

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 170

16 JANUARY 2014

PAGES 19930 TO 20106



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1 [PROCEEDINGS ON 16 JANUARY 2014]
 2 [09:21] CHAIRPERSON: The Commission will resume.
 3 Those who haven't turned their cell phones off must please
 4 do so now. Brigadier, now that you've turned your cell
 5 phone off, I can remind you, you're still under oath.
 6 ADRIAN MARTHINUS CALITZ: Dankie,
 7 Kommissaris.
 8 CHAIRPERSON: Mr Mpofo, do you have
 9 anymore questions for the witness?
 10 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 11 [Microphone off, inaudible] but first I need to comply with
 12 your – yes, otherwise yes, the customary one or two
 13 questions. Good morning, Brigadier.
 14 BRIGADIER CALITZ: Good morning,
 15 Advocate.
 16 MR MPOFU: Right, I promised you that we
 17 would move to the 16th, but I was wrong. I'm just going to
 18 ask one or two – literally this time – one or two issues
 19 about some of the material we dealt with yesterday, just to
 20 situate the – and then we'll move back to the 16th.
 21 I think maybe even before I do that, let me just
 22 do something that I usually do with other witnesses, just
 23 so that you understand where, what my case, or the case of
 24 the injured and arrested is. Effectively our case is
 25 contained in the opening statement, which is not one of the

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1 documents that you have, but we have condensed it into
 2 about three broad themes, and fortunately two of those
 3 themes don't concern you, but I'll just give you the broad
 4 parameters.
 5 Firstly, would you agree with me that one of the
 6 determining factors of the success or failure of a
 7 particular operation is the terrain? There are many other
 8 factors, but that is one of the factors, correct?
 9 BRIGADIER CALITZ: Dit kan een van die
 10 faktore wees.
 11 MR MPOFU: Ja, and then of course another
 12 factor in the context of this case, which is a matter that
 13 Mr Bizos and you discussed at length, might be the
 14 emotional state of the troops, of the members. That could
 15 play a role as well, correct?
 16 BRIGADIER CALITZ: Dit kan 'n rol speel,
 17 ja.
 18 MR MPOFU: And then of course another key
 19 factor which could play a role would be what one might call
 20 timing, and that would cover both the date of the operation
 21 and even the time of the day, correct?
 22 BRIGADIER CALITZ: Tyd kan ook 'n faktor
 23 wees vir 'n operasie, ja.
 24 MR MPOFU: Ja, okay. Now the gist of our
 25 case then is based on those elements being determinative in

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1 this case, and what we say is that the terrain upon which
 2 this whole saga played itself, which was the koppie and all
 3 that goes with it, was triggered, or determined by what we
 4 call the first game-changer in this case, which was the – I
 5 don't want to call it the battle – the fight that took
 6 place between the NUM and the strikers, after which they
 7 fled and took refuge at the –
 8 CHAIRPERSON: You're referring to the
 9 incident on the Saturday –
 10 MR MPOFU: Of the 11th.
 11 CHAIRPERSON: - on the Saturday morning,
 12 the 11th –
 13 MR MPOFU: Correct.
 14 CHAIRPERSON: - when a group of about
 15 3 000 RDO, rock drill operators proceeded to the NUM
 16 offices. On their way some NUM officials came out of the
 17 office and eventually fired shots and two of the rock drill
 18 operators were –
 19 MR MPOFU: That's correct.
 20 CHAIRPERSON: - were injured and the
 21 others –
 22 MR MPOFU: Ran.
 23 CHAIRPERSON: - ran away and eventually
 24 took up position on the koppie. That –
 25 MR MPOFU: That's correct.

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1 CHAIRPERSON: That's the first game-
 2 changer.
 3 MR MPOFU: Yes, thank you, Chairperson.
 4 CHAIRPERSON: According to you.
 5 MR MPOFU: Yes, that's the first game-
 6 changer, and thankfully you are not involved in that, so
 7 I'm not going to question you on that. I'm just telling
 8 you about it. Because that, if I'm correct that before
 9 that they were meeting near the stadium - and at least
 10 their evidence is that as a result of that attack the whole
 11 idea of using the koppie almost as a kind of fort, as it
 12 were, or defensive position, came to the fore - if I'm
 13 correct in that then you would accept then that the terrain
 14 was determined at that stage, the terrain upon which you
 15 had to play – or sorry to use that word – where you had to
 16 carry out your operation, correct?
 17 BRIGADIER CALITZ: Ek verstaan wat u sê.
 18 MR MPOFU: Ja.
 19 BRIGADIER CALITZ: Die terrein was deur
 20 dan die "strikers" gekies as –
 21 MR MPOFU: Ja.
 22 BRIGADIER CALITZ: - die veiligste plek.
 23 MR MPOFU: Ja, okay, I won't quibble with
 24 you. I've just explained that it was forced upon them by
 25 circumstances, but it doesn't matter. The second game-

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1 changer in our view is the issue of the killings on the
 2 13th, and that's why I was dwelling on that issue with you
 3 so much yesterday, because from the point of view of the
 4 case of the injured and arrested that mini tragedy – to use
 5 the neutral word – of the 13th had a significant impact on
 6 the 16th, on what happened on the 16th. I don't know if you
 7 would agree with that.

8 BRIGADIER CALITZ: Nee, ek – so as ek u
 9 reg verstaan, nee, ek stem nie saam met u nie.

10 MR MPOFU: Okay, how about this; you
 11 would agree, wouldn't you, that what we call – okay, if it
 12 can be established that there was a revenge motive on the
 13 part of even one or two people, that would relate directly
 14 to what happened on the 13th, on the part of the police, for
 15 that matter even on the part of the strikers. Would you
 16 agree with that broadly?

17 BRIGADIER CALITZ: As dit kan bewys word
 18 dat daar "revenge" was deur die "strikers" of die polisie,
 19 in daardie geval kan dit 'n moontlikheid wees, ja.

20 MR MPOFU: Okay, let's even reduce it to
 21 a risk of a revenge motive because the opening statement
 22 from SAPS seemed to acknowledge that risk, albeit
 23 indirectly, by saying that some of the people who were
 24 involved in the mini tragedy of the 13th were removed,
 25 presumably for fear that they might be motivated by

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1 revenge. Do you remember that, that some of the people who
 2 were involved in the events of 13th were removed and did not
 3 take any further part?

4 MS BALOYI: Chairperson, with your leave,
 5 my name is Sesi Baloyi. I'm standing in for Mr –

6 CHAIRPERSON: You've been here with us
 7 for some time.

8 MS BALOYI: Yes, I'm standing in for Mr
 9 Semenya –

10 CHAIRPERSON: You don't have to introduce
 11 yourself again, but –

12 MS BALOYI: I've never been on record,
 13 Chairperson, that's why.

14 CHAIRPERSON: Oh, have you never been on
 15 record?

16 MS BALOYI: Yes, I've never.

17 CHAIRPERSON: Oh, well welcome to the
 18 record.

19 MS BALOYI: Thank you. Thank you,
 20 Chairperson.

21 CHAIRPERSON: You're standing in for –

22 MS BALOYI: For Mr Semenya in the
 23 meantime.

24 CHAIRPERSON: Mr Semenya is doing –

25 MS BALOYI: I'm doing that indeed.

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1 CHAIRPERSON: Alright, okay, and you want
 2 to object to something?

3 MS BALOYI: I do indeed, Chairperson.

4 CHAIRPERSON: What do you want to object
 5 to?

6 MS BALOYI: Chairperson, Mr Mpofu makes
 7 reference to the opening statement of the SAPS as alluding
 8 or mentioning that some members who were involved in the
 9 incident of the 13th were removed from participating –

10 CHAIRPERSON: I don't think he said that
 11 comes from the opening statement. My recollection was –

12 MS BALOYI: He did, Chairperson.

13 CHAIRPERSON: There was some evidence to
 14 that effect as well.

15 MS BALOYI: Yes, at this point –

16 CHAIRPERSON: So isn't he entitled – so
 17 whether it's located in the right place –

18 MS BALOYI: Yes.

19 CHAIRPERSON: - if the evidence is that
 20 the police very sensibly removed people who had been
 21 involved in the incident of the 13th for fear that what
 22 happened might influence their conduct and so on, if there
 23 is such evidence then there can be no objection to the
 24 questioning thereof, can there?

25 MS BALOYI: Chairperson, the point that

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1 I'm taking is that Mr Mpofu says there's an acknowledgement
 2 in the opening statement of the SAPS that some of the
 3 people that were involved in the incident of the 13th may
 4 well have been motivated by emotions of revenge should they
 5 be deployed for the 16th. I'm taking objection to that,
 6 that it is not borne out in the statement. It is not borne
 7 out in anything that has been put before this Commission by
 8 the SAPS.

9 MR MPOFU: Okay.

10 CHAIRPERSON: Mr Mpofu, you've heard that
 11 objection –

12 MR MPOFU: Yes, I'm prepared to rephrase,
 13 yes.

14 CHAIRPERSON: Can you reformulate the
 15 question to obviate the need for the objection to be
 16 persisted with?

17 MR MPOFU: Yes, Chairperson, I'll
 18 rephrase the question, and I apologise, Brigadier, that I
 19 don't have the opening statement at hand but after tea I'll
 20 refer you to the specific passage. But as far as I'm
 21 paraphrasing it, all I'm saying is that in SAPS' opening
 22 statement there is a tacit acknowledgement that some of the
 23 members may have been so affected –

24 CHAIRPERSON: No, no, Mr Mpofu, unless
 25 and until you have the actual statement upon which you rely

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1 for the acknowledgement, tacit or otherwise, I don't think
 2 you should ask the question. I'm sure you've got other
 3 material you can deal with in the meanwhile, because
 4 objection has been taken. I understood you to say you've
 5 moved away from it for the time being. If necessary you
 6 can produce it after the tea adjournment. Let's carry on
 7 with something else in the meanwhile.

8 MR MPOFU: I thought Chairperson has said
 9 I must reformulate the question, that's exactly what I was
 10 doing.

11 CHAIRPERSON: I know, but the
 12 reformulation didn't seem to me to obviate the problem. So
 13 have another go at reformulating the question.

14 MR MPOFU: Yes. I'm saying, Brigadier,
 15 the SAPS, whether in the opening statement or in some of
 16 the evidence has testified that – yes, paragraph 35 of the
 17 SAPS opening statement – Chairperson, it's paragraph 35 of
 18 the SAPS opening statement, which is –

19 CHAIRPERSON: [Microphone off,
 20 inaudible].

21 MR MPOFU: Okay, I'll just read that. It
 22 says, "When police officers are targeted, the Police
 23 Service steps in, suppressing the human response
 24 (underline) of the moment in order to render a professional
 25 service. Some members who may have been affected by the

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1 death of their colleagues in the events of Monday 13 August
 2 2012 were removed from Marikana and posted elsewhere."
 3 That's all I'm saying. That's a verbatim quite from the
 4 SAPS opening statement.

5 CHAIRPERSON: What paragraph is that?
 6 MR MPOFU: 35, Chairperson.

7 CHAIRPERSON: Yes, I see. Thank you.

8 MR MPOFU: Ja. Are we together now? Ja,
 9 now I'm saying that the human response in the SAPS opening
 10 statement can only mean some form of stress. I acknowledge
 11 what my learned colleague is saying, that maybe I was
 12 putting too high, but let's just leave it at that level,
 13 that SAPS acknowledged that there would be a human response
 14 to those people of –

15 CHAIRPERSON: They didn't say that, Mr
 16 Mpofo. That's part of the objection. The second sentence
 17 of the paragraph says some members who may have been
 18 affected, so the police aren't conceding that members were,
 19 but what they are saying is just in case they were –

20 MR MPOFU: Yes, that's all I –
 21 CHAIRPERSON: - they, because they may
 22 have been, they took precautionary steps.

23 MR MPOFU: Yes.
 24 CHAIRPERSON: But you can't put it on the
 25 basis, as I understand you to be doing now, that they're

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1 admitting that some people were affected.

2 MR MPOFU: No, I –

3 CHAIRPERSON: Provided it's clear that
 4 you are sticking to the words that they used, that the
 5 risk, possibility of people being affected, is what was
 6 guarded against, then you can carry on with the question.

7 MR MPOFU: Yes, Chairperson, if you play
 8 the record you'll see that the question was based on even
 9 less than a possibility. All I'm saying is that the mere
 10 chance that there was what is called in paragraph 35 a
 11 human response, and that human response, as tenuous as you
 12 can want to make it, but that that human response would be
 13 occasioned by what happened to their colleagues on the 13th.
 14 That is what I'm referring to, Brigadier. We understand
 15 each other? And SAPS thought that the connection between
 16 the human response and the events of the 13th was sufficient
 17 for them to take action, which is to remove those people
 18 from Marikana and post them elsewhere, somewhere else.
 19 Understand?

20 CHAIRPERSON: So what question is the
 21 witness to answer?

22 BRIGADIER CALITZ: Is that the question,
 23 that I understand –

24 MR MPOFU: Yes.
 25 CHAIRPERSON: What is the question the

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1 witness is to understand? So what's the question the
 2 witness is to answer? Do you understand that –

3 BRIGADIER CALITZ: Ek verstaan –

4 CHAIRPERSON: Were you aware of it? Were
 5 you aware of it – never mind what you understand – were you
 6 aware of the fact that persons who it was feared might have
 7 been affected by what happened on the 13th were removed and
 8 sent elsewhere?

9 BRIGADIER CALITZ: Mnr die Voorsitter,
 10 miskien kan ek net die gedeelte waarop ek wel kan help is,
 11 die voorbeeld wat ek kan noem is Kolonel Merafe. Ek weet
 12 nie van ander lede wat "ge-affect" is in daardie geval dat
 13 hulle "ge-remove" is weens die effek daarvan nie, nee, maar
 14 waarvan ek wel bewus is, is dat die lede van die lede wat
 15 oorlede is het gevra dat hulle betrokke raak en ek dink
 16 daar is Kolonel Merafe en miskien nog een of twee verskoon
 17 van die operasie af, want hy was die eenheidsbevelvoerder,
 18 as u reg onthou, van een van die lede wat vermoor is. So
 19 ons het hom verskoon en hy het die families gaan bystaan,
 20 wat normaal is in daardie omstandighede, en na die bystaan
 21 van die families is dan ook, u sal onthou, ek dink dis op
 22 die 16de was die – onder korreksie – ek dink dis op die
 23 16de was die "memorial service." So dis die beplanning van
 24 daardie lede se families, die "memorial service" en dan ook
 25 die begrafnis. So daardie lede is verskoon. Ek kan –

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1 byvoorbeeld Kolonel Merafe.
 2 MR MPOFU: Yes, the simple, the only
 3 point I'm making, Brigadier, is that there is some possible
 4 – I won't put it higher than that – connection between the
 5 events of the 13th and what I've called the mood and the
 6 emotional state of the members on the 16th. That's all.
 7 I'm just explaining to you why we call these things game-
 8 changers. I've told you the first one and I'm saying the
 9 second one was the events of the 13th insofar as they may
 10 have impacted on, in their own right, but insofar as they
 11 have impacted on what happened on the 16th, and I was, the
 12 first leg of that game-changer is this issue of the
 13 emotions, and I'm sure you'd agree with me that neither –
 14 you wouldn't be in a position to dispel the possibility
 15 that some of the members who had the so-called human
 16 response may still have been affected by those events on
 17 the 16th. You can't say well, we removed all the ones, or
 18 it only takes 24 hours to have such a response. It's
 19 possible – not more than that – possible that some of the
 20 members may still have been affected, correct?
 21 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 22 kan net getuig op dit wat aan my gerapporteer is en wat ek
 23 self van weet, en dit is die redes wat ek gegee het.
 24 MR MPOFU: Okay, the second way in which
 25 the events of the 13th had an impact on what happened on the

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1 16th is what is borne out of exhibit L and various
 2 statements of the police members, where direct reference to
 3 the events of the 13th is made either in the crafting of the
 4 plan or in the movements. I'll give you an example.
 5 Someone would say we did this and did that because we
 6 wanted to pre-empt an attack as happened on the 13th.
 7 That's, all the statements are littered with that. In
 8 other words, the events of the 13th played another role
 9 which impacted on what happened on the 16th in that sense as
 10 well, agreed?
 11 BRIGADIER CALITZ: U verwys na "exhibit"
 12 L. Ek weet die detail wat deurgegee is aan die persone wat
 13 dit saamgestel het en die verslag in die "exhibit" L verwys
 14 dan na die 13de sowel as die 16de. Dis die gebeure, ja.
 15 CHAIRPERSON: I think the point goes a
 16 bit further than that. What Mr Mpofu is saying, he's
 17 putting to you and asking for your comment, is that after
 18 the events of the 13th in the planning going forward, if one
 19 can call it that, obviously the planners had to take into
 20 account what they were dealing with. They had to take into
 21 account the behaviour of some of the strikers on the 13th.
 22 They had to try to ensure that there wouldn't be a
 23 repetition of what happened on the 13th in the sense that if
 24 there were attacks of the kind which took place.
 25 [09:41] Of course whether the strikers were acting in

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1 self defence or whatever is a matter, I'm not busy at the
 2 moment. The fact is the police's perception was that there
 3 had been attack by the strikers in, with gruesome
 4 consequences and that perception was then factored in as it
 5 were into the planning and the plans took that into account
 6 and tried to devise methods of preventing that kind of
 7 thing in future. I think that's his point. I take it
 8 you'll agree with that?
 9 BRIGADIER CALITZ: Ek stem saam, mnr die
 10 Voorsitter. Die plan het dan voorsiening gemaak daarvoor.
 11 MR MPOFU: In fact and again I must
 12 apologise because I don't have the statement at hand now.
 13 But you can take it from me for now in fact the, Captain
 14 Kidd of the TRT in, when he was briefing his men or and
 15 women specifically said to them, this is now just minutes
 16 before the events of the 16th. Specifically said you must
 17 bear in mind that these people have killed, I think he said
 18 eight innocent people including two policemen and I don't
 19 want to be held to those words but words to that effect
 20 which I will demonstrate through one of the statements of
 21 the –
 22 CHAIRPERSON: Sorry to interrupt you, Mr
 23 Mpofu. There's two points I want to make. If you want to
 24 put things of that kind to the witness you should prepare
 25 cross-examination in such a way that you're able to put

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1 them immediately and not rely on your memory which may well
 2 be correct but it helps to have the actual reference. But
 3 that's the first point. The second point however is that
 4 this witness wasn't present as I understand it when Captain
 5 Kidd instructed his people. So he can't from his own
 6 knowledge respond to the suggestion that that's what
 7 Captain Kidd said. What, Captain Kidd as I understand is
 8 going to come and give evidence. You'll have an
 9 opportunity to question him about this but I don't see the
 10 point of asking this witness about something clearly from
 11 his own knowledge can't help us on.
 12 MR MPOFU: No, Chairperson, with the
 13 greatest respect this is the operational commander, he
 14 briefed the commanders under his wing to go and brief the
 15 troops, to use the word loosely. If one of those people in
 16 that briefing says that remember that these people have
 17 killed two policemen there's one of two possibilities.
 18 It's either that person is doing it of his own accord or
 19 the boss had told him to do that. So –
 20 CHAIRPERSON: I'm sorry –
 21 MR MPOFU: It can't be separated from
 22 this witness with the greatest respect.
 23 CHAIRPERSON: I'm sorry to interrupt you.
 24 I haven't got a problem, you putting to the witness did you
 25 tell Captain Kidd to give those instructions.

<p style="text-align: right;">Page 19946</p> <p>1 MR MPOFU: Yes, that's where I'm going.</p> <p>2 CHAIRPERSON: Well go there but –</p> <p>3 MR MPOFU: Thank you, Chairperson.</p> <p>4 CHAIRPERSON: Go there directly, it will</p> <p>5 save more time.</p> <p>6 MR MPOFU: Ja. Again please accept my</p> <p>7 apology, it's not about preparation, you know some of these</p> <p>8 things just arise from the answers. The, I'm saying to you</p> <p>9 if one of the section commanders or whatever other, Captain</p> <p>10 Kidd was one of the section commanders that's how they were</p> <p>11 described.</p> <p>12 BRIGADIER CALITZ: Nee, mnr die</p> <p>13 Voorsitter, hy was 'n groep bevelvoerder, ja.</p> <p>14 MR MPOFU: Group commander.</p> <p>15 BRIGADIER CALITZ: Dit is korrek.</p> <p>16 MR MPOFU: Yes. If one of the, if I'm</p> <p>17 correct that one of the group commanders and there may be</p> <p>18 more but I can only vouch for one, said to the members,</p> <p>19 let's not use troops, said to his members that they must</p> <p>20 bear in mind, they must bear in mind among other things the</p> <p>21 events of the 13th, A was that what you had asked them to</p> <p>22 emphasise, the group commanders as it were when they were</p> <p>23 briefing their people, that's the first question. Because</p> <p>24 remember that briefing flowed from the briefing of Scott</p> <p>25 and yourself as the big bosses.</p>	<p style="text-align: right;">Page 19948</p> <p>1 I'm just showing you the connection between that and, the</p> <p>2 last game changer is the, is what happened on the 15th</p> <p>3 leading up to the meeting of the National Management Forum</p> <p>4 which is the political interference which we will argue</p> <p>5 determined the date and time. Remember those three</p> <p>6 elements, it's the terrain, the mood, emotional state of</p> <p>7 the members and the date of the operation. We, and once</p> <p>8 again it's not something that concerns you but just for the</p> <p>9 sake of completion that's where we're coming from. So it's</p> <p>10 from that perspective that I'll, yesterday dealing with you</p> <p>11 of the events of the 13th because we'll argue that they had</p> <p>12 a direct impact, a very direct impact on the mood of the</p> <p>13 members as well as the plan itself, the mechanics of the</p> <p>14 plan were based on what happened. In other words what I'm</p> <p>15 saying is that if the 13th hadn't happened the 16th might</p> <p>16 not even have happened or would have happened differently</p> <p>17 but I don't have to argue that point with you now. That's</p> <p>18 where we'll come from, understand?</p> <p>19 BRIGADIER CALITZ: Ek hoor wat u sê.</p> <p>20 MR MPOFU: Thank you. Right now the, we</p> <p>21 then go to what I said is just one or two issues to sweep</p> <p>22 up some of the stuff we dealt with yesterday. I just want</p> <p>23 to ask you to tell me honestly, I know certain things</p> <p>24 you've not been honest before, if it, it doesn't concern</p> <p>25 you as a senior member of SAPS what you and I were</p>
<p style="text-align: right;">Page 19947</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>2 kan net sê die voorligting wat ons gegee het was nie deur</p> <p>3 myself en Kaptein Kidd gegee nie. Die voorligting was aan</p> <p>4 al die groepbevelvoerders insluitend myself gegee by</p> <p>5 forward holding area 1 en daar is beslis nie verwys na</p> <p>6 daardie waarskuwing dat onthou pasop die 13de was daar</p> <p>7 gedood en so nee dit is nie oorgedra aan die</p> <p>8 groepbevelvoerders nie. So as dit sy eie woorde is, soos u</p> <p>9 daarna verwys het is dit 'n moontlikheid.</p> <p>10 MR MPOFU: No, fine. I'll accept that</p> <p>11 for now until Captain Kidd comes here. But obviously the,</p> <p>12 one of the ominous links with that is that Captain Kidd is</p> <p>13 a TRT man, correct?</p> <p>14 BRIGADIER CALITZ: Kaptein Kidd was ten</p> <p>15 tye van die ontplooiing was hy 'n TRT lid, dit is korrek.</p> <p>16 MR MPOFU: Ja and it is the TRT that</p> <p>17 killed people at scene 1 at least.</p> <p>18 BRIGADIER CALITZ: Wat ek in hindsight</p> <p>19 verneem het is dit nie net TRT nie, daar was ook ander</p> <p>20 gewees, ja.</p> <p>21 MR MPOFU: But mainly the people in that</p> <p>22 so-called basic line were TRT members, correct?</p> <p>23 BRIGADIER CALITZ: Die meeste van hulle</p> <p>24 in die basic line, u is korrek.</p> <p>25 MR MPOFU: Alright. Anyway once again</p>	<p style="text-align: right;">Page 19949</p> <p>1 discussing yesterday namely that at face value at least it</p> <p>2 looks like a handful of private security people were able</p> <p>3 to handle a group of about a 100 people armed with,</p> <p>4 successfully without a drop of even a single drop of blood</p> <p>5 and divert them back to where they should be. When our</p> <p>6 police force with all the equipment, with all the training,</p> <p>7 with the helicopters and what have you, handling the same</p> <p>8 group and then it ends up with five tragic deaths. Does</p> <p>9 that concern you?</p> <p>10 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p> <p>11 verwys na gister se gesprek. U sal onthou dat ons verskil</p> <p>12 het in die opsigte van dat u gesê het die sekuriteit het</p> <p>13 dit suksesvol hanteer. Uit my oogpunt uit waar ek was en</p> <p>14 wat ek ge-observeer het, het ek hulle daar naby gesien nie.</p> <p>15 So ek het nie daardie feite dat dit wel so was nie en dan</p> <p>16 ook dink ek u het self genoem die sekuriteit het nie</p> <p>17 probeer om die groep te ontwapen nie. So dit is twee</p> <p>18 verskillende -</p> <p>19 MR MPOFU: Ja.</p> <p>20 BRIGADIER CALITZ: Takings gewees as ek</p> <p>21 dit so kan stel tussen die sekuriteit en die polisie.</p> <p>22 MR MPOFU: Ja, okay. Well that answer is</p> <p>23 incorrect with respect. I'll tell you why. Yes, it's true</p> <p>24 that at the point at which the, General Mpembe met with the</p> <p>25 group his objective was to ontwapen or disarm them. That's</p>

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1 correct, granted, okay. But listen to this, by the time
 2 the disaster struck on the 13th and I think you and I got
 3 stuck on this point and that's how it got lost. By the
 4 time the disaster struck on the 13th that motive at least or
 5 intention on the part of the police had been abandoned and
 6 at that stage the motive was exactly the same as that of
 7 those Lonmin security people. Which was to ensure that
 8 those people go back to where they came from.

