerders het nie gekom van een of van twee hostelle 2 af nie. Hulle het van 'n wye gebied, van verskeie 3 nedersettings en informele nedersettings en woonbuurte - 4 die topografie van die gebied was net sodanig dat 'n mens 5 dit nie kon doen nie. Voorsitter, dit is dus baie makliker 6 om so iets te doen in 'n tipiese stedelike opset, want dan 7 sou daar miskien net twee of drie toegangsroetes tot 'n 8 sentrale punt gewees het. Ons het dan ook 'n wye gebied, 9 omtrent 360 grade of waarskynlik 360 grade en ons sou dan 10 orals moes kontrolepunte, moes ons opgestel het om dan 11 groeperings, soos wat hulle dan nou nader beweeg na hierdie 12 koppie area toe, om hulle dan nou voor te keer. Ek kan in 13 verdere detail aangaan, maar ek weet nie of – want daar was 14 pertinente risiko's aan verbonde, maar ook die praktiese 15 uitvoerbaarheid daarvan was baie moeilik. 16 MR SEMENYA SC: The other criticism is 17 that in such environments you would have a particular ratio 18 of police to protesters. Mr Hendrickx talks about a ratio 19 of 3 to 1 under sub-paragraph 22.2. Do you see that? 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 ek merk dit op in paragraaf 22.2 op bladsy 16. 22 MR SEMENYA SC: Your comment? 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 ek vir een is nie bewus van die internasionale ratio wat sê 25 drie protesteerders vir elke een polisiebeampte nie. As</p>

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1 ons dan sou 'n skare hê van 9 000 of 10 000 mense dan gaan
 2 ek elke liewe openbare orde opgeleide polisiebeampte moet
 3 ontplooi by so 'n gebeurtenis. Voorsitter, maar dit was
 4 ook nie, soos ek voorheen in my getuienis verwys het, dat
 5 daar twee spesifieke groepe was en ek het dan verduidelik
 6 ook dat dit nie voorsien was dat ons sou moet offensief
 7 optree tot hierdie totale groter groep nie.
 8 [10:52] CHAIRPERSON: The point in 22.2 is
 9 actually even, goes even further than that. It says that
 10 if you are engaging in a defensive operation, the accepted
 11 international ratio is three protesters to every one
 12 policeman. If it's an offensive operation, namely an
 13 arrest operation, it's the other way around. You've got to
 14 have one protester to every three police. Now your case,
 15 your evidence as I understand it is that you were mainly
 16 concerned about the group in the front, the ones with sharp
 17 weapons, who you estimated to be between 300 and 400.
 18 GENERAAL-MAJOOR ANNANDALE: Dis reg.
 19 CHAIRPERSON: You thought, as I
 20 understand it, that some of them might be deterred by the
 21 show of force and go away, so you'd actually have a smaller
 22 number to deal with and to deal with them you had 750
 23 police. So even on the international ratio you were
 24 probably alright.
 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 dankie. Dit was my volgende punt in terme van die volgende
 2 ratio.
 3 MR SEMENYA SC: Except when Mr Hendrickx
 4 makes the point, even in relation to the personnel required
 5 to process those arrested, he's still working with a number
 6 of 3 000, isn't he?
 7 GENERAAL-MAJOOR ANNANDALE: Dit is reg,
 8 dit blyk dat dit sy aanname is, Voorsitter.
 9 MR SEMENYA SC: And the deployment of
 10 other units is a matter we dealt with, that was also raised
 11 by Mr White. That is correct, is it not? We have dealt
 12 with the use of NIU, STF as well as the TRT and other
 13 units.
 14 GENERAAL-MAJOOR ANNANDALE: Dit is
 15 korrek, ek het reeds daarna verwys.
 16 MR SEMENYA SC: Then Mr Hendrickx,
 17 against sub-paragraph 23.2 says, "The majority of the
 18 members of the SAPS involved at Marikana were neither
 19 screened or adequately trained in crowd management."
 20 What's your reaction to that?
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 ek verstaan regtig nie die konteks waarin die woord
 23 "screened" gebruik word nie.
 24 CHAIRPERSON: He's probably referring to
 25 some kind of psychometric testing. Some of your more

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1 advanced units, you have to pass a psychometric test before
 2 you can be admitted. I imagine screening here means some
 3 kind of test of that nature to see whether the person has
 4 the right personality to deal with that kind of work, I
 5 would suspect, and then he goes on to talk about adequate
 6 training.
 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 8 as dit die – as dit is waarna hy verwys dan al die lede van
 9 mobile operations, spesiale taakmag, nasionale intervensie-
 10 eenheid en dan al die TRT-lede wat vanaf 2011 gekeur is,
 11 het sodanige psigometriese keuring deurloop maar ook elke
 12 polisiebeampte voordat hulle in diens geneem word, gaan
 13 deur psigometriese keuring. Dan die gedeelte wat hy verwys
 14 na toepaslik opgelei, die openbare orde personeel wat daar
 15 ontplooi was, is opgelei in die hantering van skarebestuur,
 16 plus nog ander lede wie by ander eenhede ontplooi was maar
 17 het 'n agtergrond het in openbare orde en ook sodanig
 18 opgelei was.
 19 MR SEMENYA SC: In paragraph 24 says Mr
 20 Hendrickx, "The equipment for the operation was not
 21 appropriate to the rural context of the gathering" and he's
 22 using the water cannons as an example.
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 ek stem nie saam met mnr Hendrickx nie. Waterkannone, as
 25 'n mens dit in tandem gebruik, is 'n groot hulpmiddel in

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1 terme van die uiteendrywing van skares, verneam as sodanige
 2 skare [onhoorbaar].
 3 MR SEMENYA SC: I think you said they are
 4 useful tools in crowd dispersal, General –
 5 GENERAAL-MAJOOR ANNANDALE: Uiteen dryf,
 6 dis korrek.
 7 MR MAHLANGU: Uiteen dryf, yes, that's in
 8 crowd dispersal, yes.
 9 MR SEMENYA SC: Mr Hendrickx then repeats
 10 the criticism relating to Nkaneng settlement as a negative
 11 attraction. We have handled that, haven't we?
 12 GENERAAL-MAJOOR ANNANDALE: Dit is
 13 korrek, Voorsitter.
 14 MR SEMENYA SC: Then there's the other
 15 criticism, that he says there was no evidence of a good
 16 command and control. What was the command structure? You
 17 did touch on it as well.
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 die bevelstruktuur het bestaan uit Generaal-majoor Mpembe,
 20 was die oorhoofse bevelvoerder en dan brigadier Calitz as
 21 die operasionele bevelvoerder, dan myself as die
 22 koördineerder vir die eenhede nasionale intervensie,
 23 spesiale taakmag en mobiele operasies en dan pertinent my
 24 rol as die voorsitter van die gesamentlike operasionele
 25 komitee. Maar dan was daar ook pertinent bevelvoerders

<p style="text-align: right;">Page 8486</p> <p>1 aangewys vir pertinente take, maar daar was ook 2 bevelvoerders toegewys aan die onderskeie eenhede en ook 3 die opdeling van die mense binne die betrokke eenhede of 4 binne die betrokke taking. 5 MR MAHLANGU: Opdeling? Die opdeling, 6 I'm not sure of that. 7 MR SEMENYA SC: Division, subdivision of 8 – 9 MR MAHLANGU: Subdivisions that occurred. 10 MR SEMENYA SC: - the various units as 11 well. The other criticism, General, is that there was no 12 real negotiation or dialogue with the crowd. Is that 13 accurate? 14 GENERAAL-MAJOOR ANNANDALE: Nee, 15 Voorsitter. Dis nie 'n akkurate waarneming nie. 16 MR SEMENYA SC: Chair, I see it is 11 17 o'clock. 18 CHAIRPERSON: Since we started late, I 19 thought we'd carry on till quarter past 11 but if you have 20 a particular reason for asking for an adjournment at this 21 stage I'll give it to you. 22 MR SEMENYA SC: I might just use the 15 23 minutes to finish. 24 CHAIRPERSON: Yes, I would prefer that 25 actually, but before you move on to your next question, in</p>	<p style="text-align: right;">Page 8488</p> <p>1 existing then was an abnormal one. 2 CHAIRPERSON: An abnormal situation for 3 negotiation, that's what the witness said, I think. 4 MR MAHLANGU: For negotiations, yes, that 5 is so. The situation that existed then was basically 6 abnormal for negotiation. 7 GENERAAL-MAJOOR ANNANDALE: Dit was ook 8 gemeld die Woensdagaand, Voorsitter, toe ons bespreek het, 9 waar daar vinnig verwys was na die induksie program. So, 10 Voorsitter, daar was 'n geleentheid. Daar was 'n ander 11 uitweg vir die groep om dan ook te kan sien daar is 'n 12 proses wat gevolg kan word in onderhandeling. 13 MR SEMENYA SC: General, then Mr 14 Hendrickx says against paragraph 28.7 that the radio 15 communications were problematic and specifically mentions 16 that some of the radio equipment appeared not to be 17 compatible. What is the evidence in relation to the radio 18 operations that were there? 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 ek wil nie te tegnies raak nie want ek is nie tegnies 21 aangelê nie, maar ek het dit so probeer verduidelik van my 22 perspektief as 'n gebruiker van die polisie radio stelsel 23 en ek weet ook dat daar dokumente aangevra is en ek weet 24 nie of dit 'n bewysstuk is nie, maar ek weet dit is 25 aangevra in terme van verduideliking te gee. Maar daar is</p>
<p style="text-align: right;">Page 8487</p> <p>1 relation to the point that's just been made, 28.4, you 2 denied that there was no real negotiation or dialogue but 3 the thrust of Colonel Hendrickx' criticism is in the next 4 sentence. "The SAPS issued an ultimatum but were not able 5 to offer anything to the crowd in response to its demand to 6 meet with Lonmin management." That's the point you've got 7 to deal with. 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 9 ek kan dit tweeledig antwoord. Die polisie onderhandelaars 10 het telkens oorgedra dat die boodskap wat ons vanaf Lonmin 11 kry en ons het dit gekry hoofsaaklik deur mnr Abey, Abey 12 Kgotle en mnr Kwadi, maar ook pertinent deur die terugvoer 13 deur die verteenwoordiger van Lonmin, mnr Dirk Botes, waar 14 daar aangedui was dat Lonmin totaal bereid is om in gesprek 15 te tree maar dat sodanige onderhandeling nie kan plaasvind 16 met mense wat sit met, gewapen nie. Hulle het gevra dat 17 die boodskap moet oorgedra word, dat daar pertinente 18 strukture gevestig is vir onderhandeling en dat as mense 19 sou terugkeer na hulle werkstasies dan kan dit die proses 20 net vergemaklik, maar hulle het ook aangedui as daar 'n 21 pertinente delegasie is wat sou beskikbaar wees dan kon 22 sodanige onderhandeling gefasiliteer word. Basies, dat dit 23 'n abnormale situasie is om in sulke omstandighede te gaan 24 probeer onderhandel. 25 MR MAHLANGU: Basically the situation</p>	<p style="text-align: right;">Page 8489</p> <p>1 basies twee stelsels in gebruik in die Suid-Afrikaanse 2 Polisiediens, die een is analoog en die ander is 'n 3 digitale stelsel. 4 [11:12] U sal dalk verneem dat daar verwys was na Orca 5 radio's en dit sal hoofsaaklik die analoog radio's wees, 6 terwyl die digitale sisteem 'n Tetra-sisteem is. Die 7 Tetra-sisteem is net vol geïmplementeer in die provinsie 8 van Gauteng. Sover ek verneem is daar 'n proses waar dit 9 sal uitgerol word in Oos-Kaap. So almal anders dan Gauteng 10 is op die analoog-sisteem. Prakties is die twee sisteme 11 nie versoenbaar nie. Die radio's wat in gebruik is in die 12 Noordwes Provinsie is die analoogstelsel. Hierdie operasie 13 was uitgevoer in die Noordwes Provinsie en daarvolgens het 14 ons op die analoogsisteem gewerk. Daar was wel lede van 15 Gauteng provinsie wat ontplooi was, wat hulle toegeruste 16 Tetra radio's met hulle saamgebring het. Ons het vir dié 17 lede, het ons – onder korreksie – iets soos 83 of 85 18 radio's, die analoog radio's, uit laat teken. So elke 19 eenheid, elke voertuig het analoog radio's tot hulle 20 beskikking gehad. Daar was wel lede wat die Tetra radio's 21 gebruik het onder, in gesprekke ondermekaar. Voorsitter, 22 en soos ek verneem ook vir diensrapportering by die Gauteng 23 Midrand 10111-sentrum. 24 Ek kan dalk, net om dit duideliker te maak, kan 25 ek net kortliks meld wat is die groot voordele van Tetra.</p>

