

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 82 29 APRIL 2013 PAGES 8623 TO 8727

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 29 APRIL 2013]
 2 [10:08] CHAIRPERSON: The Commission resumes. I
 3 see there's a document here which has been put on our
 4 desks. Mr –
 5 MR BUDLENDER SC: That's from us, Chair.
 6 CHAIRPERSON: Yes, and what is it?
 7 MR BUDLENDER SC: It's going to be – it's
 8 a document discovered by Lonmin which is going to be used
 9 in cross-examination.
 10 CHAIRPERSON: What is the document, or is
 11 it a secret you want to keep from the witness for the
 12 moment?
 13 MR BUDLENDER SC: No, it's what it says.
 14 It's a transcript of the debriefing by General Mpmembe on
 15 the 15th of August 2012, first with NUM and then with AMCU.
 16 CHAIRPERSON: Oh, I see. So do we give
 17 an exhibit number yet?
 18 MS PILLAY: We haven't, Chair. It will
 19 be GGG4.
 20 CHAIRPERSON: GGG4. If you're going to
 21 deal with it in cross-examination with the witness, was he
 22 present when this meeting took place?
 23 MR BUDLENDER SC: Yes, he was, Chair.
 24 CHAIRPERSON: Has he had an opportunity
 25 to read the document?

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1 MR BUDLENDER SC: I don't know, Chair.
 2 It's a document discovered by Lonmin and the witness was
 3 present at the meeting, or so I understand. He'll no doubt
 4 confirm –
 5 CHAIRPERSON: Are you going to deal with
 6 it before we take the tea adjournment?
 7 MR BUDLENDER SC: I was planning to,
 8 Chair, but if necessary I won't –
 9 CHAIRPERSON: I mean, we don't, you know
 10 I've said often here that I don't believe in litigation or
 11 commission by ambush, and so we want to be fair to
 12 everybody. Let's find out. Mr Semenya, have you any
 13 suggestions in regard to this document and its use in
 14 cross-examination of this witness?
 15 MR SEMENYA SC: We have just been given
 16 the document now. I can confirm that we never consulted on
 17 the document with the witness at all. I don't know which
 18 aspects I've got –
 19 CHAIRPERSON: He has spoken a bit about
 20 this meeting, but to be fair to him, if he's going to be
 21 questioned about it, I would have thought he should get a
 22 chance to read it first.
 23 MR SEMENYA SC: Indeed, Chair.
 24 CHAIRPERSON: So you go along with that.
 25 Would it greatly inconvenience you, Mr Budlender, if we ask

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1 you to hold your fire on this particular issue over until
 2 after the tea adjournment?
 3 MR BUDLENDER SC: Chair, it arises right
 4 at the beginning of the cross-examination and a great deal
 5 flows from it. So I would rather, if necessary, if the
 6 witness –
 7 CHAIRPERSON: - take for the witness to
 8 read the document, would you say?
 9 MR BUDLENDER SC: I don't know, Chair. I
 10 can tell you which pages I'm interested in, is from page –
 11 CHAIRPERSON: It's only 20 pages. We'll
 12 adjourn for 10 minutes.
 13 MR BUDLENDER SC: Chair, can I just say,
 14 it's that the –
 15 CHAIRPERSON: Mr Budlender, it's a 20-
 16 page document. We'll adjourn for 10 minutes –
 17 MR BUDLENDER SC: Chair, could I just
 18 explain, it consists of the transcripts of two minutes.
 19 CHAIRPERSON: Yes?
 20 MR BUDLENDER SC: I'm interested only in
 21 the transcript of the first meeting –
 22 CHAIRPERSON: I see, so it's to page?
 23 MR BUDLENDER SC: It ends at page 678.
 24 CHAIRPERSON: I see. So it's only eight
 25 pages.

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1 MR BUDLENDER SC: Yes.
 2 CHAIRPERSON: So we'll still adjourn for
 3 10 minutes.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [10:34] CHAIRPERSON: The Commission resumes.
 6 Majoor-Generaal, ek neem aan u het kans gekry om die hele
 7 dokument deur te lees, of hoe?
 8 GENERAAL-MAJOOR ANNANDALE: Ek het
 9 inderdaad, dankie Voorsitter.
 10 VOORSITTER: Ek moet u daaraan herinner
 11 dat u nog steeds onder eed is.
 12 CHARL ANNANDALE: s.o.e.
 13 CHAIRPERSON: Mr Budlender?
 14 CROSS-EXAMINATION BY MR BUDLENDER SC:
 15 Thank you, Chair. General Annandale, on Friday you
 16 received certain homework to look at, some minutes, to
 17 check that you were satisfied with them. Have you been
 18 able to do that?
 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 20 vergun my net, voor ek dit antwoord, om net die agbare
 21 Voorsitter en die lede van die Kommissie te bedank vir die
 22 geleentheid wat ek gehad het om Vrydag die begrafnis by te
 23 woon. Dan in antwoord op u vraag, u het die huiswerk op
 24 Donderdag gekry en ek het inderdaad daarna gekyk.
 25 MR BUDLENDER SC: General, you explained

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1 on Thursday that these are not the minutes of an annual
 2 general meeting of an association or the minutes of the
 3 board of directors of a company, so they aren't formal and
 4 they aren't detailed. I can understand that they will not
 5 be comprehensive.
 6 GENERAAL-MAJOOR ANNANDALE: Dit is
 7 korrek.
 8 MR BUDLENDER SC: But can we accept that
 9 what is stated in those minutes is correct?
 10 GENERAAL-MAJOOR ANNANDALE: Met die
 11 uitsondering van grammatika en spelfoute en dan die enkele
 12 ander aspekte, is dit oor die algemeen korrek.
 13 MR BUDLENDER SC: Thank you. Now could I
 14 ask you just to have another brief look at your statement –
 15 CHAIRPERSON: Before we move on, wat is
 16 die enkele ander aspekte? What are the few other aspects
 17 apart from spelling and grammar?
 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 19 ek sal deur die notas moet werk om daarop, die Kommissie
 20 daarop te wys. Die –
 21 MR BUDLENDER SC: General, I don't want
 22 to – well it is the Chair's question, so I don't want to
 23 interrupt the Chair's question. There are only a few
 24 things in those minutes to which I want to refer you, and
 25 I'm happy for you to – how many matters are there that are

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1 problematic in the minutes?
 2 GENERAAL-MAJOOR ANNANDALE: Ek kan hulle
 3 nou nie vinnig tel nie, maar 'n hele aantal.
 4 MR BUDLENDER SC: Chair, I'm concerned we
 5 may spend a long time going through minutes which may not,
 6 an amendment which may not be material. I'm prepared to
 7 take my chances.
 8 CHAIRPERSON: Okay, very well.
 9 MR BUDLENDER SC: Then General, could we
 10 go to your statement which we dealt with last week, exhibit
 11 GGG1, and could we go back to the top of page 7, which we
 12 discussed last week. I just want to make sure that I
 13 understood your evidence correctly. You'll see it says,
 14 "It was agreed that a contingency must be in place if the
 15 call to lay down arms fails, and that the South African
 16 Police Service will again deploy a visible monitoring force
 17 with an addition of standby POP Nyalas with barbed wire
 18 trailers positioned to deploy in case of aggressive actions
 19 from the protesters." Now the question is this – as I
 20 understand your evidence last week, that last part of that
 21 paragraph is intended to say the Nyalas with the barbed
 22 wire trailers will be prepositioned in case there is
 23 aggressive action from the protesters. Is that correct?
 24 GENERAAL-MAJOOR ANNANDALE: Dit is
 25 korrek, en ek het ook verduidelik dat dit tweeledig is.

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1 MR BUDLENDER SC: Thank you, I got that.
 2 Then can I move on, related to that, before the Nyalas with
 3 barbed wire trailers were prepositioned, the strikers did
 4 not make any threats to the police.
 5 GENERAAL-MAJOOR ANNANDALE: Verwys u nou
 6 na die betrokke Donderdagoggend, die 16de?
 7 MR BUDLENDER SC: Well, let's start with
 8 the 16th, Thursday the 16th, yes. Were there any threats
 9 before the prepositioning took place?
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 daar kon nie dreigemente gewees het nie want die polisie
 12 was nog nie ontplooi nie. Die posisionering van die
 13 lemmetjiesdraad het gesamentlik met 'n vlak 1 ontplooiing
 14 plaasgevind.
 15 MR BUDLENDER SC: And then just one other
 16 preliminary matter. As you said in your evidence-in-chief,
 17 implementing stage 3 was a last resort.
 18 GENERAAL-MAJOOR ANNANDALE: Dit is
 19 korrek.
 20 MR BUDLENDER SC: Now can we go – or
 21 alright, I'm sorry. Now we know that General Mpembe was
 22 the overall commander of the operations.
 23 GENERAAL-MAJOOR ANNANDALE: Dit is
 24 korrek.
 25 MR BUDLENDER SC: On the evening of

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1 Wednesday the 15th of August you and he and General Naidoo
 2 had meetings at Lonmin with the leadership of AMCU and the
 3 NUM.
 4 GENERAAL-MAJOOR ANNANDALE: Dit is
 5 korrek, Voorsitter.
 6 MR BUDLENDER SC: Can we go to the
 7 transcript which Lonmin has provided of that meeting, and
 8 can I take you to page 672. This is exhibit GGG4. Right,
 9 and I'm going to read from the second line. This is what
 10 General Mpembe says. "So we need also to address to that,
 11 because that is what we need to address in terms of, but
 12 the issue of whether they hand in firearms or they hand in,
 13 because we just want to assure you the intelligence is they
 14 are hiding out in their blankets." He goes on, "It is
 15 going to be bloodshed. We still have to resolve that. We
 16 still have to resolve that, and we are no more prepared.
 17 We've already lost two police officers. We are no more
 18 prepared and we are not going to lose another police
 19 officer." And then the last sentence of that paragraph, "I
 20 know that you also come up and say but why are the police
 21 not intervening, but they cannot intervene in the situation
 22 that we see that it is going to cause more harm than good."
 23 Now General, I'll ask you some questions about this
 24 afterwards, but you recall that General Mpembe said that?
 25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 nie die presiese woorde soos dit nou weergegee word nie.
 2 Ek onthou strekkings.
 3 MR BUDLENDER SC: I accept that. That's
 4 the general thrust of what he said.
 5 GENERAAL-MAJOOR ANNANDALE: Dit is
 6 korrek.
 7 MR BUDLENDER SC: Then could we go to
 8 page 674, and you'll see at the foot of the page General
 9 Mpmembe speaking again. Then I'm going to read what he says
 10 from the third line from the foot of the page. "Now I need
 11 to do my job and you all also call me to remove firearms.
 12 I cannot go there and disarm people. It would be
 13 bloodshed. So then I need and go in a specific house,
 14 disarm them. That is the only way." Do you recall that?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 weereens die breë strekking.
 17 MR BUDLENDER SC: What General Mpmembe was
 18 really saying was we've got to do it piece by piece, house
 19 to house, and he was asking NUM to help them find out where
 20 the weapons were being kept, in which houses. Do you
 21 remember that?
 22 GENERAAL-MAJOOR ANNANDALE: As 'n
 23 gedeeltelike benadering tot die oplos van die situasie, dis
 24 korrek.
 25 MR BUDLENDER SC: Then from line 7, "I

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1 need to be told, I need to go to the house because that is
 2 the only way - beating this elephant," I think it means
 3 eating this elephant, "bit by bit, because me going there
 4 to the mountain, disarming people, it is going to be
 5 bloodshed. It is going to be bloodshed. That one I can
 6 assure you. Those blankets they have and those things, I
 7 saw being cut by police officers in front of me, they did
 8 that." Then if we go to line 22 on that page, 675, if you
 9 were there, President, you could count how many people
 10 between 3 to 4 000, so if you charge those people with the
 11 number of police you have, with what they have cut the
 12 people, they are also psyched up. Definitely anyone would
 13 come up with that, whatever thing. They will have to act
 14 and we are also not prepared to use less bullets, and I
 15 know that you do not want us to shoot, shoot. Here it is
 16 that the police are shooting, are killing people, and we do
 17 not want to go that route, but at the same time we are also
 18 not prepared that our members should die, but we have a
 19 duty to disarm." Then at the foot of page 676, three lines
 20 from the foot of the page, "I cannot go to the mountain.
 21 It is not, has never been strategically in my training. I
 22 have not, because I must disarm somebody. How do I de-arm
 23 somebody with an axe and I have a firearm? It will never
 24 work. There is no training in the whole world to be like
 25 that." So General, what General Mpmembe was saying to the

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1 NUM leaders was if we confront these people on the koppie,
 2 psyched up as they are, and try to take their arms from
 3 them, if you have a confrontation between a man with an axe
 4 and a man with a rifle, there's going to be bloodshed.
 5 GENERAAL-MAJOOR ANNANDALE: As 'n mens na
 6 die strekking van die woorde kyk, dit is korrek, ja.
 7 MR BUDLENDER SC: So what we have here,
 8 General, is that the overall commander, the night before
 9 stage 3 was implemented, said that trying to disarm the
 10 protesters on the koppie was likely to lead to bloodshed.
 11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 dit is dan juis hoekom ons die uiteendryf aksie gehad het,
 13 sodat ons toe die mense in die groep soos hulle op die
 14 koppie geposisioneer is, omdat ons juis nie 'n groep van
 15 sowat 400 wou konfronteer terwyl hulle in 'n naby groep
 16 geposisioneer is of gegroeper is nie, en dis juis hoekom
 17 ons die groep kohesie wou breek, deur hulle uiteen te dryf
 18 sodat hulle in klein groeperings is, wat dan hanteerbaar is
 19 vir ontwapening.
 20 MR BUDLENDER SC: General, the plan for
 21 Operation Platinum and for stage 3 was in place before the
 22 evening of the 15th of August.
 23 GENERAAL-MAJOOR ANNANDALE: Dit is
 24 korrek, ja.
 25 MR BUDLENDER SC: So when he said those

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1 words, General Mpmembe knew that stage 3 involved a
 2 dispersal followed by a disarming.
 3 [10:54] GENERAAL-MAJOOR ANNANDALE: Generaal
 4 Mpmembe wou oordra, soos ek dit waargeneem het, dat daar 'n
 5 geweldige verantwoordelikheid is op die leierskap van die
 6 unies, dat hulle hul lede sover moet kry om die wapens neer
 7 te lê en uiteraard sou hy nie die totale strategie van die
 8 polisie op die tafel gelê het nie.
 9 MR BUDLENDER SC: General, did General
 10 Mpmembe know, when he said those words, that stage 3 would
 11 involve dispersal and then disarming?
 12 GENERAAL-MAJOOR ANNANDALE: Dit was reeds
 13 die beplanning vanaf die Dinsdagmiddag.
 14 MR BUDLENDER SC: General, also, a man
 15 with an axe, a man who is in a small group and carrying an
 16 axe – or let me start the question again. Let's presuppose
 17 a man in a small group is carrying an axe. He is hyped up
 18 and he is refusing to hand it over. If there's a
 19 confrontation between him and a man with an automatic
 20 weapon, there's likely to be bloodshed.
 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 22 nee. Daar is verhoogde risiko, sonder twyfel. In my
 23 loopbaan het ek al tientalle gevalle waargeneem –
 24 MR MAHLANGU: In my career I have seen
 25 many such occurrences.