9 CHAIRPERSON: Sorry, why do you say the
 10 motive had been abandoned, the motive had been abandoned by
 11 General Mpembe, I think that's clear.

12 MR MPOFU: Ja who's the overall
 13 commander.

14 CHAIRPERSON: But you'll remember the
 15 evidence is that Warrant Officer Kuhn in firing the teargas
 16 wasn't acting on any order from General Mpembe. In fact
 17 General Mpembe says he's now requested disciplinary steps
 18 be taken against Warrant Officer Kuhn for doing what he
 19 did. Warrant Officer Kuhn is going to come and give
 20 evidence why he did that is a question in respect to which
 21 we have no clear answer at this stage. So I don't see how
 22 you can put the question based upon General Mpembe's clear
 23 motive which is correctly stated by you but I don't see how
 24 you can put the question based on that where what led to
 25 the trouble, which was admitted to be the spark you

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1 remember in the evidence.

2 MR MPOFU: Used that word.

3 CHAIRPERSON: Was the conduct of Warrant
 4 Officer Kuhn, followed by Lieutenant Baloyi which appears,
 5 according to General Mpembe to have been the spark. We
 6 don't know what their motives were, it's certainly not self
 7 evident that their motives were the same as General Mpembe.
 8 It may well be that they were in fact going against his
 9 instructions because they had their own ideas. So but, any
 10 way but I just put that to you because I think your
 11 question requires reformulation.

12 MR MPOFU: Thank you, Chairperson. I
 13 think the problem maybe is, thanks Chairperson, I think the
 14 problem maybe I didn't make clear why I'm asking this
 15 question. I'm not asking this question to debate with you
 16 the merits or demerits of Warrant Officer this one and that
 17 one or whatever. All I'm saying is in handling the same
 18 group for the purposes of escorting them back to the
 19 koppie, at least that's the official SAPS version, the
 20 SAPS's involvement led to disastrous consequences where the
 21 private security group of fewer men dealing with the same
 22 group, also wanting them to go back to the koppie led to
 23 you know an agreement as it were between the two groups and
 24 no, not even one drop of blood spilled. That's really the
 25 gist of it. Whether this security policemen or that

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1 policeman or whatever is, that we'll debate with them when
 2 they come here. But what is undeniable is that the, but
 3 for their involvement those five people would be alive.

4 CHAIRPERSON: What is the question you
 5 want the witness to help us on?

6 MR MPOFU: Well it's the question that I
 7 asked you, does it worry you as a senior member of SAPS
 8 that a police force that, or rather let me put it this way,
 9 as a citizen even of South Africa that a police force that
 10 is well armed to which we should have confidence that it
 11 will protect us and so on can handle the same situation
 12 with such disastrous consequences where a handful of
 13 private security people handled it differently with success
 14 and without a drop of blood.

15 CHAIRPERSON: What do you say about that?

16 BRIGADIER CALITZ: Mnr die Voorsitter –

17 CHAIRPERSON: Do you agree with the
 18 comparison that's been made and the suggestion that it's a
 19 cause for concern, that this small band of private security
 20 people were able to deal with this group without any fatal
 21 or unfortunate consequences whereas a group of 70 policemen
 22 armed and equipped as they were didn't do that, that's
 23 basically the question. Do you wish to comment on that so
 24 that we can move on?

25 BRIGADIER CALITZ: Mnr die Voorsitter, ja

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1 graag. Die eerste deel glo ek relate tot die vroeëre vraag
 2 wat ek reeds geantwoord het, waar ek gesê het daar was 'n
 3 verskil. Volgens my weet ek nie van die klein groepie
 4 sekuriteit wat dit wel gedoen het nie. Indien dit kan
 5 bewys word en daar was dieselfde doel om die persone te
 6 ontwapen in daardie geval seer sekerlik. As 'n
 7 polisiebeampte -

8 CHAIRPERSON: There's no evidence that
 9 the security group was endeavoured in any way to disarm the
 10 strikers.

11 BRIGADIER CALITZ: Daarom het ek verskil,
 12 mnr die Voorsitter. Die tweede deel -

13 CHAIRPERSON: Or to escort them, they
 14 just told them to go away and they turned around and went
 15 away apparently.

16 BRIGADIER CALITZ: Dit is hoekom ek sê
 17 mnr die Voorsitter, daar verskil ek want dit is twee
 18 uiteenlopende, dit het nie eers dieselfde, as ek die woord
 19 kan gebruik, it's not the same ballgame. Maar die tweede
 20 deel –

21 CHAIRPERSON: I think apples and oranges
 22 may be an idea that you're trying to express.

23 BRIGADIER CALITZ: Dankie, mnr die
 24 Voorsitter. Daardie voorbeeld sal ook help. Om dan die
 25 tweede deel van die vraag toe te kom, is dat concern as 'n

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1 citizen of dan 'n polisiebeampte dat wat wel daar gebeur
 2 het die polisie se aksie as ek u reg verstaan dan getrigger
 3 het dat vyf persone oorlede is. Dit hang af wat die aksie
 4 was, u sal onthou ek was nie daar nie. So ek sal in
 5 hindsight net my mening moet gee en ek kan dit net gee op
 6 die video materiaal wat ek gesien het ensovoorts. So as u
 7 my mening daarop wil hê, ek weet nie of dit veel werd is
 8 nie. Ek was nie daar op daardie dag of het dit waargeneem
 9 nie, nee.

10 CHAIRPERSON: We've made, we've had this
 11 point before, Mr Mpofo, that matters which the Commission
 12 has to decide where it has to come to conclusions and form
 13 opinions and so on in dealing with those matters we're not
 14 really assisted by the views of individual participants in
 15 the action. Particularly in this case where the witness
 16 wasn't even a participant in that particular action. So
 17 I'm inclined to the view that we, I shouldn't allow this
 18 question.

19 MR MPOFU: Okay.

20 CHAIRPERSON: But I think you're got all
 21 the facts you need for your argument on the record. That's
 22 basically what you want isn't it.

23 MR MPOFU: That's fine, Chairperson.

24 CHAIRPERSON: So let's carry on.

25 MR MPOFU: Yes, it's just got nothing to

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1 do with participation, but it's fine. I'll move on to
 2 something else. I think I've failed to explain what I'm
 3 trying to get from you. So in the same vein does it
 4 concern you the senior policemen or even as a citizen that
 5 by your own admission and I know you didn't mean this
 6 literally, the question as to whether the police, South
 7 African Police Services is a killing machine as it was
 8 described is a 50-50 on the, 50-50 situation in terms of
 9 the citizens of the country, as you put it.

10 CHAIRPERSON: I don't understand the
 11 question and I don't understand him to have made the
 12 admission that you were referring to.

13 MR MPOFU: He did.

14 CHAIRPERSON: Perhaps you can, perhaps
 15 you can remind us of his exact words on the point. But I
 16 must be fair I didn't understand him to say that but I may
 17 be wrong and you may be right.

18 MR MPOFU: Thank you, Chairperson, those
 19 were his exact words. 50-50, his not mind. He said, to
 20 give you the context, he said, when I said to him this is a
 21 generally held view he said the majority of the media use
 22 that view but as far as the citizens are concerned it's 50-
 23 50. Those were his words the record can bear me out.

24 CHAIRPERSON: Do you acknowledge that you
 25 said that?

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1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 dis transkripsie sal wys wat gesê is. Dit is wel in
 3 daardie lyn gewees waar u my gevra het is die polisie staan
 4 bekend as a killing machine en ek het gesê nee dit is die
 5 woorde en die mening wat deur daardie skrywer in die, ek
 6 dink die koerant wat u voorgehou het was die Sowetan. Ek
 7 het gesê dit is die mening van daardie skrywer en dit was
 8 sy woorde gewees. Ek dink as ons na die breër publiek toe
 9 gaan sal dit 'n 50-50 wees. Wat ek daarby bedoel is, as
 10 daar 'n survey gaan wees en vir die persone vra is die
 11 polisie 'n killing machine daardie woorde, ek het nie gesê
 12 is daar 'n vertrouensbreuk in die polisie of weet iets
 13 anders wat dalk die balans kan, maar dat hulle gesien word
 14 as 'n killing machine –

15 MR MPOFU: Ja.

16 CHAIRPERSON: So basically you were
 17 talking about, your assessment of what public opinion is on
 18 a public attitude is in respect of that question.

19 BRIGADIER CALITZ: Dit is korrek, mnr die
 20 Voorsitter.

21 CHAIRPERSON: Do you say that the police
 22 are a killing machine?

23 BRIGADIER CALITZ: Ek sê beslis nie so
 24 nie, mnr die Voorsitter.

25 MR MPOFU: The question remains does it

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1 worry you as a citizen of South Africa and as a senior
 2 policeman that by your own admission on the question of
 3 whether the police is a killing machine the, about half of
 4 the citizens of the country would answer yes?

5 BRIGADIER CALITZ: Ek dink u het verwys
 6 toe, die eerste vraag is dat you don't think I mean it
 7 literally en dit is presies so, dit is nie letterlik laat
 8 ek geweet het daar's 'n survey nie. So ek kan nie 'n
 9 presentasie daartoe toe skryf nie. Maar ek het gesê dat as
 10 ek moet oordeel sal die persone aan die, wat aan die
 11 slegter ontvang kant was en wat met tragiese gevolge
 12 daaruit beweeg het, sal wel so voel. Die mense wat die
 13 lewens verlies en daardie.

14 [10:00] Die breër publiek wat dit lees het hulle opinie
 15 en daar is van hulle wat wel sal sê, maar hoekom het die
 16 polisie so opgetree, maar ek dink die wat die feite het en
 17 die wat luister na die Kommissie en al die transcripts volg
 18 sal nie daardie opinie hê, dat dit net 'n killing machine
 19 was nie, nee.

20 MR MPOFU: And finally on the 13th were
 21 you aware or did you subsequently become aware that the
 22 strikers clearly articulated to General Mpenbe and the
 23 members were more than ten times, I think, that they were
 24 not fighting with the police and that their gripe that they
 25 might have were with NUM and Lonmin?

<p style="text-align: right;">Page 19958</p> <p>1 BRIGADIER CALITZ: Ek moet in hindsight 2 sê ek het nie dit self gehoor nie, weereens die video na 3 geluister was in Fanagalo of Xhosa is, so die gedeelte wat 4 u vir my gegee het, die video, het ek nou nie die 5 transkripsie nie, dit was nie deel van die pakket nie, so 6 nee, ek het dit nie woordeliks gevolg nie, maar ek sal u 7 woord vat dat dit wel so was as dit in die transkripsie is. 8 MR MPOFU: Thank you. Ja, alright, now 9 we can move to the 16th. You would agree with me, wouldn't 10 you, that if you look at the operation as a whole, the 11 planning thereof and the execution are two sides of the 12 same coin. In other words both those must go right, if the 13 plan is bad the execution might be effected or the plan 14 might be good but if the execution is bad you must still 15 have that result, so it is in that sense that I mean that 16 they are two sides of the same coin, the planning and the 17 execution, correct? 18 BRIGADIER CALITZ: Die uitvoering is deel 19 van die plan, dit is korrek. 20 MR MPOFU: Ja. 21 BRIGADIER CALITZ: Ja, kom ek antwoord 22 net so. 23 MR MPOFU: And on those two aspects of 24 what happened on the 16th, those two important aspects, your 25 mark is 110%, correct?</p>	<p style="text-align: right;">Page 19960</p> <p>1 is die derde of die vierde advokaat wat my vra en ek dink 2 dit is reeds op rekord. U kan nie net die een sinnetjie 3 lees nie, u moet die sinne lees wat daarop volg en presies 4 hoe ek dit bedoel het, so ek het reeds hieroor breedvoerig 5 getuig, tensy mnr die Voorsitter wil hê ek moet dit weer 6 herhaal. 7 MR MPOFU: Okay, I'll oblige you, I won't 8 read one synergy. Now tell me if you still hold the 9 following view, "From planning to execution was a 110%, 10 exactly how we planned it and it is not often that this 11 happens in this last group. I have to congratulate you, 12 exactly how we planned it and you briefed the commanders 13 exactly were executed in that line." From planning to 14 execution was a 110%, so those are your words and not mine, 15 do you still hold that view or do you not hold that view? 16 BRIGADIER CALITZ: Mnr die Voorsitter, as 17 u verstaan in wase konteks ek dit gesê het, Advokaat dan, 18 dit is my presiese woorde en ek hou daardie view in die sin 19 van dat die Openbare Orde Polisiëringsvoertuie, "it is not 20 often that it happened in that large group," as ek maar 21 weer daaroor kan gaan, "congratulated you," met ander 22 woorde toe ek die opdrag gee om vorentoe te gaan, die Papa 23 voertuie het almal hulle lyn gehou. Ons het vorentoe 24 gegaan, ons het ge-regroup. Daarby sê ek dat elkeen het 25 nie op gesplit in sy eie rigting en gevolg in watter kant</p>
<p style="text-align: right;">Page 19959</p> <p>1 BRIGADIER CALITZ: Op watter dele verwys 2 u, die twee aspekte? 3 MR MPOFU: I'm paraphrasing again, you 4 said both in the planning and the execution, it was 100%, 5 do you still hold that view? 6 BRIGADIER CALITZ: Mnr die Voorsitter, 7 nee, ek dink u verstaan nog steeds nie die 110% nie, ek het 8 dit meer as twee of drie keer verduidelik wat ek bedoel het 9 by die 110%. Dit het ek net aan die Openbare Orde 10 Polisiëringslede gestel waar die linie gehou is en dat die 11 lyn nie gebreek is nie en dat ons in daardie sin kon 12 opvolg, kon hergroepeer en vandaar af verder uiteendryf. 13 Dit is die enigste waarop ek verwys het na die 110%, glad 14 nie na die execution of the tragiese gebeure of niks 15 daarvan nie. Dit is ook waar ek herhaaldelik verkeerd 16 aangehaal was, waarna ek verwys het in die media, so ek het 17 spesifiek net op daardie gedeelte dit so gesê. 18 MR MPOFU: Okay, then I'm going to be 19 fast to read you your exact words. From planning to 20 execution, I'm sorry, I'm reading from JJJ82. "From 21 planning to execution was a 110%," do you still hold that 22 view? 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 weet nie of dit my toekom om dit te vra nie. Ek het 25 hierdie woorde presies, presies verduidelik. Ek dink dit</p>	<p style="text-align: right;">Page 19961</p> <p>1 toe hy wil nie. Dit is die deel wat ek na verwys het. 2 MR MPOFU: And the last group – 3 CHAIRPERSON: Sorry, Brigadier, - 4 MR MPOFU: - you were referring to, I'm 5 sorry, Chairperson. 6 CHAIRPERSON: Sorry, Brigadier, you were 7 simply asked, do you still hold the view, if the answer is 8 you still hold the view then just say so. You don't have 9 to then repeat why, remember I told you, answer the 10 question you were asked and not other questions you think 11 may come next. The simple question was, do you still hold 12 that view and if the answer is, yes, then fine, that's 13 still your view and then we can move on. Okay, but you're 14 actually busy answering a question you think he is going to 15 ask you next. Do me a favour, don't do it. 16 BRIGADIER CALITZ: Mnr die Voorsitter, ek 17 – 18 CHAIRPERSON: Carry on, Mr Mpofo. 19 BRIGADIER CALITZ: Ek vra om verskoning, 20 ek wou net seker gemaak het hy verstaan die punt, want dit 21 is die derde keer wat dieselfde vraag opkom. 22 CHAIRPERSON: No, I'm not going to allow 23 Mr Mpofo to ask the question again – 24 BRIGADIER CALITZ: Dankie, mnr die 25 Voorsitter, -</p>

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1 CHAIRPERSON: - about that 110%, it has
2 been done over and over again.
3 BRIGADIER CALITZ: Dankie, mnr die
4 Voorsitter.
5 CHAIRPERSON: I'm telling him now and
6 other counsel who are here who may be tempted to ask the
7 same question, I'm disallowing it in advance now, but carry
8 on, Mr Mpofo.
9 BRIGADIER CALITZ: Dankie, mnr die
10 Voorsitter.
11 CHAIRPERSON: I think you've got on
12 record what you want.
13 MR MPOFU: No, I don't, you still haven't
14 answered the question. Listen here –
15 CHAIRPERSON: But he says, yes, he still
16 holds that view.
17 MR MPOFU: Well, when did you say, is
18 that your answer, Brigadier? Yes? Well, the brigadier
19 doesn't agree with you, Chairperson.
20 BRIGADIER CALITZ: Advokaat, met alle
21 respek, asseblief, die chairperson het vir u gesê dat dit
22 die antwoord was, so asseblief, miskien moet ons dan almal
23 luister wat die voorsitter sê, met alle respek.
24 MR MPOFU: Listen here, you're not going
25 to teach me how to cross-examine, answer the question, do

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1 you still hold the view –
2 CHAIRPERSON: Mr Mpofo, he has answered –
3 MR MPOFU: - or do you not hold the view?
4 CHAIRPERSON: Mr Mpofo, -
5 MR MPOFU: We can't have this long
6 lecture from a witness. I'm not going to have it,
7 Chairperson.
8 CHAIRPERSON: Mr Mpofo, I'm in charge
9 here, do you mind?
10 MR MPOFU: Ja.
11 CHAIRPERSON: Alright, please.
12 MR MPOFU: Thank you, answer the
13 question?
14 CHAIRPERSON: Mr Mpofo, - Brigadier, I
15 understood you to say that you still hold the view that you
16 expressed, is that correct?
17 BRIGADIER CALITZ: Dit is korrek.
18 CHAIRPERSON: You now have your answer
19 for, I don't how many times, -
20 MR MPOFU: That's better –
21 CHAIRPERSON: You can now carry on.
22 MR MPOFU: Well, he could have –
23 CHAIRPERSON: You don't have to make
24 comments like that, please.
25 MR MPOFU: Thank you.

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1 CHAIRPERSON: Just keep the temperatures
2 down, thank you.
3 MR MPOFU: And the execution that you are
4 talking about or firstly let's deal with this. When you
5 say that how we planned or the last group that you referred
6 to is the entire contingent of policemen, correct?
7 BRIGADIER CALITZ: Dit is nie wat ek gesê
8 het nie, nee.
9 MR MPOFU: I'm asking you was it the
10 group or was it not the group?
11 BRIGADIER CALITZ: Dit was nie die hele
12 groep nie.
13 MR MPOFU: Which large group are you
14 referring to?
15 BRIGADIER CALITZ: Dit is wat ek u reeds
16 geantwoord het, na die Papa5 Nyalas wat opgevolg het in
17 lyn.
18 MR MPOFU: Die Papa5 Nyalas, okay. Then
19 your answer, if the group you're referring to was the Papa
20 Nyalas then your answer earlier to that question was
21 untruthful, that you were referring to the basic line
22 because the Papa Nyalas did not form a basic line, correct?
23 BRIGADIER CALITZ: Beslis nie, mnr die
24 Voorsitter.
25 MR MPOFU: Ja.