<p style="text-align: right;">Page 8490</p> <p>1 In 'n analoogsisteem het jy twee persone wat kan praat, 2 maar een op 'n slag. So as ek die radio se knoppie druk, 3 kan die res net luister. Tetra het egter die voordeel dat 4 jy kan praatgroepe vorm, so jy kan byvoorbeeld 'n groepie 5 van openbare orde lede, kan ondermekaar praat sonder dat 6 die res van die mense dit sou hoor, maar hulle kan ook uit 7 praat met die res en ook moniteer. Voorsitter, jy kan 8 selfs net een persoon, kan jy amper soos jy op die telefoon 9 kan jy die persoon, amper wil ek sê skakel. So dan as ek 10 daardie persoon se praatgroep of sy kode of sy – 11 MR MAHLANGU: If, for instance, I know 12 that person's talk code or his code name – 13 MAJOR-GENERAL ANNANDALE: Not code name, 14 Chairperson, net sy kode om toegang te kry tot hom. 15 CHAIRPERSON: That's his code to contact 16 him – 17 MR MAHLANGU: - his code to get to that 18 person. 19 GENERAAL-MAJOOR ANNANDALE: Dan kan net 20 twee persone ook met mekaar praat oor die radio, amper soos 21 'n telefoongesprek, sonder dat enigiemand anders die 22 gesprek sou hoor. En dan is daar ook 'n voordeel van 'n - 23 en soos ek dit verstaan, as dit opgestel is op die sisteem, 24 dan kan ek alle ander gesprekke kan ek oorbrug, selfs as 25 hulle besig is om te praat. Dit is min of meer soos ek dit</p>	<p style="text-align: right;">Page 8492</p> <p>1 CHAIRPERSON: Mr Semenya, are you moving 2 away from the radio? 3 MR SEMENYA SC: I'm moving away from the 4 radio. 5 CHAIRPERSON: Perhaps I would just like 6 to ask a question then. The matter about the radio is 7 also, problems with the radio is also dealt with in Mr De 8 Rover's report, original report, not the one we got today. 9 He deals with it in para 63, and again in paragraph 81. 10 This is exhibit FFF11. I take it you have that document in 11 front of you, do you? In paragraph 63, I will read the 12 relevant passage to you, followed by the passage in 81. 13 The passage in para 63 starts in line 5. "Fragile analogue 14 communication systems operating on a single channel, 15 failing to perform at critical moments in time leading up 16 to, during, and immediately after scene 1, only compounded 17 the problems facing SAPS personnel on the ground. At 18 critical junctures necessary orders and instructions could 19 simply not be given as radios malfunctioned, or," this is 20 the passage I emphasise, "the single channel was already 21 occupied by other radio traffic." Then in paragraph 81, 22 which is on page 19, Mr De Rover says this. "At the timing 23 of scene 1," I'm not sure his English is accurate, but 24 never mind, we know what he means. "At the timing of scene 25 1 and immediately thereafter the problems with the analogue</p>
<p style="text-align: right;">Page 8491</p> <p>1 verstaan. 2 MR SEMENYA SC: Just to conclude the 3 subject over the communication, what, if anything, was the 4 influence of the electrical pylons that we see over the 5 area where the gathering occurred? 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 7 as ek reg kan onthou was daar op die Woensdag, was daar 8 vanaf daardie moniterings- en bevelvoerders vyf Nyalas 9 gerapporteer of eerder andersom, die JOC het gesukkel om 10 behoorlike kommunikasie, duidelike kommunikasie op te vang 11 en iemand van Noordwes Provinsie, ek dink dis kolonel 12 Tafeni, hy het kom ondersoek instel en hy het gesê dat die 13 Nyalas moet net skuif, aangesien hy vermoed het dat die 14 oorhoofse drade kan 'n – ja, dat dit 'n impak het of 15 onderbreking veroorsaak. Die voertuie het geskuif en daar 16 was nie verdere pertinente probleme nie. 17 MR SEMENYA SC: I think the pylons would 18 interfere with the communication. Would this be an 19 appropriate stage to take the tea adjournment, Chair? 20 CHAIRPERSON: We'll take the tea 21 adjournment at this stage. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [11:57] CHAIRPERSON: The Commission resumes. 24 Majoor-Generaal, u is nog steeds onder eed. 25 CHARL ANNANDALE: s.o.e.</p>	<p style="text-align: right;">Page 8493</p> <p>1 radio network conspired to prevent the overall commander to 2 stay abreast of developments and to call halts to police 3 operations in a bid to regroup and reassess." And then he 4 goes on to say, "It virtually goes without saying that SAPS 5 doctrine and experience in crowd management to take such a 6 decision," and in 82 he says, "In the absence of a 7 countermanning order the implementation of the operation at 8 scene 2 went ahead, with the on-scene commander unaware of 9 the incidents that had just produced," I think he means 10 "just been produced, at scene 1." 11 Now it's against that background that Colonel 12 Hendrickx says in paragraph 28.7, the one we've just been 13 looking at, at the foot of page 18 of exhibit GGG2, he says 14 this, a passage that was already read, "Apparently the 15 radio communications were problematic. Some of the radio 16 equipment appeared to be non-compatible," that you dealt 17 with. That's the Orca-Tetra problem. "There is no written 18 evidence of a planned radio communications network," and 19 this is the sentence I want to read you particularly for 20 your comment, "As is common international practice, there 21 should have been two radio networks, one for 22 information/intelligence management, and another, an 23 operational network coordinating the units in the field. 24 This operation required an inflow of information to the 25 CJOC on a communications system separate from that</p>

<p style="text-align: right;">Page 8494</p> <p>1 dedicated to coordinate deployments, movements, and 2 interventions of the units in the field." What comment do 3 you have to make in regard to those passages that I read 4 you? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 ek moet onderskei tussen die probleme ervaar en die 7 limitasies, die beperkings op die radiostelsel. 8 MR JOHNSON: Come again. 9 CHAIRPERSON: It's to distinguish between 10 the problems encountered and the limitations on the radio 11 system. 12 GENERAAL-MAJOOR ANNANDALE: Dis hy. Die 13 probleme was ons oortuig het ons uitgesorteer toe ons die 14 voertuie geskuif het. Ons het ook op die Donderdag was 15 daar 'n basis stel geïnstalleer in die operasionele 16 bevelvoerder se Nyala voertuig. 17 CHAIRPERSON: The commander's Nyala, is 18 that right? 19 MR SEMENYA SC: A base system, Chair. 20 CHAIRPERSON: Yes, there was a base 21 system installed, did you say, on the commander's Nyala? 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 23 laat ek moet verduidelik, ons het 'n sogenaamde hand-radio, 24 of ook, ons verwys daarna as 'n radio aan die man, en dan 25 het ons voertuig geïnstalleerde radio's, ook verwysend</p>	<p style="text-align: right;">Page 8496</p> <p>1 strength. 2 CHAIRPERSON: Signal strength. 3 GENERAAL-MAJOOR ANNANDALE: Die 4 beperkings op die sisteem is egter soos ek vroeër 5 verduidelik het, en dan is die aantal kanale wat beskikbaar 6 is, is afhange van die versterkers in die omgewing. 7 CHAIRPERSON: It's the amount of channels 8 available were dependent on the strength, the number of – 9 MAJOR-GENERAL ANNANDALE: Repeaters, Sir. 10 CHAIRPERSON: Of repeaters. 11 MAJOR-GENERAL ANNANDALE: Yes, Sir. 12 CHAIRPERSON: That's the "versterkers," 13 repeaters in the area. 14 MAJOR-GENERAL ANNANDALE: Yes, Sir. 15 Voorsitter, ek het vroeër verwys na Kolonel Thafeni, ek 16 dink dit kan dalk Kolonel Sepale gewees het, daar was twee 17 kolonels wat van die groter verkrygingsbestuurkantoor daar 18 was, en twee kanale was beskikbaar gestel aan ons wat 19 beskikbaar was. Ek wil net verwys na paragraaf 28.7 van 20 Kolonel Hendrickx se verklaring wat hy verwys na twee 21 radionetwerke. Voorsitter, ons het nie twee radionetwerke 22 wat in die hele land beskikbaar is nie. 23 MR JOHNSON: We have two network radios 24 in the whole land – 25 CHAIRPERSON: I think he says we haven't.</p>
<p style="text-align: right;">Page 8495</p> <p>1 daarna as mobiele radio's. 2 CHAIRPERSON: Also known as mobile 3 radios. 4 GENERAAL-MAJOOR ANNANDALE: Dis reg, en 5 dan is daar 'n basis stel. 6 CHAIRPERSON: A basic system, is that 7 correct? 8 GENERAAL-MAJOOR ANNANDALE: Basis-stel is 9 tipies wat in polisie-aanklagkantore geïnstalleer sal wees, 10 of in operasionele sentrums. Ons het die stelsel laat 11 installeer in Brigadier Calitz se Nyala, Pappa1 - 12 CHAIRPERSON: Brigadier Calitz's Nyala, 13 yes. 14 GENERAAL-MAJOOR ANNANDALE: - aangesien 15 die uitset op so 'n basis stel iets soos vyf keer sterker 16 is as 'n radio aan die man. 17 CHAIRPERSON: The output is five times 18 stronger you say than the ordinary, than the hand radio? 19 MAJOR-GENERAL ANNANDALE: That's right, 20 Sir. Voorsitter, ons het dan ook voordat die mense vertrek 21 het vanaf die groter JOC area, was daar elke keer 'n radio 22 toets gedoen om dan die seinsterkte te bepaal – 23 MR JOHNSON: A radio test was done to 24 determine – 25 MAJOR-GENERAL ANNANDALE: Output</p>	<p style="text-align: right;">Page 8497</p> <p>1 The point is that you haven't got two networks available in 2 the whole country. Is that what you say? 3 GENERAAL-MAJOOR ANNANDALE: Ons het een 4 of die ander, Voorsitter, so dis of die Tetra, of die 5 analoog, maar dis nie Tetra en analoog regdeur die land 6 nie. Die twee kanale wat aan ons toegestaan was, het ons 7 dan gebruik, die een vir die operasionele kanaal, en die 8 ander een het gedien as rugsteun. 9 MR JOHNSON: And the other one was used? 10 CHAIRPERSON: Support backup, I should 11 imagine. 12 MAJOR-GENERAL ANNANDALE: Ja, backup. 13 Voorsitter, dis die beste wat ek kan verduidelik wat ons 14 beskikbaar gehad het. Ek sien totaal en al wat die kritiek 15 is, en ek sien totaal en al wat die leemtes is in terme van 16 ons wat behoorlike tegnologie nodig het. 17 CHAIRPERSON: One of the major points 18 made by Mr De Rover was because of the way the system was 19 operating, the single channel was sometimes already 20 occupied by other radio traffic. 21 GENERAAL-MAJOOR ANNANDALE: Ja. 22 CHAIRPERSON: Is that right? 23 GENERAAL-MAJOOR ANNANDALE: Dis reg, 24 Voorsitter. Ek kan dit net verduidelik in terme van ons 25 beplanning dat ons nooit voorsien het dat so 'n situasie</p>