<p style="text-align: right;">Page 8635</p> <p>1 CHAIRPERSON: Tens of cases. Tientalle, 2 tens of cases like that. 3 MR MAHLANGU: Tens of cases like that, 4 yes. Tientalle. 5 GENERAAL-MAJOOR ANNANDALE: Daar is die 6 getalverhouding van vaardige polisiebeamptes teenoor 7 sodanige persoon wat so 'n wapen dra – 8 MR MAHLANGU: In the case of quite an 9 experienced police officer against such a person – 10 MAJOR-GENERAL ANNANDALE: Sorry, no. Die 11 verhouding, the number – 12 CHAIRPERSON: It's the relationship, 13 isn't it? The ratio of police to protesters. The point 14 being made I think is that if the ratio of police to 15 protesters who are going to be disarmed is great with far 16 more policemen than protesters, then the situation is 17 different. I think that's what he's saying. Is it 18 correct, General? 19 GENERAAL-MAJOOR ANNANDALE: Ja, dit is 20 reg. Dis die ratio tussen aantal polisiebeamptes en 21 sodanige bedreiging, dat so 'n persoon ontwapen kan word 22 sonder dat daar beserings is. 23 MR BUDLENDER SC: General, you said that, 24 as you said, implementing stage 3 was the last resort. 25 GENERAAL-MAJOOR ANNANDALE: Laaste</p>	<p style="text-align: right;">Page 8637</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Monitoring, 2 dis korrek, ja. 3 MR BUDLENDER SC: And the JOCOM had in 4 front of it that morning a crime intelligence report which 5 said that the strikers would not lay down their arms. Now 6 could you have a look at TT5? If you look – do you have 7 TT5? 8 MR MAHLANGU: Not yet. 9 GENERAAL-MAJOOR ANNANDALE: Ek het TT5. 10 MR BUDLENDER SC: Then you'll see this is 11 the crime intelligence information provided to us by the 12 South African Police Service. Would you go to paragraph 9 13 on the second page, and I'll read what paragraph 9 says. 14 "On 2012-08-15 at the PROVJOC meeting a discussion took 15 place with regard to the disarming and dispersion of the 16 striking mineworkers. Brigadier Engelbrecht held a view in 17 favour of negotiations with the group who always gather at 18 the koppie and disperse during the evenings. The view was 19 further based on an analysis of the striking workers' 20 behaviour during the incident of 13 August 2012 where the 21 police officials were killed. They were all armed with 22 different kinds of dangerous weapons. They became agitated 23 when their comfort zones were threatened and made it clear 24 that they will never surrender their weapons as they needed 25 the weapons to protect themselves against NUM members."</p>
<p style="text-align: right;">Page 8636</p> <p>1 aktiwiteit of aksie stap in, maar gesien in die konteks van 2 wat ek reeds vroeër in my getuienis verduidelik het, 3 pertinent die onderhandelings wat faal, maar pertinent die 4 verhoogde risiko – 5 CHAIRPERSON: "Verhoogde" is increased 6 risk. 7 MR MAHLANGU: Pertinently the increased 8 risk, yes. 9 GENERAAL-MAJOOR ANNANDALE: - wat hand 10 aan hand sal gaan met so 'n gewapende groep wat in die 11 gemeenskap inbeweeg. 12 MR BUDLENDER SC: General, I want to 13 suggest to you that it's quite logical that it was a last 14 resort precisely because of the high risk to which General 15 Mpembe referred. 16 GENERAAL-MAJOOR ANNANDALE: Maar dis 17 beide risiko's, Voorsitter, die risiko waarna Generaal 18 Mpembe verwys het dat ons nie wil onnodige konfrontasie hê 19 nie, maar ook die risiko in terme van so 'n groep wat in 20 die gemeenskap ingaan. 21 MR BUDLENDER SC: Yes, I'll come back to 22 that other risk a bit later. Now the JOCOM met on the 16th, 23 the Thursday, the 16th of August at 06:00 and decided to 24 continue with the previous day's monitoring and 25 negotiation.</p>	<p style="text-align: right;">Page 8638</p> <p>1 Then on the next page, the third page, which is some sort 2 of annexure, that's a crime intelligence input at the JOC 3 at 12 o'clock on the 16th of August. You see that? 4 CHAIRPERSON: I'm sorry, Mr Budlender, 5 before you move on to that, shouldn't you put para 10 on 6 the foot of page 2 to the witness, or are you going to do 7 that later? 8 MR BUDLENDER SC: Well, I'm just not sure 9 of the time here, but let me put it, yes. 10 CHAIRPERSON: It looks as if it's part of 11 the 6 o'clock report. 12 MR BUDLENDER SC: It could be. Paragraph 13 10 says, General, "On 2012-08-16 during a PROVJOC meeting 14 where the disarming and dispersing of the group at the 15 koppie was discussed, Colonel Isaacs (CI)," that's Criminal 16 Intelligence, "representative at the PROVJOC for the day 17 advised that many strikers had dangerous weapons with them, 18 and informers reported they would not hand their weapons to 19 the police and that the situation was tense." You see 20 that? 21 CHAIRPERSON: Exhibit L, slide 130 22 [inaudible]. 23 MR BUDLENDER SC: As the Chair has 24 pointed out, that according to the police presentation L, 25 was said at 6 o'clock on the morning of the 16th of August,</p>

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1 and then finally a further report is the annexure, which is
 2 the report at 12 o'clock on the 16th of August, and there
 3 paragraph 3 says the following. "According to information
 4 received the group will decline to surrender these
 5 dangerous weapons to the police." The dangerous weapons is
 6 referring to spears, assegais and pangas in the previous
 7 paragraph. "Information also indicates that the
 8 mineworkers will not leave the koppie and are prepared to
 9 fight if their demands are not met, which includes
 10 resisting the police." You see that? I take it you
 11 confirm that the JOCOM received those reports from crime
 12 intelligence?
 13 GENERAAL-MAJOOR ANNANDALE: Slegs 'n
 14 regstelling, Voorsitter. Daar was nie 'n JOCOM 12 uur op
 15 die 16de nie. Dit wat in hierdie aanhangsel na verwys word
 16 was na verwys tydens die 6 uur vergadering wat ons gehad
 17 het op die 16de, met die verskil dat Kolonel Isaacs, om 6
 18 uur het hy gemeld dat daar 300 mense reeds op die koppie
 19 was, maar tydens 'n spesiale JOCOM vergadering om 13:30 is
 20 die informasie bevestig en daar was verwys dat daar 3 000
 21 mense nou op die koppie is.
 22 CHAIRPERSON: General, does that mean
 23 that this report set out in the annexure headed "Crime
 24 Intelligence input at JOC" pertaining to a decision to
 25 disarm the people 2012-08-16 12:00, was before the JOC at

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1 1:30, 13:30?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 soos ek dit verstaan het hy dit opgedateer om 12 uur.
 4 CHAIRPERSON: Yes, yes, I understand. He
 5 made this report at 12 o'clock. The JOC wasn't, was it in
 6 session at 12 o'clock?
 7 GENERAAL-MAJOOR ANNANDALE: Dis hy.
 8 CHAIRPERSON: But you say that at 13:30
 9 het certainly confirmed there were now 3 000 people?
 10 GENERAAL-MAJOOR ANNANDALE: Dit is
 11 korrek.
 12 CHAIRPERSON: And did he also state the
 13 rest of what's in this document, i.e. paras 2, 3 and 4?
 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 15 ek weet nie of hy dit in presiese detail weer herhaal het
 16 nie. Ek dink daar was meer 'n verwysing dat die situasie
 17 nog steeds is soos wat dit die oggend was tydens die 6 uur
 18 vergadering.
 19 CHAIRPERSON: You see there's a
 20 difference, because the 6, obviously the reference to 6
 21 o'clock is at para 10 on the previous page. That says the
 22 situation is tense. This now says, "The situation is
 23 currently very tense." So if you received this information
 24 from Crime Intelligence you would have been told that the
 25 situation is now more tense than it was at 6 o'clock. I

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1 take it you received the information. Is that not so?
 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 soos die verslag hierso opgestel is was dit nie sodanig
 4 ingehandig nie. Ons het nie 'n geskrewe verslag gekry nie.
 5 CHAIRPERSON: Yes, yes, I understand
 6 that, but if – I mean are you saying that this information,
 7 which was obviously recorded I take it at noon on the 16th
 8 by Colonel Isaacs, all of this was not conveyed to the JOC
 9 at 1:30?
 10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 11 my waarneming was dat niks verander het van die oggend 6
 12 uur nie, behalwe dat die aantal persone op die koppie nou
 13 van 300 na 3 000 vermeerder het, sodat dit meer "tense"
 14 was, "very tense" was. Daar was, ek kan dit net nie,
 15 eenvoudig net nie so waar – of ek het dit net nie so
 16 waargeneem nie.
 17 CHAIRPERSON: Yes, and you see in the
 18 occurrence book, which is FFF25, at 11:20 it's already
 19 said, "Situation report, Papa1 reported," that's obviously
 20 a different person, not Colonel Isaacs, but "Papa1 reported
 21 the group were moving towards the Nyala. Group leaders
 22 asked the police officials to remove their wires, he said
 23 he's not going to ask them again as he's also aggressive,
 24 about 3 500 people gathered." That's what that report
 25 says. So already it would seem round about 11:30 you knew

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1 that there were now between 3 and 3 500 people at the
 2 koppie. Is that right?
 3 GENERAAL-MAJOOR ANNANDALE: Dit is
 4 korrek, Voorsitter.
 5 CHAIRPERSON: And the intelligence report
 6 that you'd received at 6 o'clock in the morning was still
 7 valid. Is that right?
 8 GENERAAL-MAJOOR ANNANDALE: Dit is
 9 korrek, Voorsitter.
 10 MR BUDLENDER SC: Now just to repeat
 11 myself, General Annandale, at the JOCOM meeting at 6
 12 o'clock that morning it was decided to continue with the
 13 previous day's monitoring.
 14 GENERAAL-MAJOOR ANNANDALE: Onder andere,
 15 ja.
 16 MR BUDLENDER SC: The JOCOM didn't decide
 17 then to implement stage 3.
 18 GENERAAL-MAJOOR ANNANDALE: Nee.
 19 MR BUDLENDER SC: But what the JOCOM
 20 didn't know, General, at the time of that meeting, was that
 21 the previous night a decision had already been made to
 22 implement stage 3 if the strikers did not lay down their
 23 weapons. Are you aware of that?
 24 [11:14] GENERAAL-MAJOOR ANNANDALE: Nee, ek is
 25 nie bewus daarvan dat daar 'n besluit was nie. Daar was

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1 besluit dat ons nou verder vergader sou die situasie
2 sodanig deëskaleer.
3 MR MAHLANGU: I am not aware of that.
4 The decision was that if the position escalates, that there
5 would be?
6 GENERAAL-MAJOOR ANNANDALE: Nee, ek weet
7 nie.
8 MR BUDLENDER SC: General, I -
9 CHAIRPERSON: Mr Budlender, it's now
10 going on for quarter past 11, so when we reach a convenient
11 stage – I didn't mean to interrupt you. When we reach a
12 suitable stage we will take the adjournment, but you'll
13 tell me when it's a suitable stage.
14 MR BUDLENDER SC: Thank you, Chair. Just
15 this one and then we can adjourn. Could you have a look at
16 General Mbombo's statement, which will be given to you?
17 CHAIRPERSON: Exhibit GGG5.
18 MR BUDLENDER SC: Now General, could you
19 go to page 7 of that statement, paragraph 18? Do you have
20 it? I will read it. "On Wednesday the 15th of August 2012
21 while I was attending the National SAPS Management Forum
22 meeting in Midrand, Johannesburg, I received telephonic
23 feedback from Major-General Mpmembe to the extent that there
24 has been an agreement between AMCU and SAPS that the
25 following day at 09:00 the protesters shall lay down

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1 weapons and disperse peacefully. I took the opportunity to
2 apprise the National Commissioner of the situation in
3 Marikana, and that if negotiation efforts fail I shall
4 instruct members to disperse, disarm, and possibly arrest
5 the protesters." You see that?
6 GENERAAL-MAJOOR ANNANDALE: Ek sien dat
7 dit so vermeld is, dis reg, Voorsitter.
8 MR BUDLENDER SC: And I put it to you
9 that that can only mean that if the protesters do not lay
10 down their arms and disperse, stage 3 will be implemented.
11 GENERAAL-MAJOOR ANNANDALE: Ek dink slegs
12 Luitenant-Generaal Mbombo kan sê wat sy daarmee bedoel.
13 MR BUDLENDER SC: I understand, General.
14 This would be a convenient time, Chair.
15 CHAIRPERSON: We'll take the adjournment.
16 [COMMISSION ADJOURNS COMMISSION RESUMES]
17 [11:44] CHAIRPERSON: The Commission resumes.
18 Majoor-Generaal, u is nog steeds onder eed.
19 CHARL ANNANDALE: s.o.e.
20 CHAIRPERSON: Mr Budlender?
21 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
22 Thank you, Chair. General, on the morning of Thursday the
23 12th of August the Provincial Commissioner arrived at the
24 JOC at about half past 8 or 9 o'clock after the JOCOM
25 meeting had ended.

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1 CHAIRPERSON: 16th of August [inaudible].
2 GENERAAL-MAJOOR ANNANDALE: 16e die
3 oggend, dis korrek.
4 MR BUDLENDER SC: And she then held a
5 media briefing.
6 GENERAAL-MAJOOR ANNANDALE: Ons het saam
7 met haar vertrek vanaf die JOC area na ander kantore van
8 Lonmin, waar daar dan 'n "media briefing" was ongeveer
9 09:30.
10 MR BUDLENDER SC: Chair, I'm going to ask
11 for a short extract from AAA13 to be played to the
12 Commission.
13 CHAIRPERSON: I did ask for – before we
14 look at the video clip, we did ask for a transcript of this
15 to be prepared. Has it been prepared?
16 MR BUDLENDER SC: We have asked the
17 police and they're in the process of doing it, Chair.
18 CHAIRPERSON: When is it going to be
19 available, Mr Semenya? Do you know?
20 MR SEMENYA SC: I'll enquire, but make
21 all effort to have the transcript available.
22 CHAIRPERSON: Yes, thank you.
23 [VIDEO RECORDING PLAYED]
24 CHAIRPERSON: Maybe everybody else can
25 hear, but I can't. Would you turn the volume up for my

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1 benefit?
2 MR BUDLENDER SC: And could we again go
3 to the beginning, right at the beginning of that clip,
4 please?
5 CHAIRPERSON: Well let's say if you go a
6 bit forward, there is a summary of what she said at slide
7 154 of exhibit L.
8 [VIDEO RECORDING PLAYED]
9 MR BUDLENDER SC: So General, what the
10 Provincial Commissioner announced was that if the strikers
11 did not leave the koppie voluntarily, stage 3 would be
12 implemented and it would be implemented that day.
13 GENERAAL-MAJOOR ANNANDALE: Agbare
14 Voorsitter, ek het dit nie so gehoor nie.
15 CHAIRPERSON: Could we play the clip
16 again? Please listen to it.
17 MR BUDLENDER SC: I've made my own
18 transcription. Can I read it to you, General? She says,
19 "We will ask them to leave, but then I don't want to
20 explain to you if they don't, what then. What I told you
21 is today we are ending this matter."
22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
23 ek het nie "stage 3" gehoor nie. Wat ek vir u sê die
24 konteks waarin ek dit verneem het, die vorige aand taamliek
25 laat, dis die vorige aand die 15de, was daar 'n gesprek

<p style="text-align: right;">Page 8647</p> <p>1 gewees tussen Luitenant-Generaal Mbombo en Generaal Mpembe, 2 maar ook daar was gesprek tussen Generaal Mbombo en myself. 3 Dit was 'n telefoniese gesprek, en ek het vir haar 'n 4 oorsig van die dag se gebeure gegee en ek het aan haar 5 gemeld dat ons 'n uiters konstruktiewe gesprek gehad het 6 met die presidente van NUM asook AMCU, en veral die gesprek 7 met mnr Mathunjwa van AMCU het my laat glo dat ons, die 8 volgende dag gaan hy sy lede oortuig om hulle wapens neer 9 te lê en dit was in die konteks wat die Provinsiale 10 Kommissaris dan van ons af verneem het, waar sy verwys het 11 dat die proses sal beëindig word die betrokke dag. 12 MR BUDLENDER SC: General, I'm sorry, but 13 that won't work. She says, "I don't want to explain to you 14 if they don't, what then. What I told you is today we are 15 ending this matter." You say that means actually today we 16 hope it will end? 17 GENERAAL-MAJOOR ANNANDALE: Nie hoop nie, 18 rede om te glo. 19 MR BUDLENDER SC: And General, she made 20 that announcement at half past 9, by which stage the so- 21 called undertaking had already not been met. 22 CHAIRPERSON: The witness doesn't say 23 there was an undertaking. What he said, to be fair to him, 24 what he says is that his understanding was that Mr 25 Mathunjwa said he thought that he would be able to convince</p>	<p style="text-align: right;">Page 8649</p> <p>1 en veral in Openbare Orde Polisiëring, en ons het pertinent 2 'n rede gehad om te glo dat mnr Mathunjwa beheer het oor 3 die situasie in terme van dat hy sy lede sou oortuig om 4 wapens neer te lê, en as u my sal toelaat, mnr die 5 Voorsitter, om te verwys na bewysstuk GGG4 – 6 CHAIRPERSON: To what page? 7 GENERAAL-MAJOOR ANNANDALE: Op bladsy 17, 8 of 686 soos hy gemerk is op die regterkant, 686, en as ek 9 kan verwys na die tweede keer op die bladsy wat mnr 10 Mathunjwa aan die woord is, en ek haal aan, "We will advise 11 them the easiest way, wherever you are just leave anything 12 here and move away, and then from there I think things will 13 work better, but do not think that if those weapons are not 14 brought back you will escape the wrath of justice. They 15 will be pursuing the individual until such time. This is a 16 challenge that everyone should use for the betterment of 17 everyone." Maar ook op bladsy 685, en ek dink die lyn is 18 27, "Leave whatever that is harmful to anyone, endangering 19 anyone's life there. They will leave whatever they leave, 20 or they do not leave anything, but they disperse." 21 Voorsitter, ook op bladsy 683, lyn 12, waar daar gesê word, 22 "Yes, I think it is quite normal to answer that question 23 because all our desire is a positive adherence to our call, 24 that everyone when you say denounce violence, leave 25 whatever that will be injuring people. So I do not have a</p>
<p style="text-align: right;">Page 8648</p> <p>1 - om die mense te oortuig - to lay down their arms, and he 2 actually said it in his evidence-in-chief. Mr Mathunjwa 3 never made a promise. It was his understanding that Mr 4 Mathunjwa thought, was fairly confident, I think, that he 5 could persuade them to lay down their arms, and there's a 6 difference between Mathunjwa persuading them and a promise 7 from the night before that it would happen. So he didn't – 8 so what you put isn't quite accurate. May I suggest you 9 reformulate your question? 10 MR BUDLENDER SC: Chair, that's why I 11 referred to so-called undertaking, because we're ad idem 12 there was no undertaking, or could have been, but in any 13 event, let me put it this way. By half past 9 when the 14 Provincial Commissioner gave her press briefing, her media 15 briefing, she already knew that the hope that "by 9 o'clock 16 the weapons would be laid down" had not been fulfilled, or 17 the expectation that by 9 o'clock the weapons would be laid 18 down had not been fulfilled. 19 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 20 dit is verseker nie so nie. Ons het die JOC area verlaat 21 voor 9 uur die oggend omdat die media, of die 22 persverklaring wat sy sou uitreik om 9 uur veronderstel was 23 om te begin. So dit is nie waar wat Adv Budlender sê nie. 24 Ek wil ook net meld dat die Suid-Afrikaanse Polisiediens is 25 baie afhanklik om in vennootskap met verskeie rolspelers,</p>	<p style="text-align: right;">Page 8650</p> <p>1 specific answer what next will happen because I believe 2 that tomorrow will be a day of joy for everyone, so I have 3 not point in that direction of negativity of saying no, 4 people will say no violence or whatever, and again when we 5 say weapon, what do we mean. Yes, pangas, and what 6 exactly," and then there was a response, "And firearms." 7 Voorsitter, ook op bladsy 682 waar daar verwys word na die 8 "policeman," daai "policeman" is ek. 9 CHAIRPERSON: I think "policeman" is 10 mentioned twice on the page, in line 1 and again in line 11 19. 12 GENERAAL-MAJOOR ANNANDALE: Die tweede 13 een is ek nie seker of dit ek was of Generaal Naidoo nie. 14 Dit kan baie moontlik ek wees wat gepraat het met Generaal 15 Mpembe. 16 CHAIRPERSON: The first one refers to 17 you. So you actually start at this line 27 on the previous 18 page. 19 GENERAAL-MAJOOR ANNANDALE: Dit is 20 korrek, Voorsitter. As ek dan op min of meer lyn 7 op 21 bladsy 682, as ek kan aanhaal, "Then also we absolutely 22 welcome the fact that you're saying that you are denouncing 23 the violence and that that will mean that those people will 24 hand in their firearms so that we can then sit with 25 yourselves and leadership. We can then have a practical</p>