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1 BRIGADIER CALITZ: Dit is nou heeltemal
2 'n ander gedeelte weer in hierdie statement, so ek stem nie
3 saam met u nie.
4 MR MPOFU: No, Brigadier, I am saying
5 when you were asked this question by, I think it was either
6 Mr Budlender or Mr Chaskalson, and I'm going to show you
7 that opportunistically so, you said that when you were
8 talking about that you congratulated them and so on, it was
9 because they had formed the basis line. You've now told me
10 that you were referring to the Nyalas, I'm telling you the
11 Nyalas did not form a basic line, so your earlier answer
12 was untruthful.
13 BRIGADIER CALITZ: Mnr die Voorsitter,
14 nee, ek stem glad nie saam met u nie, die basic line waarna
15 ek verwys het was die TRT.
16 MR MPOFU: Ja, that's exactly the point,
17 Brigadier, I'm saying that it is either, it can't be both.
18 It is either you were congratulating them for the basic
19 line which was the TRT, or you were congratulating them for
20 the Papa Nyalas as you are saying today, both those
21 statements cannot be truth, one of them is false. Which
22 one is the truth, which one is the lie?
23 BRIGADIER CALITZ: Mnr die Voorsitter,
24 weereens die advokaat verstaan nie, met alle respek. As u
25 die twee dele lees en my getuienis gaan kyk, ek dink dit is

<p style="text-align: right;">Page 19966</p> <p>1 Advokaat Ntsebeza wat my gevra het, is dit twee heeltemal 2 aparte goed. Ek het bo verwys na wat ons nou alreeds 3 hoeveel keer hanteer het en dan het ek gesê, "Then we come 4 to the second part," en daar het ons gepraat van die 5 command that was given en die antwoord op die command that 6 was given, dit is waar ek verwys het na dat die 7 bevelvoerders het gesê, "Keep the basic line," en dit is 8 hoe die TRT operate. So dit is twee heeltemal aparte goed, 9 so ek stem nie saam met dit nie. Dit is nie truthful nie, 10 dit is presies die feite van daardie dag. 11 MR MPOFU: And – 12 CHAIRPERSON: Those remarks that you made 13 which are quoted from 8.10 in the transcripts of what you 14 said, JJJ82, at this stage you did nothing wrong, from the 15 planning to the execution is a 110% and then you go on. To 16 whom were those remarks addressed? 17 BRIGADIER CALITZ: Dit was na die groter, 18 die larger Papa Nyala groep wat saam met ons beweeg het in 19 daardie lyn vorentoe, mnr die Voorsitter. 20 CHAIRPERSON: But those remarks were 21 addressed to the POP group. 22 BRIGADIER CALITZ: Dit is die POP group 23 wat opgevolg het, met ander woorde kom ons verwys na die 24 dispersion group, dit is dalk 'n makliker word. 25 CHAIRPERSON: But I understood you to say</p>	<p style="text-align: right;">Page 19968</p> <p>1 these questions, you expect the court or the Commission to 2 believe something helpful. This is his evidence, he 3 presumably gives the evidence in the belief with the 4 expectation that we will believe it. 5 MR MPOFU: It is a figure of speech, 6 Chairperson, I'm only attacking his credibility – 7 CHAIRPERSON: No, I understand that, but 8 that's not the way to attack his credibility. He has given 9 the evidence, he expects us to believe it, whether we 10 believe it at the end will depend – 11 MR MPOFU: It is a rhetorical question, 12 Chairperson – 13 CHAIRPERSON: - inter alia on the 14 submissions we received in the end. Reformulate the 15 question, please? 16 MR MPOFU: It is a rhetorical question 17 but I'll ask it differently. Okay, let me not even ask, 18 let me tell you, I'm going to argue that your evidence that 19 this Commission should believe that when you were 20 addressing this last group of people, you were actually 21 congratulating them in respect of one tiny basic line which 22 was formed in the course of a large operation, is blatantly 23 false. Do you have any comment? 24 BRIGADIER CALITZ: Ek stem glad nie saam 25 met u nie, mnr die Voorsitter.</p>
<p style="text-align: right;">Page 19967</p> <p>1 that the line was held, the line you were talking about was 2 essentially the TRT line, or did I misunderstand it? 3 BRIGADIER CALITZ: Nee, mnr die 4 Voorsitter, die lyn wat gehou is, onthou soos ons deur 5 beweeg het, ek het die woorde river bend gebruik, daardie 6 foto's en daardie lugfoto's, ek dink u het toe vir my gevra 7 oor die river bend. Ek het gesê, nee, net 'n bietjie voor 8 dit, so dit is daardie Papa Nyalas wat uitbeweeg het en toe 9 ons vorentoe beweeg het, tot by die hergroeperingslyn, dit 10 is die lyn waarvan ons praat en dan op 'n latere stadium in 11 hierdie selfde gesprek het dit eers ter sprake gekom oor 12 die command wat gegee is en die command verwys dan na die 13 basic line. Dit is twee totaal verskillende goed, mnr die 14 Voorsitter. 15 CHAIRPERSON: Thank you, now I 16 understand. 17 BRIGADIER CALITZ: Dankie, mnr die 18 Voorsitter. 19 CHAIRPERSON: Yes, Mr Mpofo? 20 MR MPOFU: Alright, do you really expect 21 anyone to believe that the congratulations were isolated to 22 something innocuous as a basic line as opposed to the 23 operation in respect of which the whole group that you are 24 addressing was – 25 CHAIRPERSON: Mr Mpofo, I don't find</p>	<p style="text-align: right;">Page 19969</p> <p>1 CHAIRPERSON: This point was dealt with 2 very fully by Mr Budlender who questioned him along the 3 lines that you're now questioning him and said that, in 4 fact he used that phrase in that line, whether that was all 5 that was being talked about, he dealt with that very fully 6 in his cross-examination. So I think you can accept that 7 that point has been made, if there is any substance in it 8 we will uphold it and if there isn't we won't, but all the 9 material that is required for an argument to the Commission 10 at the end on that point is before us. I suggest you move 11 on to the next point. 12 MR MPOFU: Well, Chairperson, with 13 respect that's not how I read the record. I don't think 14 anyone has dealt with, I know Mr Budlender dealt with the 15 question of which line he was referring to, but I'm putting 16 a proposition to the witness about lying, so I can't not 17 give him a chance to comment on it, with respect. 18 CHAIRPERSON: You gave him a chance to 19 comment, do you wish – 20 MR MPOFU: Yes – 21 CHAIRPERSON: - to comment further on the 22 point? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 die laaste vraag wat hy gevra het stem ek saam mee, ek het 25 gesê, nee, ek stem glad nie saam met hom nie.</p>

<p style="text-align: right;">Page 19970</p> <p>1 MR MPOFU: No, he has already commented, 2 it is you that I'm addressing, Chairperson, who is saying 3 that I shouldn't have asked the question. He had already 4 said, I had to give him a chance to comment, if I want to 5 accuse him of lying later it would be unfair not to tell 6 him.</p> <p>7 CHAIRPERSON: Just move on now, Mr Mpofo.</p> <p>8 MR MPOFU: Thank you, and also in the 9 same vein I'm going to argue that when you say, when they 10 came under attack, you used the word "become" but I'm sure 11 you meant, when they came under attack, that is where the 12 command was given by their commanders as well as some of 13 them acted in self defence. Despite your explanations 14 which we don't accept, that sentence clearly meant that 15 some of the people who were shooting were acting on 16 command, that's what I want to argue.</p> <p>17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 die aspek is ook reeds extensiewe ge-hanteer, maar ek sal 19 dit weer vir die benefit van u antwoord. Daardie 20 sinnetjie, ek het dit oor en oor gesê, that is where the 21 command was given to the commanders. Dit is wat u hoor op 22 die video, dit is wat ons sien.</p> <p>23 CHAIRPERSON: He says it was given by the 24 commanders, that's what the transcript says.</p> <p>25 BRIGADIER CALITZ: Given, wat het ek</p>	<p style="text-align: right;">Page 19972</p> <p>1 commanders," met ander woorde dit is wat ek vir u verwys na 2 die videos en alles wat ons kan sien na die tyd waar die 3 ouens geskree het, keep the basic line, basic line, om op 4 te vorm. Dit is die opdrag vir die lede en dan die 5 sinnetjie gaan aan en dan sê hy, "as well as some of them 6 act in self defence." Daardie lede wat dan wel opgetree 7 het, het opgetree in self verdediging. Die vraag was 8 vroeër aan my gestel, soos u nou ook gesê het, die ander 9 het dan nie, toe sê ek, nee, die wat ge-act het, het in 10 self defence ge-act, die ander het glad nie ge-act nie. So 11 daar was van hulle wat glad nie vuurwapens gebruik het nie, 12 so dit is waarin ons verskil het en dit was ook waarom ek 13 getuig het.</p> <p>14 MR MPOFU: So once again, of all the 15 plethora of commands that must have been given that day and 16 there you were just isolating the command for basic line, 17 is that your evidence?</p> <p>18 BRIGADIER CALITZ: Kan u net die vraag 19 herhaal, asseblief?</p> <p>20 MR MPOFU: I'm saying of all the commands 21 that were given that whole day, in this sentence when you 22 were talking about the commands given by your commanders 23 you were isolating just that one command of basic line.</p> <p>24 BRIGADIER CALITZ: Dit is die bevel 25 waarna ek verwys het en wat ons gehoor het in die videos en</p>
<p style="text-align: right;">Page 19971</p> <p>1 gesê?</p> <p>2 MR MPOFU: By the, yes, the chairperson 3 is right.</p> <p>4 BRIGADIER CALITZ: Wel, miskien het ek 5 net verkeerd gelees. Ek lees net hier van my dokument –</p> <p>6 CHAIRPERSON: If you look at the screen, 7 if you look at the screen you will see –</p> <p>8 BRIGADIER CALITZ: Ja, nee, ek is met 9 hom, mnr die Voorsitter, that is where –</p> <p>10 CHAIRPERSON: Five lines from the foot of 11 that paragraph.</p> <p>12 BRIGADIER CALITZ: Ek het hom, mnr die 13 Voorsitter, –</p> <p>14 CHAIRPERSON: When they become under 15 attack, that is where the command was given by their 16 commanders –</p> <p>17 BRIGADIER CALITZ: Dit is korrek –</p> <p>18 CHAIRPERSON: - as well as some of them 19 acted in self defence, so it says some acted in self 20 defence and others acted in accordance with the command 21 that was given. That's the point that Mr Mpofo is busy 22 with.</p> <p>23 BRIGADIER CALITZ: Dankie, mnr die 24 Voorsitter, as ek dan dit weer 'n keer kan, maar dit reeds 25 op rekord, "where that command was given by their</p>	<p style="text-align: right;">Page 19973</p> <p>1 wat die bevelvoerders dan vir my gesê het, het hulle opdrag 2 gegee vir hulle lede om uit te beweeg en die basic line te 3 hou. Dit is die bevel wat die TRT bevelvoerders, ek dink 4 ek het gepraat van Kaptein Loest, ensovoorts, dan vir hulle 5 mense gegee het. Dit is die enigste bevel waarna ek hier 6 verwys en bewus is nou.</p> <p>7 MR MPOFU: Okay, so the basic line was 8 very important for you?</p> <p>9 BRIGADIER CALITZ: Dit is 'n baie 10 belangrike opdrag aan die lede en dit word ook in hulle 11 opleiding dan so vir hulle geleer.</p> <p>12 MR MPOFU: Yes, well, now that we've 13 established the importance of the basic line let's deal 14 with it. Do you accept that the members of the TRT, or let 15 me put it this way. Do you accept that the location, the 16 exact location of where the basic line was formed is 17 probably the most important determinant of the deaths of 18 those 34 people? In other words if it was formed somewhere 19 else the deaths might not have occurred?</p> <p>20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 weereens, ek het dit nie self waargeneem nie, so dit gaan 22 my opinie wees in hindsight op die videos wat ek gekyk het.</p> <p>23 MR MPOFU: Ja, -</p> <p>24 BRIGADIER CALITZ: So as u my opinie wil 25 hê of my mening, ek wil net weet, mnr die Voorsitter, dan</p>

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1 kan ek aangaan daarmee.
 2 [10:20] MR MPOFU: Well, you can't have it both
 3 ways, Brigadier, with respect. You can't say you didn't
 4 see it when you thought it was a most important thing to
 5 such an extent that you congratulated, of all the people
 6 there, the one thing that you thought you must congratulate
 7 people for was the basic line. So you understand? If it
 8 was that important to you then we'll have to discuss it.
 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 10 stem glad nie saam met die stelling wat u nou net weer
 11 gemaak het nie en dis teenstrydig met wat ons voorheen nou
 12 ooreengekom het.
 13 CHAIRPERSON: I don't quite understand
 14 you say he's trying to have it both ways. He's addressing
 15 the troops, as you call them. He's doing so on the basis
 16 of what has happened, the action in which they had
 17 participated to some extent, things of which he had person
 18 knowledge in respect of some aspects, and knowledge he'd
 19 required from, I think he calls them hot debriefings
 20 thereafter, and also from what he's seen on the television
 21 screen of video clips that were taken at the time. So he's
 22 speaking to them about those matters. He clearly is
 23 entitled to use – and one would expect him to use - not
 24 only his personal knowledge, but what he'd acquired from
 25 feedbacks and debriefings and so forth, and what he'd seen

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1 on the television screen. So I don't see how there's any
 2 question of his having it both ways, as you say. Obviously
 3 it was an important matter, that's why he was talking to
 4 them about it. I don't want to stop you cross-examining on
 5 these lines, but to suggest that he's having it both ways,
 6 as it were, doesn't seem to me to be justified in the
 7 circumstances.
 8 MR MPOFU: Okay. Thanks –
 9 CHAIRPERSON: In the context with which
 10 we're busy.
 11 MR MPOFU: Yes. Thank you, Chairperson,
 12 I'll withdraw that part. The question really actually was
 13 this; do you accept that given what we know now from all
 14 the things that the Chairperson has said, that the exact
 15 location of the basic line in relation to the gap where the
 16 34 – well, not 34 – 18, 17, whatever the number is, would
 17 you accept it as a statement that the exact – not
 18 geographical – the exact location of the basic line in
 19 relation to the gap where the people were killed is an
 20 important factor? In other words if they were 20 metres
 21 from the gap, the result might have been different. If
 22 they were 50 metres from the gap, the result might have
 23 been different. If they were 10 metres from the gap, the
 24 result might be different, just that.
 25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 wat ek verstaan van die vraag is waar hulle opgevorm het.
 2 Ek kan net my opinie gee dat hulle het opgevorm in wat voor
 3 hulle afgespeel het en hulle was daar om ondersteuning te
 4 gee aan Openbare Orde Polisiëring, wat reeds dan oorgegaan
 5 het na 'n "dispersion action" toe, en in daardie lyn het
 6 hulle opgevorm ter beskerming van die Openbare Orde
 7 Polisiëring. So dit is stelling ingeneem reg agter waar
 8 die voertuie was.
 9 MR MPOFU: Brigadier, please listen to
 10 the question. Do you accept as an operational commander
 11 and knowing what you know now from the things that the
 12 Chairperson said you know, from all sorts of things, what
 13 you were told, the TV, and all that, do you accept that the
 14 – and the defence of self-defence – do you accept that the
 15 location, the specific location of the basic line had an
 16 important bearing in the sense that if it was where it was,
 17 we know what happened, and I'm saying if it was 20 metres
 18 behind that or 50 metres behind that, and so on, the result
 19 would have been different? Do you accept that, just as a
 20 general statement?
 21 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 22 kan nie sê die "result" sal verskillend wees nie. Dit hang
 23 af wat voor die TRT afgespeel het. As hulle nog steeds
 24 onder aanval was sou, kon daar nog steeds "results" gewees
 25 het. So as ek dan moet sê nee, dit is 'n belangrike lyn

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1 maar die, wat die "results" betref, 10, 20 meter, kan ek
 2 nie sê ek stem heeltemal saam nie, nee.
 3 MR MPOFU: Do you agree not "heeltemal"
 4 but a little bit? What is that answer? Do you agree or do
 5 you not agree or do you agree partly?
 6 BRIGADIER CALITZ: Laat ek dan sê ek stem
 7 nie saam met u nie, mnr die Voorsitter, om dit makliker te
 8 maak.
 9 MR MPOFU: Ja, okay. So then your
 10 evidence is – and I'm taking it from your version now – if
 11 the so-called attacking group of strikers came into that
 12 gap and the basic line was 50 metres away from them, the
 13 assessment of the threat to their lives would have been
 14 exactly the same as if the attacking group came there and
 15 they were only a few feet away from the attacking group.
 16 It would be exactly the same, "heeltemal," huh?
 17 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 18 dink soos u die vraag nou stel is dit anderste. U praat
 19 nou van 'n dreigement op hulle lewe as hulle 50 meter weg
 20 was. Ek het my vroeër antwoord gebaseer op die 10 en 20
 21 meter en wat dan voor hulle afgespeel het. As hulle 50
 22 meter of meer weg was dan die selfverdediging, en my
 23 antwoord sal wees dit hang dan af van die groep in watter
 24 rigting, of wat dan daar gebeur, maar dit kon, dit is 'n
 25 moontlikheid, ja.

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1 MR MPOFU: Ja.

2 CHAIRPERSON: Tell me, do we know – if we

3 don't know we'll obviously have to find out – do we know

4 what the distance was between the front line of the

5 strikers as they were advancing and the TRT line and the

6 NIU line? It obviously wasn't as much as 50 metres. Do we

7 know what it was? Do you know? Was it necessary? Maybe

8 we can ascertain. Mr Chaskalson was going to try to get it

9 for us on the Google Earth, I think, was it?

10 MR CHASKALSON SC: We've done an

11 estimate, Chairperson. We estimate approximately 12 metres

12 to Warrant Officer Kuhn, who was ahead of the TRT line, and

13 18 metres to the TRT line, but that's not an absolute

14 precise estimate. That's trying to plot the position of

15 the front group of the strikers from the video footage onto

16 a Google Earth image and then –

17 CHAIRPERSON: We're going to have an

18 inspection in loco in due course, another one, and one of

19 the exercises we'll have to perform is we're going to have

20 to measure what that distance is. Do you have anything you

21 wish to put to the witness in regard to the question that

22 I've asked, or do you accept pro tem, as it were, what Mr

23 Chaskalson has said until we go there and actually measure

24 it?

25 MR MPOFU: Yes, Chairperson, as I

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1 indicated earlier, I've only measured it in Mpofo paces,

2 which is not reliable. So when we do the inspection we'll

3 have a proper measurement, yes. So –

4 CHAIRPERSON: Can we just take this point

5 further?

6 MR MPOFU: Yes.

7 CHAIRPERSON: So we are told, and we'll

8 accept this for the moment as correct, that the distance

9 between the frontline advancing and Warrant Officer Kuhn,

10 who was, I think it's correct to say, virtually the only

11 POP person who was visible on the one video clip and was in

12 front of the TRT line, that was apparently 12 metres, and

13 the TRT line themselves were – it's the TRT line you're

14 talking about – were 18 metres away from the frontline of

15 the advancing strikers. Now I take you agree that if – and

16 I think you have agreed – that if the TRT line had been 50

17 – 5-0 – metres away, then the result might well have been

18 different. Might well have been, but I think you said you

19 can't be sure. Is that an accurate summary of what you

20 said?

21 BRIGADIER CALITZ: Dit is wel –

22 CHAIRPERSON: And it would depend on

23 various things, you say.

24 BRIGADIER CALITZ: As ek miskien net "on

25 depend" kan – ja, maar ek stem heeltemal saam met u, mnr

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1 die Voorsitter. Adjudant Offisier Kuhn se reaksie sal dan

2 nog steeds, ons weet hy het op die skare gevuur, so daar

3 sal nog steeds dan daardie tragiese gevolge gewees het, en

4 my, al wat ek probeer sê is "depend on" wat voor gebeur,

5 van die TRT kan dalk – ek weet nie wat is die "distance"

6 wat, as mens - wat is die woord? – "private defence," om

7 'n ander persoon te beskerm, kan daar wel dalk ook in

8 daardie geval opgetree gewees het as mens gesien het daar

9 word gestorm op 'n persoon.

10 CHAIRPERSON: One of the questions that I

11 was going to ask there, and I can't ask you because you

12 weren't there, was who was regarded by the TRT as being

13 under attack at the time when they started firing, but you

14 can't answer that, because it's a very important question.

15 BRIGADIER CALITZ: Dit is, ja.

16 CHAIRPERSON: But it's not something you

17 can answer.

18 BRIGADIER CALITZ: Dit is korrek, mnr die

19 Voorsitter.

20 CHAIRPERSON: Ja, it also depends of

21 course on what the group would have done if they had

22 continued advancing, but that's hypothetical too, isn't it?

23 Yes, please carry on, Mr Mpofo.

24 MR MPOFU: Thank you. I'll just pick on,

25 I'll pick it exactly on the point where the Chairperson has

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1 put it. Do you accept from the accounts that you got that

2 at least some of the people who shot, who killed people,

3 said that they were protecting their own lives, self-

4 defence?

5 BRIGADIER CALITZ: Dit is wat ek verstaan

6 van die verklarings, ja.

7 MR MPOFU: Ja, right. Now you see the

8 pertinent point here is what the Chairperson has touched

9 on. Remember that this whole Commission – and I'll venture

10 to say that, as far as scene 1 is concerned at least – one

11 of the key issues that have to be postulated is whether

12 when they reached the road in front of the kraal the

13 strikers, as they claim, would have turned left into

14 Nkaneng, or whether, as the police claim, they would have

15 crossed the road and tried to kill the TRT people. It's

16 something we can't know, we wouldn't be having a commission

17 if we had –

18 CHAIRPERSON: You're correct, that's one

19 of the issues we have to determine.

20 MR MPOFU: Yes.

21 CHAIRPERSON: One of the other issues of

22 course is that never mind what the answer to that question

23 is, if the police reasonably believed that they weren't

24 going to turn left, they were actually going to implement

25 threats that, it is alleged, I know there's going to be a

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1 challenge about that too, but one of the issues, another
 2 issue of course is whether threats were made and whether
 3 the police had reason to believe that this advancing group
 4 was coming towards them with the intention of implementing
 5 those threats. So you're correctly mentioning the one
 6 issue.

7 MR MPOFU: Thank you.

8 CHAIRPERSON: It's certainly one we're
 9 very conscious of. We're going to have to –

10 MR MPOFU: It's not the only issue –

11 CHAIRPERSON: - clearly deal with it, but
 12 it's not the only issue.

13 MR MPOFU: Yes. No, fair enough,
 14 Chairperson. Okay, you understand the importance of that
 15 issue? Because if by some magic we could establish that
 16 when they reached that road they were going to turn left,
 17 then it would have certain consequences, and if by the same
 18 magic we could establish that when they got to that road
 19 they were going to cross it and attack, then the Commission
 20 would be shortened very – unfortunately we don't have that
 21 magic, that's why we have to go through all these
 22 exercises. But the Chairperson is also correct, and
 23 remember now we have evidence, and I think the Chairperson
 24 said I should use the words "not yet disputed," or
 25 something like that, but we have evidence from Mr

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1 Magidiwana that they on reaching that road were going to
 2 turn left and go to Nkaneng. We also have evidence from Mr
 3 Magidiwana that Mr Noki had specifically said to them, "Let
 4 us not run, let us walk towards Nkaneng. We have done
 5 nothing wrong," or words to that effect.

6 Now the other important issue, and that's why I'm
 7 talking about this thing of the location of the basic line,
 8 it's very, very important because what I'm saying to you,
 9 and I hope you'll accept, is that if the basic line was 40
 10 metres, or even 20 metres behind where it actually was, the
 11 point at which the policemen would have perceived their own
 12 lives to be in danger would have been different. I think
 13 that's obvious because it's about how far the person –
 14 because these people had pangas and all sorts of things.
 15 The point at which they felt that these people are now
 16 within reach and my life is in danger, as you put it – I'm
 17 not going to take a blow of a panga on my neck, and all
 18 that, that point would have been at a different place. You
 19 accept that?

20 BRIGADIER CALITZ: Ja, weereens u gebruik
 21 net die woord, hulle was in besit met pangas gewees.

22 MR MPOFU: Yes, thank you. Now –

23 BRIGADIER CALITZ: Nee, ek is nog nie
 24 klaar nie.

25 MR MPOFU: Oh, I'm sorry. You haven't

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1 finished, okay.

2 BRIGADIER CALITZ: Nee, ek sien mnr die
 3 Voorsitter het net gepraat. Ek wag net om - mnr die
 4 Voorsitter, ekskuus tog, die antwoord op die vraag is dat
 5 die groep van die "strikers" wel gekom het sou daar 'n
 6 dreigement gewees het, as ek u reg verstaan, op TRT, dat u
 7 sê hulle was gewapen met 'n panga, en dit is my woorde
 8 gewees dat hulle nek nie – ek wil net byvoeg dat daar wel
 9 vuurwapens was, en ons weet in "hindsight" dat daar wel
 10 gevuur was op die polisie en dit sou dan dalk 'n verskil
 11 ook gemaak het, nie net die pangas nie, maar die afstand
 12 van 50 meter, as 'n persoon op jou skiet op 50 meter is dit
 13 nog steeds selfverdediging, soos wat ek glo. So ek wil net
 14 dit bygevoeg het. Dankie.

15 MR MPOFU: Ja. No, you see maybe you are
 16 abusing what you call the benefit of hindsight. I'm saying
 17 to you, you said – or at least there's no evidence in this
 18 Commission at least that the people in the basic line had
 19 seen any firearm. What there is evidence of is what you
 20 have said about hacking with pangas and what have you,
 21 which is in your statement, and I'm saying, and for the
 22 sake of progress I want to say to you in respect of the
 23 threat posed by pangas, spears, and all those things, you
 24 would accept that the imminent, or the reality of that
 25 threat would be determined by the distance between the

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1 threatened person and the panga holder, correct?

2 BRIGADIER CALITZ: Nie korrek nie, mnr
 3 die Voorsitter.

4 MR MPOFU: So in your evidence then if
 5 someone holding a panga is 50 metres away and if they are
 6 two metres away, the threat is the same?

7 BRIGADIER CALITZ: Dit is nie wat ek gesê
 8 het nie, mnr die Voorsitter.

9 CHAIRPERSON: Before we carry on about
 10 what you did say, Mr Mpofo, of course we have to bear in
 11 mind – just to get the complete picture – you're talking
 12 about panga-wielding people and where the threatened person
 13 knows that the only weapon that's likely to be used against
 14 him is a panga, that's one proposition.

15 What we also know is that some of the strikers
 16 were in possession of firearms, that firearms had been
 17 taken from the police on the 13th. This is your point that
 18 what happened on the 13th cast its shadow forward onto the
 19 state of mind of the people on the 16th. So it may well be,
 20 we'll hear when some of them come, that the people in the
 21 TRT line and the commanders and so on would have been aware
 22 of the fact that some of the strikers were in possession of
 23 firearms because firearms had been taken from the police on
 24 the 13th. So that's something you've got to factor in as
 25 well.