<p style="text-align: right;">Page 8498</p> <p>1 hom sou afspeel nie. Ons het in terme van hoe ons dit 2 voorsien het, sou die proses min of meer as volg uitgerol 3 het. Ons sou Brigadier Calitz gehad het wat sekere opdrag 4 gegee het in terme van hetsy defensief of offensiewe 5 aksies. Hy sou byvoorbeeld 'n opdrag aan Kolonel Makhubela 6 gegee het – 7 MR JOHNSON: He was going to give 8 instructions to Colonel Makhubela – 9 CHAIRPERSON: For example. For example, 10 I think he said. For example he would have given 11 instructions to Colonel Makhubela, obviously to other 12 people as well. 13 GENERAAL-MAJOOR ANNANDALE: Dit is 14 korrek, en hy sou gesê het dat die lemmetjiesdraad moet 15 uitgerol word. Die oomblik as dit oorgegaan het na Kolonel 16 Makhubela, buiten dat die ander bevelvoerders in Kolonel 17 Makhubela se groep dit sou gehoor het, sou Kolonel 18 Makhubela dit dan bevestig het, Nyala 1, draad, en so sou 19 dit dan verder gegaan het, Voorsitter; dit sou dan, die 20 oomblik soos hulle vorentoe beweeg het, hy sou dan gesê 21 het, "Waterkanonne, vorm op." 22 MR JOHNSON: So it went on and it went 23 further, he could have said which cannons should come up. 24 CHAIRPERSON: No, no, I think it's if he 25 moved forward he would then say that the water cannons must</p>	<p style="text-align: right;">Page 8500</p> <p>1 we wouldn't have to wait for gaps, as it were, in the 2 general conversations that were going on, on the one 3 channel. That's why he should have his own separate 4 dedicated channel. The point is now, you didn't have that. 5 So I mean that's clear from what you told us, but point is 6 that what Colonel Hendrickx says, that that was a departure 7 from what he describes as common international practice. 8 What do you say about that? 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 dit is verseker die ideale situasie, en as ons groot 11 gebeurtenisse het – 12 MR JOHNSON: If there was big happenings 13 – 14 CHAIRPERSON: No, what he says is that's 15 the ideal situation and if we had big, I think big events, 16 or big occurrences, then – 17 GENERAAL-MAJOOR ANNANDALE: - wat vooraf 18 beplan word en waar die infrastruktuur beskikbaar is, dan 19 werk ons presies op daai beginsel. 20 [12:17] CHAIRPERSON: The trouble is that's not 21 an answer to the point. The point is he says that this was 22 common international practice. You say, we didn't have 23 that system available. Is it correct that that – I 24 understand it's ideal, but the question is, is it common 25 international practice and, if so, did we deviate from</p>
<p style="text-align: right;">Page 8499</p> <p>1 move forward. Is that what you're saying? 2 GENERAAL-MAJOOR ANNANDALE: Dis absoluut 3 reg. So die punt wat ek wil illustreer, dit sou pertinente 4 opdragte gewees het. Die mense was toegelig en het geweet 5 wat van hulle verwag word. So dis opdrag van die 6 operasionele bevelvoerder na die volgende bevelvoerder vir 7 sy betrokke verantwoordelikheid, en dan die volgende vlak 8 weer die bevelvoerder weer na die res van sy mense. So dit 9 sou 'n geordende radiokommunikasie proses gewees het. 10 MR JOHNSON: It was going to be an order 11 radio communication process. 12 CHAIRPERSON: It's "ordered," I think. 13 Major-General, the problem is that Colonel Hendrickx says 14 that it's common international practice that there should 15 be two networks, one of them being for information and 16 intelligence management, and the other an operational 17 network coordinating units in the field, and he then goes 18 on to say – I've read this before – "This operation 19 required an inflow of information to the CJOC on a 20 communication system separate from that dedicated to 21 coordinate deployment movements, interventions of units in 22 the field." It sounds as if there should have been a 23 dedicated channel available only to the CJOC so that the 24 CJOC could immediately either received information directly 25 for him, and send out instructions directly from him, and</p>	<p style="text-align: right;">Page 8501</p> <p>1 common international practice? 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 ek kan nie daarop kommentaar lewer nie. Ek aanvaar in 4 terme van sy Europese perspektief is dit waarskynlik so, en 5 dat dit net soveel makliker gemaak word as mens die 6 tegnologie het wat jy net amper onbeperkte aantal kanale 7 tot jou beskikking het. Ek kan ook – 8 COMMISSIONER HEMRAJ: What is the 9 recommended, or required number of channels that's ideal 10 for the South African Police Service? 11 GENERAAL-MAJOOR ANNANDALE: Kommissaris, 12 ek wens ek kan u antwoord, maar as ons nou regtig moet 13 ideaal gaan dan sou ek dink net vinnig, as ek moet dink 14 daaraan, off the top of my head, dat jy, verseker sal jy 15 jou operasionele kanale hê en dan ook die intelligensie 16 terugvoer kanaal, en dat elke groepering en elke eenheid 17 geleentheid sal hê om direk te kan terugpraat na die JOC 18 toe sodat hulle hulle boodskap kan oordra. 19 MR JOHNSON: That each and every person 20 will give a feedback or talk to the JOC and make the work 21 easier. 22 CHAIRPERSON: I think every grouping 23 should be able to communicate – or unit should be able to 24 communicate directly with the JOC. No, I think it was – 25 you want to interpret it in isiXhosa. Perhaps it's time</p>

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1 that I should say something that's not directly relevant to
 2 what we're talking about, but I think it's got to be said
 3 sooner rather than later. My understanding is that a
 4 review wasn't conducted because it was felt, and I can
 5 understand where the idea came from, that this Commission
 6 would find out what happened, make a finding of what
 7 happened, and make recommendations for the future. For the
 8 reasons that I don't have to go into, this Commission is
 9 taking longer than anybody thought at the time and this
 10 clearly is a serious defect, I would imagine, in the
 11 system, and I would seriously suggest to the police, don't
 12 wait for our report; deal with this problem now because if
 13 you have a similar problem like this tomorrow or the next
 14 day, you will have to come along and say we'll we haven't
 15 got the equipment and we've been waiting for the foreign
 16 commission or the Marikana Commission to tell us what to
 17 do. Please get on with that particular problem now. I
 18 take it you can convey that to those responsible for making
 19 the relevant decision.

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 21 ek kan u die versekering gee dat ons nie besig is om te wag
 22 vir die uitslag van die Kommissie om aspekte aan te spreek
 23 wat ons reeds geïdentifiseer het as problematies nie. Ek
 24 kan vir u verder sê dat die radiokommunikasiesstelsel is 'n
 25 projek wat al vir etlike jare aan die gang is, en ek weet

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1 nie of, daar's, waarskynlik is daar beter stelsels, Tetra,
 2 ek hoor ook van Tetra 2, maar iets wat daai kapasiteit of
 3 moontlikhede aan ons kan bied moet ons verseker hê.
 4 Voorsitter, ek kan ook, Generaal Mbombo sal kan presiese
 5 besonderhede verskaf -

6 CHAIRPERSON: General Mbombo can deal
 7 with this when she comes, so we'll take the matter up
 8 further with her. Thank you.

9 GENERAAL-MAJOOR ANNANDALE: As ek net mag
 10 voortgaan, ekskuus, mnr die Voorsitter.

11 CHAIRPERSON: Yes, you may continue.

12 GENERAAL-MAJOOR ANNANDALE: In terme van
 13 die uitrol van 'n radiosisteam in haar provinsie, en dan
 14 het ek ook verwys na die planne in die Oos-Kaap met die
 15 ideaal dat die hele Suid-Afrikaanse Polisie diens, so basies
 16 die hele Suid-Afrika op een stelsel kan werk. Die kostes –
 17 en ek weet nie wat is die presiese kostes nie, maar ek hoor
 18 syfers wat skrikwekkend is.

19 MR JOHNSON: I don't know about the
 20 costs, but I've heard some huge costs.

21 CHAIRPERSON: I think he says costs that
 22 are frightening.

23 MR JOHNSON: Shocking cost.

24 GENERAAL-MAJOOR ANNANDALE: En as ek vir
 25 u sê dat ek 'n syfer gehoor het van R600 miljoen vir een

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1 provinsie se uitrol, dan is ek waarskynlik naby aan reg.
 2 Voorsitters, en daar is baie ander aspekte wat ons reeds
 3 aandag aan gee.

4 CHAIRPERSON: Can we now let Mr Semanya
 5 carry on? Mr Semanya, I'm sorry, I intervened at that
 6 point, but I thought it was an important point to deal with
 7 sooner rather than later. Would you like to carry on now?

8 EXAMINATION BY MR SEMENYA SC (CONTD.):
 9 Indeed, Chair. General, there is also the evidence to be
 10 tendered of Prof Heyns about what international instruments
 11 say in relation to crowd management. Those are matters
 12 law; we can go past those ones.

13 CHAIRPERSON: I take it you're referring
 14 to exhibit FFF24?

15 MR SEMENYA SC: Yes, I'm told it is,
 16 Chair.

17 CHAIRPERSON: Yes, well is it necessary
 18 to deal with that with this witness?

19 MR SEMENYA SC: That's precisely what I
 20 said, that we will not deal –

21 CHAIRPERSON: You will not, I see. It
 22 seems I misheard you. I'm pleased that you've corrected,
 23 removed this apprehension which caused me some concern.

24 MR SEMENYA SC: General, let's go though
 25 to some of the questions raised at various stages of cross-

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1 examination. It was suggested there is in the South
 2 African Police Service a doctrine of maximum force. Is
 3 there such a doctrine?

4 GENERAAL-MAJOOR ANNANDALE: Doktrine soos
 5 in grondbeginsels van 'n beleid? Is ek reg as ek dit so
 6 verstaan? Doktrine vorms die grondbeginsels van 'n
 7 amptelike beleid.

8 MR SEMENYA SC: Indeed.

9 MR JOHNSON: Doctrine which is the
 10 beginning of the training –

11 CHAIRPERSON: No, no. No, no, what he
 12 asks is whether the suggestion is, the suggestion that's
 13 being referred to is one that a doctrine of maximum force
 14 forms the basis of their doctrine and approach. I think
 15 that's a correct translation, isn't it, of what he said?
 16 Is it a reference, amongst other things, it was put to you
 17 in cross-examination but an exhibit was handed in, an e-
 18 book by Mr Bruce which sets out, it has a chapter in which
 19 that contention is advanced, and it's also advanced in
 20 other documents that had been put before the Commissioner,
 21 and in fact it was put to you, I think in cross-examination
 22 also. What Mr Semanya wants to know is whether you agree
 23 that that is a basic doctrine in the South African Police
 24 Force.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

<p style="text-align: right;">Page 8506</p> <p>1 ek het net seker gemaak dat ek reg verstaan, maar daar 2 bestaan nie enige so 'n beleid of doktrine van geweld in 3 die polisie nie. 4 MR JOHNSON: - or a doctrine of minimum 5 force in the police. 6 CHAIRPERSON: No, no, no, the opposite. 7 There's not a doctrine of maximum force in the police 8 force. That's what you say, isn't it? 9 MAJOR-GENERAL ANNANDALE: Maximum. 10 MR SEMENYA SC: Allied to that was a 11 proposition placed that since the beginning of the ORS, 12 Operational Response Services, there has been an escalation 13 of use of force in a particular period. What's your 14 comment? 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 ek weet nie watter verband kan getrek word tussen die 17 vestiging of die hervestiging van 'n divisie in die polisie 18 - 19 MR JOHNSON: I don't know which divisions 20 are you talking about which can confirm - 21 MR SEMENYA SC: No, I think the witness 22 says what connection can exist in the re-establishment of 23 the ORS. 24 GENERAAL-MAJOOR ANNANDALE: - dat daar 25 enige lyn getrek kan word tussen sterftes aan die hand van</p>	<p style="text-align: right;">Page 8508</p> <p>1 adjourn at this stage until half past 1. 2 [COMMISSION ADJOURNS COMMISSION RESUMES] 3 [13:41] CHAIRPERSON: The Commission will resume. 4 Majoor-Generaal, u is nog steeds onder eed. 5 CHARL ANNANDALE: s.o.e. 6 CHAIRPERSON: Mr Semenya? 7 MR SEMENYA SC: Chair, before we 8 commence, might I record our disquiet at the newspaper 9 articles suggesting that the witness has given testimony 10 contradicting that of General Phiyega. 11 CHAIRPERSON: I'm not aware of those 12 articles and whether there are contradictions between the 13 evidenced of General Phiyega, National Commissioner Phiyega 14 and this witness is a matter that can be dealt with in 15 argument at a later stage. You've put what you want to say 16 on record and my response is as you've heard. Before you 17 actually carry on, there's something I should have said 18 before, and that is I'm happy to announce that Mr Mpfu, 19 who was discharged from hospital yesterday, will be back 20 tomorrow and at 9:30 when we resume he will argue the 21 application for the removal of the Commission from 22 Rustenburg to Centurion. Those counsel who wish to address 23 the Commission on that issue, I'm giving you notice now so 24 you can be ready to address us on the point. Mr Semenya? 25 EXAMINATION BY MR SEMENYA SC (CONTD.):</p>
<p style="text-align: right;">Page 8507</p> <p>1 polisie optrede en die vestiging van 'n divisie nie. 2 MR JOHNSON: Whether there is a division 3 of the police - 4 MR SEMENYA SC: Whether there is a line 5 that can be drawn between the re-establishment of ORS and 6 the fatalities as a result of police action. 7 CHAIRPERSON: Mr Semenya, how far are you 8 from the end of the evidence-in-chief? 9 MR SEMENYA SC: I am three questions 10 away. 11 CHAIRPERSON: Alright, well we'll take 12 the three questions and then I think we'll take the lunch 13 adjournment, but carry on. 14 MR SEMENYA SC: You had just completed, 15 General, to say that you cannot see how a line can be drawn 16 between the two events. 17 GENERAAL-MAJOOR ANNANDALE: Dis absoluut 18 so, Voorsitter. ORS as 'n divisie was al hierso iewers in 19 die vroeë 90s, '95 dink ek, het hy al sy oorsprong gehad en 20 daar was naamsveranderings gewees en daar was op 'n stadium 21 wat hy gegroeper was en weer gevestig was. Ons is in 1 22 Januarie 2011 is ons weer, het ons geskuif vanaf die 23 divisie Sigbare Polisiëring. 24 CHAIRPERSON: Mr Semenya, I think this is 25 going to take longer than we thought. So I think we'll</p>	<p style="text-align: right;">Page 8509</p> <p>1 General, can we revisit one subject just quickly? 2 Regarding the use of radio, Mr Hendrickx talks about two 3 networks that are an international standard, and there is a 4 distinction between a network that has various channels, 5 such as a Tetra system. For effective achievement of goals 6 that are articulated by Mr Hendrickx, do you require two 7 networks, or do you require a network which has multiple 8 channels? 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 nie twee netwerke nie. Dit sal beteken ons moet 'n 11 duplisering hê van 'n totale radionetwerk, maar eerder een 12 stelsel, een radio - so net een stelsel, een netwerkstelsel 13 wat vir ons sal 'n verskeidenheid van kanaalopsies gee. 14 MR SEMENYA SC: General, there is a 15 document in front of you which is a document dealing with a 16 call-up systems for people to attend Potchefstroom. 17 GENERAAL-MAJOOR ANNANDALE: Ek sien die 18 dokument. Dit is reg. 19 CHAIRPERSON: Mr Semenya, do you want me 20 to give this an exhibit number? 21 MR SEMENYA SC: Please, Chair. 22 CHAIRPERSON: I think it will be - I take 23 my life in my hands now, but I think it will be GGG3. Is 24 that right, Ms Pillay? 25 MS PILLAY: That's correct, Chair.</p>