<p style="text-align: right;">Page 8651</p> <p>1 plan in terms of that so the people will be in a position 2 to then in that demarcated area put down the pangas and the 3 spears and whatever." Kan ek net laastens, dieselfde 4 bladsy, lyn 15 waar mnr Mathunjwa praat, "I mean from 5 tomorrow when we engage them, maybe some, the way forward, 6 maybe we will be saying wherever, just leave whatever and 7 then police come and collect it. Maybe sometimes if I come 8 and bring it to you there will be that sort of" – 9 Voorsitter, ek probeer net illustreer dat ons geredelik 10 geglo het dat wapens neergelê sal word die volgende dag en 11 dat ons regtig afhanklik is van vennootskap in terme van 12 enige sodanige konflikhantering, en dat Generaal Mbombo 13 eers bewus was dat wapens nie neergelê is toe ons 14 teruggekeer het na afloop van die media persvrystelling. 15 MR BUDLENDER SC: General, I'm not 16 suggesting the question of whether the police reasonably 17 believed that the weapons would be laid down; I'm 18 addressing the question of what would happen if they did 19 not lay down their arms. 20 CHAIRPERSON: Before you move on to that, 21 Mr Budlender, there are two passages I'd like to put to the 22 witness briefly in exhibit GGG4. Page 680, line 9, it 23 starts end of line 8, what Mr Mathunjwa says, "So our 24 impression is they're willing to go back to work, but we 25 must come at 9 o'clock," and then at page 681, line 11, he</p>	<p style="text-align: right;">Page 8653</p> <p>1 the first page. Three paragraphs up from the end of the 2 first section there's a passage which reads, "Before 3 gunfire was opened." Do you have that? Do you have that, 4 General? 5 GENERAAL-MAJOOR ANNANDALE: Ek het dit. 6 Dis korrek, Voorsitter. 7 MR BUDLENDER SC: Right, I'll read it. 8 "Before gunfire was opened on Thursday, SAPS Captain Dennis 9 Adriaio told Moneyweb, 'We have tried over a number of days 10 to negotiate with the leaders and with the gathering here 11 at the mine. Our objective is to get the people to 12 surrender their weapons and to disperse peacefully. Today 13 is D-day in terms of if they don't comply then we will have 14 to act; we will have to take steps,'" he said. Do you see 15 that? And I suggest to you that that's consistent with 16 what was discussed between the Provincial Commissioner and 17 the National Commissioner on the night of the 15th and what 18 the Provincial Commissioner said at the media briefing on 19 the morning of the 16th, that if they didn't hand over the 20 weapons, they would be dispersed and disarmed on the 21 koppie. 22 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 23 ek was nie teenwoordig toe Kaptein Dennis Adriaio hierdie 24 oordrag gemaak het, of na bewering gemaak het nie, en ook 25 waarna verwys word, ek was nie teenwoordig in die</p>
<p style="text-align: right;">Page 8652</p> <p>1 says, "So that is our belief this thing will be over by 2 tomorrow." So he talked of the impression, belief. He 3 obviously seemed confident, but you can't put it higher 4 than that. 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 soos ek gesê het, hy het nie 'n belofte gemaak nie, maar hy 7 het regtig oortuig oorgekom. 8 [12:04] MR BUDLENDER SC: General, the question 9 I'm interested in is what was going to happen in the view 10 of the Provincial Commissioner if the weapons were not laid 11 down. Can I ask you, you should have in front of you two 12 internet press cuttings. Do you have one which, a single 13 page called "Lonmin death toll at 34, 78 injured?" 14 CHAIRPERSON: Do you want this to be 15 GGG6? 16 MR BUDLENDER SC: 6. Would you make that 17 6.1, Chair, and the next one will be 6.2. 18 CHAIRPERSON: And then we'll mark the 19 other one, "The mad world we live in," is exhibit GGG6.2. 20 MR BUDLENDER SC: I hope that wasn't a 21 comment on the Commission, Chair. 22 CHAIRPERSON: Well, if it was, we will 23 deal with it with such humility as we can muster. 24 MR BUDLENDER SC: Could you look at 25 GGG6.1, General, and you'll see there are two sections on</p>	<p style="text-align: right;">Page 8654</p> <p>1 vergadering, nasionale – wat het u gesê? National 2 Management Forum? - Nasionale Bestuursforum Vergadering 3 van die polisie. Fase 3 was besluit voor 13:30 op die 16de 4 Augustus, nadat daar oordrag gemaak is deur Generaal-Majoor 5 Mpmembe aan Luitenant-Generaal Mbombo. Fase 3 was egter 6 altyd 'n opsie gewees. 7 MR BUDLENDER SC: Then General, would you 8 go to GGG6.2, which is a report from The Sowetan newspaper 9 – from Reuters, I beg your pardon, a Sowetan newspaper 10 carrying a Reuters report. If you look at the top of the 11 second page where it says the following, "Police officers 12 said talks with leaders of the radical association of 13 mineworkers and construction union, AMCU, had broken down, 14 leaving no option but to disperse them by force. Today is 15 unfortunately D-day, spokesman Dennis Adriaio said." You 16 see that? 17 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 18 my reaksie is dieselfde as my reaksies teenoor GGG6.1. Ek 19 weet werklik nie wie hierdie polisie-offisier is waarna 20 verwys word nie en onderhandelinge was sover ek betref was, 21 was uiters positief met pertinent AMCU na gelang van 'n 22 konstruktiewe gesprek die vorige aand, die aand van die 23 15de Augustus. 24 MR BUDLENDER SC: Yes, we'll pursue that 25 with Captain Adriaio if we have the pleasure of his company.</p>

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1 I just want to put this to you, General, and we will
 2 discuss it with Captain Adriaio and Lieutenant-General
 3 Mbombo, but at the time when these announcements were
 4 made –
 5 CHAIRPERSON: Before you proceed, Mr
 6 Semenya, is Captain Adriaio on your list of witnesses?
 7 MR SEMENYA SC: Not on the provisional
 8 list of witnesses, no Chair.
 9 CHAIRPERSON: Well, if you don't have him
 10 on your list we'll have to subpoena him.
 11 MR BUDLENDER SC: We'll come out with a
 12 subpoena, Chair.
 13 MR SEMENYA SC: It might not be necessary
 14 to subpoena Captain Adriaio. If wanted, he'll be here.
 15 CHAIRPERSON: I'm pleased to hear that.
 16 Please proceed, Mr Budlender.
 17 MR BUDLENDER SC: General, just one
 18 thing. At the time that the Provincial Commissioner
 19 conducted her media briefing, half past 9 Thursday morning,
 20 life and property were not in any imminent danger. I
 21 understand there's always the risk of danger, but at that
 22 time there was no imminent danger and there had been no
 23 violence since the Tuesday afternoon.
 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 die dreigement was nie dreigend op daardie stadium nie, dit

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1 is korrek.
 2 MR BUDLENDER SC: Now I want to move on
 3 to a related subject, General. You explained to the
 4 Commission last week that the part of exhibit SS3 which is
 5 headed "Lonmin Mine Marikana 16 August 2012 Stage 3," you
 6 remember that last piece, that that was actually prepared
 7 after the event. It was in response to questions by the
 8 Chair who pointed out that it referred to things which –
 9 the timing of the events referred to, suggested that. It
 10 was, in other words it is not a document which was prepared
 11 before stage 3 was implemented.
 12 GENERAAL-MAJOOR ANNANDALE: Gedeeltes van
 13 SS3, dit is korrek, Voorsitter.
 14 MR BUDLENDER SC: Now the decision to
 15 move to stage 3 was a big decision, and the reason for the
 16 decision was very important. I'm sure you'll agree with
 17 that.
 18 GENERAAL-MAJOOR ANNANDALE: Elke stap wat
 19 ons ontplooi het in die plan was 'n belangrike besluit wat
 20 ons moes neem want ons het gedeel met 'n moeilike en
 21 abnormale situasie.
 22 MR BUDLENDER SC: I've looked through a
 23 number of the police documents which have been submitted to
 24 the Commission, and with the exception of a reference in
 25 SS3, part of which was prepared later, I can't find any

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1 police document that says or suggests that the decision to
 2 implement stage 3 was made because matters had escalated
 3 and life or property was in danger. Let me show you why I
 4 say that. Could you have a look at the opening statement
 5 of the police? Do you have that available?
 6 GENERAAL-MAJOOR ANNANDALE: Het u die
 7 bewysstuknommer?
 8 MR BUDLENDER SC: FFF9.
 9 GENERAAL-MAJOOR ANNANDALE: Ek het dit
 10 voor my, FFF9.
 11 MR BUDLENDER SC: Could you go to page
 12 16? There it says, paragraph 44.6, "By 09:30 on Thursday
 13 16 August 2012 Mr Mathunjwa had not reported back to the
 14 Provincial Commissioner North West on the disarmament by
 15 protesters. The Provincial Commissioner North West
 16 criticised him for not being a man of his word in this
 17 regard." 44.7, "It was reported later that the protesters
 18 would not disarm. The JSOC then took a decision at 13:30
 19 to disperse the protesters, disarm them and where
 20 necessary, effect arrests at 15:30." That doesn't say
 21 anything about escalation. Is that correct?
 22 GENERAAL-MAJOOR ANNANDALE: Ek sê nie die
 23 woord "eskalasie" nie, nee.
 24 MR BUDLENDER SC: Then could you go to
 25 L174, the police presentation to the Commission.

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1 GENERAAL-MAJOOR ANNANDALE: Ek het die
 2 betrokke bladsy voor my.
 3 MR BUDLENDER SC: That's headed, "A
 4 detailed sequence of events." You see that?
 5 GENERAAL-MAJOOR ANNANDALE: Dis korrek.
 6 MR BUDLENDER SC: It says, "The
 7 chairperson, Major-General Annandale, called a special
 8 JOCOM meeting to evaluate the current strategy and the
 9 possible implementation of stage 3. The Provincial
 10 Commissioner, Lieutenant-General Mbombo, informed the JOCOM
 11 that she had been involved in a meeting the whole morning
 12 with the president of AMCU, Mr Joseph Mathunjwa, to resolve
 13 the current situation. Mr Mathunjwa was supposed to
 14 indicate at 09:00 whether or not the protesters on the
 15 koppie were prepared to put their weapons down. Mr
 16 Mathunjwa failed to provide feedback as he agreed to do,"
 17 and then, "After evaluating the situation from reports on
 18 the ground the Provincial Commissioner instructed Major-
 19 General Annandale to proceed with the implementation of
 20 stage 3 of the operational plan, dispersion into smaller
 21 groups, encirclement, and disarming."
 22 Then can I take you to General Mbombo's
 23 statement, exhibit GGG5. Do you have it?
 24 GENERAAL-MAJOOR ANNANDALE: Dit is
 25 korrek, ek het dit.

<p style="text-align: right;">Page 8659</p> <p>1 MR BUDLENDER SC: Could you go to page 8, 2 paragraph 19.4? I will read what it says. Do you have it? 3 GENERAAL-MAJOOR ANNANDALE: Ek het dit 4 voor my, 19.4. 5 MR BUDLENDER SC: It says, "During the 6 JOC meeting at 13:30 I received a briefing that the 7 protesters at the koppie have not laid down their dangerous 8 weapons. In the light thereof I then gave the instruction 9 that the protesters must be dispersed and disarmed, and 10 arrest be effected on those who might offer resistance 11 thereto. This is commonly referred to as stage 3 in the 12 plan." You see that? Now what all of those documents have 13 in common is that they suggest that what triggered stage 3 14 was the failure to hand over the weapons, and not one of 15 them suggests that it had anything to do with any 16 escalation of the threat of violence. Do you agree with my 17 summary of what the documents say? 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 nee. 20 MR BUDLENDER SC: Well, which of them 21 gives any reason other than the failure to hand over 22 weapons? Which of them says there was an escalation which 23 was the cause? 24 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 25 bewysstuk L, slide 174, derde paragraaf, "After evaluating</p>	<p style="text-align: right;">Page 8661</p> <p>1 CHAIRPERSON: Yes, that's noted. May I 2 ask a question, Mr Budlender, or would you prefer to finish 3 this part of the cross-examination before I ask a question? 4 MR BUDLENDER SC: I'm happy for the Chair 5 to go ahead. 6 CHAIRPERSON: Well, you see the 7 difficulty with what you've told us is that it appears that 8 the Provincial Commissioner had already decided the night 9 before that if the weapons weren't laid down, the crowd 10 would be dispersed. That's what she says in paragraph 22, 11 a paragraph she never denies, on various copies of page 7 12 of her statement, FFF2A and FFF3. So she already, 13 according to what she told the National Commissioner the 14 night before, said that if the undertaking to lay down 15 their arms is not, and to leave the koppie is not honoured, 16 which she regarded as an undertaking – a matter we'll 17 investigate later – but if that didn't happen the police 18 would have to disperse the crowd. No question would have 19 to disperse the crowd if the situation escalates or if all 20 these things that are set out in the occurrence book the 21 next day happened; simple statement, if the above 22 undertaking fails to materialise the police will have to 23 disperse the crowd. That's what she told the National 24 Commissioner on the evening of the 15th. Now you weren't 25 there, I know, so you can't really comment, but it does</p>
<p style="text-align: right;">Page 8660</p> <p>1 the situation and from reports on the ground." 2 MR BUDLENDER SC: Yes, I see that. It 3 doesn't say there was any escalation of violence or any 4 threat, does it? 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 6 die konsep van "evaluating the situation and reports on the 7 ground" is baie wyd en dit het ingesluit die eskalasië van 8 geweld, en ek het getuig reeds oor die toeligtig wat 9 Generaal Mpembe gegee het aan Generaal Mbombo, en dit het 10 'n oorsig gegee van terugvoer wat ontvang is vanaf die, 11 Pappa1 pertinent en die pertinente dreigemente wat geuiteer 12 was, en die verandering in die betrokke, die houding van 13 die groep, die groepskohesie wat toegeneem het. 14 [12:24] So Voorsitter nee, die woord "eskaleer" is nie 15 pertinent sodanig gereflekteer in bewysstuk L nie, en ook 16 nie in 19.4 van – of wat bewysstuk GGG5 is nie, en daaroor 17 kan Luitenant-Generaal Mbombo getuig in terme van haar 18 woordkeuse. 19 MR SEMENYA SC: Chair – 20 CHAIRPERSON: Mr Semanya? 21 MR SEMENYA SC: Chair, we will see the 22 word "report" in slide 174. The corresponding evidence of 23 what reports those are we'll find at exhibit FFF25, running 24 from approximately 9:45, that will be on page, ending 535 25 onwards.</p>	<p style="text-align: right;">Page 8662</p> <p>1 throw light upon the point that's being made. 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 ek hoor totaal wat u sê. Ek kan slegs getuig oor wat my 4 ervaring was, my interaksie met Generaal Mbombo. 5 Voorsitter, en sy het dit nooit aan my oorgedra en vir my 6 gesê irrelevant wat vandag gebeur, ons gaan sodanig of 7 sodanig optree nie. 8 CHAIRPERSON: Would it be a fair comment 9 to say that in the light of what you told us, what I've 10 read to you from the National Commissioner's statement as 11 to what the Provincial Commissioner told her the night 12 before, comes as a surprise to you? 13 GENERAAL-MAJOOR ANNANDALE: Vra u of ek 14 verras sal wees as u dit aan my voorhou? 15 CHAIRPERSON: Well, it's been put to you. 16 I've read to you what the National Commissioner said the 17 Provincial Commissioner told her the night before, so 18 obviously you didn't know about it, you've told us. So now 19 that you've heard it been read to you, do you find it – are 20 you surprised? 21 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 22 ek is seker verras want dit was nooit so oorgedra. 23 Generaal Mbombo het daardie oggend daar vir my gesê 24 [onhoorbaar] – 25 CHAIRPERSON: That was my question, thank</p>

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1 you.