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1 There may be other questions that arise from
 2 that, but you can't just say the threatened people knew
 3 they were dealing with pangas, and effectively only with
 4 pangas, and that's relevant in determining the distance
 5 between the panga wielder and the threatened person in
 6 deciding whether a threat was imminent. That's the only
 7 point I'm putting to you.
 8 MR MPOFU: It's not me, it's Brigadier
 9 Calitz. He said to the people –
 10 BRIGADIER CALITZ: As ek u kan help, by
 11 8:53, heel bo-aan die bladsy waar ons nou is.
 12 MR MPOFU: Ja. "Your neck cannot take
 13 the blow for a panga or spear, alright," and I'm busy
 14 dealing with that aspect. In any event, I'm saying to you
 15 that the mere fact that the frontline was a POP dispersion
 16 line, or whatever it's called, suggests that the primary
 17 issue of your concern or source of danger were these pangas
 18 and spears. But that's not even what I'm busy with. I'm
 19 busy with self-defence in relation to the so-called basic
 20 line.
 21 Maybe for your benefit let me tell you where I'm
 22 going with this. There was effectively an instruction that
 23 use of live ammunition, the use of live ammunition should
 24 only be confined when lives are at risk. Correct?
 25 BRIGADIER CALITZ: Waar het ek dit gesê,

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1 mnr die Voorsitter?
 2 MR MPOFU: Well, you're the operational
 3 commander. You don't know that people were told that they
 4 can only use live firearms if their lives or those of their
 5 colleagues are at risk?
 6 BRIGADIER CALITZ: Nee –
 7 MR MPOFU: You don't know this?
 8 BRIGADIER CALITZ: Nee, u het gesê ek het
 9 dit gesê vir iemand, so –
 10 MR MPOFU: No, I'm saying it was said. I
 11 didn't say you said it.
 12 BRIGADIER CALITZ: Ek dra nie kennis, die
 13 voorligting van die taktiese groepe, die bevelvoerders aan
 14 hulle lede nie, maar ek glo die term van "self-defence" sou
 15 opgekom het. Dis 'n moontlikheid.
 16 MR MPOFU: So according to you nobody
 17 said to the members live ammunition should only be used if
 18 lives are at risk?
 19 [10:40] CHAIRPERSON: No, he didn't say that, he
 20 says he doesn't know what they said. He says he assumes
 21 that something must have been said about self defence but I
 22 understood him to say he doesn't know what exactly was
 23 said.
 24 MR MPOFU: No I'm not talking about self
 25 defence, with the great respect. I'm saying he –

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1 CHAIRPERSON: No, I know that, but he
 2 said he didn't know what was said, but he assumes that
 3 something would have been said about self defence. That
 4 was his answer but you can't then from his answer say that
 5 he said that only self defence was talked about because he
 6 has already said he doesn't know what was said, but –
 7 MR MPOFU: I didn't say –
 8 CHAIRPERSON: - he assumes that self
 9 defence probably was mentioned as I understand it.
 10 MR MPOFU: Alright –
 11 CHAIRPERSON: So I think –
 12 MR MPOFU: Let's forget what was said.
 13 CHAIRPERSON: Reformulate your question.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: I understand the point
 16 you're busy with.
 17 MR MPOFU: Yes, yes.
 18 CHAIRPERSON: I'm not saying you can't
 19 ask questions about that, but-
 20 MR MPOFU: I get you, Chairperson, -
 21 CHAIRPERSON: - formulate the question
 22 with him.
 23 MR MPOFU: I get you, Chairperson, yes.
 24 CHAIRPERSON: So reformulate the question
 25 with him.

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1 MR MPOFU: Thank you, Mr Chairperson.
 2 Was it a stance of the police on that day as far as you
 3 know that live ammunition should only be used when lives
 4 are at risk?
 5 BRIGADIER CALITZ: Ek dink dit is 'n
 6 algemene term in die polisie dat jy kan net –
 7 CHAIRPERSON: Brigadier, the answer is,
 8 yes, it may always be the attitude of the police which is
 9 what you're now telling us, but it was the attitude of the
 10 police on the 16th and that's all you've been asked, okay?
 11 Have you got it?
 12 BRIGADIER CALITZ: Kom ons maak dit dan
 13 kort, mnr die Voorsitter, ja.
 14 MR MPOFU: Thank you.
 15 BRIGADIER CALITZ: Nie wat ek gehoor het
 16 nie, maar wat ek dan sal verneem het, ja.
 17 MR MPOFU: Okay, and I don't want to be
 18 legalistic with you, but you would accept even as a general
 19 proposition that that risk or rather the law wouldn't
 20 protect those who have voluntarily assumed a risk? Would
 21 you accept that just as a general proposition?
 22 BRIGADIER CALITZ: Hy het gesê die lower,
 23 - ek verstaan nie u vraag nie, as u dit net weer kan
 24 herhaal, asseblief?
 25 MR MPOFU: No, I'm saying even if you say

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1 to people, yes, look, you may use live ammunition if your
2 lives are at risk, surely in that statement cannot be
3 contained a situation where the person voluntarily assumes
4 that risk. In other words put themselves in a situation
5 where they now have to be "forced" to live ammunition, a
6 general proposition, do you accept that, so you don't go
7 out of your way to go there and to stand in front of a
8 moving train and then say, well, the train should not have
9 hit me. You don't voluntarily assume the risk, do you
10 understand?

11 BRIGADIER CALITZ: Nee, ek verstaan wat u
12 sê, laat ek net sê ek stem nie saam nie, ek dink die lede
13 is opgelei en veral in daardie geval, so hulle het gedoen
14 wat voor hulle aangespeel is en terug geval op hulle
15 opleiding self.

16 MR MPOFU: No, Brigadier, maybe let me
17 explain this differently. You said and I agree with you on
18 that 110%, in your congratulatory speech one of the things
19 which you said, which I agree with, was that the members
20 who retreated, despite whatever disparaging remarks might
21 have been made by the media, did the right thing. That's
22 what I mean by not voluntarily assuming a risk, in other
23 words they couldn't just stand there when they see there is
24 a danger and simply say, well, I'm scared of the media and
25 voluntarily assumed the risk that was coming when there was

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1 a way of averting it by going into the Nyalas, it is that
2 kind of thing that I'm talking about, do you understand?

3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 ja, as ek dit miskien net kan duidelik stel, ek dink u het
5 vroeër ook verwys na die panga spear, miskien as ek dit net
6 in konteks kan sê, dit is daar bo in 8.53, as mnr die
7 Voorsitter, my net vinnig toelaat, daar het ek gepraat, u
8 sal sien, because your head and your neck cannot take the
9 blow of a panga or a spear. Alright, I'm not joking, that
10 is the words which we are using, we tactically retreat and
11 you have to face the Nyala in order to get in there, so
12 that was right. Met ander daar het ek net met die Openbare
13 Orde Polisiëringslede en dit is wat ek sê in daardie
14 paragraaf, glad nie met die taktiese response eenhede nie,
15 onthou hulle was nie voor by ons met die dispersion line
16 nie, so dit gaan daaroor dat die Openbare Orde lede, ons
17 laaste, kan ek maar sê defence mechanism is haelgeweer
18 rubber. Ons het niks na haelgeweer rubber nie, dan is dit
19 R5, so daar is niks anders wat hulle kon doen in daardie
20 omstandighede nie. Sou hulle gebly staan het sou daar
21 lewens verlies aan hulle kant gewees het, so hulle was reg
22 om terug te beweeg. Wat die TRT lyn aanbetref, dit was wat
23 ek sê, hulle kon nie dieselfde gedoen het nie, as ek u reg
24 verstaan, omgedraai het of -

25 CHAIRPERSON: I'm sorry, can I interrupt

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1 you? We're looking at this passage which is from the
2 exhibits, JJJ82 which is on the screen at the moment. The
3 passage from 8.53 down to the end of the fourth line, the
4 words "going back to your safe haven", those words were, as
5 you said were directed to the POP.

6 BRIGADIER CALITZ: Dit is korrek, mnr die
7 Voorsitter.

8 CHAIRPERSON: When you then proceed to
9 say, "Therefore we got over to the second phase," you're
10 now addressing your remarks to the NIU and the TRT.

11 BRIGADIER CALITZ: Die TRT sal op -

12 CHAIRPERSON: And they are not
13 retreating, the retreating part in getting into the Nyala,
14 that was an option available to the POP people.

15 BRIGADIER CALITZ: Dit was korrek gewees,
16 ja, hulle het nie pantser voertuie nie.

17 CHAIRPERSON: And now it is the actions
18 of the TRT and the NIU that form the subject of what you
19 say in the next section, is that correct?

20 BRIGADIER CALITZ: Dit is korrek, daar -

21 CHAIRPERSON: Because that's where the
22 line comes in?

23 BRIGADIER CALITZ: Dit is waar die tweede
24 deel -

25 CHAIRPERSON: Perhaps after the tea

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1 adjournment, which we're now going to take, Mr Mpofo will
2 ask you further questions about that.

3 BRIGADIER CALITZ: Dankie, mnr die
4 Voorsitter.

5 MR MPOFU: Thank you, Mr Chairperson.

6 CHAIRPERSON: We now take the tea
7 adjournment.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [12:01] CHAIRPERSON: The commission resumes.
10 I'm sorry about the delay. I've only just been informed
11 that the projector has now been fixed and is now working.
12 Mr Semanya, has now joined us, good morning, Mr Semanya.
13 Brigadier, you're still under oath.

14 BRIGADIER CALITZ: Dankie, mnr die
15 Voorsitter.

16 CHAIRPERSON: Mr Mpofo, I take it you've
17 got some more questions?

18 MR MPOFU: A couple, Chairperson. Thank
19 you, Brigadier, we were busy with, the Chairperson had
20 correctly pointed out that even if as I said we could show
21 that the persons were not advancing with the intention to
22 attack anybody but to go to Nkaneng which we'll deal with
23 separately. There would remain a question as to whether
24 the policeman, the affected ones in the basic line
25 reasonably perceived such a threat to exist, remember that

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1 discussion?

2 BRIGADIER CALITZ: Ek onthou, ons het

3 daaroor gesels, ja.

4 MR MPOFU: Ja, and I had in response to

5 that then said to you and I think we agreed that part of

6 that, of looking at that reasonableness and all that would

7 involve the question which we were busy with as to whether

8 or not those people had not voluntarily assumed the risk

9 and I explained what that means to you in broad terms,

10 remember that?

11 BRIGADIER CALITZ: Ek onthou wat bespreek

12 was, mnr die Voorsitter.

13 MR MPOFU: Ja and then I think, and then

14 lastly we were then busy with the question of the

15 difference which may or may not have been made by the

16 proximity of the TRT line to the gap where the people were

17 shot at, do you remember that as well?

18 BRIGADIER CALITZ: Distances en so on,

19 ja.

20 MR MPOFU: Ja. Now do you accept or do

21 you know for a fact either because you saw it on video or

22 because you saw it on the spot that the TRT group that

23 formed the basic line had actually advanced running towards

24 the place where the basic line was eventually formed? In

25 other words they ran from somewhere, wherever it was, into

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1 that position, do you remember or do we have to show a

2 video?

3 BRIGADIER CALITZ: You don't have to show

4 a video. I also saw the same video afterwards.

5 MR MPOFU: Yes. Now can we, do you also

6 know that or rather because they ran as they did in a group

7 would it be fair to assume that someone had instructed them

8 to do that, to go to that position? From wherever they

9 were they ran towards that, they couldn't have individually

10 thought oh let's just run to that spot.

11 BRIGADIER CALITZ: Ek sal net moet raai,

12 ek was nie daar nie. So, mnr die Voorsitter, soos ek

13 voorheen gesê my mening gaan nie meer van pas wees nie,

14 maar die enigste opdrag waarna ek verwys het is keep the

15 basic line maar om u vraag te antwoord, ek sal nie u kan

16 help nie.

17 MR MPOFU: No, no with respect,

18 Brigadier, I don't think that's good enough. You are the

19 operational commander. You know which things should be

20 done with, by commands either from the group commanders or

21 from the section commanders and so on and so on. I'm

22 saying from, with that background and qualification from

23 your observation of the large group of people running from

24 one stop to another in concert, in a group would it be fair

25 to say that someone must have instructed them to do so?

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1 BRIGADIER CALITZ: Dit is hoekom ek sê ek

2 het dit nie self waargeneem nie. Dit sal my mening wees.

3 MR MPOFU: Ja, thanks. That's good

4 enough and, so then the reason for that proximity or for

5 them to be where they ended up, where they ran towards, to

6 form the basic line must be attributed to whoever it is,

7 and I know you were not there, you didn't see it, whoever

8 it is instructed them to do so.

9 BRIGADIER CALITZ: Ja, weereens, dit is

10 wat ek op die video gesien het. So ek dink hulle het

11 gereageer op wat voor hulle afgespeel het en dan ook wie

12 moontlik vir hulle kon gesê het.

13 MR MPOFU: I accept that, Brigadier. All

14 I'm saying is that, I thought we had agreed on this part.

15 All I'm saying is that that reageering was not that each of

16 the 50 people decided, it was by implication I accept

17 because somebody had said I must go there.

18 BRIGADIER CALITZ: Dit is hoekom ek sê

19 ons, ek spreek net my mening uit. Daarom sê ek die

20 moontlikheid is dat iemand van hulle gesê het en dat hulle

21 gereageer het op wat voor hulle gebeur het.

22 MR MPOFU: Yes, and what we do know, this

23 one is not speculation is that then there were orders or

24 instructions given for the formation of the basic line.

25 We've dealt with why it was at that point, I'm not saying

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1 now, once they got there, once they ran towards they spot

2 then they were instructed to form a basic line. That we

3 know, because we heard it on the video, correct?

4 BRIGADIER CALITZ: Dit is so, mnr die

5 Voorsitter.

6 MR MPOFU: So up to that stage they are

7 acting on commands from what we can see, correct?

8 BRIGADIER CALITZ: Van wat ek op die

9 video gesien het, die command lyn van basic line dit het ek

10 verstaan as 'n command ja.

11 MR MPOFU: Ja and then we see them

12 cocking their guns, their rifles. Would they also have

13 been part of or encapsulated in that command?

14 BRIGADIER CALITZ: Ek sal nie sê dit is

15 'n opdrag wat gegee is, weereens, mnr die Voorsitter, ek

16 het nie dit gehoor of gesien nie, was nie daarvan bewus

17 gewees nie, die vraag was voorheen aan my gestel, ek kan

18 nie onthou deur wie nie, is dit normale prosedure en ek het

19 getuig dit is hoe hulle takties gereed maak sou hulle dan

20 enige toneel benader. Dit is manier van making tactical

21 ready.

22 MR MPOFU: Ja, good. So that's in fact

23 what I'm saying. So the instruction to cock the gun is

24 basic, is subsumed in the basic line instruction, that's

25 normal. Once you form the basic line you cock your gun?

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1 Is that what you're saying or once again did they all 50 of
2 them suddenly have an instinct to do it or is it what they
3 were expected to do?

4 BRIGADIER CALITZ: Mnr die Voorsitter,
5 nee dis nie wat ek gesê het nie. Ek het net gesê in hulle
6 opleidings module sodra hulle oorgaan na takties fase toe
7 en hulle beweeg nader na 'n punt toe, dit is die manier hoe
8 om takties gereed te maak. Ek dink ek het nog verduidelik
9 dat die span die wapen hou 45 grade en beweeg dan nader, na
10 wat ook al voor jou afspeel.

11 MR MPOFU: Ja. Fine, I think we are
12 saying the same thing. So once now they've had their guns
13 cocked for the reasons that you explain the next, when they
14 fire or rather would you accept that this cocking of the
15 guns and I don't expect you to accept that from my say so,
16 so I'm just building up so that when you play the video I
17 can show you some of the things I'm talking about, unless
18 if you accept them, then we don't have to play the video.
19 But would you accept that this process of the formation of
20 the basic line including the cocking of the guns occurred
21 before the strikers emerged from the corner of the kraal?

22 BRIGADIER CALITZ: As ons nou van die
23 corner of the kraal bedoel u waarna ons verwys het insident
24 3?

25 MR MPOFU: Ja.

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1 BRIGADIER CALITZ: Ek wil net weet watter
2 -

3 MR MPOFU: Ja, you're right. That
4 corner, the last corner, let's call it the last corner
5 before they were killed.

6 BRIGADIER CALITZ: Ja, ek's -

7 MR MPOFU: I know, I'm sorry, Brigadier,
8 I don't want to mislead you. We know that kraal
9 effectively a round kraal but, so when I say corner I mean
10 just the last section before they would proceed straight.
11 Are we together now?

12 BRIGADIER CALITZ: Ek dink dis wat ek op
13 die video gesien het in die op beweeg van die lyn. Ek kan
14 nie presies getuig dat ek kon sien op die videos waar die
15 persone op daardie stadium was nie, ja.

16 MR MPOFU: Okay and do you also know or
17 don't you in which case we'll confirm it from the video and
18 some of the photos that when the, when Nyala 4 blocked off
19 the road to Nkaneng for the strikers that at that stage the
20 basic line was not there? In other words those people had
21 not even started to run towards the basic line position,
22 that space was just an open veldt? The open veldt that the
23 basic line was not there.

24 BRIGADIER CALITZ: Ja, ek sal nie vir u
25 kan presies sê op watter stadium hulle op beweeg het of

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1 Nyala 4 al die kraal bereik het nie. Ek kan nie presies sê
2 dat ek dit al in die video al dit gesien het nie, nee.

3 MR MPOFU: Okay, fine. Okay well you
4 can, one of the, I think it was one of the police witnesses
5 have accepted that, but we'll do it when we do the video.
6 But for now we'll take it at face value. Now if the, if
7 I'm correct that the basic line was not there at the point
8 at which Nyala 4 closed the road off to them then their
9 version that they were accessing the road, in other words
10 that were it not for Nyala 4 closing that gap they would
11 have continued on the road to Nkaneng. Well you can't know
12 because it didn't happen, but one thing we know for sure is
13 that they were not accessing that road to go to the basic
14 line because the basic line was not there. Do you
15 understand what I'm saying?

16 BRIGADIER CALITZ: Mnr die Voorsitter, as
17 ek dan 'n lyn kan trek as hy dan bedoel as hulle reguit af
18 beweeg het of hulle na die voetpad toe kon beweeg het, dit
19 is die rigting, ja as ek hom reg verstaan.

20 CHAIRPERSON: He's saying you're
21 accepting if that's so, this is the time of, I think you
22 call incident 2, isn't it, when the Nyala 4 accelerated and
23 moved forward to the, what one can describe as the other
24 side of the kraal and they tried to get through but they
25 couldn't do so because the Nyala accelerated and their

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1 route was blocked. Now what Mr Mpofu wants to know do you
2 accept that at that stage there was no line, TRT line in
3 front of them and inasmuch as they appear to be trying to
4 get through going towards that path they weren't trying to
5 get through to deal with the TRT line because there wasn't
6 a TRT line in front of them at that point. That is your
7 question, Mr Mpofu?

8 MR MPOFU: Exactly, Chairperson.

9 CHAIRPERSON: That's his point. What do
10 you say about that?

11 BRIGADIER CALITZ: Mnr die Voorsitter,
12 nee dan sal hulle nog steeds die aanval sou nog steeds op
13 die openbare order polisiëring lyn gewees het waar dan wel
14 alreeds gedisperse is op hulle, die gebruik van haelgeweer
15 rubber. So die feit dat die TRT lyn nie daar was nie, die
16 openbare order polisiëringslede was in daardie omgewing
17 gewees. So daar was reeds 'n uiteendrywing aksie aan die
18 gaan.

19 CHAIRPERSON: That again doesn't answer,
20 it wasn't a question you weren't really asked. What he
21 asked you was do you accept that at the time they tried to
22 get passed the kraal, before their progress forward was
23 blocked by the acceleration of the fourth Nyala do you
24 accept that at that stage there wasn't a TRT line formed in
25 front of them, that they were advancing towards and the

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1 answer is then it is. Isn't that so?

2 BRIGADIER CALITZ: Mnr die Voorsitter, ja

3 ek het gesê ek kan nie onthou op daardie stadium of die TRT

4 klaar opgevorm het nie, maar ek aanvaar -

5 CHAIRPERSON: They didn't form up on the

6 other side of the kraal did they?

7 BRIGADIER CALITZ: Nee, net op hierdie

8 kant, op, agter Nyala 4 kan ek maar basies sê.

9 CHAIRPERSON: Ja.

10 BRIGADIER CALITZ: Oor die voetpad.

11 CHAIRPERSON: Ja, that's, the answer to

12 his question is in the affirmative.

13 BRIGADIER CALITZ: As ek u reg verstaan,

14 ja ek dink daar was ander woorde gebruik, dis hoekom ek net

15 wil bedoel het dat -

16 CHAIRPERSON: I tried to -

17 BRIGADIER CALITZ: Daar sou nog steeds 'n

18 aanval gewees het as ek dit so kan stel.

19 MR MPOFU: Okay.

20 CHAIRPERSON: I can rephrase it for you

21 but, Mr Mpofo doesn't hesitate to correct me if I'm wrong.

22 It happens more frequently than I would like, didn't

23 correct me on that stage. So I think I can safely assume

24 that I correctly paraphrased what he said.

25 MR MPOFU: That's correct, Chairperson.

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1 BRIGADIER CALITZ: Mnr die Voorsitter, ek

2 stem saam met u stelling, dit is korrek.

3 MR MPOFU: Okay. Thank you. Now also

4 just from your own observations you would accept that what

5 you call as the peaceful group, die vreedsame groep, had

6 also gone through that path which was eventually closed off

7 by Nyala 4, had gone exactly through there to that path in

8 front of the kraal on their way to Nkaneng. You observed

9 that yourself, correct?

10 BRIGADIER CALITZ: Mnr die Voorsitter,

11 nee, ek dink my getuienis was van waar af my posisie was

12 het ek gesien die voorste groep het afbeweeg en in daardie

13 rigting beweeg en ek sê die groter groep, die, soos u

14 verwys die vreedsame groep, die groter groep by die koppie

15 het ek gesien was meer in 'n ombeweeg rigting. So die

16 groter groep het ek nie gesê het ook na Nyala 4 toe.

17 MR MPOFU: Okay fine. Maybe I've used

18 the wrong expression. But the group of people who, after

19 Mr Mathunjwa's address left the koppie and I remember Mr

20 Chaskalson showed you a picture, some of them were this

21 side or others this side of Nyala 6. But the point of the

22 matter is -

23 CHAIRPERSON: You say this side you

24 indicate with your hands, some on the right and some on the

25 left.

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1 MR MPOFU: Thank you, that's correct,

2 Chairperson. Well on both sides of Nyala 6. That group of

3 people, that's the one I'm referring to. So forget the

4 label that I use for them. But those people in their quest

5 to go to Nkaneng had used that path, that very path which

6 was closed by Nyala 4, which was closed off by Nyala 4 for

7 the group that eventually went around the kraal.

8 BRIGADIER CALITZ: Mnr die Voorsitter,

9 net 'n regstelling. Ek kan nie onthou dat daar groep aan

10 die linker of die regter kant om Nyala 6 beweeg het nie.

11 Ek dink wat ek gewys was, was toe hulle verby die paal

12 beweeg, ek praat maar net onder -

13 MR MPOFU: Okay.

14 BRIGADIER CALITZ: Ek dink nie die groepe

15 was naby Nyala 6 nie. Dit was die by die paal gewees waar

16 Mnr Chaskalson vir my 'n foto gewys het en dit was uit 'n

17 linkerkantste hoek geneem. So jy kon actually net die

18 voerpunt sien.

19 MR MPOFU: Okay.

20 BRIGADIER CALITZ: Die groter groep wat

21 gevolg het kon ons glad nie gesien het nie. Dis hoe ver ek

22 dit onthou. Maar om u vraag te antwoord ek wil net seker

23 maak dat ek reg antwoord. Nee die voor punt, die voorste

24 militante groep het ek gesê het ek gesien om na daardie

25 deel toe te gaan wat u verwys Nyala 4 se afsny punt.