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1 CHAIRPERSON: The exhibit is marked
2 exhibit GGG3.

3 MR SEMENYA SC: Thank you, Chair. The
4 three first pages of that document are various call-up
5 calls by one Major-General Naidoo, dated 25 August 2012.
6 The second one you'll see is by General Mpmembe dated 29
7 August 2012. The third is the one dated 30 August 2012 by
8 General Mbombo, all of which have attachments to them,
9 which are an attendance register. Is that how the members
10 were called and were those attendance registers completed,
11 as we see?

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 dit is korrek. Die eerste een, die eerste drie bladsye sal
14 u merk dat die oproepinstruksie was vanaf 27 Augustus tot
15 31 Augustus. Die tweede een was, wat deur Generaal Mpmembe
16 geteken was, is net gedateer vir die 30ste Augustus.

17 CHAIRPERSON: - before the 30th of August.
18 It was actually dated the 29th, but the members, the 14 of
19 them listed on that page were all asked to be present on
20 the 30th of August.

21 GENERAAL-MAJOOR ANNANDALE: En die derde
22 dokument vanaf 3 September tot 6 September.

23 CHAIRPERSON: There appears to be
24 something missing from that letter. It refers to the
25 officers and members listed in the annexure, and the

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1 annexure is not here, as far as I can see. What we do have
2 are the attendance lists, but presumably the ones listed in
3 the annexure are the ones listed in the two preceding
4 documents, so the fact that we haven't got the annexure
5 doesn't take it any further.

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 die derde oproep, die ene wat vanaf die 3de September tot
8 die 6de September was, was net 'n ekstensie, 'n verlenging
9 van die eerste oproep, so dit was vir dieselfde persone
10 bedoel.

11 CHAIRPERSON: It's an annexure which
12 contained the names of those who are listed in the two
13 previously, so we don't need it.

14 GENERAAL-MAJOOR ANNANDALE: En dan die
15 teenwoordighedsregister sien ek aangeheg, die aanvaarding
16 is, en dit lyk vir my of dit die meeste mense is, maar die
17 aanvaarding is dat almal dit sou geteken het. Daar mag
18 dalk een of twee wees wat dit dalk nie geteken het nie.

19 MR SEMENYA SC: General, the Council for
20 the Advancement of the South African Constitution talks
21 about a possibility that ORS training includes concept of
22 the use of maximum force. Is that correct or not?

23 GENERAAL-MAJOOR ANNANDALE: Dit is nie so
24 nie, Voorsitter.

25 MR SEMENYA SC: There has also been

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1 similarities, or attempts at drawing similarities between
2 the Sharpeville incident and the Marikana incident. What's
3 your comment there?

4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 Sharpeville was voor die demokrasie in ons land, voor '94.
6 Die protesaksie in Sharpeville was gemik gewees teen die
7 regering van die dag. Marikana het sy ontstaan gehad as 'n
8 arbeidsgeskil. Tydens Sharpeville was daar slegs skerp-
9 punt ammunisie gebruik en dit was gebruik om mense uiteen
10 te dryf. Marikana het ons geen skerp-punt ammunisie
11 gebruik in die uiteendryf van 'n skare nie.

12 MR SEMENYA SC: General, what is the
13 South African Police Service presently doing flowing from
14 the Marikana incident, in its attempt at making sure that
15 there is no recurrence? What were the lessons learned
16 there?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 daar is 'n aantal. Die een is ons het gesien hoe
19 ontoereikend ons radiokommunikasiestelsel is. Daar is
20 reeds 'n proses aan die gang al vir 'n aantal jare om te
21 kyk na 'n geskikte stelsel. Voorsitter, ons video-opnames
22 het ons reeds voor die insident by Marikana al plaasgevind
23 het, het ons alreeds begin met 'n proses waar ons begin het
24 met die eindverbruiker se behoeftes in terme van 'n
25 videostelsel, of 'n videokamera. Voorsitter, dit was 'n

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1 proses wat behels het dat onderskeie operateurs aangedui
2 het wat hulle tipies in so 'n kamera wil hê, aangesien die
3 kameras wat ons in gebruik het gewone, van die rak
4 beskikbaar, kommersiële kameras is. Ek het dan in die
5 begroting waarvoor ek verantwoordelik is binne my
6 komponent, in die 2012/2013 finansiële jaar, het ek 'n
7 bedrag van R500 000 beskikbaar gestel sodat ons kan meer
8 professionele kameras aankoop, maar ook hardeskywe en ook
9 oorhoofse projektors, met die gedagte dat ons al 28
10 Openbare Orde eenhede in die land ten minste een elk te gee
11 van die items soos ek vermeld het. Die eindverbruiker
12 spesifikasies wat ons toe ontvang het, het ons
13 gekonsolideer en ons het dit beskikbaar gestel aan ons
14 divisie, Tegnologie Bestuursdienste. Hulle het toe gaan
15 kyk of daar 'n produk geredelik beskikbaar is op die
16 staatskontrak. Daar was nie pertinent so 'n kamera wat aan
17 al die behoeftes voldoen beskikbaar nie, maar ons het toe,
18 net om te begin het ons toe 12 kameras aangekoop met die
19 naaste spesifikasies aan wat die finale behoefte is. Daar
20 is ook dan – ek is nie seker van die presiese getal nie,
21 maar 'n aantal hardeskywe aangekoop en 'n aantal
22 projektors, en ons gaan verder gaan in hierdie finansiële
23 jaar om dan die verdere, die "support" kameras aan te koop
24 sodat elke eenheid ten minste een het.

25 [14:01] Die kameras sal dan gebruik word, ook die

<p style="text-align: right;">Page 8514</p> <p>1 bestaande kameras wat die eenhede het sal dan addisioneel 2 gebruik word sodat ons ook kan verskillende hoeke kan dek 3 tydens so 'n protesaksie. Dan die lede word opgelei in die 4 tegniese hantering en aspekte van die kamera, maar ook 5 bewyslewering, Voorsitter, met die gedagte dat daar insette 6 is van ons Korporatiewe Kommunikasie, van Justisie, en dan 7 ook van ons Forensiese Afdeling in terme van die aanwending 8 en die korrekte gebruik van hierdie kameras. 9 MR MAHLANGU: I'm sorry, if you could 10 repeat that maybe. 11 GENERAAL-MAJOOR ANNANDALE: Met die 12 insette van, ook van Justisie, en dan ook ons Korporatiewe 13 Kommunikasie, Corporate Communication. U sal ook merk dat 14 daar is 'n konsep dokument wat ons reeds begin het om te 15 gaan kyk hoe gaan ons die prosessering, of die hantering 16 van hierdie video's nadat die opnames gemaak is, sodat die 17 hele proses van om dit te aktiveer, in kort die hele proses 18 met die hantering vandat dit geneem is totdat dit dan 19 teruggehandig is sodat ons 'n behoorlike proses kan volg. 20 Waarna ons ook kyk is die hardeskywe en die oorhoofse 21 projektors sodat die eenhede die geleentheid het om hulle 22 nabetraging te doen. 23 MR MAHLANGU: Chairperson, this is a bit 24 difficult for me. So that? 25 MAJOR-GENERAL ANNANDALE: So that the</p>	<p style="text-align: right;">Page 8516</p> <p>1 interrupting you. Don't assume that that license will 2 apply to everything else you say – 3 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 4 daar is ongelukkig nie 'n kortpad om die lesse wat ons 5 geleer het te verduidelik nie, so inderdaad - 6 MR SEMENYA SC: There is budget 7 provision, as you told us, in relation to these matters. 8 Is there anything else contemplated in relation to 9 additional POP member recruitment and training? 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 ek wens ek kan hierdie net in 'n kort antwoord – maar ek 12 gaan probeer. Ons het 'n uitvoerende komitee gevestig en 13 daar is verskeie aspekte wat hulle na moet kyk, onder 14 andere dit wat vermeld is. Dit behels enersyds dat ons sal 15 nasionale mobiele Openbare Orde eenhede vestig, national 16 mobile reserve units. Chairperson, I've taken note of the 17 National Commissioner's response that she's going to take 18 specific remedial actions. I see one of the actions 19 already, that I've been demoted. 20 CHAIRPERSON: That is a bit unfair. We 21 haven't made a finding against you yet and we may never - 22 MAJOR-GENERAL ANNANDALE: That's what I 23 thought. That's what I thought. Voorsitter, ons het reeds 24 een van hierdie nasionale eenhede het ons gevestig in 25 Pretoria. Ons beoog, en dis alles afhangende van die</p>
<p style="text-align: right;">Page 8515</p> <p>1 units, that they can have the opportunity when they do 2 their debriefing. 3 CHAIRPERSON: - the opportunity when they 4 do the debriefing, obviously to learn from the mistakes 5 they'd made, that they can see on the video. 6 MR MAHLANGU: Thank you, Mr Chairperson. 7 CHAIRPERSON: Just as the football teams 8 do after a game. 9 MR MAHLANGU: Thank you, Sir. 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 11 en dan is ons besig wat ons wil kyk dat die eenhede dit kan 12 oplaai by, op eenheidsvlak, die videomateriaal en dat hulle 13 dit kan deurstuur na die verantwoordelike kantoor by 14 hoofkantoor wat verantwoordelik is vir openbare orde. 15 MR SEMENYA SC: General, yes we 16 understand there will be some improvements in relation to 17 the videos, the cameras, the overheads, to deal with public 18 order management environments. We will also – 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 verskoning, ek aanvaar ek is besig om te veel detail te 21 gee. 22 CHAIRPERSON: - going to stop you, but I 23 thought to be fair, you were probably responding to the 24 comments I made earlier and you probably felt it important 25 to put those on record. So that's why I refrained from</p>	<p style="text-align: right;">Page 8517</p> <p>1 beskikbaarheid van fondse en die beskikbaarheid van poste, 2 om 'n verdere drie uit te rol. Die voorgestelde struktuur 3 dui net so onder 'n duisend poste aan. Dan is daar ook die 4 opening van 'n addisionele potensieële nege eenhede wat 5 onderworpe aan die, eers die afhandeling en dan die 6 goedkeuring van 'n werkstudie verslag, wat die eenhede dan 7 tot 37 sal opstoot. Ons kyk ook na tekorte tans wat so min 8 of meer aandui so 1 600 persone wat ons dan ook in die 9 Openbare Orde omgewing wil instoot, en dit sal dan min of 10 meer ons getalsterkte, wat tans net so oor die 4 000 11 operasioneel is, na so ses en 'n half duisend opstoot. Dan 12 gaan ek daar stop in terme van die uitbreiding. 13 MR MAHLANGU: I will stop there in terms 14 of this building, rebuilding. 15 CHAIRPERSON: I should think it's not a 16 physical bricks and mortar extension, but an extension in 17 the way that he has described. 18 MR MAHLANGU: An extension. This is 19 human resource, yes, an extension. 20 MR SEMENYA SC: An expansion [inaudible]. 21 MR MAHLANGU: Of an expansion, that's 22 right. 23 MR SEMENYA SC: Those are the questions 24 we have. 25 CHAIRPERSON: Thank you. Mr Budlender, I</p>