2 MR BUDLENDER SC: - one more document.

3 Could you look at EE, the minutes of the JOCOM held at

4 13:30? EE. Do you have that? Could you go to page 3,

5 please? The third paragraph under closing remarks, or the

6 second paragraph under the heading, "Closing remarks," I'll

7 read it, "The Provincial Commissioner indicated," this is

8 the meeting held at the JOCOM at 13:30. "The Provincial

9 Commissioner indicated that she had already communicated

10 with the National Commissioner, informing her of the

11 current situation, and that a deadlock was reached with

12 negotiations, and also that phase 3 of the operational plan

13 will be executed. She also indicated that that National

14 Commissioner indicated that she will inform the Minister of

15 Police on the current situation and actions that will be

16 taken." Now that's what the Provincial Commissioner said

17 at that meeting.

18 GENERAAL-MAJOOR ANNANDALE: Dis reg,

19 Voorsitter, of woorde met dieselfde strekking.

20 MR BUDLENDER SC: So the decision to

21 implement stage 3, or to execute stage 3, had already been

22 made before the JOCOM meeting of 13:30 because the

23 Provincial Commissioner had already told the National

24 Commissioner, who said she will tell the Minister.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek het verduidelik dat die besluit geneem was voordat ons

2 die JOCOM – as gevolg van die besluit het ons die JOCOM

3 vergadering het ons belê, en dit was nadat Generaal Mpembe

4 vir Generaal Mbombo toegelig het, en ek weet nie wanneer

5 die gesprek plaasgevind het tussen Generaal Mbombo en die

6 Nasionale Kommissaris nie, maar hoe ek dit ervaar het is

7 dat Generaal Mbombo gesê het, ek het dit ervaar dat sy dit

8 voor die vergadering, dat sy dit net voor die vergadering

9 aan die Nasionale Kommissaris oorgedra het.

10 CHAIRPERSON: You told us she went from

11 the JOC to another room where the – is that right? Or this

12 information that you'd received – I'm sorry, let me

13 rephrase the question. This information that was conveyed

14 to the Provincial Commissioner, that was before you went to

15 the JOC. Is that right?

16 GENERAAL-MAJOOR ANNANDALE: Dit is

17 korrek, Voorsitter.

18 CHAIRPERSON: Where was it relayed to

19 her?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

21 dit was aan die buitekant van die JOC. Net buitekant die

22 JOC is daar 'n taamlike groot oop area waar daar

23 grasdakkies was en sulke tipe van tafeltjies.

24 CHAIRPERSON: And did you walk straight

25 from there to the JOC?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

2 ek het direk teruggegaan JOC toe. Ek dink ek het in my

3 getuienis ook gesê dat ek nie die healtyd teenwoordig was

4 wat Generaal Mpembe voorligting gegee het aan Generaal

5 Mbombo nie.

6 CHAIRPERSON: So was that report then

7 made, or a report made by General Mpembe to General Mbombo

8 after you went to the JOC, or was it made before you went

9 to the JOC?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

11 Generaal Mpembe het vir die Provinsiale Kommissaris

12 toegelig en hy het al hierdie terugvoer vir haar gegee,

13 waarop sy gesê het dit sal ons noodsaak op om te tree en

14 nadat ek die terugvoer gekry het, het ek na die JOC toe

15 gegaan om vir Brigadier Pretorius te sê sy moet vir my

16 rolspelers bymekaarkry, sodat ons vergadering kan belê.

17 CHAIRPERSON: Brigadier Pretorius, is it

18 a lady?

19 MAJOR-GENERAL ANNANDALE: Yes.

20 CHAIRPERSON: Female.

21 MR MAHLANGU: I did not get what

22 Brigadier Pretorius was to arrange for the General.

23 CHAIRPERSON: To get all the role-players

24 together. So in other words you left, would it be correct

25 to say you left General Mbombo and General Mpembe in this

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1 open area in front of the JOC when you went ahead, as it

2 were, to the JOC to get Brigadier Pretorius to invite all

3 the role-players – in other words you convened the meeting

4 at the JOC at that point?

5 GENERAAL-MAJOOR ANNANDALE: Dit is

6 absoluut korrek, Voorsitter.

7 COMMISSIONER HEMRAJ: Was this the first

8 indication that you got that stage 3 was about to be

9 implemented?

10 GENERAAL-MAJOOR ANNANDALE: 'n Aanduiding

11 vanaf Generaal Mbombo, dis reg, Kommissaris.

12 MR BUDLENDER SC: General Annandale, am I

13 right in recollecting that your evidence was that you were

14 the media conference at half past 9 when General Mbombo

15 made her statement?

16 GENERAAL-MAJOOR ANNANDALE: Dit is

17 korrek, ek was teenwoordig.

18 MR BUDLENDER SC: Alright, can I move on

19 to – can you go to exhibit TT4, which is the minutes of the

20 JOC meeting held at 6 o'clock on the 16th of August. If you

21 look at page 1, the penultimate paragraph it says the

22 following, "If the situation escalates, stage 3 will be

23 implemented, but proper communication will be done with all

24 commanders when that decision is taken." Correct?

25 GENERAAL-MAJOOR ANNANDALE: Dit is so

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1 reflekteer, dis korrek, Voorsitter.

2 MR BUDLENDER SC: In the event a decision

3 was actually made the previous evening to implement stage

4 3, even though no escalation had taken place at that time.

5 GENERAAL-MAJOOR ANNANDALE: Ek kan regtig

6 nie sien hoe die advokaat die afleiding kan maak nie.

7 MR BUDLENDER SC: Sorry, I should have

8 clarified. I'm referring to the meeting between the

9 Provincial Commissioner and the National Commissioner the

10 night before on which both of them have said there was, it

11 was decided that evening that stage 3 would be implemented

12 if the arms were not laid down.

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

14 ek kan oor my eie feite getuig.

15 CHAIRPERSON: Mr Budlender, the Major-

16 General had said he wasn't there on the Wednesday evening,

17 so he doesn't know what was said. He says he can only

18 testify about things he knows himself. He said he was

19 surprised when that passage was put to him.

20 MR BUDLENDER SC: I want to put it to you

21 this way, General, that if such a decision was indeed made

22 on the Wednesday evening, that was a fundamental change to

23 the plan, which was that stage 3 would be implemented if

24 there was escalation.

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter

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1 nee, dit kan nie 'n verandering op die plan wees nie want

2 die verandering op die plan word nie geneem deur die

3 Nasionale Kommissaris of die Provinsiale Kommissaris nie.

4 Die plan is opgestel, soos ek verduidelik het, deur insette

5 van 'n verskeidenheid van rolspelers, en die finale besluit

6 word geneem na advies van die JOCOM deur die oorhoofse

7 bevelvoerder.

8 CHAIRPERSON: That's what should have

9 happened. Is that right?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

11 as ek kan voortgaan?

12 CHAIRPERSON: That's what should have

13 happened.

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

15 dit is nadat die oorhoofse bevelvoerder dit aan Generaal

16 Mbombo oorgedra het, wie sou dan bevestig het dat ons

17 voortgaan. Dit was, sy is die Provinsiale Kommissaris, so

18 dit was aan haar oorgedra, dit is die advies, en nie

19 omgekeerd nie. So daardeur wil ek sê as die Provinsiale

20 Kommissaris sê en sy sê julle gaan dit nou so en so en so

21 doen, gaan ons dit nie so doen nie as ons nie daarmee

22 saamstem nie.

23 CHAIRPERSON: That raises a problem that

24 I've been, I was intending to ask you about later, but

25 perhaps I should ask you about it now. Mr Mathunjwa gave

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1 evidence, which was not challenged in cross-examination as

2 far as I can recall, that at some point in the morning he

3 spoke to General Mpembe and General Mpembe said "Don't talk

4 to me; I am not in charge anymore, General Mbombo is."

5 Obviously you're not aware of that, but that evidence was

6 given and it wasn't challenged, as far as I can recall.

7 Perhaps General Mpembe can explain it to us, but if that's

8 correct it would mean that General Mbombo had taken over as

9 the commanding officer, and that's why General Mpembe

10 declined to talk to Mr Mathunjwa, but I take it that's

11 again something you can't comment on, or can you?

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

13 nee, ek het nie die besonderhede nie, maar ek gaan wel

14 kommentaar lewer. Daar is 'n oorhoofse bevelvoerder

15 aangestel en dit was Generaal-Majoor Mpembe, en hy was

16 deurlopend die oorhoofse bevelvoerder. Hy is nie vervang

17 nie, maar dat ons ook 'n verantwoordelikheid het om die

18 Provinsiale Kommissaris in te lig want sy bly

19 verantwoordelik vir polisiëring in die provinsie.

20 MR MAHLANGU: Because she remains overall

21 responsibility for the police in the province.

22 CHAIRPERSON: What he said was she

23 remains responsible for policing in the province.

24 MR MAHLANGU: That is correct, vir

25 polisiëring, for policing.

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1 [12:44] MR BUDLENDER SC: General, just to finish

2 off on the matter which the Chair has raised, the passage

3 in the record is at page 2340. You don't have it in front

4 of you. I'll read you what he said. For the benefit of

5 everyone, it's page 2340, lines 1 to 10, and this is where

6 Mr Mathunjwa is giving evidence about what happened when he

7 met General Mbombo and General Mpembe at the JOC meeting on

8 the morning of the 16th of August. Mr Bruinders as counsel

9 for AMCU says to him, he says, "There were introductions,"

10 and then Mr Bruinders SC, "So after the introductions, who

11 spoke?" Mr Mathunjwa, "Mr, or General Mpembe, he spoke

12 first, but Provincial Commissioner Mbombo, she's the one

13 that's taking over the operation here, so therefore he's no

14 longer a person in charge of the operation. The person who

15 is no longer in charge is General Mpembe." That's the

16 evidence which he gave.

17 CHAIRPERSON: - challenged in cross-

18 examination by counsel for the police.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

20 ek was teenwoordig gewees met die vergadering en Generaal

21 Mpembe het haar nie so voorgestel nie. Hy het haar

22 voorgestel as synde die Provinsiale Kommissaris vir

23 Noordwes provinsie te wees. Voorsitter, en hy het gesê sy

24 is in beheer van die provinsie. Hy het nie gesê sy is in

25 beheer van die operasie nie.

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1 MR BUDLENDER SC: Well, the difficulty is
2 that that's what Mr Mathunjwa says she said and that was
3 not challenged in cross-examination.
4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
5 ek hoor dit totaal. Ek kan net sê wat ek waargeneem het en
6 ek was teenwoordig gewees.
7 MR BUDLENDER SC: What we know in any
8 event is that the Provincial Commissioner made the decision
9 that stage 3 will be implemented. Is that correct?
10 GENERAAL-MAJOOR ANNANDALE: Weereens moet
11 dit gesien word in die konteks nadat sy toegelig was en
12 daar 'n voorstel aan haar gemaak was en synde dat sy
13 teenwoordig was het sy saamgestem en sy het dan gesê gaan
14 voort met die operasie.
15 MR BUDLENDER SC: General, she made the
16 decision to proceed with stage 3 of the operation. Is that
17 not correct?
18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 die besluit was reeds geneem deur die oorhoofse
20 bevelvoerder en sy het dit beaam, en ek dink dis belangrik
21 dat die protokol verstaan word in terme van die Suid-
22 Afrikaanse Polisiediens.
23 CHAIRPERSON: What did she do? Did she
24 just say she agreed, or did she give an instruction?
25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 as 'n provinsiale kommissaris sê ek stem saam dat ons
2 voortgaan, dan is dit niks anders as 'n instruksie nie,
3 maar dit was gebaseer op dit wat ons aan haar oorgedra het
4 en die konteks is belangrik; as sy sou gekom het en gesê
5 het julle gaan nou optree en julle gaan die volgende doen,
6 en dit is nie in lyn met ons beplanning nie, en dit word
7 nie daarvoor saamgestem nie, dan sou ons dit nie gedoen het
8 nie, maar terselfdertyd as die Provinsiale Kommissaris gesê
9 het, nadat sy toegelig was, dat julle nie voortgaan met
10 hierdie optrede nie, dan sou ons ook nie. Dan sal ons na
11 die redes geluister het en ons sou dit gedebatteer het.
12 MR BUDLENDER SC: And General, I
13 understand what you say in relation to the details of how
14 the plan would be executed, but you're surely not disputing
15 that General Mbombo made the decision that stage 3 would be
16 implemented?
17 GENERAAL-MAJOOR ANNANDALE: Dit is reg,
18 soos ek so pas verduidelik het.
19 MR BUDLENDER SC: And she also decided
20 who would implement it.
21 GENERAAL-MAJOOR ANNANDALE: Ek verstaan
22 nie die "who" nie.
23 MR BUDLENDER SC: Let me read you L174,
24 third bullet, "After evaluating the situation and from
25 reports on the ground, the Provincial Commissioner

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1 instructed Major-General Annandale to proceed with the
2 implementation of stage 3 of the operational plan,
3 dispersion into smaller groups, encirclement, and
4 disarming." So she decided that you would be the
5 implementer.
6 GENERAAL-MAJOOR ANNANDALE: Sy het dit so
7 aan my oorgedra, dit is korrek.
8 MR BUDLENDER SC: It's also reflected in
9 that way in the minutes, EE.
10 GENERAAL-MAJOOR ANNANDALE: Dit is
11 korrek.
12 MR BUDLENDER SC: Now just to round off
13 this point, the decision of the JOC at 6 o'clock on the
14 Thursday morning was that stage 3 would be implemented if
15 matters escalated.
16 GENERAAL-MAJOOR ANNANDALE: Soos
17 gereflekteer, dis korrek.
18 MR BUDLENDER SC: If it is correct that
19 General Mbombo decided the night before that phase 3, stage
20 3 would be implemented if the strikers did not hand over
21 the weapons, then she was, from her point of view it was a
22 different trigger. The trigger wasn't escalation; the
23 trigger was a failure to hand over the weapons.
24 GENERAAL-MAJOOR ANNANDALE: As dit
25 feitelik korrek is soos wat u dit stel dat dit haar – dan

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1 waarskynlik.
2 MR BUDLENDER SC: Chair, I'm now going on
3 to a new subject. I'm happy to start now, but perhaps we
4 could stop a bit early and restart a bit early?
5 CHAIRPERSON: [Inaudible]
6 MR BUDLENDER SC: 25 past 1, Chair.
7 CHAIRPERSON: Sorry, I must – yes, Mr
8 Msimang? This is a day when we start at 10, so that's why
9 we take a short luncheon adjournment. We would have
10 resumed at half past 1, but in view of the fact that we're
11 stopping now at 5 to 1 we'll try to start at 25 past 1, and
12 tomorrow we'll do it as well because I've been asked to
13 adjourn at 3:30 so that people who want to travel
14 thereafter can get to the airport in time, so we'll take
15 half an hour lunch break tomorrow as well, and we'll
16 adjourn at 3:30, take half an hour lunch now and we'll
17 adjourn now until 26 minutes past 1.
18 [COMMISSION ADJOURNS COMMISSION RESUMES]
19 [13:31] CHAIRPERSON: The Commission resumes. U
20 is nog steeds onder eed, Majoor-Generaal.
21 CHARL ANNANDALE: s.o.e.
22 CHAIRPERSON: Mr Budlender – document now
23 being put before us. It's a handwritten document to which
24 is attached what looks like a typewritten version of the
25 same document. Yes, I think so. It's headed Lieutenant-

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1 General Mbombo. Now is this going to be an exhibit? What
2 exactly is it?