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1 MR MPOFU: Okay. So I think we are

2 speaking passed each other. But let's do it with the help

3 of a photograph. Can you have L191, find it Brigadier or

4 you can look at the screen. I think the smaller screen is

5 clearer.

6 BRIGADIER CALITZ: Nee, dit is reg, ek

7 sien die foto.

8 MR MPOFU: Ja. That's all I'm referring

9 to at this stage is, you see near the kraal the path in

10 front of the kraal, the path just before which the people

11 were killed, just in front of the kraal, the path that

12 crosses or rather that, ja that's just in front of the

13 kraal. You see that?

14 BRIGADIER CALITZ: Ek sien daar is 'n

15 kruispad voet pad en dan 'n klein skuins voetpadjie wat

16 daarby aansteek.

17 MR MPOFU: Ja.

18 BRIGADIER CALITZ: As ons by die kraal

19 is, dit is korrek.

20 MR MPOFU: I'm talking about the one that

21 goes passed the kraal, the big one. Any way what I've just

22 described to you is, are people shortly after Mr

23 Mathunjwa's address on either side of Nyala 6 if that is

24 Nyala 6 that one at the bottom accessing that path. You

25 see that?

<p style="text-align: right;">Page 20006</p> <p>1 BRIGADIER CALITZ: Op hierdie stadium toe 2 die foto geneem is, ja het ek gesien daar is persone wat 3 daar vrylik beweeg. 4 [12:21] MR MPOFU: Okay and the point I'm making 5 is that ja, until such time that Nyala 4 closed off that 6 path, that was the chosen way by those people of going to 7 Nkaneng, correct? 8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 ja, nee ek weet nie of die korrekte tyd van die foto is wat 10 hierop staan nie. Ek dink miskien kan iemand ons help met 11 die korrekte tyd net van hierdie foto, maar die pad wat 12 hulle gebruik het was die voetpad van Nkaneng af, asook as 13 u nou na die foto kyk, aan die kraal se kant links, links 14 van die kraal soos ons na die foto kyk is daar ook 'n groot 15 "village," Nkaneng, so hulle het ook van daardie kant af 16 gekom. So nie net die voetpad nie, nee. 17 MR MPOFU: Ja, alright. Alright, maybe 18 to make this easier let's go to 193. That's the version of 19 the police now with the line. That spot where we are 20 talking about, the white line, the longer white line is 21 pointing towards the people that you and I have been 22 discussing, correct? 23 BRIGADIER CALITZ: Dit is korrek, mnr die 24 Voorsitter. 25 MR MPOFU: And the writing on top of that</p>	<p style="text-align: right;">Page 20008</p> <p>1 BRIGADIER CALITZ: Nee, dit is waar – dit 2 is my punt waar ek u wil regstel. Dit is reeds, dit is die 3 vreedsame groep wat daarnatoe beweeg het en die militante 4 groep het nog agtergebly. So dit is nie dat hulle net voor 5 die tyd daar gekom het nie, per toeval nie. 6 MR MPOFU: No, Brigadier, please. 7 "Agterbly" can mean many things. It can mean they stayed 8 put where they were, or they only got there later, so I 9 want us to be clear; I accept without any reservation that 10 the people who are in 193 got there first - in fact the 11 evidence will be that because they were running, at least 12 some of them. So I accept that they got there first and 13 they got through. I also accept, because that's our, 14 that's my version 2, that the so-called militant group had 15 chosen to walk as opposed to running. So obviously the 16 people who were running would get there first than people 17 who are walking. So there's no dispute about that. Okay, 18 the only point I'm making to you is that the earlier group, 19 whether they were running or walking or whatever, the only 20 difference that they made it to Nkaneng is that they got 21 there before the slower group - or the walking group, or 22 the militant group, whatever you call them – arrived there, 23 and before Nyala 4 closed the path off. That's all. Yes? 24 BRIGADIER CALITZ: Die vreedsame groep 25 het eerste deurgegaan, dit is korrek.</p>
<p style="text-align: right;">Page 20007</p> <p>1 picture says "Protester organised group remain with others 2 on the koppies while a number of protesters are departing." 3 Do you agree with that? 4 BRIGADIER CALITZ: Dit was wat gebeur het 5 tydens die tydperk. 6 MR MPOFU: Ja, okay. Good, that's all 7 I'm talking about. So that as far as using that path is 8 concerned, the only difference really between those people 9 and the ones who came behind them is that they got there 10 first and they managed to go through to Nkaneng, whereas 11 others were blocked by Nyala 4 from doing the same thing, 12 correct? 13 BRIGADIER CALITZ: Die verskil is net dat 14 ek dink daardie is die meer vreedsame groep, dat as die 15 foto se tyd korrek is, wat voor die tyd besluit het om 16 vrylik te beweeg. Ons het nie gesê dat, ons indikasie was 17 nooit teen die persone wat vrylik wil beweeg, ongewapen 18 beweeg nie. Hulle is oor gelaat. Die aksie was, om toe te 19 maak was teen die militante groep voor gewees. 20 MR MPOFU: Ja, no fine. I'm not at this 21 stage debating the relative militancy. I'm saying to you 22 that if, the difference between protester 1 and protester 2 23 as to whether they made it through on that path to Nkaneng 24 was whether they got there before or after Nyala 4 closed 25 that path, correct?</p>	<p style="text-align: right;">Page 20009</p> <p>1 MR MPOFU: Ja, and the "onvreedsame 2 groep," the – 3 BRIGADIER CALITZ: Militante groep. 4 MR MPOFU: - "militante groep," as you 5 call it, arrived at that same point but later than the 6 "vreedsame groep," and the only reason they were not able 7 to continue behind the "vreedsame groep" to Nkaneng is 8 because Nyala 4 closed off that place, correct? 9 BRIGADIER CALITZ: Nee, dit is nie korrek 10 nie. Dit was omdat hulle gekies het om 'n aanval te loods. 11 MR MPOFU: Okay, sure. So what you are 12 saying then, and I'm sorry once again to ask you to 13 speculate, what you are saying is that if Nyala 4 for some 14 reason had not closed off that gap and had stopped, let's 15 say 10 metres or so before the kraal, allowing for access 16 to that road, that militant group would not have simply 17 followed on the path to Nkaneng, they would have done 18 something else? 19 BRIGADIER CALITZ: Nee, dis nie wat ek 20 gesê het nie. 21 MR MPOFU: Okay, no - okay, I'm sorry if 22 I attributed it to you. I'm asking you now afresh. 23 BRIGADIER CALITZ: Hulle kon nog steeds, 24 die moontlikheid is hulle kon nog steeds op daardie rigting 25 reguit aanbeweeg het, dan sou daar 'n konfrontasie tussen</p>

<p style="text-align: right;">Page 20010</p> <p>1 hulle en die Openbare Orde Polisiëring, asook die voertuie 2 wat daar aan die agterkant is, gewees het en daar sal nog 3 steeds tydens die aanval tragiese gevolge gewees het. 4 MR MPOFU: Ja, fine. I'll grant you that 5 for now. Let's assume there would be "tragiese gevolge," 6 but what we know now is they would have gone through on the 7 road to Nkaneng and if they had a murderous intent they 8 would have met up with POPS people, but certainly they 9 wouldn't have met up with the R5-wielding TRT, correct? 10 BRIGADIER CALITZ: Mnr die Voorsitter, 11 nee, ek verskil van u. As daardie militante groep, u sien 12 die afstand, indien hulle vorentoe beweeg het en ons het 13 probeer toemaak en hulle het wel deurgekom op daardie 14 stadium, u sal sien net links van die wit lyn, of die wit 15 pyl wat op die voetpad is staan daar vyf pantser voertuie. 16 Die Casspir is in die voorgrond en dan vier Nyalas aan sy 17 bokant, dit is reg langs die sinkhuisie, as ek dit so kan 18 verduidelik op die foto, en reg agter daardie voertuie sal 19 u dan die TRT voertuie sien. Die een TRT voertuig is 20 basies teen die middelste Nyala. So die TRT sal definitief 21 ook in daardie omgewing gewees het. 22 MR MPOFU: Alright, I'll even concede 23 that, that the TRT was in the area. That's clear. The 24 only point I'm making to you is that they would have gone 25 through that gap and they would not have met up with the</p>	<p style="text-align: right;">Page 20012</p> <p>1 conceded that. So what he's effectively saying is there 2 might still have been a confrontation – 3 MR MPOFU: Of a different kind, yes. 4 CHAIRPERSON: Of a different kind. 5 MR MPOFU: Ja. 6 CHAIRPERSON: Well, that may well be 7 correct, unless of course – 8 MR MPOFU: Or no confrontation. 9 CHAIRPERSON: Unless of course your 10 clients were all really "vreedsaam," if they all were 11 really intent on proceeding peacefully to Nkaneng – 12 MR MPOFU: Which is exactly – 13 CHAIRPERSON: That's the big question we 14 have to decide. 15 MR MPOFU: It's not a big question, 16 Chairperson, as far as our clients are concerned. They've 17 testified in this Commission that's exactly what they were 18 doing. 19 CHAIRPERSON: I said that's the big 20 question we have to decide. That's what I said. 21 MR MPOFU: Oh, that's fine. 22 CHAIRPERSON: And whether they were in 23 fact intent on doing that and with the other questions that 24 we debated earlier – 25 MR MPOFU: Yes.</p>
<p style="text-align: right;">Page 20011</p> <p>1 TRT basic line, which we know is what happened later. That 2 much you can agree? 3 MR SEMENYA SC: Chair, we're spending a 4 lot of time on matters of conjecture. The answers that 5 come from this are not going to help the Commission at all. 6 CHAIRPERSON: What do you say about that, 7 Mr Mpofu? 8 MR MPOFU: Chairperson, I can only say 9 that if the answers which shed light on the possible free 10 movement of the strikers to Nkaneng as opposed to them 11 meeting their fate, which is what happened, if the answers 12 to that will not help this Commission then we are all 13 wasting our time here. 14 CHAIRPERSON: No, but isn't the point 15 that you're really asking someone who admittedly was there, 16 he was in one of the Nyalas which we can see on the 17 photograph, but you're asking him to speculate and the 18 question is whether he is in a position to give us opinions 19 which take the matter further. 20 MR MPOFU: Okay. 21 CHAIRPERSON: Whether all the material 22 facts you require to argue at the end as to what finding 23 should be made already on record, I must confess that's my 24 impression. Insofar as you're making the point that the 25 TRT line wasn't there yet, I think the witness already</p>	<p style="text-align: right;">Page 20013</p> <p>1 CHAIRPERSON: - is a matter which we will 2 have to decide, but I'm not sure – and I say this with due 3 respect to the witness – that he's really able to throw any 4 significant light on it that we haven't got already. I 5 would have thought, being myself at this stage, that the 6 main facts upon which you would rely in argument are 7 already before us. Whether they will be enough to make us 8 make a finding in your favour is a matter that we will only 9 know at the end of the exercise, won't we? 10 MR MPOFU: Chairperson, thank you, 11 Chairperson. Can I approach it – I'm sorry. 12 CHAIRPERSON: I'm sorry, Mr Mpofu, we 13 were just making sure we understood the evidence at this 14 point. I think we now do. 15 MR MPOFU: Thank you, Chairperson. 16 Chairperson, with respect, I'll approach it differently. 17 Let me put it this way, Brigadier. Am I correct that one 18 of the reasons for erecting the barbed wire was to prevent 19 the people from going to Nkaneng? 20 BRIGADIER CALITZ: Dit was een van die 21 redes gewees. 22 MR MPOFU: Ja, okay. 23 CHAIRPERSON: It says so at the bottom of 24 this slide. It says, "Police deploying barbed wire as a 25 barrier to protect the media and members around the</p>

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1 vehicles and deflect the dispersal movement towards the
 2 west to open ground where the armed protesters can be
 3 approached without endangering other members of the public
 4 in the informal settlement if the situation becomes
 5 confrontational." So it's quite clear that police deployed
 6 - as they like to call it, I prefer to call it uncoiled -
 7 the barbed wire to put up a barrier. One of the reasons
 8 was - the reasons are set out there. One of the reasons
 9 was to present the strikers from going into Nkaneng and
 10 endangering the lives of members of the public in Nkaneng
 11 if the situation became confrontational. So that's -
 12 MR MPOFU: Ja, well -
 13 BRIGADIER CALITZ: Dit is korrek, mnr die
 14 Voorsitter.
 15 MR MPOFU: Ja, but please, I'm not
 16 talking about if the situation became confrontational and
 17 all that jazz. I'm saying to you, was it one of the
 18 purposes of the -
 19 CHAIRPERSON: He's already conceded that.
 20 MR MPOFU: No - okay, let me put it this
 21 way. If the situation did not become confrontational and
 22 all the conditional ditties that are put there, was one of
 23 the purposes of the barbed wire to prevent strikers from
 24 going to Nkaneng?
 25 BRIGADIER CALITZ: Ek verstaan dit as

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1 dieselfde vraag, mnr die Voorsitter.
 2 MNR MPOFU: Nee, dit is nie dieselfde
 3 vraag nie.
 4 CHAIRPERSON: I think the way to put it
 5 correctly is as follows. If you don't agree you can say
 6 so. The police wanted to stop the strikers from going to
 7 Nkaneng. That's Mr Mpofu's point. They wanted to do it
 8 because the police were afraid, according to the evidence,
 9 that the situation might become confrontational and the
 10 strikers when they were at Nkaneng might start attacking
 11 people because they thought they weren't participating in
 12 the strike or for whatever other reason they decided to do
 13 so. The police wanted to stop the strikers from getting
 14 into Nkaneng. That's correct. They had a motive for doing
 15 it, because they suspected something might happen and they
 16 wanted to prevent it, but they didn't do it, they didn't
 17 wait to see if that was going to happen. They can't say
 18 they did it in order to stop confrontation taking place
 19 that was on the point of taking place. It was a guess on
 20 their part that confrontation might well take place and
 21 they took preventative action to make sure it didn't
 22 happen. That's the true position, isn't it?
 23 BRIGADIER CALITZ: Mnr die Voorsitter,
 24 ja, ek wil net sê die voorste militante groep bly die - ons
 25 het nooit, miskien die woord "quarrel" te gebruik, met die

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1 meer vreedsame groep wat dan wel wegbeweeg het aan die
 2 bokant nie. So as u sê Nkaneng het ek op 'n stadium drie
 3 foto's gewys waar daar aan die - maar ek dink u sal onthou,
 4 aan die regterkant soos ons nou na die foto kyk, aan die
 5 regterkant van die kraal is daar 'n groot gedeelte waar
 6 hulle wel na die Nkaneng toe kon gaan. So dit is nie die
 7 nedersetting; dit is waarna ons verwys het as "a negative
 8 attraction point" oor die militante konfrontasie wat
 9 alreeds daar plaasgevind het en dan die intimidasies.
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 covered very fully in cross-examination by Mr Madlanga, I
 12 think, who said that actually he regarded it as a defect in
 13 the plan because theoretically even the militant group
 14 could have put their pangas in their pockets, or wherever
 15 they put them, and walked around, the long way around and
 16 got into the township, and if they were minded to beat up
 17 the people in the township they could have done that. But
 18 that was a point that he covered fully.
 19 But anyway, your point was you wanted to stop
 20 direct access to Nkaneng because you feared confrontation
 21 of the kind described. That's the way it is, but Mr Mpofu
 22 is quite right when he says the purpose of the barbed wire
 23 was to prevent the militant group from getting directly
 24 into the township, and it was done on the basis you thought
 25 there might be confrontation, but presumably even if there

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1 hadn't been confrontation, even if in fact they'd intended
 2 to go there peacefully, you were in fact - which you didn't
 3 believe, of course, but he says it was so. The fact of the
 4 matter is the way you did it would have prevented them
 5 going directly into Nkaneng. That's his point really.
 6 Isn't that right? And he's correct.
 7 BRIGADIER CALITZ: Ek het hom so, mnr die
 8 Voorsitter, en ek stem saam met u. As hulle dan vreedzaam
 9 wou gegaan het -
 10 MR MPOFU: Thank you.
 11 BRIGADIER CALITZ: - sou hulle dan deur
 12 die filter lyn beweeg het.
 13 MR MPOFU: Ja, alright. In other words
 14 the only reason - and once again I'll support this by using
 15 a photograph if we don't agree - the only reason that the
 16 so-called militant group had to go around the kraal was
 17 because that what I had postulated did not happen, namely
 18 that Nyala 4 would leave a gap there. That gap was closed
 19 and then obviously they couldn't, they would have been hurt
 20 if they went through the barbed wire and forged through to
 21 that path, and they had to then go around the kraal. Do I
 22 understand that? Otherwise there wouldn't have been
 23 another path around the kraal.
 24 COMMISSIONER HEMRAJ: Mr Mpofu, I'm not
 25 following you. You want to please put that again?

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1 MR MPOFU: Okay, I'm going to rephrase
 2 it. Factually that group – remember I started by
 3 postulating something that did not happen, namely that
 4 Nyala 4 would have left a few metres and they could have
 5 gone through to Nkaneng. I'm saying now we know that in
 6 fact that did not happen and Nyala 4 did close the path,
 7 and that I'm saying resulted in that group going around the
 8 kraal, as we know is what happened. That was a direct
 9 result of the fact that they could no longer proceed
 10 through on that path to Nkaneng. I think that's obvious.
 11 Do you agree?

12 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 13 wil net seker maak as ek reg verstaan. Die Nyala 4 het die
 14 pad toegemaak tot teen die kraal –

15 MR MPOFU: Ja.

16 BRIGADIER CALITZ: En dan het die groep
 17 besluit om aan te val om, om te beweeg om die kraal en nie
 18 vreedsaam weg te beweeg in die rigting van Nkaneng nie,
 19 nee.

20 MR MPOFU: No, Brigadier, I'm saying for
 21 the purposes of this question I'm not even quibbling with
 22 you with your description of the militant group and what
 23 not, because I don't want us to go to that path. I'm
 24 saying to you, you would agree, would you not, that if
 25 Nyala 4 had not closed that gap we would – and as you

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1 correctly say, there might have been another disaster,
 2 what-what, I'm not quibbling with that, but we would not be
 3 sitting here talking about the situation of people who had
 4 gone around the kraal, for whatever reasons, good, bad, or
 5 indifferent, because they would have gone through as they
 6 were proceeding on their path to Nkaneng. Can we just
 7 accept that simple, the fact that the movement around the
 8 kraal was induced by the closure of that thing by Nyala 4?
 9 Maybe that's the simplest way to put it.

10 BRIGADIER CALITZ: Mnr die Voorsitter,
 11 dit is die beste manier wat ek dit kon antwoord, is my
 12 vorige antwoord dat ons het toegemaak en hulle het dan om
 13 die kraal beweeg verder met hulle aanval.

14 CHAIRPERSON: Well, you say "verder met
 15 die aanval." That's the point of difference between the
 16 two of you.

17 [12:40] Mr Mpofu says they were going through because
 18 they wanted to go peacefully to Nkaneng, you've already
 19 given reasons, we don't go into that again, you're saying
 20 your view is that they were actually going, intending to
 21 attack the police to implement the threats that you say
 22 they had made. So what is clear is that by Nyala 4
 23 prevented them from getting through, passed on what would
 24 have been, was it the western side, I never remember these
 25 things, the north-western corner of the kraal, they could

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1 have got through there. What they would have done if
 2 they'd got through there is the subject for a debate. Mr
 3 Mpofu says they would have gone on to Nkaneng, you say in
 4 all the circumstances it is your view that they would have
 5 attacked the police because they wanted to implement their
 6 threats, they wanted to chase the police away, kill the
 7 police, burn the hippos, the Nyalas and so on. That's what
 8 you think would have happened, which you suggest would have
 9 happened if they got through there.

10 Mr Mpofu on the other hand said, no, no, that's
 11 not correct, they would have got through and gone to
 12 Nkaneng, but that's the specific difference between you.
 13 What is clear is, they were prevented from going through at
 14 that point because of Nyala 4, so therefore what they were
 15 prevented from doing thereafter is the subject for the
 16 debate which we're not going to clarify between the two of
 17 you in the course of your cross-examination. Is that a
 18 fair way of stating it?

19 BRIGADIER CALITZ: Ek stem saam met u,
 20 mnr die Voorsitter.

21 MR MPOFU: Thank you very much,
 22 Chairperson. Now if that is indeed so and this is where
 23 this line of questioning is going and maybe I'll go
 24 straight to that conclusion so that you can dispute it or
 25 agree with it. Given all these things that I have said

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1 now, the fact that other people went through the, to go to
 2 Nkaneng, the fact that, which I haven't canvassed with you
 3 but I think with other witnesses, that was the path that
 4 they had used even throughout the day to go and from the
 5 koppie, the fact that, we seem to both agree that had Nyala
 6 4 not closed the place they would have gone through to that
 7 path and as the chairman says for you, they would have gone
 8 there and attacked POP or whatever, and I say they would
 9 have gone home, but that's not what we are debating now.

10 Then the, let me put it this way. Do you accept
 11 that this movement which you have agreed with the
 12 chairperson, this movement around the kraal, the time it
 13 took to perform that manoeuvre, for whatever reason,
 14 murderers or not murderers, but the time that it took to
 15 make that manoeuvre also allowed the formation of the basic
 16 line, in other words for the TRT to come there, do basic
 17 line and so on and so on, do you accept that?

18 BRIGADIER CALITZ: As ek hom reg
 19 verstaan, dit is die feite wat ons gesien het op die video,
 20 Kommissaris.

21 MR MPOFU: Ja, good, so we agree.
 22 Alright, now you, - okay, let's pause that point there.
 23 Earlier before tea you said that there was, you spoke about
 24 firearms. It is correct, isn't it, that you yourself did
 25 not see any firearm on the protesters, correct?