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1 understand you're going to cross-examination on behalf of
 2 the evidence leaders.
 3 MR BUDLENDER SC: Yes, I am, Chairperson.
 4 CHAIRPERSON: Mr Burger?
 5 MR BURGER SC: Chair, may I raise
 6 something before my learned friend starts?
 7 CHAIRPERSON: Yes.
 8 MR BURGER SC: If you'll bear with me,
 9 and may I address at this stage the scope of the
 10 examination being conducted up to now both in the form of
 11 evidence-in-chief and in cross-examination. We are now in
 12 the seventh month of this Commission since we started. The
 13 final report requested by the President had to be filed by
 14 the 23rd of January of this year. There was then an
 15 extension granted to next month, to May 2013. It's clear
 16 to all of us that that date is not going to be achieved.
 17 I've heard rumours that August might be a date, but I've
 18 made my calculations with reference to the list of generals
 19 to come and give evidence, the remaining experts, my own
 20 witnesses, other parties' remaining witnesses. I estimate
 21 that we'll need another eight months for evidence. That
 22 estimation of mine intersects with the estimation of some
 23 of the colleagues around the table, although we all agree
 24 that's a conservative estimate. That, Chair, will be the
 25 end of phase 1. When we do phase 2, we don't know yet. We

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1 hear that there are dates being agreed now for the filing
 2 of documents, but it seems on my prognosis unlikely that
 3 phase 2 will see the light of day anywhere before some time
 4 in 2014. There are distortions caused by this delay.
 5 We have heard the evidence now by the General
 6 about the remedial action being implemented by SAPS. I'd
 7 like to have a debate with him on that in due course. It's
 8 the first time I hear of that in the Commission. Up to now
 9 my recollection of the evidence is that the SAPS was
 10 awaiting the outcome of this Commission. They were
 11 awaiting the recommendations and they wouldn't
 12 prognosticate on what might come out, on what their
 13 mistakes were, on who will take responsibility, if anyone,
 14 and we have that limbo section, and I must submit that
 15 present and recent events in the SAPS suggest that they
 16 might well need some guidance onto procedures.
 17 As to the nature of this process, as I understand
 18 the law, this is an inquisitorial process, not an
 19 adversarial process. This is your process, Chair. You run
 20 it. You allow cross-examination only to the extent that
 21 the cross-examination assists you in coming to a speedy and
 22 an informed decision. This is not the forum to probe
 23 potential civil claims. It is not the forum to settle
 24 scores between warring factions. It's not the forum for
 25 grandstanding and sensation, and I submit – and I speak to

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1 myself and to my colleagues – that the way in which we have
 2 thus far led the evidence and did the cross-examination is
 3 unfair to all of us. It is unfair to the public of this
 4 country because they would like to know what happened, and
 5 this week in one of the leading newspapers in this country
 6 there was an editorial posing the following question, which
 7 really typifies what happens in the public debate.
 8 Business Day on the 23rd, and in an editorial said, "Until
 9 the Commission concludes its probe, the working assumption
 10 is that no-one knows what happened at Marikana, including
 11 whether or not police killed 34 of the strikers. That was
 12 not an intended consequence when the Commission was
 13 appointed." That's unfair on the fiscus, the length we
 14 take, and it's unfair on the public. Secondly, it's unfair
 15 to the families of those people killed and injured. It
 16 prolongs their pain; they don't know what had happened on
 17 that fateful day and in a recent affidavit filed on behalf
 18 of, for SERI, it seems that their funding is being
 19 threatened now. I read from the affidavit of Mr Mosikili
 20 filed week in the contents of going to Pretoria, where he
 21 says, "I point out in particular that a number of donors
 22 have suggested that they are unwilling to contribute
 23 funding to the Commission if there's no sense of when the
 24 Commission's hearings will come to a conclusion. I have
 25 been unable to honestly advise donors when the Commission

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1 will conclude its work, as the Commission's period of
 2 operations keeps extending. At this stage it seems that
 3 the Commission will not conclude its hearing before the end
 4 of the year."
 5 It's unfair to the police, the time we take.
 6 Where did they go wrong? They get accused in the
 7 marketplace of all sorts of things. There was last night
 8 on BBC a programme, it was a film shown by a previous
 9 minister in the labour government, and in that film he
 10 says, "There is a report to the extent that filming at
 11 Marikana," says Mr Peter Hain, "I was told by lawyers
 12 representing the families of the dead miners that the
 13 massacre was pre-planned." Now that's the story out in the
 14 international community. It's unfair to SAPS if we cannot
 15 come to a conclusion and have a finding whether there's any
 16 substance in that serious accusation. It's unfair to my
 17 client, to Lonmin. We would like to know whether we should
 18 address our debate with our unions differently, whether
 19 there should be central bargaining in the platinum
 20 industry, or whether collective bargaining is to be
 21 preferred, but that's phase 2. Do we really have to wait
 22 to 2014 to commence that debate? And it's unfair in a
 23 phase 1 context. We were appointed as one of – I was
 24 appointed as one of five lawyers so that we have
 25 continuity, we could represent our client up to the 23rd of

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1 January. Well, I've lost most of my colleagues. Our diary
 2 simply can't accommodate another year of this. We don't
 3 know till when we have to book. We don't know whether we
 4 are going to have a break in June or not. We don't know
 5 whether we go to August or December, and I don't blame it,
 6 but I really say that is unacceptable from the point of
 7 view of us as colleagues and the way we handle the evidence
 8 before you, Sir.

9 Let me then conclude to say on the evidence-in-
 10 chief we have just seen how the first police general is led
 11 off a statement which didn't take more than about a third
 12 of the time he told us his story. He was led for nearly
 13 four days. How long he's going to be cross-examined, I
 14 don't know. I don't want to think that far. But what I
 15 want to submit is that the time has really come for a
 16 direction from you, Chair, that there should be a
 17 comprehensive statement filed by every witness and that
 18 that statement should be the script for the evidence-in-
 19 chief, which should be briefer. There's a debate here
 20 between experts –

21 CHAIRPERSON: May I interpose by saying I
 22 thought we'd done that. My understanding was that
 23 statements were to be filed on oath of the evidence to be
 24 given in chief by the various witnesses to be called. I
 25 indicated that, I think yesterday, to Mr Semanya. I

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1 understand that sometimes after the statement has been
 2 prepared, extra material becomes relevant in the light of
 3 cross-examination and discovery and so on, but I want to
 4 make it clear that I would expect that before any witness
 5 is called from now on, that there should be available a
 6 statement, or perhaps a number of statements - in some
 7 cases we've got statements and then supplementary
 8 statements – dealing with the main points to be made by the
 9 witness in chief. That's certainly, it was also being
 10 intended to be the position, and insofar as it hasn't been
 11 the position, that's got to stop. I'm sorry to interrupt
 12 you, Mr Burger.

13 MR BURGER SC: Sir, my debate is through
 14 you, but I'm really talking to my colleagues. That
 15 direction you've given in the past; it wasn't complied
 16 with. It's never been complied with.
 17 [14:21] We all know that if one deals with experts in
 18 esoteric subjects, the obvious thing to do is ask the
 19 experts to get together to have a debate amongst themselves
 20 and to prepare a memorandum, tell us what they agree and
 21 what they don't agree. We do not have the luxury of time
 22 to have three different experts who appear to have never
 23 been spoken to each other, who have now debated through a
 24 police general, times 9? I don't know. This is not the
 25 way to do expert evidence.

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1 CHAIRPERSON: I'm sorry to interrupt you
 2 there, just to say that I certainly have no intention of
 3 allowing same points to be repeated ad nauseam with
 4 numerous witnesses. If the evidence on a particular point
 5 is being given – take for example the plan, the alleged
 6 merits or demerits of the plan – and answers are given to
 7 the criticism, well, the criticism won't get stronger by
 8 being repeated over and over again; the answers won't get
 9 stronger by being repeated over and over again, and I have
 10 no intention – and I want everybody to know that now – I'm
 11 not going to allow that kind of unnecessary repetition.
 12 Thank you, Mr Burger, please proceed. I'm sorry to have
 13 interrupted you.

14 MR BURGER SC: Chair, but we've done you
 15 and the Commission a disservice in the way we've
 16 interrogated, cross-examined in this inquiry, and may I ask
 17 you to give us a direction in due course, if you should be
 18 so inclined, where there is a time limit on the length for
 19 any witness to give evidence, where the cross-examiners, we
 20 have to agree on who the lead cross-examiner will be.
 21 Hopefully it will be typically somebody from the evidence
 22 leaders, but it might be one of our colleagues, depending
 23 on the nature of the evidence, that that main cross-
 24 examiner will have some latitude in cross-examination - a
 25 day, whatever, as long as one can coherently cross-examine

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1 – to make the points to be made, but thereafter, Sir, that
 2 whoever is not a lead cross-examiner, will be limited to –
 3 I've suggested in the past 30 minutes, that's for you to
 4 direct us, but for a limited incision. We have seen in
 5 this inquiry cross-examination covering the same ground,
 6 not always as coherently as it should, over and over again.
 7 That is unfair to everybody around the table, and I call
 8 upon you, we've tried to agree, to discuss it, we can do
 9 that again, but I may well request you respectfully to give
 10 us a direction on how cross-examination is to go forward.
 11 Thank you for the opportunity. I'm sorry that I have to
 12 raise it, but it's a real concern with me, and I think I
 13 speak for some of my colleagues that it's a concern of
 14 ours.

15 CHAIRPERSON: In view of what you've said
 16 - I want to thank you for what you said, you have as you
 17 say, expressed concerns which have worried us on the
 18 Commission, and also the other instances and bodies of
 19 persons to whom you've referred. Is there anyone among the
 20 representatives of the parties who wishes to say something
 21 briefly in relation to what Mr Burger has said, or would
 22 you wish to do so on a subsequent occasion, in other words
 23 not have to deal with it now unprepared, as it were?
 24 Anyone? What I would like to suggest is this – Mr Msimang,
 25 you want to say something?

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1 MR MSIMANG: Thank you, Mr Chairman. I
 2 must say that one has to answer by shooting from the calve,
 3 because what was said, we're taken completely by surprise.
 4 It was not discussed with us, and you know, these are
 5 issues of concern, we know, of course, because lots of
 6 evidence has been led and in my opinion some of the people
 7 who were called and who were given the platform to stay for
 8 days there were not even at the scene as to exactly what
 9 happened. We have discussed this in the past and we have
 10 said that we should try and curtail the witnesses. That
 11 has not happened. There are people who've got versions, I
 12 mean our clients are directly involved in this. We don't
 13 want to see this matter running for ad infinitum. I mean
 14 we are, we travel with our own money to come and help these
 15 people. We are not paid a dime by the government, by
 16 anyone else, and we suffer lots of prejudice because if we
 17 were to pull out tomorrow, they are there without
 18 assistance. We certainly would want to see this matter
 19 running through. We objected yesterday when a witness who
 20 was part of drawing all these things immediately seems to
 21 turn an expert witness, but that was permitted to go on –
 22 CHAIRPERSON: I think if he was an expert
 23 he can give expert evidence, but I don't mean to interrupt
 24 you unduly, but may I interrupt you by making the
 25 suggestion which I think may address the problem you want

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1 to put to me. I know attempts have been made in the past
 2 to get the parties' representatives together to discuss
 3 ways of shortening the proceedings. Whether there are –
 4 clearly I would prefer to have the parties agree to a
 5 regime for shortening the proceedings rather than to impose
 6 it myself, although I may have to do that, if necessary,
 7 but I did speak to the evidence leaders yesterday about the
 8 matter and is it not possible that a meeting can be
 9 arranged once again, a further attempt made to get the
 10 representatives of the parties to agree at a meeting on a
 11 regime for shortening the proceedings? I've, as you know,
 12 repeatedly talked about the need for thorough investigation
 13 coupled with expedition and I have on several occasions
 14 pulled people up and said that I wasn't prepared to allow
 15 cross-examination on certain points. On the other hand I
 16 was reluctant to be too strict because I didn't want to
 17 create the impression that I was being unfair and I wasn't
 18 giving people chance, but may I suggest once again – I'm
 19 not stopping you, I'm just interposing this as a suggestion
 20 that you may be prepared to embrace - that a further
 21 attempt be made to have a meeting, presided over by the
 22 evidence leaders, to see whether a regime can't be devised
 23 to shorten the proceedings significantly without unduly
 24 prejudicing anybody. Would you be happy with that
 25 suggestion? Does that meet the concerns that you are