3 MR SEMENYA SC: Chair, the Chair
4 requested to have a transcript of General Mbombo's media
5 briefing. We don't have the media statement. What we do
6 have, and that is before you, would be notes taken by
7 Captain Adriano as the media briefing was presented, and we
8 have made a translation warts and all; there are
9 typographical errors that appear in the original notes –

10 CHAIRPERSON: You made a transcription,
11 you mean.

12 MR SEMENYA SC: Yes, a transcription.
13 CHAIRPERSON: There's a handwritten
14 document and then a typed version of the same, warts and
15 all, as you say. Do you want me to mark it as an exhibit
16 now, or do you think we must wait for Mr Budlender to
17 introduce it at a stage he considers appropriate? Mr
18 Budlender, we're in your hands.

19 MR BUDLENDER SC: We're happy for it to
20 go in now, Chair.

21 CHAIRPERSON: Thank you very much, Mr
22 Semenya. It's exhibit GGG7 and I'll describe it as a
23 transcript of Captain Adriano's notes of the Provincial
24 Commissioner's statement at the media briefing. Is that
25 right? Thank you. Mr Budlender.

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1 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
2 Thank you, Chair. General, I now want to discuss with you
3 the problems of implementation of stage 3, and I'm going to
4 suggest that in fact the police were not in a position to
5 implement stage 3 satisfactorily at 15:30, or at 15:40, and
6 I'll show you why I say so. Now the first problem was that
7 there was a – or the first difficulty was that there was a
8 problem with the radio communication system. That was
9 discussed last week, and I want to go into that in some
10 more detail, and I'd like you to have a look at the
11 statement of Brigadier Fritz.

12 CHAIRPERSON: It's not been handed in
13 yet.

14 MR BUDLENDER SC: It's about to be handed
15 in, Chair.

16 CHAIRPERSON: Yes, thank you. That will
17 be exhibit GGG8, I take it. Yes, Ms Pillay is not
18 concentrating, but I take it exhibit GGG8 is the correct
19 description of this document. Is that right?

20 MR BUDLENDER SC: I'll speak to her
21 sternly, Chair, but she does confirm that it's GGG8. She
22 can only multi-task three things at once; she seems unable
23 to do a fourth thing simultaneously.

24 CHAIRPERSON: Something must be done
25 about that.

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1 MR BUDLENDER SC: General, do you have
2 Brigadier Fritz's statement? Not yet, sorry. Perhaps
3 before we get there, there's just one preliminary matter I
4 can deal with which is relevant to that and other matters.
5 You'll remember, General, that at the JOC meeting of 13:30
6 on the 16th you gave a series of instructions as to things
7 that must be done. Could you have a look at exhibit EE for
8 that purpose? Can we go to that first? On page 2 of EE
9 there's a list of – there's a checklist of matters to be
10 checked to ensure that everything was in place. Do you
11 have that?

12 MAJOR-GENERAL ANNANDALE: I do have it,
13 yes, Chairperson.

14 MR BUDLENDER SC: Now what I would just
15 like you to do is to indicate who was responsible for
16 ensuring that all of these things, each of these things was
17 in place. Let's take the first one. Who was responsible
18 for ensuring adequate batteries for radio and video
19 cameras?

20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
21 in my loopbaan as ek mense toegesprek het, dan gaan mens
22 deur sekere aspekte sonder dat jy ver wag dat iemand moet
23 pertinent nou dit gaan reël. Soos byvoorbeeld ek sal 'n
24 parade toesprek en ek sal sekere goed meld, soos
25 byvoorbeeld maak seker dat daar genoeg brandstof in julle

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1 voertuie is, dat julle julle radio's het, dat die radio's
2 werk, dat julle vuurwapens reg is en dat julle julle
3 magasyn nagegaan het, en ek noem dit ter illustrasie. So
4 party van die geld meld 'n ou sonder dat jy ver wag die
5 volgende persoon moet nou opstaan en dit gaan reël. So die
6 eerste punt was gewees oor die radio's en daar was 'n klein
7 sleepwaentjie wat buitekant die JOC was, soos om die
8 boodskap uit te stuur dat daar ekstra spaar batterye
9 beskikbaar is sou lede dit nodig hê.

10 MR BUDLENDER SC: I'm sorry to interrupt
11 you, but who did you think would ensure that there were
12 adequate batteries for radios and video cameras?

13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
14 dit sal tipies die bevelvoerders wees van die onderskeie
15 groepe.

16 MR BUDLENDER SC: So this was in effect
17 an instruction to the commanders, ensure that there are
18 adequate batteries for the radios and the video cameras?

19 GENERAAL-MAJOOR ANNANDALE: Weet u,
20 Voorsitter, baie van die punte sou reeds gedek wees deur
21 die normale verantwoordelikheid van 'n bevelvoerder tydens
22 parade. So dis 'n herinnering en 'n ou sou ver wag dat dit
23 oor die, deur die JOC oorgedra word aan bevelvoerders.

24 MR BUDLENDER SC: Just to interrupt you,
25 or maybe I'm not interrupting you, when you had on your

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1 checklist to ensure that everything was in place, first
 2 item, ensure adequate batteries for radios and video
 3 cameras, when you said "Make sure about this," you were
 4 reminding the commanders to make sure that they'd done it?
 5 GENERAAL-MAJOOR ANNANDALE: Ja, dis amper
 6 nodeloos om te sê dit is, dit word verwag; dis in elk geval
 7 deel van hulle gewone verantwoordelikhede. It is stating
 8 the obvious.
 9 MR BUDLENDER SC: But you did state the
 10 obvious, or didn't you, at that meeting?
 11 GENERAAL-MAJOOR ANNANDALE: Ek het dit so
 12 gesê, ja, Voorsitter.
 13 MR BUDLENDER SC: And can you just remind
 14 us who were the commanders who were responsible for
 15 ensuring this? Who would they have been?
 16 GENERAAL-MAJOOR ANNANDALE: Elke
 17 bevelvoerder wie ontplooi is, Voorsitter.
 18 MR BUDLENDER SC: And who was responsible
 19 for making sure that there were batteries for the video
 20 cameras? Because not every unit had video cameras.
 21 GENERAAL-MAJOOR ANNANDALE: Elke
 22 operateur van sodanige videokamera, Voorsitter.
 23 MR BUDLENDER SC: And who was the
 24 commander who was meant to check this with the video
 25 operators? In other words, who was their commander?

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1 GENERAAL-MAJOOR ANNANDALE: Die twee
 2 Openbare Orde video-operateurs was waarskynlik Luitenant-
 3 Kolonel Mere –
 4 CHAIRPERSON: He says probably. I think
 5 he said "waarskynlik," probably Lieutenant-Colonel Mere.
 6 MR MAHLANGU: Oh yes, the word was
 7 "probably," yes, "waarskynlik."
 8 GENERAAL-MAJOOR ANNANDALE: En dan dié
 9 van Luitenant-Kolonel Botha, Brigadier Van Zyl was versoek
 10 om sodanige reëling te tref want dit was bo en behalwe –
 11 MR MAHLANGU: Brigadier Van Zyl was above
 12 all the responsible for the – kan u help? I'm again lost
 13 here, Mr Chairperson.
 14 CHAIRPERSON: I think in relation to
 15 Lieutenant-Colonel Botha, the Brigadier was responsible for
 16 that. I think that's what he said. He was, because it
 17 was, he was above him.
 18 MR MAHLANGU: He was the person in
 19 command.
 20 MR BUDLENDER SC: According to the
 21 attendance list Lieutenant-Colonel Mere was not present at
 22 the meeting.
 23 GENERAAL-MAJOOR ANNANDALE: Dit is
 24 korrek, Voorsitter.
 25 MR BUDLENDER SC: So who was the person

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1 who had to say to him, say to Brigadier Mere make sure,
 2 General Annandale says you must make sure that there are
 3 adequate batteries for the video cameras? Who would have
 4 done this?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek het dit verlede week, ek dink op Donderdag het ek dit
 7 verduidelik dat enersyds was daar 'n verwagting dat die JOC
 8 radio-operateurs dit sou doen, en sonder dat ek pertinent
 9 so vermeld het aan Brigadier Pretorius en Luitenant-Kolonel
 10 Scott –
 11 MR MAHLANGU: Without pertinently
 12 mentioning it to Brigadier Fritz and Colonel Scott –
 13 MAJOR-GENERAL ANNANDALE: I did not say
 14 Fritz.
 15 MR HANABE: Brigadier Pretorius.
 16 MR MAHLANGU: Oh, I'm sorry, Pretorius.
 17 GENERAAL-MAJOOR ANNANDALE: - was dit ook
 18 verwag dat dit wat relevant is oorgedra sou word tydens
 19 hulle persoonlike toeligting –
 20 CHAIRPERSON: He says it was expected
 21 that they would communicate what was relevant. I think
 22 that's what the witness said.
 23 MR BUDLENDER SC: I understood your
 24 evidence last week, General, that Brigadier Pretorius and
 25 Colonel Scott were going to go around to the different

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1 units, so you expected that they would say to the units,
 2 have you made sure about this, and have you made sure about
 3 that. Is that correct?
 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 5 nee, Brigadier Pretorius en Kolonel Scott het nie
 6 rondgegaan tussen eenhede nie. Hulle het na een pertinente
 7 punt gegaan, te wete "forward holding area" 1, en hulle het
 8 die toeligting aldaar gedoen.
 9 MR MAHLANGU: And they did the
 10 "toeligting" there.
 11 CHAIRPERSON: Communication, I imagine.
 12 MR MAHLANGU: I'm sorry?
 13 CHAIRPERSON: "Communication" is probably
 14 the word you're looking for.
 15 MR BUDLENDER SC: I'm sorry, yes, I was
 16 mistaken. But I really don't want to spend a long time on
 17 it. I just want to understand how it was going to happen,
 18 or how you thought it was going to happen. As far as the
 19 first item is concerned, you expected that Brigadier
 20 Pretorius and Lieutenant-Colonel Scott would relay this to
 21 the commanders at their meetings with the commanders. Is
 22 that correct?
 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 24 nee, ek het probeer verduidelik dat dit is 'n algemene
 25 verwagting dat elke bevelvoerder in elk geval sal seker

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1 maak dat dit die geval is, en dat dit amper 'n onnodige
2 herhaling is tydens die vergadering, en ek het dit gedoen,
3 en ek het die illustrasie gebruik in terme van hoe ek
4 parades toespreek en ek het verder gegaan om te sê –
5 CHAIRPERSON: What he says is I gave as
6 an illustration the address at a parade. That's what he
7 said.
8 MR MAHLANGU: Oh yes, not at the command,
9 at the parade.
10 GENERAAL-MAJOOR ANNANDALE: Dankie
11 Voorsitter, en ek het ook verder gegaan en gesê dat daar 'n
12 verwagting was dat die JOC radio-operateurs dit sou oordra,
13 en dat aspekte wat relevant geag sou word deur Brigadier
14 Pretorius en/of Luitenant-Kolonel Scott oorgedra sou word.
15 MR BUDLENDER SC: I'm afraid you've lost
16 me, General. I'm truly trying to understand it and I'm
17 obviously missing something, but did I understand you
18 correctly to say that you thought that the JOC, you
19 expected that the JOC radio operators would communicate all
20 of these items on the checklist to those who were
21 responsible for them?
22 [13:51] GENERAAL-MAJOOR ANNANDALE: Nee, nie al
23 die aspekte nie.
24 MR BUDLENDER SC: But for which of these
25 did you rely on the JOC radio operators?

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1 GENERAAL-MAJOOR ANNANDALE: As ek kan
2 voorbeelde noem, soos ek deur die lys gaan van wat –
3 batterye was verwagting dat elke lid sal seker maak dat sy
4 batterye gelaai is.
5 MR BUDLENDER SC: Can you just stop there
6 for a moment, General. I'm sorry to interrupt you. What's
7 the point of a checklist if it's directed at people who are
8 not at the meeting? If the individual operators are
9 supposed to check this, then what's the point of announcing
10 at a meeting of about 10 or 12 people that this must be
11 checked?
12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
13 as ek kan voortgaan kan ek dit verduidelik. Soos
14 byvoorbeeld "call signs to be verified and radio test to be
15 done," is daar aan my bevestig, "Dit is reeds vanoggend
16 gedoen toe die mense vertrek het." Volgende punt, "trucks
17 to be available at holding area, one for arrest if needed
18 and prisoners transported," daar is vir my daar en dan gesê
19 deur Brigadier Seboloke, "Generaal, dit is reeds gereël."
20 "Investigation team to be in place at forward holding area
21 1," Brigadier Van Zyl het bevestig, "Dit is reeds sodanig
22 gereël; my mense is reeds ontplooi." Voorsitter, en so kan
23 ek aangaan - die observasiepunt en die reserwespanne en die
24 onderhandelaars. So Voorsitter, dit is wat ek probeer sê,
25 dat van dit is net, dis amper 'n onnodige herhaling. Dis

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1 bevestig, dis gesê en die bevelvoerders het bevestig dat
2 dit reeds in plek is.
3 CHAIRPERSON: Major-General, I've looked
4 through these minutes; I see that there are 17 bullet
5 points on pages 2 and 3 and the minutes reads, "Major-
6 General Annandale went through the following checklist to
7 ensure everything was in place." You then dealt with 17
8 topics. I can understand that in the case of a number of
9 them you were then told there and then, as it were, that
10 they'd been attended to. So certain others were left over,
11 to which, in respect of which you did not receive such an
12 assurance. Is that correct?
13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
14 soos byvoorbeeld die kragopwekkers –
15 CHAIRPERSON: The generators.
16 GENERAAL-MAJOOR ANNANDALE: - wat
17 Brigadier Pretorius pertinent getaak was en versoek om met
18 mnr Dirk Botes van Lonmin te skakel en te versoek dat hulle
19 sodanige kragopwekkers op bystand hou.
20 CHAIRPERSON: So in other words what
21 happened was there were 17 items you mentioned. In respect
22 of a number of them you were assured then and there that
23 they'd either been attended to, or Brigadier Calitz or
24 somebody said, "I'll do that."
25 GENERAAL-MAJOOR ANNANDALE: Reg.

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1 CHAIRPERSON: That left a number of
2 others which had not been so dealt with, and I would
3 imagine those would then be covered by the first sentence
4 of the closing remarks on page 3, "Major-General Annandale
5 instructed Lieutenant-Colonel Scott to ensure that all the
6 commanders are briefed accordingly." That must surely be
7 briefed in respect of the matters which had been
8 specifically mentioned, but which had not yet been disposed
9 of in the manner you discussed, and then it goes on –
10 before you answer me, "Discussion was held and it was
11 decided not to brief the commanders on the air, but to go
12 to forward holding area 1, where it will be done in person,
13 and Brigadier Pretorius was instructed to join Lieutenant-
14 Colonel Scott on senior briefing to ensure she's up to date
15 with postings and call signs as it was essential for
16 effective functioning of the JOC." That's what happened.
17 Is that right?
18 GENERAAL-MAJOOR ANNANDALE: Soos u dit
19 opgesom het en verstaan, dis korrek, Voorsitter.
20 COMMISSIONER HEMRAJ: But General,
21 practically it's surely not for the commander to go and
22 ensure that 200 people in his team have got their radios
23 and their batteries in order?
24 GENERAAL-MAJOOR ANNANDALE: Prakties,
25 nee, Kommissaris. U weet, bevelvoerders het, in die

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1 oggende is daar 'n lang parade terwyl ons die JOCOM
2 vergadering het en dan word die mense geparadeer, die lede
3 wie ontplooi gaan word, en dan is daar vaste
4 verantwoordelikhede op elke bevelvoerder, sal kyk na
5 toerusting, hulle moet 'n SAP15 voltooi. Hulle sal kyk na
6 die beskikbaarheid van radio's, roepseine. Kommissaris, en
7 dan is daar ook 'n, die sodanige bevelvoerder wat dan enige
8 probleme identifiseer of ervaar sal dit dan onder die
9 aandag bring van die relevante operasionele bevelvoerder.
10 Dis hoekom ek gemeld het dat baie van dit is amper onnodig.
11 Dis net 'n proses wat ek deurgaan om seker te maak dat
12 almal reg is.

13 MR BUDLENDER SC: Alright, then if you
14 can just identify in respect of a few of these items,
15 General, so we're clear what happened. The fifth bullet is
16 water cannons to be tested. Who was responsible for
17 ensuring, or who did you expect would ensure that that was
18 done?

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
20 die waterkanon operateurs.

21 MR BUDLENDER SC: I'm sorry, I didn't
22 make myself clear. Who at the meeting, at the JOCOM
23 meeting did you think would ensure that the water cannons
24 were tested - in other words, would convey that
25 instruction?

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
2 niemand in besonder nie.

3 MR BUDLENDER SC: So there's not much
4 point in putting that on the checklist, is there, if it's
5 not directed at anybody?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 ek het dit verduidelik soos ek dit verduidelik het. Dis
8 [onhoorbaar] gewoonte dat 'n ou deurgaan. Dis amper soos
9 om vir 'n valskerm operateur te sê maak seker dat jy jou
10 valskerm daar het. Voorsitter, 'n waterkanon operateur is
11 opgelei in die gebruik en die hantering van sodanige
12 waterkanon.