<p style="text-align: right;">Page 20022</p> <p>1 BRIGADIER CALITZ: Dit is korrek, ek het 2 self dit nie waargeneem nie. 3 MR MPOFU: Ja, when they were coming from 4 the koppie which you call incident 1, I mean once again you 5 and I agree, I don't believe in incident 1 and so on, but 6 for the purposes of progress let's accept that there was an 7 incident 1 and an incident 2. 8 BRIGADIER CALITZ: I'll accept that. 9 MR MPOFU: You accept that for now, ja, I 10 don't accept it but I'm accepting it for you. 11 BRIGADIER CALITZ: Ja. 12 MR MPOFU: Neither at that point or at 13 the point at which you say, I think you said the 14 chairperson at some stage they were making threatening 15 gestures and so on, at no stage did you observe any 16 firearms? 17 BRIGADIER CALITZ: Nee, dit is glad nie 18 deur myself waargeneem, vuurwapens nie, ja. 19 MR MPOFU: And you don't know or at least 20 it may or may not be so, you don't know that the TRT people 21 in the basic line observed any firearms? 22 BRIGADIER CALITZ: Mnr die Voorsitter, ek 23 weet daar is verklarings gemaak, ek weet nie of hulle gesê 24 het hulle het dit observe en of hulle dit net gehoor het 25 nie, ek praat onder korreksie, maar ek weet daar is</p>	<p style="text-align: right;">Page 20024</p> <p>1 BRIGADIER CALITZ: - en miskien 2 waarnatoe, ja, maar ek verstaan nie die vraag direk aan my. 3 MR MPOFU: Okay, you know that, your 4 instructions were that the TRT should be 100 metres behind, 5 correct? 6 BRIGADIER CALITZ: Dit was die 7 voorligting gewees dat as ons in hierdie posisie is staties 8 deur die dag sou dit dan hulle afstand wees, min of meer 9 agter die Nyala voertuie, wat ons op hierdie foto kan sien 10 en miskien die vorige een, dit is waar die afstande van die 11 100 meter ter sprake gekom het. 12 MR MPOFU: Yes, and we've canvassed this 13 with another witness I think. 14 CHAIRPERSON: I think we actually saw 15 that in slide 191, didn't we, is that right? I've got 16 Exhibit L in front of me but it was shown on the screen a 17 short while ago. 18 MR MPOFU: Yes, incidentally, - thank 19 you, Chairperson, yes. 20 BRIGADIER CALITZ: Ja, daar is die 100 21 meter tussen die sedan voertuie en dan die onderhandelings 22 Nyalas voor. 23 MR MPOFU: Ja. 24 BRIGADIER CALITZ: Dit was die afstand 25 wat ons van gepraat het.</p>
<p style="text-align: right;">Page 20023</p> <p>1 verklarings wat melding maak van vuurwapens en dan ook die 2 Openbare Orde Polisiëringselede wat in daardie Nyalas was, 3 het fisies gesien en opdrag gegee – 4 MR MPOFU: Ja, - 5 BRIGADIER CALITZ: So van hulle het 6 fisies die wapens gesien. 7 MR MPOFU: Okay, that's fine. So then we 8 go back to rounding off the point which I was trying to 9 make before tea, which is that the TRT basic line had 10 placed itself in that exact position by moving as we 11 agreed, from one place to another and in so doing, if you 12 agree with me, as opposed to a situation where they would 13 have been 50 metres or 100 metres away, increased the risk. 14 I am now assuming in their favour, which I don't accept, 15 that they thought that their lives were in danger from the 16 oncoming strikers. The fact that they were 12 metres or 17 whatever, we'll find out, 18 metres from the strikers as 18 opposed to being 50 or 100 metres away from them, then 19 increased the level of risk, let's put it like that, if you 20 understand what I am saying. I know it is a long question 21 but do you get what I'm saying? 22 BRIGADIER CALITZ: Miskien as u net 'n 23 direkte vraag vra, die stelling wat u gemaak het, ek 24 verstaan die stelling wat u maak – 25 MR MPOFU: Ja, -</p>	<p style="text-align: right;">Page 20025</p> <p>1 MR MPOFU: Yes. Okay, Chairperson, we'll 2 accept the chairperson's word on that. If that is so then 3 by moving from that position to where the basic line 4 eventually formed, that distance was reduced, that's 5 obvious, correct? 6 BRIGADIER CALITZ: Ja, as hulle bystand 7 gee aan die Openbare Orde Polisiëring sal hulle outomaties 8 dan nader beweeg het, dit is logies, ja. 9 MR MPOFU: Yes, good, and even if they 10 were 18 metres away, that would mean the distance had been 11 substantially reduced, correct? 12 BRIGADIER CALITZ: Ja, hulle het, dit 13 maak sin, 18 meter, ja, hulle het dit ge-reduce. 14 MR MPOFU: Okay. 15 CHAIRPERSON: - arithmetic? 16 MR MPOFU: Yes, now just help me with 17 something very quickly before I ask you the next question, 18 can we have L205, or maybe before you even go there, 19 Brigadier, can I ask you, how many TRT lines were there 20 behind the gap? 21 BRIGADIER CALITZ: Dit is die een lyn wat 22 opgevorm het. 23 MR MPOFU: Ja, okay. 24 BRIGADIER CALITZ: Ja. 25 MR MPOFU: Alright, then go to 205, and I</p>

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1 don't know if you can zoom into the top right hand corner?
 2 No, right at the top of the picture, okay, move to the
 3 left, more, more, more, more, ja, okay, there. Can you
 4 see, you see this is what you call the TRT basic line. Oh,
 5 I'm sorry, let me use the big one, there, where I'm
 6 pointing, correct?
 7 BRIGADIER CALITZ: Die "there" sal dan
 8 wees net –
 9 CHAIRPERSON: Please describe what you
 10 describe as "there"?
 11 MR MPOFU: Oh, yes, "there" is not going
 12 to help us.
 13 CHAIRPERSON: This and there are going to
 14 be meaningless on the record.
 15 MR MPOFU: Thank you, Chairperson.
 16 Between that or rather in front of the two Nyalas which
 17 are, or let me put it like this. Closer to the smallest
 18 kraal is a line, a TRT line which we'll call the TRT basic
 19 line, which I am pointing to, is that correct?
 20 BRIGADIER CALITZ: Dit is die lyn van
 21 polisiemanne die naaste aan die kraal wat ons sien aan 'n –
 22 MR MPOFU: Yes –
 23 BRIGADIER CALITZ: Ja.
 24 MR MPOFU: Is that a, yes?
 25 BRIGADIER CALITZ: Dit is korrek.

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1 MR MPOFU: Ja, okay, and then almost a
 2 100 metres or I don't - to that, a bigger distance which
 3 I'm showing now towards the back, from that line there is
 4 another formation, can you see that?
 5 BRIGADIER CALITZ: Dit is korrek.
 6 CHAIRPERSON: The other formation you're
 7 referring to is the top right hand corner of the
 8 photograph?
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: The first one you referred
 11 to is about, it is very close to the top of the photograph,
 12 it is about a third of the, between a third and a half of
 13 the distance from the left hand corner.
 14 MR MPOFU: Ja, who are those people, that
 15 second line at the back?
 16 BRIGADIER CALITZ: Volgens my kennis is
 17 dit die NIU lyn wat daar opgevorm het.
 18 MR MPOFU: But I thought the TRT, NIU and
 19 STF line was the same sweeping line, so called. So are you
 20 telling if, sorry, if I'm correct, you might say I'm not,
 21 but just to save time, if I'm correct are you saying that
 22 there was the TRT line that was the so called basic line
 23 and then another joint TRT, STF, NIU line or are you saying
 24 there was a TRT line, so all the TRT people were there and
 25 at the back there were no TRT people except NIU, NIU I

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1 think is the only unit you, which of the two is it?
 2 BRIGADIER CALITZ: Your second option,
 3 the front portion being the TRT line and the back I know
 4 that was where the NIU line was forming up.
 5 MR MPOFU: Well, that NIU line, what was
 6 its purpose?
 7 BRIGADIER CALITZ: Op die voorligting is
 8 die NIU se taak gewees om saam met die Spesiale Taakmag en
 9 dan hulle sou deurbeweeg het na die uiteendrywing van die
 10 persone en sou die uiteendrywing suksesvol gewees het in 'n
 11 noord westelike rigting sou daar persone dan hulle wapens
 12 op die koppie agter gelaat het. So die taking van die NIU
 13 was om agterna te kom met 'n V aksie en hulle sou dan die
 14 groter koppie, koppie 1 gegee het saam met die Taakmag
 15 voertuie in die middel en aan die linkerkant en die TRT sou
 16 dan die kleiner koppie, koppie 2 gegee het.
 17 MR MPOFU: Was that a deviation from the
 18 plan that the TRT, NIU and STF, really their first
 19 usefulness, if I can put it like that without being
 20 facetious, was intended to be at koppie 2 to sweep,
 21 whatever that means. In other words if everything had gone
 22 as it should have, the TRT, NIU and STF, their first job
 23 would have been to sweep at the, I think it was called the
 24 high levels of koppie 2.
 25 BRIGADIER CALITZ: Dit was hulle taking

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1 gewees, maar die TRT se taking was ook om bystand te
 2 verleen aan die Openbare Orde met die, as hulle, hulle sou
 3 uiteendryf dan sou daar ook arrestasie uitgevoer word met
 4 die beskerming aan die Openbare Orde Polisiëring. Die NIU
 5 egter, hulle sou dan net die V aksie gedoen het by koppie
 6 1.
 7 MR MPOFU: Yes, Brigadier, all I'm saying
 8 is and if I'm wrong you'll correct me. My understanding
 9 was that in terms of the original plan the tactical units
 10 which are the TRT, NIU and STF, were meant to form one line
 11 behind POP and to then sweep at koppie 2, not two separate
 12 lines. So I'm either right or I'm wrong, if I'm wrong then
 13 you'll correct me and I'll check my notes. If I'm right
 14 then you'll say why the deviation from that was done, so I
 15 depend on your answer.
 16 BRIGADIER CALITZ: Okay, nee, ek verskil
 17 van u, volgens my sou die TRT eerste opgevolg het, die
 18 Openbare Orde geassisteer het en dan na die sweeping toe
 19 gegaan het, die NIU se funksie was dan om die groot koppie
 20 te sweep, so dit is hoe ek miskien daardie, as ek u reg
 21 verstaan.
 22 MR MPOFU: Okay, so what you are saying
 23 is that that's exactly how it was planned, there was going
 24 to be a separate TRT line and then a separate NIU line, I
 25 don't know, maybe an STF line but your understanding of the

<p style="text-align: right;">Page 20030</p> <p>1 plan was that there was supposed to be a separate TRT line 2 from an NIU line, that's what you are saying to me? 3 BRIGADIER CALITZ: As ek bedoel separate, 4 dit is nou nie soos on shier bedoel, 100 meter wat ons op 5 hierdie foto sien omdat die plan onderbroke was nie, as die 6 plan suksesvol uitgevoer was sou die Openbare Orde 7 Polisiëring opgevorm het. Miskien as ek dit vir u so kan 8 verduidelik, in die rigting van koppie 1 en 2 en agter 9 hulle sou dan hierdie taktiese lyne opgevorm het, as dit 10 miskien meer vir u kan verduidelik. 11 MR MPOFU: Ja, but this is the point we 12 are debating, it is either what you and my understanding is 13 correct and from what you're saying and my understanding is 14 correct, or if my understanding is not correct, then what 15 was planned was that there would be two separate lines 16 which is what we see on that slide. It can't be both. 17 BRIGADIER CALITZ: Ja, ek sê vir u nie 18 soos op hierdie foto nie, onthou op hierdie foto was die 19 plan onderbreek. Ek sê as ons uitbeweeg het, ek dink ons 20 kan dit die maklikste sien in daardie foto van die 21 voorligting wat Kolonel Scott vir ons gegee het. 22 MR MPOFU: Ja. 23 BRIGADIER CALITZ: Waar die voertuie en 24 die lyne dan aangedui word, ek dink dit sal my getuienis 25 wees op daardie foto, ek kan net nie die slide onthou nie,</p>	<p style="text-align: right;">Page 20032</p> <p>1 see there was because he plan was onderbreek, but he agreed 2 with me that the original plan was that there would be a 3 one tactical line, if you know what I mean. 4 [13:00] As opposed to two tactical lines which is what we 5 see there and he says that is a result of the fact that the 6 plan was disrupted and so on. So you can't, it is quite 7 simple, it is either there was going to be one line or two 8 lines. I mean if there was going to be one line according 9 to the plan then that's one scenario. If there was going 10 to be two lines it is another. 11 CHAIRPERSON: Let's ask him and get – 12 MR MPOFU: Ja. 13 CHAIRPERSON: You heard the debate. Now 14 we're not talking about what happened when the plan was 15 disrupted, we're talking about the plan that was originally 16 supposed to be implemented and the way it works, as I 17 understand it, you've got the POP people in the front and 18 they're going to use less than lethal force and move 19 forward and try to disperse the group with water cannon and 20 stun grenades and teargas and so forth. Now behind them we 21 know with the TRT people, they're partly to protect them 22 and partly to do certain other things as he action 23 develops, and it is also mentioned to the NIU and the SDF. 24 Now what was intended to be behind POP line, one line, 25 because it is referred to as a tactical line which I take</p>
<p style="text-align: right;">Page 20031</p> <p>1 ek sal dit miskien vir u kan kry. 2 MR MPOFU: Ja, okay. Now we know that it 3 was a deviation. Now the question that I want to ask you 4 is, do you know why – 5 MR SEMENYA SC: I don't accept what – 6 MR MPOFU: Oh, okay – 7 MR SEMENYA SC: - Mr Mpofo says has been 8 established, 9 MR MPOFU: Alright, in fact this would be 10 very simple. 11 CHAIRPERSON: Mr Mpofo, it is one 12 o'clock, I was proposing to take the lunch adjournment now. 13 You can elect whether you want to try and round this point 14 up quickly now or whether you prefer to revert to it when 15 we come back after lunch, which I hope will be quarter to 16 two? I'm in your hands. 17 MR MPOFU: Thank you, Chairperson, I'll 18 round it off, firstly, maybe not with the witness, it 19 depends on how he answers but let me at least respond to my 20 learned colleague. 21 CHAIRPERSON: Certainly. 22 MR MPOFU: Yes, Chairperson, Mr Semenya 23 says he doesn't understand what I'm saying was agreed to. 24 My impression and I might be completely wrong, is that the 25 witness has now said in his last answer that that, what we</p>	<p style="text-align: right;">Page 20033</p> <p>1 it in a shorthand way referring to a TRT line consisting 2 with TRT people, NIU people and SDF people. Was there 3 intended to be one line or more than one line? 4 BRIGADIER CALITZ: Mnr die Voorsitter, 5 dit is hoekom ek net na die voorligting op daardie foto wou 6 gewys het. Ek dink die voorligting was dat die taktiese 7 lyn sou dan die Openbare Orde volg, maar ek sou uit 8 beginsel ui sê die TRT sou voor gewees het want hulle moes 9 dan eerste die Openbare Orde help met die arrestasies, sou 10 daar dan enige van die persone wees wat deurbeweeg en dan 11 miskien die taktiese lyn dan agter hulle, die NIU lyn. 12 CHAIRPERSON: Would it be fair to say – 13 BRIGADIER CALITZ: Maar dit sal – 14 CHAIRPERSON: I'm sorry to interrupt you, 15 would it be fair to say there would effectively be three 16 parallel lines? The first one would be the POP, the second 17 one reasonably close behind them for the reasons you gave, 18 it would be a line consisting of TRT people and then behind 19 them there would be another line of NIU people and possibly 20 with some STF people as well. Is that correct, three 21 parallel lines? 22 BRIGADIER CALITZ: Ja, die STF was op 23 voertuie gewees, so hulle sou – 24 CHAIRPERSON: Okay, so we can leave them 25 out of the line. So what we have is the POP line, line 1,</p>

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1 TRT people fairly close behind, not 100 metres, fairly
2 close behind.

3 BRIGADIER CALITZ: Nee, baie naby.
4 CHAIRPERSON: Line 2, for the reasons you
5 gave.

6 BRIGADIER CALITZ: Or –
7 CHAIRPERSON: And then behind them again
8 another line, NIU?

9 BRIGADIER CALITZ: Ook naby.
10 CHAIRPERSON: Also reasonably close but
11 three parallel lines?

12 BRIGADIER CALITZ: Dit is hoe ek dit sal
13 operasioneel kan beskryf.

14 CHAIRPERSON: Ja, okay. Mr Mpofo, I
15 think on that note we can take lunch?

16 MR MPOFU: I thank you very much,
17 Chairperson.

18 CHAIRPERSON: We'll adjourn now until
19 quarter to two.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]
21 [13:54] CHAIRPERSON: The Commission resumes.
22 Brigadier, you're still under oath.

23 ADRIAAN MARTHINUS CALITZ: Dankie,
24 Kommissaris.

25 CHAIRPERSON: Mr Mpofo.

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1 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
2 Thank you, Chairperson. Brigadier, what I want to –
3 following from the answer that you gave to the Chairperson,
4 if you can just help me now to understand that that third
5 line, so to speak, or the second line, second tactical
6 line, let's call it that, which is about 100 metres behind,
7 does that –

8 CHAIRPERSON: No, no, no, no, no. No,
9 no, that's not what he said. He said the original plan was
10 a hundred metres, but he said at the stage we're talking
11 about, or when they were going to start executing the plan,
12 the distance between the POP line and the TRT line was
13 going to be shorter than the hundred metres, and equally
14 the distance between the TRT line and the NIU line was also
15 going to be shorter. So just to get that straight, but
16 he –

17 MR MPOFU: No, Chairperson, I'm sorry –
18 CHAIRPERSON: Did I – sorry, let me check
19 I didn't misunderstand. Did I state it correctly, or was I
20 dead wrong?

21 BRIGADIER CALITZ: Korrek, mnr die
22 Voorsitter.

23 CHAIRPERSON: So originally there was
24 supposed to be this hundred-metre distance, but in terms of
25 the plan when you were going to proceed, before it was

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1 disrupted, before there was any question of disruption,
2 when you were going to implement it there were going to be
3 shorter distances, I understood you to say. Can you
4 estimate for us what the distances are likely to have been
5 between the first parallel line of POP people, the second
6 parallel line of TRT people, and the third parallel line of
7 NIU people?

8 BRIGADIER CALITZ: Mnr die Voorsitter,
9 operasioneel gewys, as ek moet "estimate," as ons die
10 afstand tussen my en u vat, die TRT lyn sal omtrent die
11 paar meters wees. As ek sê die paar, kan ons sê vyf, ses
12 meter. Hulle moet in 'n posisie wees dat sou daar 'n
13 "dispersion" van POP, Openbare Orde Polisiëring wees en
14 daar is 'n groepering wat gearrester moet word, moet hulle
15 in 'n posisie wees dat as die lede dan, sou ons met die
16 skilde 'n opening hê, om dan te gryp deur te – so hulle
17 moet in 'n baie naby kontak posisie wees aan die –

18 Die NIU se funksie was egter glad nie enigsins
19 hulp met dit nie. Hulle was net 'n entjie weg gewees.
20 Hulle sou dan, sou die "dispersion" suksesvol wees, beweeg
21 na koppie 1 toe waar hulle dan die deursoeking sal doen.
22 So daardie afstand was nie 'n spesifieke afstand nie, maar
23 sê maar nog 'n verdere vyf of 10 meter agter die TRT. Maar
24 hulle sou nie deelneem aan die "dispersion" nie, die
25 taktiese – dit is nie die –

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1 MR MPOFU: Well, the record will speak
2 for itself. So you're now agreeing with the Chairperson.
3 You didn't say before lunch that that other line was about
4 a hundred metres behind? You didn't say that at all? The
5 record won't –

6 CHAIRPERSON: The record will show that
7 he used the word "naby" as both distances, but you needn't
8 debate it now. We can look at the record tomorrow and
9 we'll see who is right –

10 MR MPOFU: Okay.
11 CHAIRPERSON: - and we will then proceed
12 according to what we see.

13 MR MPOFU: Ja. Anyway, the only point I
14 wanted to ask – so now there's a new plan altogether now
15 about "naby, naby." They were supposed to be shortened, as
16 the Chairperson calls it, shortened distances now. Under
17 what circumstances were these shortened distances? This is
18 the first time we are hearing of this.

19 BRIGADIER CALITZ: Mnr die Voorsitter,
20 nee, dit is die oorspronklike plan. So dit kan nie wees
21 dat u dit die eerste keer hoor nie. Dit was die
22 oorspronklike plan gewees.

23 MR MPOFU: Is it written anywhere that,
24 this shortening process?
25 BRIGADIER CALITZ: Ek dink "exhibit" L,

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1 Kolonel Scott sou daaroor getuig het. Dit is sy plan, so
 2 ek glo die "evidence" is klaar voor die Kommissie.
 3 MR MPOFU: Okay, right. Now –
 4 COMMISSIONER HEMRAJ: Mr Mpofu, there has
 5 been evidence that as the dispersal took place the distance
 6 between the POP line and the TRT line would lessen. There
 7 has been that evidence.
 8 MR MPOFU: No, of course. That's what I
 9 said. Between 100 and 18 is a shortening. That's not the
 10 point I'm making. I put that to the witness. I'm saying
 11 whether he's saying that there was a plan that according to
 12 the plan, which I'm hearing for the first time, there was a
 13 stage at which there was going to be a shortening of the
 14 distances. The fact that it actually happened, nobody can
 15 dispute, 18 and 100 are completely different. Ja, that
 16 I've said myself. I'm making a different point as to
 17 whether the plan encapsulated a stage of shortening of
 18 distances, which I'm hearing for the first time. I'm at
 19 the –
 20 COMMISSIONER HEMRAJ: Didn't Colonel
 21 Scott give that evidence?
 22 MR MPOFU: No, certainly not. And I'm a
 23 hundred percent sure of that. Colonel Scott actually is
 24 the one who conceded to me that that distance was meant to
 25 be 100 metres because the range of the R5s would have been

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1 sufficient, whether they were standing at 50 metres or 100
 2 metres, to protect POP. So he never said that.
 3 Anyway, the simple point I really want to make,
 4 Brigadier, is according to you then that second line, that
 5 other line, wherever it was, whether it's shortened or not,
 6 did not include TRT, or did it?
 7 BRIGADIER CALITZ: The second line was
 8 the TRT.
 9 MR MPOFU: Okay, then the third line, did
 10 it not include TRT?
 11 BRIGADIER CALITZ: Nee, die derde lyn, as
 12 ons nou miskien – ek weet nie of ons dit net kan
 13 verduidelik, mnr die Voorsitter, maar laat ek sê nee, dis
 14 NIU. Ek wil miskien net u verduidelik het hoe die
 15 oorspronklike plan – maar ek dink dit is klaar op rekord.
 16 MR MPOFU: So it was only NIU?
 17 BRIGADIER CALITZ: Dit is die lyn van NIU
 18 saam met Spesiale Taakmag wat dan op, sou opgevolg het.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 to be depicted on slide 81. I know slide 81 says that was
 21 the plan already on Tuesday. We've gone over that ground
 22 before, we don't have to go over it again. But the plan as
 23 it was explained to us by Scott is I think in slide 81. Is
 24 that right?
 25 BRIGADIER CALITZ: Dis die wat ek versoek

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1 het, mnr die Voorsitter. Ek kon net nie my hand op hom lê
 2 nie. Ja, dis dalk die oorspronklike.
 3 CHAIRPERSON: You remember the trouble
 4 was Scott said that was the plan already on Tuesday, but
 5 that contention has now been abandoned, but my
 6 understanding is that it's still the police case that that
 7 was – whenever the plan was finally devised and finalised,
 8 the plan that was supposed to be implemented and would have
 9 been implemented but for the disruption is the one on slide
 10 81. Is that – have I got it right, Brigadier?
 11 BRIGADIER CALITZ: Dit is korrek, mnr die
 12 Voorsitter. Hierdie plan kon nie uitgevoer het nie as
 13 gevolg van die onderbreking, en daarom het die lede
 14 opgevolg soos wat in daardie vorige foto gesien is.
 15 MR MPOFU: In other words all the TRT
 16 people who were there would have been on what you call the
 17 second line?
 18 BRIGADIER CALITZ: Hulle het die tweede
 19 lyn gevorm, ja.
 20 MR MPOFU: So do you know when – I mean
 21 we know from the videos when the TRT basic line was formed.
 22 Do you know whether at that stage the line behind what you
 23 call the NIU line had already been formed, the one which
 24 was either 100 metres behind or shortened or whatever?
 25 BRIGADIER CALITZ: Nee, ek het dit eers

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1 op die foto's vasgestel.
 2 MR MPOFU: What was the plan? Was that –
 3 by the time those people were running towards the basic
 4 line, the TRT people, was the NIU line, as you call it,
 5 already formed, or should it have already been formed?
 6 BRIGADIER CALITZ: Soos ek vir u sê, as
 7 die TRT lyn op beweeg het om die Openbare Orde Polisiëring
 8 lyn te gaan assisteer dan sou die NIU lyn agter hulle
 9 opgevolg het want sou die "dispersion action" suksesvol
 10 gewees het sou hulle dan opgevolg het om dan die vee-aksie
 11 te gaan doen.
 12 MR MPOFU: Alright, now I want to ask you
 13 about – no, we'll come back to the kraal area. Actually we
 14 somehow got that through your answer. I wanted to do that
 15 sequentially, to use Mr Scott's language, by starting at
 16 the koppie itself. But while I'm doing that can I just ask
 17 you one question in passing? The discussion, if we can
 18 call it that, the congratulatory speech, so to speak, was
 19 it, the part that says "Nothing, nothing, nothing was wrong
 20 done," was that directed at the people who formed the basic
 21 line? As you said, was it directed at all those people, or
 22 did it include the people who shot the people dead?
 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 24 dink daardie woorde – ek het nie nou die ding voor my nie,
 25 ek dink dit was my woorde wat gesê was nadat ek die TRT

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1 toegesprek het en vir hulle gesê het dat volgens die
2 inligting wat tot ons beskikking toe was, dat hulle in
3 selfverdediging opgetree het.