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1 expressing?
 2 MR MSIMANG: I support it wholeheartedly,
 3 Chairperson. I support it wholeheartedly. We would want
 4 to see this matter brought to finality. We are, as I say,
 5 some of us are paying from our pockets to come here every
 6 day and if really I were to suggest certain things,
 7 probably would be even that the people who should be called
 8 really would be the generals and the people who were
 9 involved in the shooting, because these are the people who
 10 were on the ground and tell us what happened on that day.
 11 We keep on getting witnesses and witnesses and we are not
 12 moving an inch. We want to see finality to this matter,
 13 Chairperson. It has cost my clients, it has cost us in
 14 particular a fortune to come and sit here and really, it's
 15 so painful to come and sit here the whole day and you ask
 16 yourself when you get back to the hotel, what has been
 17 achieved today, and you simply say I can't say what, we
 18 have not moved an inch.
 19 The other thing, we also want to know, going
 20 forward, as correctly stated by Mr Burger, if we can tell
 21 at this stage that this Commission is not going to reach
 22 the – June, come June would not even, probably this witness
 23 may still be in the box, judging by the way we go.
 24 CHAIRPERSON: If he's still in the box I
 25 will have failed in my duty; that I can tell you, but carry

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1 on.
 2 MR MSIMANG: But we also would like to
 3 know if, what extension is likely to be granted and if
 4 there are going to be break periods, what break periods,
 5 because some of – we've got other work in our offices that
 6 we have to take through. Thanks, Mr Chairperson.
 7 CHAIRPERSON: I can tell you we've
 8 already entered into negotiation with the President's
 9 office in regard to an extension. I can't tell you what
 10 extension they'll give us, but we have made strong
 11 representations to them. From their side concerns have
 12 been raised along the lines of those that we've heard
 13 today, so we've got to find a way of dealing with those
 14 concerns, bringing the Commission to a conclusion sooner
 15 rather than later, but on the other hand not in any way
 16 affecting the quality of the findings that are ultimately
 17 made. But may I suggest that you have the meeting that I
 18 suggested and then report back. You can report back to me
 19 and then we can deal with the matter, if necessary, in open
 20 Commission, otherwise we could have a meeting in chambers.
 21 In regard to the recess that had been requested,
 22 or the recess that's been requested, obviously once we've
 23 heard from the Presidency what their stance is in relation
 24 to the request we made to them, we will then be able to fix
 25 a time when the Commission will not be sitting, to address

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1 the other concern you made, but provisional dates have
 2 already been discussed and I understood that they were in
 3 the process of being circulated, but they're just
 4 provisional at this stage so I won't say anymore about them
 5 at this stage, but the need for a recess such as you've
 6 articulated is certainly, we're aware of that, and it will
 7 receive the necessary attention. But can I leave it there
 8 on the basis that you all promise, undertake solemnly to –
 9 I'll give Mr Bizos a moment – to attend a meeting with the
 10 evidence leaders to discuss the matters that have been
 11 canvassed this afternoon, and to see whether some kind of
 12 modus operandi can be worked out to achieve all the
 13 proposals that have been discussed. Mr Bizos?
 14 MR BIZOS SC: Mr Chairman, speaking on
 15 behalf of the Legal Resources Centre, our resources are not
 16 limitless. It's not the only case that we have to deal
 17 with, and I think steps should be taken to expedite the
 18 pace at which this – and may I indicate how many days our
 19 learned friend Mr Semenya has taken to lead this witness.
 20 In a Commission, and you, Mr Chairman, will recall that
 21 when we had, in criminal cases preparatory examinations,
 22 the evidence was given, or in commissions that some of us
 23 have been in it has been the habit where a very
 24 comprehensive statement is taken by the party involved; the
 25 witness goes into the witness box, "You signed this

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1 document under oath; do you adhere what you have said? Is
 2 there anything else that you want to quickly lead, Mr
 3 Semenya, over and above this lengthy statement?" Give him
 4 a few minutes to tell you about it, and allow the cross-
 5 examination to take and put limitations on me and everyone
 6 else against repetition.
 7 CHAIRPERSON: That can be discussed at
 8 the meeting, I suppose. Ideally one would like to proceed
 9 that way, but we have to remember there are people watching
 10 the proceedings on television; there are people in the
 11 auditorium, and so I would have thought some reasonably
 12 brief summary has to be given of the evidence-in-chief so
 13 that those present can understand what's happening, but my
 14 sympathies are in favour of the view you've expressed, but
 15 I would have thought some way of dealing with the point I
 16 have mentioned can always be borne in mind. Anyway, that
 17 can be discussed at the meeting that I trust will be held
 18 soon. Mr Semenya?
 19 MR SEMENYA SC: Chair, might I dispel any
 20 perception that we are six months down the line because of
 21 me.
 22 CHAIRPERSON: I don't think that that was
 23 the impression that was created. There are other people
 24 whose names could be mentioned, but won't be. But also to
 25 be serious for a moment, I think we may well have reached a

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1 psychological stage – that's why I'm glad Mr Burger said
 2 what he did now. I think a stage has been reached when I
 3 would hope that the bona fides of the Commission are
 4 apparent to all, that we haven't come here to find in
 5 favour of one side or against another, but if we're being
 6 fair to one side, we're not necessarily automatically being
 7 unfair to another, and it may well be that the cycle – I
 8 think it has been, the stage has now been reached where
 9 everybody agrees that we have to adopt a more expeditious
 10 way forward, without it being suggested that people are
 11 being hampered or one particular side is being unduly
 12 favour or prejudiced by the expeditious procedure that
 13 we're proposing to follow. But Mr Budlender, can we now
 14 proceed with your cross-examination, unless you or Mr
 15 Madlanga wish to say something first on the topic that's
 16 been raised?
 17 MR BUDLENDER SC: Chair, I had been asked
 18 to say something brief on behalf of our team, that we share
 19 the concern expressed by Mr Burger. There are a number of
 20 reasons why progress has not been at the pace which is
 21 necessary and desirable. Those reasons include the
 22 inadequacy of some of the statements submitted by parties,
 23 the length of some of the evidence-in-chief, and extended
 24 cross-examination which is sometimes repetitive and which
 25 sometimes deals with matters on which the witness is not

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1 able to give any evidence and has never purported to be
 2 able to give any evidence.
 3 As you know, Chair, we have made a number of
 4 attempts to reach agreement amongst the parties as to an
 5 expedited way forward. Unfortunately those efforts have
 6 been unsuccessful. We take the view that the Commission
 7 will not be able to achieve its purposes unless there's now
 8 a joint effort which will require the leadership and
 9 direction of the Commissioners, and much better cooperation
 10 amongst the legal representatives than has been achieved so
 11 far, and it doesn't avail, I'm afraid, to say everybody
 12 else must do better but me; that will take us nowhere, and
 13 so we all have to do better and that will require a team
 14 effort to do better and it will require people to take an
 15 attitude which says well, this might not be what I would
 16 most like to do but in the greater good, in the interest of
 17 the greater good we will give some ground. Unfortunately
 18 we haven't seen that from all of the parties thus far.
 19 CHAIRPERSON: Once the parties have
 20 perhaps had their meeting we can discuss it further. I'd
 21 want to avoid an impression though that while most of the
 22 parties have given their evidence and a fair degree of
 23 latitude has been allowed, so it would be apparent to all
 24 that everything was fair, I don't want the impression to be
 25 created that now that the police are starting to give

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1 evidence, the rules change. That would be an unfortunate
 2 impression which would not be justified, and as I said,
 3 some people, we've received feedback which I interpret as
 4 saying you're being unfair to us because you're being fair
 5 to the other side. Now that's not the way it works. I'm
 6 sure if one party complains of unfairness and the objection
 7 is upheld, it doesn't mean that one is automatically being
 8 unfair to the other side. That's never been my approach
 9 and I certainly, and I don't think any such criticism will
 10 be justified. So it's important that the police understand
 11 the points I've made, but still it doesn't mean that there
 12 aren't ways of expediting matters, and one way of doing it
 13 – of course I may as well say this now because I'm thinking
 14 about it; we had an unfortunate situation in the beginning
 15 of this witness's evidence - and I'm not criticising Mr
 16 Semenya for it but just I'm mentioning it because I don't
 17 want it to ever happen again – when a witness comes and
 18 gives a long recital of his or her life's history, gives a
 19 curriculum vitae, that's unnecessary, and I'm not proposing
 20 to allow that in future. If it's intended to lead evidence
 21 of the CV of the witness, that can be produced in writing,
 22 can be handed up, the witness can confirm it's correct, and
 23 possibly a short little summary can be given lasting a
 24 couple of minutes, of the broad outline, but I don't
 25 propose ever to allow anybody to give a detailed curriculum

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1 vitae unless that procedure is followed. Having said that,
 2 we will close off this discussion for the moment. I hope
 3 to receive speedy feedback on the meeting that's been
 4 agreed to. Mr Budlender, would you like to cross-examine
 5 the witness once what I've just said has been interpreted?
 6 [14:41] CROSS-EXAMINATION BY MR BUDLENDER SC:
 7 Thank you, Chair. General Annandale, I'm sure you'll agree
 8 that what happened at Marikana on the 16th of August last
 9 year was a tragedy for the people affected directly, and
 10 for the police service, and for our country?
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 dit is ongetwyfeld so.
 13 MR BUDLENDER SC: And I know that you
 14 will also agree that one of the reasons for the
 15 establishment of this Commission is to help all of us to
 16 ensure that we don't again have such a tragedy?
 17 GENERAAL-MAJOOR ANNANDALE: Dit is
 18 presies hoe ek dit verstaan, Voorsitter.
 19 MR BUDLENDER SC: And I want to clarify
 20 between us that while you will not be surprised to learn
 21 that I disagree with some of the things that you suggest,
 22 or that I want to question whether they're correct, my
 23 questions are not aimed at tripping you up or at scoring
 24 points.
 25 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar

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1 dit so, Voorsitter.
 2 MR BUDLENDER SC: They are aimed at
 3 identifying what should be done or should not be done if we
 4 want to avoid a repetition on this tragedy. I don't expect
 5 you to answer that. I'm explaining myself. Also by way of
 6 explanation, I'm not going to ask you questions about the
 7 detail of what happened on the ground on the 16th of August
 8 because you were in the JOC, not on the ground. We'll
 9 raise those questions with the police officers who were on
 10 the ground; that by way of preliminary. Then unless you
 11 want to comment, shall I proceed?
 12 GENERAAL-MAJOOR ANNANDALE: U kan gerus
 13 voortgaan, Meneer.
 14 MR BUDLENDER SC: General, am I correct
 15 in understanding that you played a central role in
 16 coordinating the preparation and presentation of the police
 17 case before this Commission?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 ek was een 'n hele span wat betrokke was.
 20 MR BUDLENDER SC: I understand that.
 21 You're one of the leaders of that team.
 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 ek is 'n generaal-majoor in die Suid-Afrikaanse
 24 Polisiediens. Uit die aard van my rang en my betrokkenheid
 25 daar is ek een van die voorste persone, ja.

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1 MR BUDLENDER SC: And as far as the
 2 police opening statement and the SAPS presentation exhibit
 3 L are concerned, am I correct in assuming that you saw both
 4 of them before they were presented to the Commission?
 5 GENERAAL-MAJOOR ANNANDALE: Ek het wel
 6 beide dokumente onder oë gehad, dit is korrek.
 7 MR BUDLENDER SC: General, I think you've
 8 in fact yourself said this, that the first goal of the
 9 SAPS, particularly in public order situations, is to
 10 resolve the conflict and avoid confrontation.
 11 GENERAAL-MAJOOR ANNANDALE: Dit is
 12 korrek, Voorsitter.
 13 MR BUDLENDER SC: The essence of Public
 14 Order Policing is tolerance and flexibility. It's referred
 15 to in one of the prescripts as the highest degree of
 16 tolerance.
 17 GENERAAL-MAJOOR ANNANDALE:
 18 Verdraagsaamheid is verseker sodanig vermeld.
 19 MR BUDLENDER SC: And we know from the
 20 prescripts that the police are instructed that they must
 21 maintain tolerance even if hostile words and insults are
 22 directed at them, even if objects are thrown at them.
 23 GENERAAL-MAJOOR ANNANDALE: Dit is so,
 24 Voorsitter.
 25 MR BUDLENDER SC: Now if we come down

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1 specifically to Marikana, it was in that spirit of
 2 tolerance that the police service tried to find a
 3 resolution of the dispute.
 4 GENERAAL-MAJOOR ANNANDALE: Met sodanige
 5 benadering, ja, om wet en orde te handhaaf.
 6 MR BUDLENDER SC: And we know that the
 7 rock drill operators wanted to speak to management, and
 8 this was their repeated demand from the 10th of August.
 9 GENERAAL-MAJOOR ANNANDALE: Ja, ek weet
 10 nie, Voorsitter, of die groepie wat die sogenaamde "leiers
 11 5" was, of hulle almal rotsbreek-operateurs was nie. Ek
 12 weet regtig nie.
 13 MR BUDLENDER SC: I understand. It was
 14 the failure to achieve that interaction with management
 15 which raised the temperature of the dispute.
 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 dit was oorgedra aan Generaal Mpembe dink ek alreeds op die
 18 13de en dit was ook aan die polisie onderhandelaars en
 19 beveling by name Brigadier Calitz oorgedra dat hulle
 20 verskil – as ek nou net kan min of meer dit saamvat – hulle
 21 verskil is nie met die polisie nie maar met die mynbestuur.
 22 MR BUDLENDER SC: Thank you, General.
 23 That's just the point I was going to make, yes. Now slide
 24 L133 says that the police strategy is to enter into
 25 negotiations. Look at the last bullet there, General.