13 CHAIRPERSON: Major-General, surely it
14 can't be as simple as that. The closing remarks say,
15 "Major-General Annandale instructed Lieutenant-Colonel
16 Scott to ensure that all the commanders are briefed
17 accordingly." So I would have thought that what that means
18 in the particular context is that those items which were
19 specifically referred to and covered in the bullet points
20 which were not thereafter talked about at the JOC because
21 you were given assurances that those matters had been
22 attended to, were instructions that had to be carried over
23 to the commanders, so that in the case of water cannons to
24 be tested, obviously Lieutenant-Colonel Scott didn't have
25 to go to each water cannon operator and say is your water

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1 cannon operating correctly, but surely the commander, or
2 commanders of the water cannon operators were the people
3 who should have been briefed with the details of the
4 checklist which you had gone through, to ensure that
5 everything was in place. Otherwise it was a meaningless
6 formality which took the matter no further.

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
8 maar ek het dit so verduidelik. Die, hoe ek die vraag
9 verstaan het van Adv Budlender is wie het ek spesifiek
10 getaak om dit te gaan doen, en ek het niemand spesifiek
11 getaak om te sê gaan maak seker dat die waterkanonne
12 getoets word nie.

13 CHAIRPERSON: I can understand that, but
14 who is the commander who was supposed to be briefed
15 accordingly and to whom that instruction would be conveyed?

16 In the case of water cannon, who were the commanders, or
17 who was the commander of the water cannon operators?

18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 dit sou waarskynlik direk onder die beheer van die
20 operasionele bevelvoerder Brigadier Calitz geval het.

21 COMMISSIONER HEMRAJ: How did you expect
22 that what you'd mentioned in the checklist about the water
23 cannons was going to be communicated to Calitz, to
24 Brigadier Calitz?

25 GENERAAL-MAJOOR ANNANDALE: Kommissaris,

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1 ek sou verwag het dat in hierdie interaksie tussen
2 Brigadier Pretorius en Luitenant-Kolonel Scott met hierdie
3 verskeie bevelvoerders, sou daar melding gemaak gewees het
4 en gesê tydens die JOCOM vergadering is die volgende
5 aspekte vermeld, so half net as 'n herinnering aan die
6 mense, weet jy, neem net kennis, kom ons maak net seker.

7 MR BUDLENDER SC: Right, sorry that that
8 took longer than I had hoped. Now can we come to the
9 problems with implementation. The first problem, or
10 firstly there was a problem with the radio communication
11 system and I referred you to the statement of Brigadier
12 Fritz, which you now have, I think. In all the excitement
13 about water cannons I've lost my copy. Could you go to
14 paragraph 5, and you'll see that this is Brigadier Fritz
15 talking about the time that they were up in the air in the
16 chopper, and then he says, the sixth line – or let's start
17 with the fifth line, he says, "At that stage we were not
18 aware that people had been killed, or how many had been
19 killed. We tried to make radio contact with the people on
20 the ground and the JOC to give a sit-rep from what we were
21 witnessing, but we could not because Lieutenant-Colonel
22 Vermaak in another chopper and Brigadier Calitz on the
23 ground were busy giving instructions from their radios.
24 They effectively occupied the communication channel, which
25 made it impossible for me to communicate on that channel

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1 with anyone. The operation on that day was run on that
 2 single channel." Then could we go to paragraph 8, and I'll
 3 read that. "The purpose of my deployment in the chopper
 4 was not achieved because I could not make radio
 5 communication with either the JOC or the people on the
 6 ground. Every time the radio went quiet I tried to
 7 communicate, but was unable to do so because someone else
 8 was occupying the channel." Now General, you explained
 9 last week how that problem had arisen, what the problem was
 10 with the system.

11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 12 ek het die beperkings van die stelsel verduidelik.

13 MR BUDLENDER SC: Now General, did the
 14 JOC commanders know before the operation that this
 15 limitation might be a problem?

16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 17 soos ek probeer verduidelik het in terme van hoe ons
 18 voorsien het die plan sal uitrol, het ons nie voorsien dat
 19 daar sodanige volume radiokommunikasie sou plaasvind nie.

20 MR BUDLENDER SC: I understand, and now
 21 did the JOC commanders know during the operation that
 22 Brigadier Fritz was having this problem that he couldn't
 23 communicate?

24 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 25 ek is nie bewus of hy enigsins gedurende daai tyd met die

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1 JOC gepraat het nie, maar ek was nie bewus daarvan dat hy
 2 sodanige probleme ervaar nie.

3 MR BUDLENDER SC: I think what you're
 4 saying is at the time you were not aware that he was
 5 encountering those difficulties?

6 GENERAAL-MAJOOR ANNANDALE: Dit is
 7 korrek.

8 [14:11] MR BUDLENDER SC: Well, I have to put it
 9 to you, General, that what that means is that the
 10 communication system was so bad that you didn't even know
 11 there was something wrong with it.

12 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 13 dit het niks met die kommunikasiesistiem te doen nie. Dis
 14 hoe die kommunikasiesistiem ontwerp is. Dis hoekom ek
 15 verwys het na beperkings op 'n analoge sistiem.

16 MR BUDLENDER SC: No, I understand that
 17 it was an inherent limitation in the mechanical system.
 18 What I'm putting to you is something different, that your
 19 method of communication that day was so bad that you didn't
 20 know that there was a problem with it, because you didn't
 21 even know that Brigadier Fritz was having a trouble.

22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 23 wat ons nou weet soos gebeurde uitgedraai het, maar dit was
 24 nie sodanig voorsien nie, en ek het probeer verduidelik aan
 25 die Kommissie hoe ons dit voorsien het, en dan sou daar nie

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1 'n uitdaging gestel geword het aan daai kanaal soos wat nou
 2 die geval is wat ons nou weet nie.

3 MR BUDLENDER SC: Right, now the police
 4 have –

5 CHAIRPERSON: Are you moving on to a
 6 different topic?

7 MR BUDLENDER SC: A different aspect of
 8 this topic, Chair.

9 CHAIRPERSON: Look at paragraph 4 of
 10 Brigadier Fritz's statement. The pages aren't numbered,
 11 but it's paragraph 4. I think it's on the second page. He
 12 says, "While he was at the JOC, General Annandale informed
 13 me that a shooting had taken place at the koppie. I was
 14 instructed by General Annandale to climb into a chopper and
 15 fly to the area and give a situational report (sit-rep)."
 16 There he describes how he did that and there's the passage
 17 that was put to you by Mr Budlender, and so in para 8 he
 18 says, "The purpose of my deployment in the chopper was to
 19 go and give a situation report. The purpose of my
 20 deployment in the chopper was not achieved because I
 21 couldn't make radio communication with either the JOC or
 22 the people on the ground." Now what it means then is you
 23 asked him to get into a chopper, to fly over the area and
 24 give a situational report. You never got the situational
 25 report. He never reported back to you at all during the

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1 whole time, and I think he says somewhere that he's in the
 2 air for – I'm not quite sure how long it is, but he was in
 3 the air for quite some time – 40 minutes, and at no stage
 4 during that time did he give you the situation report.
 5 Didn't you wonder what had happened? He's flown to the
 6 area - it couldn't take him very long to get there – being
 7 specifically instructed to give a situation report, and you
 8 didn't get any report.

9 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 10 ons moet teruggaan. Die beplanning was altyd dat die
 11 tweede "chopper" ook in die lug sou wees. Die doel van die
 12 "chopper" wat Brigadier Fritz op sou wees was pertinent om
 13 te fokus om lugbeheer te neem van insidente wat buite die
 14 operasionele omgewing van Brigadier Calitz plaasvind, maar
 15 hy sou ook vir Luitenant-Kolonel Botha aan boord gehad het
 16 om die uiteendryf-aksie te verfilm. Daar was aan my
 17 oorgedra dat die betrokke Squirrel helikopter slegs twee en
 18 'n half ure vlugtyd tot sy beskikking het vir die dag. Met
 19 die wat die operasie nie om 15:30 begin het nie, was daar
 20 nou eers gewag vir die uitrol van die defensiewe maatreël
 21 en daarna, en voor offensiewe maatreëls implementeer sou
 22 word was ons bewus daarvan dat daar nog steeds 'n
 23 waarskuwing gegee sou word wat waarskynlik 20 minute, of
 24 selfs langer sou wees, en dit was die rede hoekom Brigadier
 25 Fritz nie reeds in die lug was om 15:30 nie. Toe ons op

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1 die radio waarneem dat daar 'n eerste aanslag was op die
 2 polisielyn, en OOP lede reeds rubber- en skokgranate en CS-
 3 gas gebruik het –
 4 CHAIRPERSON: The POP members had used
 5 rubber, stun grenades, and teargas.
 6 GENERAAL-MAJOOR ANNANDALE: - het ek vir
 7 Brigadier Fritz gesê hulle moet nou onmiddellik in die lug
 8 kom, en ook vir hom gesê om terugvoer te gee. Voorsitter,
 9 om hierdie vraag te antwoord, daar was deurlopende
 10 kommentaar vanaf die ander "chopper," Charlie1, en ook
 11 vanaf die operasionele bevelvoerder, Pappa1, en dit is
 12 hoofsaaklik die twee roepseine wat die radio wel geokkupeer
 13 het. Voorsitter, daar was selfs 'n stadium dat dit seker
 14 omtrent vir meer as drie minute waar daar geen
 15 radiokommunikasie geplaasgevind het nie, en dit is tipies
 16 wat gebeur wanneer iemand sy knoppie sal inhou, dan word
 17 radiokommunikasie in totaliteit uitgesny.
 18 CHAIRPERSON: I understand all that, but
 19 it still doesn't detract from the fact that you instructed
 20 him to climb into the chopper after a shooting had taken
 21 place at the koppie, he says. You instructed him to fly to
 22 the area and give a situational report. He got in the
 23 chopper, he went away. You didn't see him for 40 minutes,
 24 and during that time you received no situational report
 25 from him at all.

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1 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 2 dit is wel so, en ek het ook verstaan hoekom dit so is,
 3 omdat die radio kanaal so besig was. Net soos hy nie
 4 geleentheid gehad het, het ek of die volgende persoon ook
 5 nie 'n geleentheid gehad nie, en wat ek nie sou doen op
 6 daardie stadium nie, Voorsitter, is om te probeer inbreek
 7 op die radio want as hulle besig is met kommunikasie dan
 8 gaan presies gebeur die oomblik as ek my knoppie druk, dan
 9 sny ek daai kommunikasie ook uit.
 10 CHAIRPERSON: The question which follows
 11 from all this, is this – you wanted a situational report,
 12 as I understand it, on what was happening at the koppie.
 13 That's why you sent Brigadier Fritz. Did you get such a
 14 situational report from anybody else?
 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 16 die terugvoer wat deurlopend gegee was deur Brigadier
 17 Calitz en Luitenant-Kolonel Vermaak.
 18 CHAIRPERSON: Calitz was on the ground
 19 and Vermaak was in another helicopter. Is that correct?
 20 GENERAAL-MAJOOR ANNANDALE: Dit is
 21 korrek, Voorsitter.
 22 MR BUDLENDER SC: General, just to follow
 23 up on that before I come back to the theme I was busy with,
 24 when did you first hear that there had been shootings at
 25 scene 1? How did you hear it?

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1 GENERAAL-MAJOOR ANNANDALE: "Shootings"
 2 soos in skerp-punt ammunisie?
 3 MR BUDLENDER SC: When did you first hear
 4 that people had been shot with sharp ammunition at scene 1
 5 and killed?
 6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 7 ek kan nie die presiese tyd onthou nie. Dit moes
 8 waarskynlik in die omgewing van half 5 of selfs later
 9 gewees het.
 10 COMMISSIONER HEMRAJ: Lack of report, the
 11 situation report from Brigadier Fritz from the chopper, did
 12 that hamper your operation in any way? Did it have an
 13 effect on it?
 14 GENERAAL-MAJOOR ANNANDALE: Kommissaris,
 15 nee, nie werklik nie want Brigadier Fritz sou in dieselfde
 16 lugruim gewees het oor dieselfde insident as wat Luitenant-
 17 Kolonel Vermaak was. So, Kommissaris, hulle sou basies
 18 gesirkel het, net op verskillende hoogtes, maar daardeur
 19 wil ek nie sê dat as jy aan die een kant is en iets gebeur
 20 aan die ander kant dat jy "obviously" iets kan waarneem wat
 21 die ander persoon nie waargeneem het nie.
 22 CHAIRPERSON: What your own statement
 23 says is, at page 11, para 25, "It was from 15:45 Brigadier
 24 Calitz and Lieutenant-Colonel Vermaak started with
 25 continuous feedback over the police radio as to

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1 developments at the koppie." That's in accordance with
 2 that you said, that's why Fritz couldn't get through,
 3 because they were busy with continuous feedback as to
 4 developments at the koppie, and then your statement goes
 5 on, "It was mentioned at around 15:55 when the police
 6 started deploying the barbed wire, a group from the
 7 protesters, armed with various weapons, flanked the
 8 vehicles deploying the wire; the police came under attack.
 9 They tried to stop the advance of the water cannons, stun
 10 grenades, CS and double ball rubber. The attempt was
 11 unsuccessful. Police members had to utilise force to
 12 defend themselves from the charging group." That's the
 13 first paragraph of paragraph 25, and then you go on to say,
 14 "I was later told by Major-General Naidoo that the
 15 dispersion action had commenced at this time and that the
 16 protesters moved to a smaller koppie in the close vicinity.
 17 The police advanced to arrest the armed protesters, was met
 18 by gunfire, and attacks by armed individuals resulted in
 19 the police officers having to again employ force." So what
 20 that appears to be telling us is that you didn't know until
 21 later when Major-General Naidoo spoke to you, told you what
 22 had happened, that apart from what had happened at scene 1,
 23 which is described, I take it in the first paragraph at
 24 para 25, you didn't know about scene 2 until substantially
 25 later, and I think you actually said that in your evidence

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1 last week. That's correct, isn't it?

2 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
3 dit is korrek. Daar was nie vir my 'n onderskeid gewees in
4 terme van tonele nie.

5 **CHAIRPERSON:** Well, things were happening
6 at the second scene and you had no knowledge of that at the
7 time for the reasons that we have discussed.

8 **GENERAAL-MAJOOR ANNANDALE:** Dis korrek.

9 **MR BUDLENDER SC:** General, you say the
10 first time you heard that people had been shot at scene 1
11 with sharp ammunition and killed was at 4:30 or some time
12 thereafter. That's what you just said.

13 **GENERAAL-MAJOOR ANNANDALE:** Ja,
14 Voorsitter, ek kan nie presies onthou nie. Alles het baie
15 vinnig gebeur en ek het ook gesê dit voel of tyd stilstaan.
16 Ek aanvaar dit was waarskynlik na 16:30.

17 **MR BUDLENDER SC:** Well, 16:30 is the time
18 you suggest. You said 16:30 or thereafter, and I have to
19 put it to you that by 16:30 both scene 1, the deaths at
20 both scene 1 and at scene 2 had already taken place.

21 **GENERAAL-MAJOOR ANNANDALE:** Ek aanvaar
22 die meeste van die sterftes.

23 **MR BUDLENDER SC:** We'll look at the
24 evidence and see what it shows. It's not fair to debate
25 that with you because you weren't on the scene of the

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1 shootings.

2 [14:31] Now General, to go back to the problem with the,
3 as you explained, the capacity of the radio system, the
4 police case has been put quite strongly that what happened
5 on the 16th of August was, or the situation on the 16th of
6 August was an unprecedented event and the parameters of the
7 event included the follows; there were between 3 000 and
8 4 000 protesters; they were in an area which is not easily
9 surrounded and isolated; a significant number of them were
10 armed, including some of them with firearms. Some members
11 of the group had apparently been emboldened through rituals
12 and some members of the group had already carried out some
13 killings. Is that a fair description of the broad
14 parameters of the problem you faced, or the situation you
15 faced?

16 **GENERAAL-MAJOOR ANNANDALE:** Het u dit
17 aangehaal uit die openingsverklaring?

18 **MR BUDLENDER SC:** No, no, it's not a
19 quotation; it's my description of how I understand the
20 parameters.

21 **GENERAAL-MAJOOR ANNANDALE:** Ja, ek
22 aanvaar dis seker 'n wye omskrywing, behalwe dat daar 'n
23 pertinente kleiner groepie was van sowat 400.

24 **MR BUDLENDER SC:** Right, thank you, and
25 as you explained to the Commission last week, the problem

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1 of radio capacity can be avoided if in advance you put the
2 necessary infrastructure in place, but that infrastructure
3 was not obtained for this operation.

4 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
5 my beperkte tegniese kennis van die radiostelsels verstaan
6 ek dat daar pertinente versterkers moet geplaas wees en dat
7 sodanige versterkers op hoë grond moet geplaas wees.

8 **CHAIRPERSON:** I understand the English
9 word is "boosters."

10 **MR MAHLANGU:** Boosters, that's the
11 correct term, yes, that is boosters would be placed at a
12 high altitude.

13 **MAJOR-GENERAL ANNANDALE:** High ground.

14 **MR BUDLENDER SC:** I understand that,
15 General, but you also explained what I understood would be
16 a different system or mechanism that where you had some
17 very large events, you've had to create systems where there
18 can be communication on more than one channel, but special
19 infrastructure is necessary for that.