4 MR MPOFU: So you are saying then, it's
5 even worse than what I'm putting. It didn't include the
6 people who shot the people dead; it was actually directed
7 at them specifically that nothing, nothing, nothing was
8 done wrong?

9 BRIGADIER CALITZ: Ja, ek probeer dit net
10 kry in my – as u na die lyn kan verwys dan kan ek miskien
11 net – dit is daar na die, waar ek hulle aangesprek het en
12 gesê het, "And then they become under attack," daardie
13 sinnetjie, "And then some acted in self-defence," met ander
14 woorde "So on that," met ander woorde die "self-defence,"
15 "nothing, nothing, nothing was wrong."

16 MR MPOFU: Ja.

17 BRIGADIER CALITZ: En dan het ek vir
18 hulle gesê, "You acted," dit is korrek.

19 MR MPOFU: Okay, sure. So it was
20 directed at – well obviously it follows the people to whom
21 self-defence referred to are the people who shot people
22 dead. Okay, I understand. Now okay, that was the question
23 I wanted to ask you in passing, yes. I'm now back to what
24 I call the sequentially, dealing with the – no, no, no, I'm
25 sorry to do this, Brigadier. There's one picture that I

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1 want to show you, so that we don't have to go back to the
2 kraal. It's actually L, it's JJJ42, page 654, but what it
3 really is, is L200, I think, but what the police have done
4 in L200 is to put those yellow and red arrows and so on, so
5 it's that picture, but without the arrows, without the
6 self-imposed arrows. It's JJJ – I'm sorry, I confused you
7 totally. That's exactly the one I don't want, the one with
8 the arrows. It's JJJ42, page 654, I think, 6-5 – ja, 654
9 and 655. 654, are we there? Yes, so that's the picture
10 that's in L200 with the arrows, but Chairperson, I'm just
11 explain to you, Chairperson, that it's that picture at
12 L200, but without the arrows, without the SAPS arrows and
13 all that.

14 Now that is something that you may have observed
15 either on the scene or from the TV or whatever, but you
16 know what stage of the operation that is more or less,
17 correct?

18 BRIGADIER CALITZ: Korrek, mnr die
19 Voorsitter.

20 MR MPOFU: I'm surprised, but –

21 BRIGADIER CALITZ: No, we agree, to be
22 short.

23 MR MPOFU: Thank you. That's what
24 surprises me. And the evidence of Mr Magidiwana is that
25 when they were using that small path, or rather you

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1 remember when we were at 191 you referred to the small
2 path, that's where they were, ja. That is how they were
3 accessing the road, as it were, that discussion that you
4 and I had earlier, which but for its closure by Nyala 4
5 they would have proceeded through. Do you understand what
6 I'm saying?

7 BRIGADIER CALITZ: Ek hoor wat u sê.

8 MR MPOFU: Ja, and you would agree,
9 wouldn't you – in fact I think you can even see on that
10 picture Nyala 4 still on its way towards this gap. Is that
11 correct?

12 BRIGADIER CALITZ: Ja, wat ek op die foto
13 sien, ek weet nie of ek, dit miskien teruggaan na u vorige
14 vraag toe nie, is dat – net 'n regstelling, u het gesê dit
15 is die voetpad wat hulle gevolg het.

16 MR MPOFU: Ja.

17 BRIGADIER CALITZ: So hulle het nie met
18 die voetpad, reguit van die koppie af op die voetpad
19 geloop, maar daar was 'n duidelike wegbeweeg en toe weer
20 die groep beweging, maar daardie – as ek sê daardie praat
21 dit van die Nyala wat op die regterkantste voerpunt van die
22 voorste groep is, dit is Nyala 4 wat nog oppad is om toe te
23 maak.

24 MR MPOFU: Ja, exactly. Okay, and that's
25 the point of – that you and I discussed earlier where if

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1 Nyala 4 for some reason, if it got stuck at that point and
2 lost its petrol or whatever, then you and I had discussed
3 it, then they were proceeding towards the path in front of
4 the kraal, correct?

5 BRIGADIER CALITZ: Ja, ek dink waarop ons
6 ooreengekom het, as Nyala 4 op daardie stadium –

7 MR MPOFU: Got stuck.

8 BRIGADIER CALITZ: - sê maar vasgeval het
9 of hulle het nie – dan as u sien die ander voertuie wat in
10 daardie rigting beweeg sou daar definitief nog 'n blok
11 aksie gewees het deur die ander Pappa Nyala voertuie wat
12 dan in daardie rigting beweeg het.

13 MR MPOFU: Oh, I see. So what you are
14 saying is if Nyala 4 had some mishap then the other Nyalas
15 would have simply blocked that gap, correct?

16 BRIGADIER CALITZ: Dit is korrek, daar
17 sou nog steeds 'n blok aksie gewees het deur daardie
18 voertuie.

19 MR MPOFU: Good. Now is there a reason
20 why the other gap where they actually did get killed was
21 not similarly blocked by those Nyalas, but instead they
22 channelled them through to their death?

23 BRIGADIER CALITZ: Mnr die Voorsitter, ek
24 weet nie of ek dit weer moet herhaal nie. Ek dink dis ook
25 in detail met ons bespreek waar ek gesê het ek het nie

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1 saamgestem met die "channelling" nie. Ons het hulle
 2 definitief nie "ge-channel" na die dood toe nie, soos u dit
 3 nou stel nie –
 4 CHAIRPERSON: Sorry, I know you said
 5 that. I think Mr Mpfu is busy with something else. He
 6 wants to know, you'd blocked off – the idea was to have
 7 uncoiled wire from the power station all the way through to
 8 the side of that small kraal. That would have blocked
 9 their progress to the, what was going to be the neutral
 10 area.
 11 [14:13] Mr Mpfu wants to know well that being so because
 12 they then go round the kraal and there was a gap where
 13 there was no wire on the other side of the kraal where in
 14 fact they did go and where in fact the shooting happened.
 15 That's scene 1 and he wants to know as I understand him why
 16 scene 1 was left open. I thought you had explained that
 17 before it was always intended to be left open because that
 18 was the place where you were going to go in, in terms of
 19 the plan to start the dispersal and disarmament process.
 20 You were to go, you were going to go in I think, you were
 21 going to speak with a loudhailer and give the necessary
 22 warnings and so forth and you never thought they would come
 23 towards you, as I understand the evidence for reasons we
 24 don't have to elaborate on now, but it was always intended
 25 to be left open so that you could get in to dispersal and

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1 disarmament, is that correct?
 2 BRIGADIER CALITZ: Dit is waarna toe ek
 3 wou gegaan het.
 4 CHAIRPERSON: What wasn't foreseen was
 5 that the strikers would use that to try to get passed the,
 6 at the outer end of the wire barrier, that's correct, isn't
 7 it?
 8 BRIGADIER CALITZ: Dit is die aanval
 9 waarna ek verwys het.
 10 CHAIRPERSON: Because remember I asked,
 11 the fact is you never, you're trying to block them -
 12 BRIGADIER CALITZ: Ja.
 13 CHAIRPERSON: With this wire barrier,
 14 there was this gap left which physically they could have
 15 got passed if necessary, you never thought they'd go there
 16 because there were going to be a lot of police there and
 17 you were actually going to go in there for the dispersal
 18 and disarmament, that's right, isn't it?
 19 BRIGADIER CALITZ: Dit is korrek, mnr die
 20 Voorsitter.
 21 CHAIRPERSON: And that's your answer to
 22 his question?
 23 BRIGADIER CALITZ: Dit is korrek, mnr die
 24 Voorsitter.
 25 MR MPOFU: Well that answer is not good

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1 enough I'm afraid, even considering that this comes from
 2 high places. The, that answer would only be good in so far
 3 as it's may hold any water which it doesn't. If we were
 4 talking about the, remember there are two questions here.
 5 The first question that arises we shall put to other
 6 witnesses is why the wire was not extended. Remember there
 7 was the available wire of six and five, Nyala 6 and 5 and
 8 the answer, this answer is good enough for that. For why
 9 the wire was not stretched to close that gap. It has its
 10 own problems but that's not important for you, we'll deal
 11 with it in argument. But for the separate question which
 12 is what I'm asking which is why the Nyalas when the people
 13 were coming through were not used to block that gap. That
 14 answer doesn't assist you because those Nyalas in blocking
 15 the people would not have presented the rest of the
 16 contingent from going once they were removed. In other
 17 words they could have blocked it, they're not permanent
 18 fixtures like the wire would have been. The, if you
 19 intended to block the gap so to speak you could have done
 20 so by the use of these hundreds of Nyalas that are there
 21 and once the danger was averted then the people could
 22 simply go through. So do you see the distinction I'm
 23 making. I'm not saying you're agreeing with me. I'm
 24 saying that if you close it with the wire the answer that
 25 the police have given holds some water in the sense that

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1 what they are saying is well once you've blocked it off
 2 then we would all have been stuck in the neutral area as it
 3 were. Fair enough. I'm asking you a completely different
 4 thing. I'm saying if those, you said to me if Nyala 4 had
 5 run out of petrol at that point on that picture then the
 6 other Nyalas would have been used to block the gap. That's
 7 what your answer was and I was simply asking you why then
 8 that strategy was not employed in the other gap.
 9 CHAIRPERSON: What happened was that, Mr
 10 Chaskalson actually asked you about that before and said
 11 when you saw these people coming around the kraal why
 12 didn't you arrange a physical block by having the Nyalas
 13 across that opening there, one behind the other and your
 14 answer I'm afraid wasn't really clear to me. Perhaps you
 15 should, now that Mr Mpfu has repeated the question,
 16 perhaps you must give the answer again.
 17 MR MPOFU: Thank you, Chairperson, but
 18 also in the light of what you have said which you hadn't
 19 said to Mr Chaskalson namely that had the mishap happened
 20 that Nyala 4 got stuck for some reason the immediate thing
 21 would have been, which obviously would have been an
 22 improvisation of some sort would have been to block that
 23 gap, the first gap, the Nyala 4 gap with Nyalas.
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee ek verskil daardie antwoord was ook gegee vir Mnr

<p style="text-align: right;">Page 20050</p> <p>1 Chaskalson en dit is ook breedvoerig bespreek, ek dink dit 2 was Nyala nommer was Papa 5 gewees. So daar is u nie reg 3 nie. 4 CHAIRPERSON: But you're now talking 5 passed Mr Mpfu. Nyala 5 was a wire - 6 BRIGADIER CALITZ: Papa5. 7 CHAIRPERSON: Papa5 was a wire, Nyala 5 8 and Nyala 6 were both had wire trailers behind them. 9 BRIGADIER CALITZ: Korrek, mnr die 10 Voorsitter. 11 CHAIRPERSON: And the, but you had a lot 12 of other Nyalas there which didn't have any wire at all 13 which physically could have been used to block the area 14 between that shack, I don't think we can see it on this 15 slide, but there's a corrugated iron shack there and 16 there's a fenced area, remember it's the fence that you 17 drove, no that's not the fence that you drove over, there's 18 another fence there. There's a shack with a fence around 19 it on the left hand side of this slide away from the kraal. 20 Now the point being put to you as I understand it is it 21 was, it would have been physically possible to have blocked 22 that space between the left hand side of the kraal as we 23 see on the photograph and that fenced area which is to the 24 left of it, blocked that opening just before the point at 25 which the path next to the kraal meets the other path which</p>	<p style="text-align: right;">Page 20052</p> <p>1 wants to know and Mr Chaskalson wanted to know before him 2 why the space between what is the left hand side of the 3 kraal on the slide before us and that fenced off area 4 around the shack on the extreme left hand side of the slide 5 why that wasn't blocked off by parking four or five Nyalas 6 next to each other in that space. That's his question, am 7 I right? 8 MR SEMENYA SC: Chair, just before our 9 understanding was that Mr Chaskalson was postulating the 10 blockade much higher then what, where Mr Mpfu is talking 11 about. So they're not talking about the same place. 12 MR MPOFU: Okay, that's fine. 13 CHAIRPERSON: They - 14 MR MPOFU: That's the first time. 15 CHAIRPERSON: That is correct, that is 16 correct what is common to what Mr Chaskalson asked and what 17 Mr Mpfu is now asking was the idea of blocking that 18 passage, whatever you want to call it, that gap physically 19 by Nyalas. That's the question. You were correct, Mr 20 Chaskalson suggested it be done further up, Mr Mpfu is 21 suggesting that it could have been done near the path. 22 MR CHASKALSON SC: Chairperson, if I 23 could just set the record straight. I identified both 24 places. The Brigadier had referred to a place where he 25 wanted a block to take place. I asked him to identify</p>
<p style="text-align: right;">Page 20051</p> <p>1 Mr Mpfu says his clients were intending to go along. Now 2 that's the question, you agree I take it that it would have 3 been physically possible other things being equal to have 4 blocked that gap with a number of Nyalas. 5 MR MPOFU: Three or four. 6 CHAIRPERSON: Three or four, it would 7 have been physically possible, other things being equal. 8 There may be reasons why you couldn't do it but physically 9 other things being equal it could have been done, is that 10 correct, that would have been an effective block? 11 BRIGADIER CALITZ: U praat van toe hulle 12 om die kraal gekom het of waar hulle nou is? Laat ek net 13 seker maak ek verstaan u korrek, mnr die Voorsitter. Waar 14 hulle nou is, die insident 2 dit is physically - 15 CHAIRPERSON: - we're talking about 16 incident 3, oh I understand you. 17 BRIGADIER CALITZ: Nee, dit stem ek saam 18 met u, mnr die Voorsitter. 19 CHAIRPERSON: Incident 2 there's a 20 debate about that but what's clear is that the barbed wire 21 barrier eventually reached what is the right hand side of 22 the kraal in this slide. 23 BRIGADIER CALITZ: Ja. 24 CHAIRPERSON: They couldn't get through 25 there which is why they went round the kraal. Now Mr Mpfu</p>	<p style="text-align: right;">Page 20053</p> <p>1 where that place was, he identified the place higher up 2 with that wooden marker which we'll see on the video, the 3 demonstration, it was the Brigadier who identified the 4 place higher up. I then asked the Brigadier to clarify 5 that we, that it was clear that it was there that he wanted 6 it and not at the lower place and the Brigadier confirmed 7 that. 8 MR MPOFU: Yes, I think Mr Chaskalson 9 even called it block A and block B just to distinguish 10 them. 11 CHAIRPERSON: It comes back to me now. 12 Anyway let's not get involved in that side way, side road. 13 BRIGADIER CALITZ: Voorsitter, kan ek 14 dalk - 15 CHAIRPERSON: The question you've been 16 asked and which you're going to answer in a moment. What 17 Mr Mpfu wants to know from you is it would have been 18 possible physically to have blocked that opening with four 19 or five Nyalas parked next to each other. Do you want to 20 know from him why he didn't do it? 21 MR MPOFU: He might as well, Chairperson. 22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 dankie. 24 CHAIRPERSON: You might as well give us 25 the answer if you don't mind.</p>

<p style="text-align: right;">Page 20054</p> <p>1 BRIGADIER CALITZ: Hier's nou 'n reeks 2 vrae of miskien responses wat ek moet gee. Net terug te 3 kom wat mnr Chaskalson nou gesê het. Ek dink daardie 4 volgende oggend het ek die 10, 8, 9 plekke uitgewys waar ek 5 en mnr Chaskalson verskil het en ek het bewys uit die, of 6 nie bewys nie, ek het my weergawe gesit uit die 7 transkripsie uit waar dit wel deur mnr Chaskalson daardie 8 plekke gewys het. Ek het gesê baie meer verder vorentoe, 9 verder vorentoe beteken ver verby die kraal waar ons moes 10 actually opgevorm het, dit is amper waar hierdie groep nou 11 staan as 'n mens dit so kan ware sê waar ons dan die 12 uiteendryf aksie sou plaasgevind het.</p> <p>13 CHAIRPERSON: Now that's your debate 14 with Mr Chaskalson. We've now got another cross-examiner 15 at the moment, Mr Mpofu.</p> <p>16 BRIGADIER CALITZ: Ek kom by hom.</p> <p>17 CHAIRPERSON: He asked a slightly 18 different question.</p> <p>19 BRIGADIER CALITZ: Ek kom by hom nou.</p> <p>20 CHAIRPERSON: He wants to know from you 21 why you didn't take the Nyalas, look they're parked over 22 there, just come up, park next to each other, block this 23 opening. That's his question. Isn't that right, Mr Mpofu?</p> <p>24 MR MPOFU: That's correct, Chairperson.</p> <p>25 CHAIRPERSON: Alright, and what's your</p>	<p style="text-align: right;">Page 20056</p> <p>1 die linkerkant van die voerpunt van daardie protestors of 2 strikers.</p> <p>3 CHAIRPERSON: Close to the corner of the 4 head of the arrow?</p> <p>5 BRIGADIER CALITZ: Close to the corner of 6 the head of the arrow. Mnr die Voorsitter, as ons dan 'n 7 liniaal vat en dis wat ek laas in detail verduidelik het en 8 ons sit 'n liniaal loodreg met, in die rigting waar die 9 groep gaan sal u sien dat is reguit na die Nyalas toe. So 10 wat hulle kon sien op hierdie stadium is dan daardie Papa 11 Nyalas, ek dink ons het hulle geïdentifiseer met hulle 12 nommers as die twee Casspirs en dan die Papa 13 argumentsonthalwe Papa 4 en Papa 2 agter hulle. So die 14 rigting wat hulle hier, die 45 grade angle was totaal 'n 15 block, 'n lyn van openbare order polisiering voor hulle wat 16 dan op hulle aksie geloots het om hulle uit een te dryf. 17 So die aksie wat hier uiteengedryf word en dit is waarna 18 ons verwys het was genoegsaam om daardie groep om te draai. 19 As u sê nou met hindsight was dit moontlik gewees as ons 20 dit sou voorsien om te sê dat die voertuie deur aan deur 21 daar parkeer, dit is met hindsight baie moontlik, dit is 22 nie 'n onmoontlikheid nie. Die enigste probleem is as die 23 voertuie teen mekaar beweeg sal die persone nog steeds kan 24 tussen die voertuie deur beweeg. As daar spasie gelos word 25 vir die deure om oop te gaan en vir openbare order om uit</p>
<p style="text-align: right;">Page 20055</p> <p>1 answer to that?</p> <p>2 BRIGADIER CALITZ: Mnr die Voorsitter 3 dieselfde wat ek daai tyd gesê het van my posisie af waar 4 ek was het ek getuig dat ek het die agterste groep gesien 5 om beweeg het. Ek het op daardie stadium vir die persone 6 die opdrag gegee het disperse and block, u onthou dit was 7 'n twee-doellige en dit is lank gedebiteer wat dit beteken. 8 Die voertuie self, die Papa Nyalas en die Casspirs het dan 9 gereageer daarop en hulle het uitbeweeg en 'n dispersion 10 block formasie gevorm. Ek dink ons het verwys na die 11 vorige slide, as ons miskien na 205 toe kan gaan. Dit gaan 12 dalk net weer verduidelik soos u voorheen gesê het, wat 13 half onduidelik was. Ek het nou nie 'n pointer by my nie.</p> <p>14 MR MPOFU: L215?</p> <p>15 BRIGADIER CALITZ: Ja.</p> <p>16 MR MPOFU: 205?</p> <p>17 BRIGADIER CALITZ: Ja, dieselfde een wat 18 u voorheen -</p> <p>19 MR MPOFU: Oh yes.</p> <p>20 BRIGADIER CALITZ: Dit is nou waarna ons 21 verwys as insident 3. Nou daardie voertuie, as ek u vraag 22 reg verstaan van mnr Mpofu is waarom het hulle dan in so 23 lyn half agter mekaar gaan parkeer en nie regs langs 24 mekaar, met ander woorde waar Papa 11 staan as ons nou sê 25 waar Papa 11 staan is dit aan die bokant van die foto, aan</p>	<p style="text-align: right;">Page 20057</p> <p>1 te klim was die kans vir konfrontasie met openbare order 2 laat hulle sou ge-retreated back terug na hulle voertuie 3 toe presies dieselfde. Want hulle sou nie die groep se 4 aanval kon afweer nie. Ons weet dat die rubber niks aan 5 hulle gedoen het nie. So as dit miskien in kort my 6 antwoord kan wees op hierdie foto kan dit duidelik gesien 7 word dat op hierdie rigting waar hulle nou is, kan hulle 8 glad nie die TRT lyn sien nie en daardie voertuie wat voor 9 hulle is staan lyn reg voor hulle op hierdie stadium. As 10 ons 'n lyn, as ek 'n loodlyn kan trek in die rigting waarin 11 hulle beweeg. As ek net iets kan byvoeg en dit is wat u 12 gesê het hulle wil in die rigting van Nkaneng of die 13 voetpad dan, wat hulle gebruik het, die rigting wat hulle 14 nou beweeg is heeltemal weg van die Nkaneng af. As jy na 15 'n vergrote foto gaan kyk, ek dink die een wat ek vir u 16 gewys het, ek weet nooit of hy ingehandig is as 'n 17 bewysstuk nie. Die een wat die helikopter se lem was.</p> <p>18 CHAIRPERSON: I don't know the exhibit 19 number but I'm pretty certain it was handed in.</p> <p>20 BRIGADIER CALITZ: Ek het -</p> <p>21 MR MPOFU: I know the one you're talking 22 about.</p> <p>23 BRIGADIER CALITZ: Ja, as jy dan net 24 daarna kan kyk, sal u sien dat hulle beweeg op daardie 25 stadium hier reg suid in die rigting van die substasie.</p>

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1 Totaal en al weg van Nkaneng af en dan as die uiteendrywing
 2 enigsins hulle doel was om vreedzaam na die paadjie toe te
 3 gaan en dan soontoe te gaan was dit hier die unieke
 4 geleentheid gewees om dan aan die linkerkant waar u sien
 5 die Nkaneng nedersetting is, ek dink op die vorige foto
 6 waar was ons, 200 of waar was die vorige een?
 7 MR MPOFU: No.
 8 BRIGADIER CALITZ: Wat was die vorige
 9 foto, 200?
 10 MR MPOFU: I'm sorry, Brigadier -
 11 BRIGADIER CALITZ: As ek net my antwoord
 12 kan klaar maak, ek dink dan -
 13 MR MPOFU: How did you get -
 14 CHAIRPERSON: You were busy, you were
 15 referring to a slide where we saw, just before we saw this
 16 one and you want to know what it is. Can you give us the
 17 answer to that?
 18 BRIGADIER CALITZ: Ek dink dis die een
 19 wat u verwys het, sonder die geel pyl, is dit L200, is dit?
 20 CHAIRPERSON: Sorry?
 21 MR MPOFU: Ja, 200, that was, the one
 22 without the arrow.
 23 BRIGADIER CALITZ: Daarsy.
 24 MR MPOFU: That's the one.
 25 BRIGADIER CALITZ: Ja.