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1 GENERAAL-MAJOOR ANNANDALE: Ja, dit is
 2 reg. Ek neem dit so waar en dit is so.
 3 MR BUDLENDER SC: The aim was to try to
 4 resolve the matter without going to what is called in
 5 police language a tactical resolution.
 6 GENERAAL-MAJOOR ANNANDALE: As ons los
 7 daarna verwys, ja.
 8 MR BUDLENDER SC: Now if one was going to
 9 reach some agreement, one needs to understand what the
 10 different parties wanted in this situation. Clearly as
 11 it's a negotiation, you need to know what each of the
 12 parties want.
 13 GENERAAL-MAJOOR ANNANDALE: Ja,
 14 agtergrond moet jy sekerlik van bewus wees, maar dit was
 15 nie ons intensie om op arbeids-verwante aspekte in elk
 16 geval te onderhandel nie.
 17 MR BUDLENDER SC: I understand that and I
 18 want to just identify briefly what each of the parties was
 19 wanting out of the situation. Firstly the police, what the
 20 police wanted, the South African Police Service wanted, was
 21 very clear; that the strikers should lay down their weapons
 22 and leave the koppie.
 23 GENERAAL-MAJOOR ANNANDALE: Een van die
 24 aspekte, ja.
 25 MR BUDLENDER SC: What Lonmin wanted was

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1 clear; they wanted the strikers to leave the koppie and go
 2 back to work.
 3 GENERAAL-MAJOOR ANNANDALE: Ek hoor wat u
 4 sê.
 5 MR BUDLENDER SC: And what the strikers
 6 wanted was they wanted Lonmin to negotiate with them and to
 7 increase their wages.
 8 GENERAAL-MAJOOR ANNANDALE: Ek neem
 9 kennis.
 10 MR BUDLENDER SC: Now I'm sure you'll
 11 agree, General, from your experience that usually
 12 successful negotiation involves some give and take by the
 13 different parties.
 14 GENERAAL-MAJOOR ANNANDALE: Dit is so,
 15 Voorsitter.
 16 MR BUDLENDER SC: Lonmin's proposal was
 17 that the workers should go back to work and they would then
 18 talk to them through the union which had bargaining rights,
 19 NUM.
 20 GENERAAL-MAJOOR ANNANDALE: Een van die
 21 aspekte wat ek so verstaan het, ja.
 22 MR BUDLENDER SC: And it seems to me that
 23 that was really the core problem which Colonel McIntosh
 24 had, because all he could propose was that the – or I'm
 25 sorry, the problem that Colonel McIntosh had was that he

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1 had nothing to offer the strikers. All he could propose
 2 was in effect that they should capitulate. They should
 3 surrender their weapons, end the strike, go back to work,
 4 and negotiate through NUM.
 5 GENERAAL-MAJOOR ANNANDALE: Ja, dit is
 6 seker iets wat hy gehad het om hulle te offer.
 7 MR BUDLENDER SC: Well, yes, but that was
 8 always open to them. He wasn't able to offer them anything
 9 more than they already had.
 10 GENERAAL-MAJOOR ANNANDALE: Ek dink van
 11 die polisie kant af, van sy kant af het hy dit net
 12 bevestig. Daar is 'n kanaal, daar was 'n bereidwilligheid
 13 van die werkgewer om te sit en dit te bespreek, wanneer die
 14 werkgewer nie in 'n abnormale situasie wil onderhandel met
 15 so 'n groot groep swaar gewapende individue nie, en
 16 McIntosh het hierdie probeer oorkry dat lê die wapens neer,
 17 synde dat daar 'n konstruktiewe geleentheid is om te
 18 onderhandel, om te praat, om hierdie verskille uit die weg
 19 te ruim.
 20 MR BUDLENDER SC: Did management say that
 21 they were willing to negotiate with representatives of the
 22 strikers, chosen by the strikers themselves?
 23 GENERAAL-MAJOOR ANNANDALE: Daar is
 24 oorgedra dat die bestuur nie na die koppie toe gaan nie,
 25 dat daar unies is wat behoorlik verteenwoordig is, en dat

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1 sou daar 'n groepie wees wat deur hulle unie bereid is om
2 te onderhandel, dan is hulle ontvanklik daarvoor.
3 MR BUDLENDER SC: General, you yourself
4 said in your evidence that Lonmin indicated that they can't
5 enter into negotiations with AMCU because there's already a
6 two-year agreement signed.
7 GENERAAL-MAJOOR ANNANDALE: Op salaris
8 onderhandeling, ja. Ek het nie verwys na pertinent salaris
9 onderhandeling nie, maar daar is 'n twee-jaar ooreenkoms
10 reeds bereik gewees.
11 MR BUDLENDER SC: That was the complaint
12 of the strikers; they said we don't want to talk through
13 the NUM because we don't have confidence in the NUM; we
14 want to deal directly with Lonmin about wages.
15 GENERAAL-MAJOOR ANNANDALE: Ek hoor wat u
16 sê.
17 MR BUDLENDER SC: I also wasn't there.
18 That's my understanding of it.
19 GENERAAL-MAJOOR ANNANDALE: Ja,
20 Voorsitter, hulle het gesê hulle wil met die mynbestuur
21 praat.
22 MR BUDLENDER SC: General, could you go
23 to the opening statement of the police, FFF9? Mr Pretorius
24 has a copy available for you.
25 CHAIRPERSON: Mr Budlender, I see it's

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1 now 3 o'clock. I wonder whether you wouldn't like to
2 direct the attention of the Major-General to the passage in
3 the opening statement that's relevant to your questions
4 that you're going to ask, and he can perhaps look at it
5 while he's having a cup of tea and then we can reassemble
6 after that and you can carry on.
7 MR BUDLENDER SC: I'd be happy to do
8 that, Chair. General, do you have the statement? Could
9 you go to page 8, the foot of the page, the very last
10 sentence, you see there's a sentence starting "Senior
11 officers."
12 [15:01] MAJOR-GENERAL ANNANDALE: Yes.
13 MR BUDLENDER SC: I just want to read
14 that to you. It says, "Senior officers also made efforts
15 to get Lonmin management to address workers, but
16 management's constant refrain was that it was not prepared
17 to negotiate outside collective bargaining structures." Is
18 that your understanding of what the position was?
19 GENERAAL-MAJOOR ANNANDALE: Dit is reg.
20 Ek het geantwoord van my perspektief in die gesamentlike
21 operasionele sentrum in terme van die terugvoer, in terme
22 van die samesprekings wat Generaal Mpembe gehad het was dit
23 so oorgedra.
24 MR BUDLENDER SC: Thank you, Chair.
25 CHAIRPERSON: We'll take the tea

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1 adjournment.
2 [COMMISSION ADJOURNS COMMISSION RESUMES]
3 [15:30] CHAIRPERSON: The Commission resumes. U
4 is nog steeds onder eed. Majoor-Generaal.
5 CHARL ANNANDALE: s.o.e.
6 CHAIRPERSON: Mr Budlender?
7 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
8 Thank you, Chair. General, do you know that before these
9 events, in other words before August, Lonmin management met
10 with representatives of the rock drill operators on a
11 number of occasions?
12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 ek is bewus van ontmoetings.
14 MR BUDLENDER SC: And are you aware that
15 the purpose of those meetings was to discuss the amount
16 which the rock drill operators are paid and a possible
17 increase in that amount?
18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 ek is bewus dat daar 'n ooreenkoms was dat hulle 'n sekere
20 bedrag sou kry. Ek weet nie of hulle 'n bedrag geëis het
21 en toe daar 'n verhoging was nie, so ek het nie
22 besonderhede van die samesprekings nie.
23 MR BUDLENDER SC: Yes, and I understand,
24 and I'm sure we all do, that the South African Police
25 Service does not consider it part of its mandate to get

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1 involved in debates about how much mineworkers are or
2 should be paid.
3 GENERAAL-MAJOOR ANNANDALE: Dit is reg
4 so, Voorsitter.
5 MR BUDLENDER SC: But with the benefit of
6 hindsight – and I stress, with the benefit of hindsight –
7 would it not have been a good thing if the South African
8 Police Service had said the following to Lonmin, "Look
9 here, you've previously spoken to representatives of the
10 rock drill operators about the amounts of money they are
11 paid. Why don't you speak to representatives of this
12 group, if necessary through a trusted mediator with
13 experience of labour matters?"
14 MR BURGER SC: I object to that question,
15 Chair. That's a matter for argument. What this witness
16 thinks should have been done by the police at that point is
17 quite irrelevant. It doesn't bind you. That's a matter
18 for argument. Mr Da Costa will give evidence; he's filed a
19 full statement on the negotiations at the time, and in my
20 submission this debate goes nowhere with this witness.
21 MR BUDLENDER SC: With respect, no. The
22 purpose of this Commission is to try to avoid a repetition
23 of what happened at Marikana. This is a very experienced
24 policeman who now with the benefit of hindsight can look
25 back and say what could have been done differently and what

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1 might the outcome have been. He can only express an
2 opinion. He can't express a judgment. That's for the
3 Commission, but his opinion must be helpful to the
4 Commission in making, forming its own judgment.

5 MR BURGER SC: Chair, this is a very
6 experienced policeman who has disavowed any expertise in
7 labour relations, in negotiations between a mine and its
8 workers, and his view on that will be irrelevant and will
9 not assist you.

10 CHAIRPERSON: I'll allow the question.
11 It seems to me that the question is what should the police
12 have done in order to restore law and order, and this is a
13 possible approach which could have been – I'll allow the
14 question, but I think inherent in what Mr Burger is saying
15 is this is not a matter to be gone into in much depth with
16 the witness.

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 wat ons nou weet met nabetrugting en gegewe die erns van
19 die uitkoms, sal, van die polisie kant af sal ons
20 waarskynlik 'n ekstra poging aanwend, sonder om die
21 kwotasie wat aangehaal is deur Adv Budlender noodwendig die
22 strekking van die woorde sodanig te gebruik, Voorsitter, en
23 alhoewel ons totaal respekteer dat daar 'n arbeidswetgewing
24 is, sal ons versoek gegrond wees op die feit dat dit 'n
25 abnormale situasie is, en ek wil amper sê dat ons ons

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1 diskresie moet gebruik om die reëls te buig.

2 CHAIRPERSON: I didn't understand him to
3 say "we should have." It's more a question of should, he's
4 stressing he's speaking from hindsight, more looking to the
5 future as to what should be done rather than what should
6 have been done in the past. I think that's a fair
7 interpretation. Is that correct?

8 MR MAHLANGU: That is correct, that with
9 hindsight that we as the police should, that is now in
10 future.

11 CHAIRPERSON: Alright.

12 GENERAAL-MAJOOR ANNANDALE: En sê dat die
13 potensiaal vir lewensverliese sodanig dat ons uit ons pad
14 uit moet gaan om te kyk of ons nie kan 'n oplossing kry, of
15 'n voorkomende oplossing kry nie.

16 CHAIRPERSON: Again I'm sorry, but I
17 think the point he's made is a preventative resolution, one
18 which, a resolution –

19 GENERAAL-MAJOOR ANNANDALE: Voorkomend –

20 CHAIRPERSON: - which prevents things
21 from happening.

22 GENERAAL-MAJOOR ANNANDALE: Laastens wil
23 ek net sê dat ons kan nie gesien word as die polisie dat
24 ons iets gaan afdwing nie, so dit sal, ons sal nog steeds
25 die besluit moet regverdig. Vanaf die polisie het ons 'n

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1 eerste verantwoordelikheid om wetgewing te respekteer.