20 **GENERAAL-MAJOOR ANNANDALE:** Ja,
21 Voorsitter, dit is so. Dit het ook baie te doen met die
22 infrastruktuur wat beskikbaar is. So in 'n stedelike
23 gebied sal sodanige infrastruktuur meer geredelik
24 beskikbaar wees. In 'n landelike gebied is dit dan nou
25 gewoonlik minder beskikbaar.

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1 **MR BUDLENDER SC:** I understand, and what
2 happened on this day was that it wasn't anticipated that
3 such special equipment or installations or infrastructure
4 would be necessary, and as a result you proceeded on with
5 the equipment which was usually available to the police.

6 **GENERAAL-MAJOOR ANNANDALE:** Voorsitter,
7 ons het ons verlaat op 'n tegniese kundige, a radio-
8 tegniese kundige –

9 **CHAIRPERSON:** We relied upon a radio
10 technical expert. I think that's what –

11 **MR MAHLANGU:** Relied on the available –

12 **CHAIRPERSON:** We relied on a radio
13 technical expert, kundige.

14 **MR MAHLANGU:** Yes, that's correct, Chair.

15 **GENERAAL-MAJOOR ANNANDALE:** En die
16 kolonel het vir ons gesê dit is die twee kanale wat julle
17 tot julle beskikking het. Maar gegewe die uitrol van die
18 operasie wat ek reeds verduidelik het soos ons dit voorsien
19 het, was ons gemaklik om die operasie te doen op daardie
20 betrokke kanale.

21 **CHAIRPERSON:** - "happy" is a good
22 translation. We were comfortable about proceeding with the
23 equipment available to us –

24 **MR MAHLANGU:** Operate on the equipment
25 that we had available.

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1 MR BUDLENDER SC: General, with the
2 benefit of hindsight again, and I stress that because I'm,
3 as I said at the outset, what I'm particularly interested
4 in is what can be done to avoid problems of this kind in
5 future, so with the benefit of hindsight one of the lessons
6 learned from this episode is that inadequate radio
7 communication systems were a major problem.

8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
9 ek het verduidelik dat die Tetra sisteem, of die digitale
10 sisteem is 'n baie, baie beter sisteem, en wat baie
11 voordele bied bo die analoge sisteem, maar met die voordeel
12 van nabetragting, benefit of hindsight, en dat ons weet in
13 'n situasie soos wat hom afgespeel het in Marikana –

14 MNR MAHLANGU: As u kan herhaal,
15 asseblief.

16 GENERAAL-MAJOOR ANNANDALE: Met dit wat
17 ons nou weet, besef ons maar terdeë die beperkinge wat die
18 analoge sisteem met een kanaal vir ons ingehou het.

19 MR BUDLENDER SC: I understand that,
20 General. What puzzles me is why that is not mentioned in
21 exhibit L as a problem and a lesson learned.

22 GENERAAL-MAJOOR ANNANDALE: Dit was
23 waarskynlik 'n oorsigfout, Voorsitter.

24 MR BUDLENDER SC: I'm sure Mr Semenya
25 will correct me if I'm wrong, but I don't recall exhibit L

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1 mentioning any shortcomings or problems that were
2 discovered during this operation. I can't recall any. Can
3 you recall any?

4 GENERAAL-MAJOOR ANNANDALE: Ek kan nie
5 nou skielik dink in L dat daar pertinente vermelding gemaak
6 is soos ek dit uiteengesit het nie, nee.

7 MR BUDLENDER SC: You see, the problem I
8 have, General, is that the purpose of exhibit L is to
9 explain to the Commission what happened so that it can make
10 findings and we can avoid these events in future. Surely
11 for that purpose it should have included problems that were
12 discovered.

13 GENERAAL-MAJOOR ANNANDALE: Van polisie
14 se kant af, Voorsitter, was dit nooit die intensie gewees
15 dat daar net eenvoudig moet staatsgemaak word op bewysstuk
16 L nie. Dit was altyd ons intensie dat dit ook deur
17 verklarings en ook deur getuienis [onhoorbaar].

18 CHAIRPERSON: It wasn't included in the
19 opening statement either, was it?

20 MR BUDLENDER SC: I don't think so,
21 Chair. I'm not sure, but I don't think so. Chair, I don't
22 know at what time you wish to take the tea adjournment.
23 I'm happy to proceed, or to – I'm about to start a new
24 aspect.

25 CHAIRPERSON: We'll take the tea

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1 adjournment at this point.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [15:09] CHAIRPERSON: The Commission resumes.
4 Majoor-Generaal, u is nog steeds onder eed.

5 CHARL ANNANDALE: s.o.e.

6 CHAIRPERSON: Before Mr Budlender
7 continues with his cross-examination, I want to welcome Mr
8 Booie, a new interpreter who's come up from Cape Town to
9 assist us. Thank you very much. I have sworn him in as an
10 interpreter already this morning. Mr Budlender?

11 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
12 Thank you, Chair. Now General, we've discussed the problem
13 with the radio system. The second problem when the
14 operation was commenced and the barbed wire was rolled out,
15 was that the video operators were not in place. The POP
16 video operators were not in place, but we –

17 GENERAAL-MAJOOR ANNANDALE: Dis reg.
18 MR BUDLENDER SC: And you've explained
19 how that happened.

20 GENERAAL-MAJOOR ANNANDALE: Ek het
21 verduidelik, dis korrek, Voorsitter.

22 MR BUDLENDER SC: And I'll come back to
23 it in a different context a bit later. The third problem
24 was that Colonel Botha and Brigadier Fritz were not in the
25 air at the time when the action started, and as a result

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1 they were not able to record it or to tell you what was
2 happening. Now you've explained this afternoon why that
3 was. You say that the intention was that they should go up
4 once stage 3 proper was about to commence. Is that
5 correct?

6 GENERAAL-MAJOOR ANNANDALE: Ek het
7 verduidelik wanneer die offensiewe aksies begin plaasvind,
8 dis korrek.

9 MNR BOOIE: U sê? Kan u net weer kom.

10 CHAIRPERSON: I'm not sure I understood
11 you correctly. The answer is of course your case is the
12 offensive action as such never started. They were only
13 intended to be in the air, is that right, when the
14 offensive action started, or when – well yes, that's right,
15 isn't it?

16 GENERAAL-MAJOOR ANNANDALE: Wanneer die
17 uiteendryf aksies begin, dis reg, Voorsitter.

18 CHAIRPERSON: Yes, they were intended to
19 be in the air at the beginning of the dispersal actions,
20 but before the dispersal actions could begin, there was
21 what the National Commissioner called the disruption,
22 namely the attempt by some of the protesters to breach the
23 line, as it were, before all the wire was deployed. Is
24 that correct?

25 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

<p style="text-align: right;">Page 8707</p> <p>1 Voorsitter.</p> <p>2 MR BUDLENDER SC: And the problem was</p> <p>3 that you didn't anticipate what happened immediately after</p> <p>4 the barbed wire, or immediately once the barbed wire</p> <p>5 started being rolled out. You hadn't thought that there</p> <p>6 would be difficulties at that point.</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>8 die handeling van die groepie was nie geantisipeer nie, dis</p> <p>9 korrek.</p> <p>10 MR BUDLENDER SC: Yes, you thought it</p> <p>11 would be rolled out without any untoward incident which</p> <p>12 would require anyone in the air to observe it or to issue</p> <p>13 instructions.</p> <p>14 GENERAAL-MAJOOR ANNANDALE: Die taking</p> <p>15 van Luitenant-Kolonel Botha was om die uiteendryf aksie</p> <p>16 waar te neem.</p> <p>17 CHAIRPERSON: He was to be in position</p> <p>18 when the dispersal operation commenced. He was there to</p> <p>19 make a video, as I understand it, of the dispersal action</p> <p>20 and that had not yet commenced when the other problems</p> <p>21 arose.</p> <p>22 MR BUDLENDER SC: Now General, I'd like</p> <p>23 to explore with you a bit the prepositioning and the</p> <p>24 rollout of the barbed wire. You have explained that this</p> <p>25 is not an offensive measure, it's a defensive measure, and</p>	<p style="text-align: right;">Page 8709</p> <p>1 think about the leader of the small group, that's the small</p> <p>2 group of protesters.</p> <p>3 GENERAAL-MAJOOR ANNANDALE: Reg.</p> <p>4 CHAIRPERSON: You were going to make your</p> <p>5 point about that when you stopped and the interpreter</p> <p>6 jumped in. But perhaps you can go back to the beginning of</p> <p>7 that sentence and start again.</p> <p>8 GENERAAL-MAJOOR ANNANDALE: Nadat die</p> <p>9 leier van die, kom ons sê nou maar mnr Noki, nadat hy</p> <p>10 navraag gedoen het oor die doel van die draad, was daar toe</p> <p>11 oorgedra aan hom wat die doel van die draad is.</p> <p>12 MR BUDLENDER SC: Yes, and if I</p> <p>13 understood you correctly, you said that this was also</p> <p>14 explained over the public address system. Is that correct?</p> <p>15 Did I understand correctly?</p> <p>16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>17 dit is hoe ek dit verstaan het, synde dat die</p> <p>18 onderhandeling tussen die polisie krisisonderhandelaars –</p> <p>19 MR BOOI: That the task –</p> <p>20 MAJOR-GENERAL ANNANDALE: The</p> <p>21 negotiations.</p> <p>22 MR BOOI: - were about the crisis that</p> <p>23 were –</p> <p>24 CHAIRPERSON: The police crisis</p> <p>25 negotiators, I think, or I think that's what the witness is</p>
<p style="text-align: right;">Page 8708</p> <p>1 so on warning is required by the Standing Orders.</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Dit is</p> <p>3 korrek, Voorsitter.</p> <p>4 MR BUDLENDER SC: I want to explore with</p> <p>5 you the two questions which that leaves, namely first</p> <p>6 whether despite that a warning should have been given, and</p> <p>7 secondly, whether a warning was in fact given. Now you</p> <p>8 said at one stage in your evidence that the reason for the</p> <p>9 barbed wire was explained to the leadership group of the</p> <p>10 400 at the front.</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>12 ja, ek het verduidelik dat die terugvoer na die JOC toe was</p> <p>13 sodanig dat toe daar navraag gedoen is deur die leier van</p> <p>14 die klein leierskapsgroep –</p> <p>15 MNR BOOI: Was sodanig dat?</p> <p>16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>17 ekskuus tog, dit is vir my baie moeilik as ek besig is met</p> <p>18 'n sinskonstruksie en ek moet elke keer teruggaan, so</p> <p>19 ekskuus, die tolk vra vir my om terug te gaan en dan</p> <p>20 probeer ek eers dink nou net die woorde wat ek gebruik het.</p> <p>21 CHAIRPERSON: You must understand the</p> <p>22 interpreter has just taken over, so he's got to get</p> <p>23 accustomed to the rhythm of the –</p> <p>24 GENERAAL-MAJOOR ANNANDALE: Ja, ja.</p> <p>25 CHAIRPERSON: And you were talking, I</p>	<p style="text-align: right;">Page 8710</p> <p>1 talking about. The police crisis negotiators –</p> <p>2 MR BOOI: The discussion –</p> <p>3 CHAIRPERSON: - were dealing with, the</p> <p>4 police people were dealing with a crisis and then he didn't</p> <p>5 give us the verb, so we don't know what they did.</p> <p>6 GENERAAL-MAJOOR ANNANDALE: - dat</p> <p>7 sodanige gesprekvoering het plaasgevind vanuit 'n polisie</p> <p>8 Nyala en dat dit vanaf 'n polisiekant af plaasgevind het</p> <p>9 oor 'n publieke adressering sisteem.</p> <p>10 MR BOOI: And it was from the side of the</p> <p>11 police with regard to addressing the system.</p> <p>12 CHAIRPERSON: No, no, this communication</p> <p>13 took place from the police side by means of the use of a</p> <p>14 public address system.</p> <p>15 MR BUDLENDER SC: I now understand a bit</p> <p>16 better. Was the purpose of using the public – well, you</p> <p>17 weren't there, General, it's not fair to ask you questions</p> <p>18 about it. Who reported to you on what had happened there?</p> <p>19 We can ask that person about it.</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>21 soos ek onthou was dit waarskynlik Pappa1, Brigadier</p> <p>22 Calitz.</p> <p>23 MR BUDLENDER SC: Thank you, I'll ask him</p> <p>24 about that. Now I want to suggest to you that when the</p> <p>25 barbed wire was rolled out, it was likely that some of the</p>

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1 people on the koppie would think that they were being
 2 surrounded or encircled, and I'll show you why I say that
 3 and you can then comment on it. First I want to refer to
 4 Colonel Makhubela. He has 32 years experience of Public
 5 Order Policing and he was in charge of the deployment of
 6 the Nyalas with the barbed wire. Is that correct?
 7 GENERAAL-MAJOOR ANNANDALE: Dit is
 8 korrek, Voorsitter.
 9 MR BUDLENDER SC: I'm going to ask that
 10 you be given a copy of his statement, which we've been
 11 given by the police. You'll see that there is a
 12 handwritten version, which is signed, which is behind, and
 13 in front is a typed version, which is unsigned.
 14 CHAIRPERSON: I take it this will be
 15 exhibit GGG9.
 16 MR BUDLENDER SC: Do you have it,
 17 General?
 18 GENERAAL-MAJOOR ANNANDALE: Nee
 19 Voorsitter, ek het nie 'n kopie nie.
 20 MR BUDLENDER SC: It seems you're the
 21 last one to get it, sorry. Now you've got it. Now I'm
 22 going to work off the typed version, which was also
 23 provided by the South African Police Service. It's easier
 24 to read. Paragraph 2 Colonel Makhubela says the following.
 25 "During the said operation my task was to surround the said

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1 employees with barbed wire at the place they had gathered
 2 at a small hill near Wonderkop Village." The next
 3 paragraph he says, "I also state that I was in command of
 4 the armoured vehicles, six in number, which were to spread
 5 out barbed wire. There were about five members, SAPS, per
 6 each armoured vehicle," and then over the page, paragraph
 7 6, "I also state that the aim to use barbed wire was to can
 8 manage to control the said employees to be searched as only
 9 one entrance or exit was to be made for the weapons they
 10 were having." That's what Colonel Makhubela thought the
 11 purpose was of the rolling out of the barbed wire. Then I
 12 want to show you – I'm sorry this is such a long question,
 13 but I think it's better if I put the different statements
 14 to you at the same time –
 15 MR SEMENYA SC: Chair –
 16 MR BUDLENDER SC: Then the next one is a
 17 statement – I'm sorry.
 18 MR SEMENYA SC: Chair, just for the
 19 record, there is also a supplementary statement of the
 20 witness where a different reason is offered by the same
 21 witness for the use of the barbed wire.
 22 MR BUDLENDER SC: Perhaps we can ask that
 23 witness when he comes, but he's made – yes.
 24 MR SEMENYA SC: No, but for fairness to
 25 the witness, he ought to know that there is a different

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1 account given by that witness in relation to the use of the
 2 barbed wire.
 3 MR BUDLENDER SC: Chair, all I'm putting
 4 to the witness is that on the 19th of August 2012 –
 5 CHAIRPERSON: We know that. Surely the
 6 point, all that need be put is that this is what he said in
 7 this statement; he may have said something else in a later
 8 statement, but he did say that he did sign it and he did
 9 swear it was true, so that the witness knows, this witness
 10 knows that that wasn't Colonel Makhubela's last word on the
 11 subject -
 12 MR BUDLENDER SC: Yes.
 13 CHAIRPERSON: - but he did say something
 14 else. I imagine that deals with the problem. Alright, Mr
 15 Semenya nods his head, which indicates he agrees, so let's
 16 carry on.
 17 MR BUDLENDER SC: Thank you. Then the
 18 next statement is a statement by Constable Mooketsti. I'm
 19 going to ask that the witness be given two statements also
 20 from, produced by the police, Chair. One is Constable
 21 Mooketsti and the other is Constable Thebeetsile.
 22 CHAIRPERSON: GGG10 and GGG11. Constable
 23 Mooketsti's statement, GGG10; Constable Thebeetsile, GGG11.
 24 MR BUDLENDER SC: If we go first to
 25 Constable Mooketsti's statement, could you go to paragraph

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1 5 where he says – Chair, may I proceed? Constable
 2 Mooketsti, paragraph 5, says, "A command has been issued by
 3 Brigadier Calitz for the Nyala drivers to drop the barbed
 4 wire on the ground to encircle those gathered crowd with
 5 the intention to disarm and disperse them." Do you see
 6 that? And then could you go to Constable Thebeetsile's
 7 statement, GGG11, paragraph 3, "Some of them were -
 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 9 ek het nie die betrokke verklaring nie.
 10 MR BUDLENDER SC: I'm sorry, do you not
 11 have Thebeetsile? My apologies.
 12 CHAIRPERSON: I've got two copies of the
 13 typed version of Constable Mooketsti. I don't know whether
 14 I've got the witness –
 15 MR BUDLENDER SC: You should, Chair, have
 16 a typed version and a handwritten version.
 17 CHAIRPERSON: I have, yes. I've got two
 18 typed versions of Constable Mooketsti, and I thought maybe
 19 I had the witness's copy, but if I haven't –
 20 MR BUDLENDER SC: We'll find another one,
 21 Chair.
 22 CHAIRPERSON: Yes, alright.
 23 [15:29] MR BUDLENDER SC: My apologies, General.
 24 Would you look at then Constable Thebeetsile, paragraph 3,
 25 he says, "Some of them were carrying knobkieries and pangas

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1 and it was alleged that some of them having guns. The main
 2 aim for us was to encircle them with barbed wire and disarm
 3 them peacefully." Paragraph 4, "As soon as Nyalas put
 4 barbed wire and we tried to encircle them, they started to
 5 move towards the western of the hill. When we tried to
 6 block them with Nyala, they started to move further towards
 7 our top vehicle," and I want to suggest to you that if the
 8 person in charge of the operation and some of the people
 9 carrying it out thought that the purpose was encircling,
 10 it's not surprising that some of the people on the koppie
 11 also thought that it was an encircling operation. Would
 12 you like to comment on that?