2 MR BUDLENDER SC: Thank you, General, I
3 think that's very fair, if I may make a remark of my own.
4 General, while you mentioned a need to enforce the law, and
5 it might be helpful if we obtained clarity as to the
6 parameters of the law in a situation of gatherings like
7 this. Now I've been through the Regulation of Gatherings
8 Act, which I imagine you know better than I do; it does not
9 require people to obtain permission to attend a gathering.
10 Is that right? It deals with permission for convening
11 gatherings, but not permission for attending a gathering.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 ek dink die groot verskil is ja, dat dit het 'n verskuiwing
14 vanaf toestemming verkry tot kennis gee van sodanige
15 byeenkoms.

16 MR BUDLENDER SC: That's as I understand
17 it. Of course there is then an offence created if you're
18 ordered to disperse and you don't disperse, but until that
19 order is given the presence at the gathering is not the
20 problem; it's about, as you say, giving notice and
21 convening. Is that correct?

22 GENERAAL-MAJOOR ANNANDALE: Dis korrek.

23 MR BUDLENDER SC: Now we know that there
24 were people who were on the koppie who were carrying
25 dangerous weapons and some very dangerous weapons. That of

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1 course is also an offence.

2 GENERAAL-MAJOOR ANNANDALE: Die dra van
3 gevaarlike wapens, ja, in terme van die Wet op Gevaarlike
4 Wapens.

5 MR BUDLENDER SC: But at all times the
6 people who sat on the koppie without carrying an illegal
7 weapons were not committing any offence.

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 nou moet ek versigtig wees. Ek weet ons open 'n dossier
10 vir ondersoek as daar so 'n byeenkoms is sonder dat dit
11 deur die prosesse gegaan het.

12 MNR MAHLANGU: Daar is nie toestemming
13 verleen?

14 GENERAAL-MAJOOR ANNANDALE: Ja, dis nie –

15 MR MAHLANGU: And there was no permission
16 prior granted for it.

17 CHAIRPERSON: I think he said no notice
18 given. That's the whole point; you don't need permission,
19 you've got to give notice.

20 MR MAHLANGU: If I may correct it as
21 that, if there has been no notice given.

22 CHAIRPERSON: Mr Budlender, it's not
23 appropriate to cross-examine the witness on the law. You
24 can I suppose on his understanding of the law. The point
25 you're making, I presume, is that the people on the koppie

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1 who didn't have dangerous weapons weren't committing an
 2 offence and therefore – one doesn't have to debate, it's
 3 not appropriate to debate the law with the General, is it?
 4 MR BUDLENDER SC: The General's opinion
 5 as to the law is no more relevant than my opinion on the
 6 law, but I want to see whether we have the same
 7 understanding of the law, which is that leaving aside the
 8 people who carry illegal weapons, and leaving aside the
 9 people who convene a meeting without giving notice, the
 10 people who just attend without carrying dangerous weapons
 11 are not committing any offence. That's my understanding.
 12 Is that also your understanding, General?
 13 MR SEMENYA SC: Chair, of course the
 14 debate shouldn't be about law, but the provisions of such
 15 [inaudible] are quite different. They created various
 16 penalties for this, but over and above that we know there
 17 had been an interdict for the miners not to enter into an
 18 unprotected strike.
 19 CHAIRPERSON: - what we're talking about
 20 is people being on the koppie. We're not talking about
 21 people striking, and we can solve it very easily. The
 22 police, were the police at any stage seeking to deal with
 23 people for contempt of court who were not complying with
 24 the interdict?
 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek weet nie of daar so 'n ondersoek aan die gang was nie.
 2 Ek kan nie –
 3 MR BUDLENDER SC: Chair, I'll move on.
 4 General, the next topic I want to discuss is the plan. Now
 5 we know that by the evening of Wednesday, 15 August, the
 6 plan had already been prepared.
 7 GENERAAL-MAJOOR ANNANDALE: Kan ek net
 8 vir u vra of u verwys na die plan gedateer die 13de
 9 Augustus wat sê "contingency plan," of na Operasie
 10 Platinum?
 11 MR BUDLENDER SC: I'm sorry, I'm
 12 referring to the version of Operation Platinum which I
 13 think was prepared on the 14th of August.
 14 GENERAAL-MAJOOR ANNANDALE: Dis reg, dis
 15 die operasionalisering wat begin het op die 14de in lyn met
 16 die beginsels van die Operasie Platinum.
 17 MR BUDLENDER SC: And I'm stating the
 18 obvious, but just to lay the platform, that you had seen it
 19 and General Mpembe, who was the overall commander, had seen
 20 it.
 21 GENERAAL-MAJOOR ANNANDALE: Dit is
 22 korrek, Voorsitter.
 23 MR BUDLENDER SC: Now in your evidence-
 24 in-chief you stated that at the JOC – or sorry, let me ask
 25 the question. There was a meeting which you referred to

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1 which was held at the JOC on the evening of the 15th of
 2 August, after you had met the representatives of the trade
 3 unions. Was that a JOCOM meeting or a less formal meeting?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 ons het elke dag het ons afgesluit met 'n terugvoer
 6 vergadering.
 7 CHAIRPERSON: I think it's a feedback
 8 meeting, is it, not briefing, feedback.
 9 MR BUDLENDER SC: And at that "terugvoer
 10 vergadering" on the evening of the 15th of August, you said
 11 you reported that on the 16th you would follow the same
 12 course as on the 15th, monitoring and negotiation.
 13 GENERAAL-MAJOOR ANNANDALE: Gegewe die
 14 terugvoer wat ons gegee het na afloop van die vergadering
 15 wat ons gehad het saam met die myn, asook die twee unies –
 16 MNR MAHLANGU: As u kan herhaal?
 17 GENERAAL-MAJOOR ANNANDALE: Gegewe die
 18 terugvoer wat ons gegee het aan ons lede na afloop van die
 19 vergadering wat was tussen die polisie, Lonmin, AMCU, en
 20 NUM, gesê dat ons die 16de se aktiwiteite gaan presies weer
 21 begin met 'n monitering in lyn met die terugvoer wat ons
 22 dan ontvang het pertinent van die AMCU president.
 23 MR BUDLENDER SC: Then there was a JOCOM
 24 meeting at 6 o'clock on 16 August 2012. The police have to
 25 get out of bed early.

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1 GENERAAL-MAJOOR ANNANDALE: Dit is
 2 korrek, Voorsitter.
 3 MR BUDLENDER SC: And we have the minutes
 4 of that meeting, which are exhibit TT4. I take it you've
 5 seen those.
 6 GENERAAL-MAJOOR ANNANDALE: Dit is
 7 korrek, Voorsitter.
 8 MR BUDLENDER SC: And we can accept that
 9 those minutes are correct? Perhaps it's unfair to ask the
 10 witness this, Chair. Perhaps I can ask him to have a look
 11 at it overnight and see if there's anything in those
 12 minutes which are not correct.
 13 CHAIRPERSON: I think that would be fair.
 14 [15:50] MR BUDLENDER SC: And could you also
 15 look, General, at the minutes of the JOCOM meeting at 13:30
 16 on the 16th of August. That's exhibit EE. So would you
 17 mind looking at both of those overnight and just, you can
 18 tell us in the morning, tell the Commission whether those
 19 minutes are correct.
 20 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar my
 21 huiswerk.
 22 MR BUDLENDER SC: General, would you in
 23 the meantime have a look at TT4, paragraph 2.3? Could you
 24 look at the fourth paragraph of paragraph 2.3 which starts
 25 with the word "deployment." Do you have that?

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1 GENERAAL-MAJOOR ANNANDALE: Dit is
2 korrek, ek het dit.
3 MR BUDLENDER SC: And I'll read it,
4 "Deployment will be done in line with stage 2 of the
5 operational strategy, show of force, prepositioning. Full
6 deployment will be done in accordance with the strategy
7 plan, but without the razor wire deployed; only the Nyalas
8 and wire trailers prepositioned," and then the matter which
9 I'd like to discuss with you is really in the next
10 paragraph. "If the situation escalates, stage 3 will be
11 implemented, but proper communication will be done with all
12 commanders when that decision is taken." You see that?
13 GENERAAL-MAJOOR ANNANDALE: Ek sien dit,
14 Voorsitter.
15 MR BUDLENDER SC: That correct reflects
16 what happened at that JOCOM meeting?
17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ek dink ek kan sommer nou antwoord, die korrektheid van die
19 notule, dat geeneen van die vergaderings wat ons gehou het
20 was gedoen in terme van vergaderings-prosedure soos wat die
21 res van ons dit ken nie. So dit sou beteken dat daar 'n
22 vooraf-opgestelde agenda is, dat notules van 'n vorige
23 vergadering sou voorgehou word, en dat daar korreksies
24 uitgewys sou word, regstellings gedoen word en dan dit as
25 sulks aanvaar word as 'n korrekte weergawe nie. Daar was

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1 eenvoudig net nie die luuksheid van tyd om dit te doen nie,
2 maar die punt wat Adv Budlender na verwys is dat dit 'n
3 redelike weergawe is.
4 MR BUDLENDER SC: That you accept, that
5 it was a reasonable version. Is that what you're saying?
6 MAJOR-GENERAL ANNANDALE: That part, ja.
7 MR BUDLENDER SC: And can I refer you to
8 your statement, which is exhibit GGG1 at page 7. At the
9 top of the page you say, if one goes to the previous page
10 one sees that this is in the context of the JOCOM meeting
11 at 6 o'clock on the 16th, and you say at the top of the
12 page, "It was agreed that a contingency must be in place if
13 the call to lay down arms fails and that the South African
14 Police Service will again deploy a visible monitoring force
15 with an addition of standby POP Nyalas with barbed wire
16 trailers position to deploy in case of aggressive actions
17 from protesters." You see that?
18 GENERAAL-MAJOOR ANNANDALE: Ek sien dit,
19 Voorsitter.
20 MR BUDLENDER SC: And that's really
21 consistent with what's in that minutes which we've just
22 looked at, where it refers to deployment, stage 3
23 implemented if the situation escalates.
24 GENERAAL-MAJOOR ANNANDALE: Die paragraaf
25 in my verklaring verwys nie na "stage 3," fase 3 nie, nee.

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1 Die betrokke paragraaf wat voorgehou is verwys na 'n
2 gedeeltelike, of die begin van 'n fase 2 ontplooiing. As
3 ek kan, in die tweede sin van bo af op die bladsy waar die
4 gedeelte, "again deploy a visible monitoring force," verwys
5 na die vlak 1 ontplooiing, en dan wat bykom, and I quote,
6 "an addition of standby POP Nyalas with barbed wire
7 trailers positioned to deploy."
8 CHAIRPERSON: Stage 1, in case of
9 aggressive action from the protesters.
10 MR BUDLENDER SC: Do I understand you
11 correctly, General, what you're saying is the aggressive
12 actions will trigger the positioning of the trailers, not
13 the deployment of the wire? Is that what you mean?
14 GENERAAL-MAJOOR ANNANDALE: Nee –
15 MR BUDLENDER SC: What will the
16 aggressive action from the protesters trigger in that
17 paragraph?
18 GENERAAL-MAJOOR ANNANDALE: Ek moet u
19 ongelukkig terugvat. Die vorige aand het ons gesê ons sal
20 'n monitering doen, so kom ons doen "stage" 1. Egter met
21 die intelligensievoorigting en toeligging die oggend, het
22 die JOCOM toe besluit dat ons gaan 'n gedeeltelike fase 2
23 mee begin. Gedeeltelik beteken ons het die Nyalas met die
24 lemmetjiesdraad sleepwaens in posisie geplaas, maar ons het
25 nie die draad ontplooi nie. Die aggressiewe aksies was ook

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1 gewees dat ons nog steeds mobiel kan wees sou die groep
2 besluit om te beweeg na enige sleutelpunt, maar ook om 'n
3 defensiewe aksie daar te stel sou daar dan 'n, die situasie
4 verander. So Voorsitter, dit was net 'n voorkomende aksie
5 wat ons in plek reeds gereed gehad het.
6 MR BUDLENDER SC: Thank you, General, I
7 think I understand. Chair, is this a convenient time to
8 take the adjournment?
9 CHAIRPERSON: Yes, the Commission will
10 adjourn until 9:30 tomorrow morning. I want to repeat, at
11 9:30 we will have the argument on the removal of the
12 Commission to Centurion and thereafter we will proceed with
13 General Annandale's evidence.
14 [COMMISSION ADJOURNED]
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