13 GENERAAL-MAJOOR ANNANDALE: Ek sal graag
 14 wil. Voorsitter, ek kan net sê wat die plan bedoel het.
 15 Ek sal graag wil weet wat hierdie twee betrokke lede
 16 verstaan onder die term "encircle." Ek het ook vroeër in
 17 my getuienis verduidelik dat dit 'n opsie was wat ons
 18 waarskynlik op die Dinsdag of die Woensdagoggend bespreek
 19 het. Weens die praktiese uitvoerbaarheid daarvan het ons
 20 dit verwerp.

21 MR BOOI: Because of the practical
 22 implementation thereof we discarded it.

23 CHAIRPERSON: Practical non-executability
 24 of it, because practically it couldn't be executed, we
 25 discarded the idea. I think that's what he says.

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1 MR BOOI: Thank you.

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 3 ek het verduidelik dat ons meer as 1.3 kilometer van
 4 lemmetjiesdraad sou nodig gehad het. Ek het ook
 5 verduidelik dat dit gelyktydig dan sou moes ontplooi word.
 6 Voorsitter, en as jy gaan kyk na die voorligting en die
 7 spesifieke Google kaart wat Kolonel Scott gebruik het, en
 8 ook die praktiese ontplooiing van die ses Nyalas op die
 9 betrokke dag van die 16de, dan sal u kan sien dat dit net
 10 eenvoudig nie prakties moontlik was om die groep te
 11 omsirkel nie, synde dat vyf van die Nyalas in 'n reguit lyn
 12 was, ongeveer 80 meter uitmekaar uit, en die sesde Nyala
 13 was terugwaarts in 'n oostelike rigting geposisioneer. So
 14 die totale afstand wat gedek was deur die Nyalas was
 15 waarskynlik 400 meter, dat daar waarskynlik sowat 270 grade
 16 totaal oopgelaat was. Voorsitter, maar uiteraard was ek
 17 nie teenwoordig gewees toe Brigadier Calitz, of toe hulle
 18 die toeligting ontvang het nie, en my aanvaarding is dat
 19 dit sodanig oorgedra was tydens die toeligting en dat
 20 Luitenant-Kolonel Scott en Brigadier Calitz kan getuig oor
 21 die besonderhede wat hulle dan verder oorgedra het aan
 22 hulle onderskeie bevelvoerders.

23 MR BUDLENDER SC: General, I understand
 24 that and I understand it was not in fact the intention to
 25 encircle. What I'm exploring is whether it's surprising

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1 that some of the people affected thought that they were
 2 being encircled, and can I show you one other person who
 3 apparently also thought there was an encircling operation.
 4 Would you look at the – it's evidence given at the
 5 Commission. You've got in front of you a small pack of
 6 five or six pages of record of the Commission. Can you see
 7 that? It's headed Marikana Commission of Inquiry. I'm
 8 sorry, Chair, it seems we only have two for the
 9 Commissioners, if you don't mind. It's the record –

10 CHAIRPERSON: - given already. Read it
 11 out, we will –

12 MR BUDLENDER SC: It's the record.

13 CHAIRPERSON: I'm sure we will remember
 14 it.

15 MR BUDLENDER SC: I'm sure you will,
 16 Chair. Now this is the evidence given by the National
 17 Commissioner of Police. You see bottom right-hand section
 18 of the first page is page 7252. Do you have that? And you
 19 see in the middle of the page it says, line 10, Mr Bizos
 20 SC, "I'm sorry, yes, I'm sorry, a separate group of 2 to
 21 300, would the tactics have been different? What do you
 22 say?" and he goes on, and then General, line 15, General
 23 Phiyega, "There would be consistency in the tactics. The
 24 tactics would be to encircle, to disarm, and to disperse
 25 the people." Then could you go to the next sheet. The top

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1 right-hand block, page 7303, line 10, General Phiyega,
 2 "Advocate, those details my commanders will deal with, but
 3 the plan was to encircle, disarm, and disperse those who
 4 were there." Do you see that?

5 GENERAAL-MAJOOR ANNANDALE: Ek neem dit
 6 waar, dankie, Voorsitter.

7 MR BUDLENDER SC: Then the next sheet,
 8 the top right-hand block, page 7319, line 20, this is
 9 General Phiyega speaking, "There was an illegal protest.
 10 There were people who were armed in that protest and ours
 11 really was just to encircle them, to disarm them, and to
 12 disperse them. That's what we were here to do." Then the
 13 next sheet, top right-hand block, page 7447, line 9,
 14 General Phiyega, "Yes, I was aware because I said on our
 15 morning of the 15th I did say we endorsed her plan to go
 16 out, to encircle, disperse, and ensure that those
 17 protesters are disarmed." Then the next sheet, bottom
 18 left-hand block, line 1, General Phiyega, "It is a fact
 19 that I did not relay this matter to the Minister and I have
 20 said to you that it is not necessary for me or even General
 21 Mbombo or any other person to say to the Minister, now we
 22 are going to encircle, disarm, arrest, and disperse the
 23 crowd." So it seems that the National Commissioner had a
 24 view that what the operation was in sequence was to
 25 encircle, disperse, disarm, arrest. In any event, the one,

<p style="text-align: right;">Page 8719</p> <p>1 the action that always comes first in her account of it is 2 encircling.</p> <p>3 MR SEMENYA SC: Chair, in fairness to the 4 witness, who may not have been here while the General was 5 giving the evidence, the plan to encircle, disarm, and do 6 that, was not through the use of barbed wire. My learned 7 colleague came to this on the premise that it was not 8 surprising that people would think the deployment of barbed 9 wire was with an intention to encircle and disarm them. 10 The evidence now being referred to was not with reference 11 to the deployment of the barbed wire at all.</p> <p>12 COMMISSIONER HEMRAJ: You're referring to 13 what is in slide 178 of phase 3. Is that what you're 14 referring to, Mr Semenya?</p> <p>15 MR SEMENYA SC: That was the phase 3, 16 Madam Commissioner.</p> <p>17 CHAIRPERSON: Mr Budlender, it does seem 18 as if that's correct, that the encirclement was to take 19 place according to slide 178 after the dispersal into 20 smaller groups had taken place.</p> <p>21 MR BUDLENDER SC: I don't dispute that, 22 Chair. That clearly is so and that clearly was the plan.</p> <p>23 CHAIRPERSON: So that the barbed wire 24 itself wasn't going to encircle them. The encirclement was 25 going to be physically by members of the force who were</p>	<p style="text-align: right;">Page 8721</p> <p>1 about the rolling out of the barbed wire – was there any 2 thought given to the likely or possible response of the 3 strikers to the rolling out of the barbed wire?</p> <p>4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 korrek.</p> <p>6 MR BUDLENDER SC: General, did anyone say 7 if we do this, some of the strikers might think they're 8 being surrounded or encircled and run forward to escape 9 before the rolling out is completed?</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Nee, 11 Voorsitter.</p> <p>12 MR BUDLENDER SC: On the timeline which 13 we have constructed from the SAPS photographs and video, 14 the rollout of the barbed wire took more than nine minutes. 15 Now I want to put it to you that if that is correct, that 16 was also a problem and I ask you, did no-one say if we take 17 a long time to roll out the barbed wire, that will give the 18 strikers a lot of time to run forward around the front, 19 into the safe area?</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 eerstens weet ek nie, ek hoor nou dat dit nege minute gevat 22 het. Ek aanvaar dan vanaf 1 tot 4, ek het nie daardie 23 presiese minute –</p> <p>24 VOORSITTER: Nege minute. 25 GENERAAL-MAJOOR ANNANDALE: Nege minute.</p>
<p style="text-align: right;">Page 8720</p> <p>1 going to advance towards the smaller groups and –</p> <p>2 MR BUDLENDER SC: No, Chair, with 3 respect, no. What the – I accept that there wasn't a plan 4 to encircle the whole group. All I'm saying is that the 5 National Commissioner in her evidence thought that the 6 first step was encirclement, thereafter there was 7 dispersal, disarm, and to arrest. You just have to read 8 what she says. She always starts we encircle, then we 9 disperse, then we disarm, then we arrest. That's what she 10 thought what it was about. She's wrong, with respect.</p> <p>11 CHAIRPERSON: Yes in fact if you look at 12 the first one it's really upside down. It's encircle, 13 disarm, then disperse. I would have thought – anyway, Mr 14 Budlender, I don't know how I'm going to rule on this 15 because it seems to me that the views of the National 16 Commissioner on this – and I intend no disrespect to her – 17 on the basis of what was conveyed to her and what she then 18 understood, aren't going to take this point of yours any 19 further. You've got the other points that you've made and 20 perhaps we can get the comment of the witness on that, but 21 I don't think this case will stand or fall by the National 22 Commissioner's understanding and the way she expressed it 23 and the order in which she stated these various actions.</p> <p>24 MR BUDLENDER SC: General, when the 25 police action was planned – I'm now talking specifically</p>	<p style="text-align: right;">Page 8722</p> <p>1 VOORSITTER: Ja, u het gesê meter. 2 GENERAAL-MAJOOR ANNANDALE: Meter? 3 Minute. Nege minute. Ek hoor nou dat dit nege minute 4 gevat het vir die uitrol vanaf 1 tot 4. Dit is wat u sê, 5 Advokaat. 6 [15:49] Voorsitter, die aanvanklike bedoeling was dat dit 7 gelyktydig uitgerol was, uitgerol word, maar dit was nie 8 prakties moontlik nie gegewe dat sou een van die voertuie 9 besig wees om uit te rol en die draad hak vas, dan sou dit 10 beteken dat daar 'n gaping is daar waar die Nyala daar tot 11 stilstand kom tussen daai Nyala en die volgende Nyala. Dis 12 hoekom die een beweeg het tot by die posisie van die 13 volgende een en so sou dit dan daaropvolgend voortgaan. 14 Voorsitter, ons kan net terugval in terme van ons ervaring 15 in terme van die korrektiewe ervaring wat daar is, en in 16 die afgelope 17 jaar met meer as 150 000 gevalle van 17 skarebestuur wat die polisie hanteer het en ook in my 18 persoonlike ervaring oor my 30 jaar, beweeg mense eenvoudig 19 weg van so 'n versperring wat die polisie uitrol.</p> <p>20 MR BOOI: People would move away from 21 such an encirclement that the police would be setting. 22 CHAIRPERSON: No, no, no, no, the 23 encirclement word is going to cause trouble. The witness 24 says in his experience over 30 years is the people would 25 move away from an obstruction of this kind rolled out by</p>

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1 the police.

2 MR BOOI: Thank you.

3 GENERAAL-MAJOOR ANNANDALE: Agbare

4 Voorsitter, ek sien dat die tolk ook versperring verstaan

5 as "encirclement."

6 MR BOOI: Maybe I should have used the

7 word "demarcation."

8 MR BUDLENDER SC: Ja, I'll settle for

9 "encirclement."

10 CHAIRPERSON: We won't agree to that

11 settlement. Carry on.

12 MR BUDLENDER SC: General, I understand

13 why the barbed wire wasn't strung out simultaneously from

14 the four, the Nyalas, as you've explained, that that could

15 give rise to its own problems, as you've explained, but

16 doing it one by one was the cause of another problem, which

17 was a long delay which gave people the opportunity to go

18 around the front into the safe area, or to try to do so.

19 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

20 nou met die voordeel van nabetragting weet ons dit.

21 MNR BOOI: Voordeel van die?

22 MAJOR-GENERAL ANNANDALE: Benefit of

23 hindsight.

24 CHAIRPERSON: We know this now with the

25 benefit of hindsight, is what the witness said.

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1 MR BOOI: Thank you.

2 MR BUDLENDER SC: I understand that, and

3 all I put to you is that one of the problems now looking

4 back is that this response of the strikers, or some of the

5 strikers, was not anticipated and the result was that no

6 contingency plan was made to deal with that if it happened.

7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

8 ja, soos ons verwag het, het waarskynlik 90% plus van die

9 mense het dan juis wegbeweeg van die draad af.

10 MR BOOI: Yes, Mr Chair, as we had

11 expected, as we started, many people were moving away –

12 MAJOR-GENERAL ANNANDALE: From the

13 obstruction.

14 MR BOOI: - away from –

15 CHAIRPERSON: What he says is that 90% of

16 the people moved away. It was only about 10% who moved

17 forward, which of course, 10% of 4 000 is about 400, and

18 10% of 3 000 is 300, which was of course the bad group, but

19 anyway, perhaps that's another matter we'll get on to

20 later. [Inaudible] when you say 90%, you mean 90% of the

21 3 000. Is that right?

22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

23 nee, 90% van die kollektiewe getal.

24 CHAIRPERSON: Ja, well that was 3 000

25 roughly.

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1 GENERAAL-MAJOOR ANNANDALE: Ja, 3 000,

2 miskien 3 500, ja.

3 CHAIRPERSON: Ja, but anyway, it's

4 hearsay from you and from me, so we mustn't spend more time

5 on it.

6 MR BUDLENDER SC: Chair, I'm about to

7 start a new topic. This might be a convenient time –

8 GENERAAL-MAJOOR ANNANDALE: Kan ek net,

9 Voorsitter, dis belangrik dat ek miskien die volgende sê.

10 Voorsitter, uiteraard het ek as 'n individu baie, baie

11 gedink in terme van hoe kan ons so 'n situasie anders

12 hanteer. Nou met die voordeel van nabetragting sien ons

13 hoe het dit uitgedraai.

14 MR BOOI: With the advantage of the –

15 nabetragting?

16 MAJOR-GENERAL ANNANDALE: Hindsight.

17 MR BOOI: Of the answer –

18 MAJOR-GENERAL ANNANDALE: Hindsight.

19 CHAIRPERSON: Hindsight. We can see how

20 it turned out.

21 MR BOOI: I now properly understand what

22 could have happened.

23 GENERAAL-MAJOOR ANNANDALE: En ons as 'n

24 organisasie moet gaan kyk na meer effektiewe metodes om dan

25 sodanige versperrings op te sit.

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1 CHAIRPERSON: Were you going to say

2 something more about that, or were you going to –

3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

4 en ek kan net sê, en as ek weer met dieselfde situasie en

5 dit wat ek nou weet, dan sou ek dit miskien oorweeg het om

6 voordat so 'n groep bymekaarkom, 'n hele neutrale gebied te

7 gaan afsper.

8 MR BOOI: Going to encircle a completely

9 neutral –

10 MR SEMENYA SC: Barricade. Barricade.

11 CHAIRPERSON: I think partition off is

12 probably the word you're looking for. Partition off a

13 whole neutral area.

14 MR BOOI: Thank you.

15 CHAIRPERSON: Is it before the people

16 could gather on the koppie?

17 GENERAAL-MAJOOR ANNANDALE: Voordat hulle

18 bymekaarkom.

19 CHAIRPERSON: Before the people came

20 together, yes.

21 GENERAAL-MAJOOR ANNANDALE: En dat dit

22 waarskynlik sou behels dat ons 'n 360 grade versperring

23 moes opgesit het wat die polisie sou omring.

24 CHAIRPERSON: I understood you to say to

25 encircle the police. In other words 360 degrees barbed

1 wire encirclement around the police.

2 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3 dan met 'n beheerde toegang en uitgang uit die gebied uit.

4 MR BOOI: That would take control of
5 entry or exit of the area.

6 CHAIRPERSON: No, I'm sorry, what he's
7 saying, with controlled exit and ingress to that area. So
8 the encircled area, and then there'd be a controlled entry
9 and exit from that area.

10 GENERAAL-MAJOOR ANNANDALE: Dit is al wat
11 ek daarop wil sê.

12 CHAIRPERSON: Is that what you're going
13 to say at this stage? Very well, we'll take the
14 adjournment now until tomorrow morning at 9:30. As I
15 indicated, we'll have a half hour lunch tomorrow and we
16 will adjourn then at 3:30 tomorrow afternoon.

17 [COMMISSION ADJOURNED]

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