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1 CHAIRPERSON: What number is that?
 2 MR MPOFU: It's exhibit JJJ42 page 654.
 3 So we can call it JJJ42.654
 4 BRIGADIER CALITZ: So, mnr die
 5 Voorsitter, as ons die twee fotos miskien vergroot en reg
 6 langs mekaar sit sal u sien dat die approach wat ons praat
 7 van, insident 3 was op 'n 45 grade hoek na die kraal toe en
 8 daar was dan die Papa Nyalas in 'n lyn met die spesifieke
 9 doel van blok. Ek ontken nie die moontlikheid wat u gesê
 10 het was dit fisies moontlik om hulle langs mekaar, maar dan
 11 beteken ons kon hulle langs mekaar gesit het in 'n
 12 westelike rigting ook, maar die lyn wat hulle gevorm het,
 13 het hulle reg voor hulle 'n totale barrier gevorm. Die
 14 spasio wat oop gelos, gelaat was, was tussen die voertuie
 15 en die kraal. Dit was wel so. Daar was wel 'n spasio,
 16 maar dit was nie -
 17 CHAIRPERSON: You see if you look at, I'm
 18 sorry to interrupt you, if you look at the video clip which
 19 shows Warrant Officer Kuhn stepping back and then firing
 20 his rifle and you see the group approaching there is quite
 21 a wide space is there not between the kraal on the one side
 22 and some, a line of parked Nyalas on the other. That's the
 23 area that wasn't blocked at all.
 24 BRIGADIER CALITZ: Dit is korrek.
 25 CHAIRPERSON: Now that I think is Mr

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1 Mpofo's point.
 2 MR MPOFU: That's -
 3 CHAIRPERSON: Mr Mpofo, perhaps we can
 4 get that clip before you take the point further.
 5 MR MPOFU: I'll get it and, we'll get it
 6 now, Mr Chairperson.
 7 BRIGADIER CALITZ: As ek net kan klaar
 8 maak, Mnr die Voorsitter, dat -
 9 CHAIRPERSON: Carry on.
 10 BRIGADIER CALITZ: Ek het glad nie
 11 gedebiteer dat daardie spasio nie oop gelaat, ek het wel
 12 aan u toegegee dat hindsight, as ons nou voorsien hulle sou
 13 om kom was dit 'n moontlikheid gewees. Op daardie stadium
 14 het ons glad nie hierdie aanval op hierdie manier verwag en
 15 ek het die opdrag gegee vir die voertuie om, om te beweeg,
 16 te disperse en te blok. So al wat ek sê is die sig veld
 17 van die protestors as hulle aan kom al wat hulle voor hulle
 18 kon sien is 'n linne van passer voertuie wat besig is om op
 19 hulle, dan aksie te loots met rubber. So ek wil u net
 20 verwys na hierdie foto wat deur mnr Mpofo self opgeroep
 21 word en hier aan die onderkant, as ek sê aan die onderkant
 22 praat ek van die groter kraal sal u sien dit is die rigting
 23 van Nkaneng. Daar waar daardie punt heen beweeg is, jy
 24 weet as hulle om die kraal is en daardie rigting is
 25 heeltemal weg van die, so tensy hulle persistent op die

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1 voetpad wou gegaan het en nie na die village toe nie, maar
 2 hier was meer genoegsame plek vir hulle om na Nkaneng
 3 nedersetting toe te gaan as hulle dit wou doen. So dit is
 4 die twee punte.
 5 MR MPOFU: Well let's start with your
 6 tweede punt. That, surely that doesn't make sense. That
 7 small, smaller path, you can see forms a Y, it leads
 8 directly to the path that goes in front of the kraal. As
 9 we saw the other people using it in 193, surely.
 10 BRIGADIER CALITZ: Ek het nie ontken laat
 11 daardie voetpad gebruik was deur die dag nie.
 12 MR MPOFU: Ja, and that's, sorry that it
 13 leads to the front entrance to the kraal at least, to the
 14 path.
 15 BRIGADIER CALITZ: Ek verstaan nie wat u
 16 nou sê nie. Praat u van die voetpad?
 17 MR MPOFU: No, I'm saying a simple thing,
 18 Brigadier. That small footpath is, forms a Y, it's
 19 actually an offshoot or an on shoot, it's then an onramp or
 20 an off ramp depending on which way you're facing into the
 21 road to Nkaneng which goes in front of the kraal, yes.
 22 BRIGADIER CALITZ: Nee, ek stem nie saam
 23 met u nie, mnr die Voorsitter. Die voetpad gaan aan die
 24 kant verby. Ek sê die rigting waarin die groep beweeg het
 25 toe hulle om die kraal beweeg het, in daardie rigting,

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1 hulle het totaal en al weg beweeg van Nkaneng af en ek sê
 2 op hierdie foto wat u self opgeroep het die sink huisies
 3 wat u aan die onderkant van dit is die kant van, daar is 'n
 4 gedeelte verder.
 5 [14:33] Ek het 'n vergrote foto en dit is hoekom ek praat
 6 van hierdie een wat uit die helikopter, is dit baie
 7 duidelik sigbaar dat aan die onderkant van die foto waar
 8 die sinkhuisies is, hier is ek dink so iets soos vier of
 9 vyf toegangsroetes wat ook voertuig roetes is, wat die
 10 mense dan vreedsaam heen kon gaan, as hulle wel vreedsaam
 11 soontoe wou gaan.
 12 MR MPOFU: Ja, okay. Look, I'm promising
 13 you I'm not going to debate this with you otherwise we'll
 14 be here for too long. I'm just going to say to you, the
 15 evidence of Mr Magidiwana which I'm saying is supported by
 16 the points that I've put to you is that when they were at
 17 that point on that smaller road their intention was to
 18 access the bigger road which is in front of the kraal, and
 19 that ambition was stopped by the arrival of Nyala4 near the
 20 kraal, which you and I have gone through, one.
 21 BRIGADIER CALITZ: Ek stem nie saam met u
 22 daar nie.
 23 MR MPOFU: That's fine, that's your
 24 problem but –
 25 BRIGADIER CALITZ: Nee, dit is nie my

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1 probleem nie, mnr die Voorsitter, asseblief.
 2 MR SEMENYA SC: Chair, no, -
 3 MR MPOFU: No, -
 4 MR SEMENYA SC: The witness has to be
 5 protected.
 6 MR MPOFU: Well, -
 7 MR SEMENYA SC: The witness has no
 8 problem at all and Mr Mpofo keeps making these snide
 9 remarks that are tied to questions. It is not acceptable,
 10 Chair.
 11 MR MPOFU: Okay, okay, -
 12 CHAIRPERSON: You heard what Mr Semenya
 13 said.
 14 MR MPOFU: I accept it –
 15 CHAIRPERSON: Now, sorry before you go
 16 on, is there anything you want to say now before Mr Mpofo
 17 ask the next question?
 18 BRIGADIER CALITZ: Nee, mnr die
 19 Voorsitter, ek het net gesê ek het nie 'n probleem daarmee
 20 nie. Hy het gesê, it is your problem, toe sê ek, ek het
 21 glad nie 'n probleem daarmee nie.
 22 MR MPOFU: Okay.
 23 CHAIRPERSON: Okay, Mr Mpofo may now
 24 proceed but bear in mind what Mr Semenya said.
 25 MR MPOFU: Yes, no, I accept, - I

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1 apologise, Brigadier.
 2 BRIGADIER CALITZ: Ek aanvaar dit so,
 3 baie dankie.
 4 MR MPOFU: Ja, I meant I agree with you,
 5 let's assume that you disagree with me, I'm telling you
 6 what Mr Magidiwana has said. Mr Magidiwana says that when
 7 they were at that point and there will be a video also, the
 8 same video that the chairperson was referring to, that at
 9 that point they were going towards that road. If they were
 10 not going towards that route then why did Nyala 4 block the
 11 road if they thought they were going somewhere else, but
 12 that's not what I'm debating with you. The point I'm
 13 making is that once Nyala4 blocked that road they went
 14 around the kraal, we've gone through this. They went
 15 around the kraal with the purpose of accessing that very
 16 same road.
 17 Remember now, I mean this is self evident.
 18 Between those people who have now been blocked by Nyala4
 19 and the road to Nkaneng, there are now two obstacles, do
 20 you understand? One is the wall, - oh no, I'm sorry, is
 21 the wire and the Nyala that is against the kraal. The
 22 second obstacle is the kraal itself, okay? So their
 23 evidence is that once they were blocked by Nyala4 from
 24 accessing that road they were not sommer going to go
 25 through the kraal, which is why the chairperson took you

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1 through this. That is why they went around the kraal with
 2 the purpose of accessing the very same road that Nyala 4
 3 had stopped them from accessing, because unless if they, -
 4 they couldn't, they were not made of air, they couldn't
 5 just go through the kraal. To access that very same road
 6 with the very same intention of going to Nkaneng they had
 7 to go around the kraal and they were shot before they could
 8 reach the road. That's the evidence, you can say whatever
 9 you want.
 10 No, I was saying to him that that is the evidence
 11 of Mr Magidiwana, if he cares to comment, yes, I'm sorry,
 12 Chairperson. Firstly, Brigadier, do you understand that as
 13 a version, not something you agree with, just as a version?
 14 BRIGADIER CALITZ: Nee, ek verstaan dit.
 15 MR MPOFU: Ja.
 16 BRIGADIER CALITZ: U het gevra, ek kan
 17 net comment daarop en ek dink dit is enigste punt waarop
 18 ons verskil, is dat u gesê het die enigste opsie wat hulle
 19 gehad het, ek dink u het verwys hulle is "not made of air,"
 20 hulle kon nie deur die kraal gegaan het nie, is om, om die
 21 kraal te gaan om daardie voetpad te bereik. Ek sê vir u
 22 dat op daardie punt toe hulle uiteengedryf is, daardie punt
 23 praat ek van Nyala4 waar hulle gebruik is, was die intensie
 24 om, om die kraal te gaan, nie om Nkaneng toe te gaan nie,
 25 en as hulle wou na Nkaneng toe gaan was daar 'n, ons kan

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1 dit met n grade bepaal maar dit is meer as 'n 180 grade,
 2 200 grade wat oop was vir hulle vir om na die nedersetting
 3 toe te gaan, reg aan die onderkant van hierdie foto. So
 4 met ander woorde as u daardie groepie kyk, as hulle daar
 5 geblok word, hoe kom 'n mens by die nedersetting?
 6 U kies die naaste pad en ek sê vir u toe hulle om
 7 die kraal gegaan het was die intensie gewees en ons het dit
 8 ook op die video gesien, dit is waar op die polisie gevuur
 9 is met 'n persoon met 'n vuurwapen en die doel hoekom hulle
 10 soontoe gegaan het was presies oor die dreigemente wat
 11 vroeër die dag gemaak is om ons aan te val. So ek dink dit
 12 is die punt waarop ons miskien verskil, mnr die Voorsitter.
 13 MR MPOFU: Ja, no, no, I'm happy with
 14 that, that I understand, that's the version of the police.
 15 I was busy saying to you just at a logical level, if there
 16 are chosen paths and just indulge me, and assume that they
 17 wanted to go to Nkaneng using that path that everybody was
 18 using, now I'm saying if that was their chosen path then
 19 the only way they could access it, the quickest way they
 20 could access it, after Nyala 4 had closed it, apart from
 21 penetration through the kraal, was to go around the kraal
 22 to this very same path which they had chosen to use towards
 23 Nkaneng. That's at a logical level, if you, as I say you
 24 and I disagree as to what their intentions were, I accept
 25 that, but let's even say the only way, let's say it like

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1 this to make it easy.
 2 Let's assume they wanted to attack the police
 3 that were minding that gap and they wanted first to attack
 4 them by going through that road, but Nyala4 closed them
 5 off, the quickest way they would have to go and attack
 6 there would be to go around the kraal and go and, let's say
 7 they were just after one person called Mr X, and that Mr X
 8 happened to be there and they were going to kill him and
 9 Nyala4 closed, the only other way they could go to kill
 10 that person is to go around the kraal and access that same
 11 spot. Do you accept that?
 12 BRIGADIER CALITZ: Dit is my hele punt,
 13 mnr die Voorsitter, dit was met die doel om aan te val, nie
 14 met die doel om –
 15 MR MPOFU: Sure –
 16 BRIGADIER CALITZ: - Nkaneng toe te gaan
 17 nie. Die enigste een is die voetpad en ek erken dat as
 18 hulle die voetpad wou gebruik het, mnr die Voorsitter, was
 19 dit die roete na die voetpad toe.
 20 CHAIRPERSON: Yes, that's the only point
 21 of the question, the other point is unnecessary things
 22 you've added which you've said already. The short answer
 23 to Mr Mpofu's question is, if they wanted to, for whatever
 24 reason, to go to the path, that path, not being able to go
 25 on the right hand side of the kraal as we can see on the

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1 slide, because it was blocked by Nyala 4, the shortest
 2 route for them was to go around the kraal and to access the
 3 path on the left hand side of the kraal as we see it on the
 4 slide, and the answer to that must be, yes, isn't it? Now
 5 what their motives were, what they were up to, what they
 6 were going to do, that's a different matter which we've
 7 already covered.
 8 BRIGADIER CALITZ: Op daardie proposisie
 9 wat u stel, dit is korrek, mnr die Voorsitter.
 10 MR MPOFU: Thank you very much.
 11 COMMISSIONER HEMRAJ: Mr Mpofu, before
 12 you leave this photograph, if one were to zoom in to the
 13 left hand side of that photograph are the strikers visible
 14 still using that path, going towards the settlement?
 15 MR MPOFU: Sorry, I'm looking at the
 16 wrong one, we are on –
 17 COMMISSIONER HEMRAJ: It is still JJJ42.
 18 MR MPOFU: Ja, it is at the left hand
 19 side, Commissioner.
 20 COMMISSIONER HEMRAJ: If one were to zoom
 21 in onto that path that you say leads to –
 22 MR MPOFU: To the other path, to the
 23 bigger path, yes.
 24 COMMISSIONER HEMRAJ: Yes.
 25 MR MPOFU: Yes?

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1 COMMISSIONER HEMRAJ: Are there strikers
 2 visible on this photograph still using that path as they
 3 were on the other photograph?
 4 MR MPOFU: No, no, neither do I claim
 5 that they are. I thought we had agreed that the difference
 6 between the two groups was mainly that the so called
 7 militant group had been told by Mr Noki that, "do not run,"
 8 and I'm, if that happened surely it must have been a
 9 response of all the other people running, "do not run,"
 10 that was Mr Magidiwana's point, "do not run, you've done
 11 nothing wrong, let's walk to Nkaneng," and they walked in
 12 what is being commonly called here, a so called tight
 13 formation. They walked, one can see it on the video. So
 14 the runners, I think by then were sleeping at home because
 15 they ran.
 16 So the only difference, that's the point I'm
 17 making, these people had exactly the same intention which
 18 his to go home to Nkaneng. The others ran, the others took
 19 Mr Noki's advice of walking. You would have thought that
 20 the ones who were in less danger were the ones who were
 21 walking, but that's another story, but those who chose the
 22 path of walking and going later were killed, those who
 23 chose the route of going to Nkaneng by running earlier were
 24 safe, that's the only thing but as to where they were going
 25 it is clear from all this evidence we've gone through, that

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1 they were all accessing the same path to the same place
 2 which is Nkaneng. Really that's the gist of the argument,
 3 I'm not saying it is the law, I'm just saying that's their
 4 version, ja.
 5 CHAIRPERSON: The short answer to the
 6 question is that only, ja, the other strikers who had
 7 already passed along that route are out of the picture
 8 already.
 9 MR MPOFU: That's correct.
 10 CHAIRPERSON: And it is just this group
 11 that we're busy with, you are busy with.
 12 MR MPOFU: That is it, yes.
 13 CHAIRPERSON: Okay.
 14 MR MPOFU: Sorry, Mr Chairperson.
 15 CHAIRPERSON: Alright, now you can ask –
 16 MR MPOFU: This explanation thing is
 17 infectious.
 18 CHAIRPERSON: Yes, no, I know, it is, but
 19 I presume it will help us to get there in the end, but
 20 let's hope the end is closer to us than some people think.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: May I suggest you ask your
 23 next question?
 24 MR MPOFU: Yes, thank you, Chairperson.
 25 So you agree with what, putting aside your difference and

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1 my difference about the motives that why they would access
 2 that path, you say they would access that path to kill the
 3 people there, I say they would access that path to walk on
 4 it, it doesn't matter, but you accept that that's the
 5 quickest and most logical way to re-access the path, well,
 6 to go around the kraal, correct, correct?
 7 BRIGADIER CALITZ: Ek glo mnr die
 8 Voorsitter het hierdie vraag vir my gevra en ek het hom
 9 geantwoord.
 10 MR MPOFU: Ja, I am vra'ing again, just
 11 answer the question.
 12 BRIGADIER CALITZ: Now that you're
 13 vra'ing it again, die antwoord is nog steeds, ja.
 14 MR MPOFU: Ja, okay, thanks.
 15 BRIGADIER CALITZ: As dit die rede was
 16 hoekom hulle soontoe wou gegaan het.
 17 MR MPOFU: Okay, thank you. Sorry,
 18 Brigadier, alright. Also the evidence of Mr Magidiwana
 19 which concerns himself mainly is that when he was taking
 20 this action in support of his assertion that he did not
 21 want to attack anyone, two things, one is, he testified
 22 that he did not know that the TRT line, while their view
 23 was blocked as it were by the kraal, he had no idea that in
 24 the meantime the TRT line had formed where it is and I'm
 25 sure you'll agree with that, because you've already agreed

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1 with me that the TRT line was not there when they were
 2 blocked by Nyala 4. So when they were going around the
 3 kraal surely they did not know that the people had in the
 4 meantime ran and formed basic line and all those things
 5 there, agreed?
 6 BRIGADIER CALITZ: Dit is wat ek vir u
 7 gewys het in slide 205, ja, waar hulle wel geblok was met
 8 die POP, maar hulle kon nie die TRT lyn sien nie, u is
 9 korrek.
 10 MR MPOFU: Thank you, and so if you and I
 11 accept that neither at the time that they were blocked by
 12 Nyala4 nor at the time that they were going around the
 13 kraal, did they have any idea that the TRT line which had
 14 formed there, then surely their motive for circum
 15 navigating the kraal, I mean by that going around it, could
 16 not possibly have been or have anything to do with the TRT
 17 line of which they were completely unaware. Do you
 18 understand where I am going?
 19 BRIGADIER CALITZ: Ek sal sê nee, ek stem
 20 glad nie saam met u nie.
 21 CHAIRPERSON: But this does sound like
 22 argument that you're going to advance at the end of the
 23 case, putting it to someone who wasn't there, who didn't
 24 see the TRT line in place, I don't know if it helps us very
 25 much.

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1 MR MPOFU: No, -
 2 CHAIRPERSON: When you present your
 3 argument at the end of the case I'm not sure that any
 4 answer this witness is giving on this point, regard being
 5 had to the fact he wasn't there at the time, is going to
 6 help us either to accept your argument or to reject it.
 7 MR MPOFU: Well, -
 8 CHAIRPERSON: You're just effectively
 9 arguing the case with him and getting his answers.
 10 MR MPOFU: No. -
 11 CHAIRPERSON: So please, let's move on to
 12 matters that he can deal with effectively and from which
 13 will enable you to get answers that will have value for you
 14 to use when you argue at the end of the case.
 15 MR MPOFU: No, Chairperson, with respect,
 16 I can't see why any human being, whether it is this witness
 17 or another, I'm putting a simple proposition to him that if
 18 I say you couldn't see, because he is sitting here he can't
 19 see that someone is parking a white car outside, I meant
 20 that's obvious. I'm saying he has already agreed that the
 21 basic line, let's call it that to differentiate it, the TRT
 22 basic line was not there at the point at which Nyala 4
 23 closed. He has now considered that if that basic line
 24 formed up while they were circumnavigating the kraal then
 25 they were still unaware of it. The simple proposition I'm

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1 making is that given those two states of unawareness about
2 the TRT basic line, the circumnavigation could not have had
3 anything to do with the unknown TRT line.
4 CHAIRPERSON: In argument based upon true
5 facts –
6 MR MPOFU: Well, he was there, he was
7 there.
8 CHAIRPERSON: He wasn't there, he had
9 already left by that time.
10 MR MPOFU: No, Chairperson, -
11 CHAIRPERSON: He –
12 MR MPOFU: He said he saw people stabbing
13 whatever, the tyres, he was there, he was actually facing
14 it –
15 CHAIRPERSON: They were stabbing tyres of
16 Nyalas, not, they were not having –
17 MR MPOFU: Yes –
18 CHAIRPERSON: - anything to do with the
19 TRT.
20 MR MPOFU: He was there.
21 CHAIRPERSON: You put true facts on
22 record from which you will be able to argue in due course,
23 the conclusion which you want to put to the witness, if the
24 witness, whether the witness agrees with you vis-a-vis it
25 is not going to take the case any further. He looks in the

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1 way things are going, he can disagree anyway, but you won't
2 be bound by this agreement, you still argue the point based
3 on the two other points. So aren't you, so isn't it better
4 to move on to something which will give you an answer -
5 MR MPOFU: No, it is fine, Chairperson, -
6 CHAIRPERSON: - which you can use?
7 MR MPOFU: I thought it was part of my
8 duties to put the case, -
9 CHAIRPERSON: No, he is not –
10 MR MPOFU: - Mr Magidiwana's case to him,
11 but fine if not it is fine.
12 CHAIRPERSON: Mr Magidiwana's case has
13 been put to him and it is not part of your duty to argue
14 with the witness, you would argue with us later based on
15 the facts that you've elicited and you've got on record and
16 if your arguments are good we will uphold them and if they
17 aren't they won't. So may I suggest you carry on to the
18 next point which will give you facts which you can use for
19 your argument, or alternatively maybe you may extract the
20 concession from the witness about something that he knows
21 about, that will be a different but anyway, let's carry on.
22 MR MPOFU: Ja, okay. Alright,
23 Chairperson, you know this is the place where some of my
24 clients were butchered in a very terrible way, so if I'm
25 not able to put their version to the operational commander

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1 nogal, then I'm worried about it.
2 CHAIRPERSON: You can put your version to
3 witnesses who can deal with it. You don't have to put
4 their version to a witness who can't deal with it, whatever
5 title he had, whether he was an operational commander or
6 overall commander or whatever. You obviously have got to
7 put your version to witnesses who can deal with it and
8 you've done that. No one can accuse you of having
9 neglected your duty in that regard, so may I suggest we
10 carry on?
11 MR MPOFU: Okay, Brigadier, and that
12 point we'll leave it there, maybe you will have another
13 chance in the future.
14 CHAIRPERSON: I don't know if that
15 comment is an appropriate one either, Mr Mpofo, just carry
16 on asking questions?
17 MR MPOFU: Ja.
18 CHAIRPERSON: I've done my best to be, -
19 MR MPOFU: Yes, -
20 CHAIRPERSON: - to help you with your
21 case –
22 MR MPOFU: Okay, let's take –
23 CHAIRPERSON: And I shall continue to do
24 that –
25 MR MPOFU: Yes –

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1 CHAIRPERSON: - and it doesn't help to
2 make comments like that.
3 MR MPOFU: You said, we said we are
4 dealing with your tweede point. The first point that you
5 had made was, and it is effectively in support of the same
6 conclusion which I was trying to drive to, is that the, do
7 you remember the chairperson, when he was clarifying the
8 blockage that I was talking about, you then showed us those
9 Nyalas that are effectively in front of the TRT line on
10 photo 205, do you see that?
11 BRIGADIER CALITZ: Dit is die foto wat ek
12 vir u gewys het, dit is korrek, -
13 MR MPOFU: Ja, -
14 BRIGADIER CALITZ: - mnr die Voorsitter.
15 [14:53] MR MPOFU: Ja, now the evidence will also
16 show that, - well, firstly in support of that argument that
17 I made earlier, what I would say about that is that all
18 that needed to be done would have been to reinforce those
19 three or four Nyalas and that would have successfully
20 closed that gap instead of opening that gap up which is
21 what was said in Aljazeera as the boxing in of the people,
22 but I'm not there. The point I want to make is that
23 another reason why the view as between the approaching
24 strikers and the TRT line was obscured were those Nyalas
25 that were in front of them which subsequently made way.

<p style="text-align: right;">Page 20078</p> <p>1 Actually the shooting happened almost immediately after, I 2 don't know which Papa it was, after one of the Nyalas 3 cleared, opened the way and then the volley of fire came. 4 You'll see that on the video. It is almost as if you've 5 got the Nyala and they are coming and it opens the way and 6 then they are shot. That's another reason I'm offering for 7 them not, we've already had two them, a third reason why 8 they would not have been aware of the TRT line, do you 9 understand first and if you understand do you agree? 10 BRIGADIER CALITZ: Mnr die Voorsitter, 11 met respek, ek dink u het my so 'n bietjie verloor. 12 MR MPOFU: 19, sorry, I'm told it is 13 Papa19, the one that swept through just before the volley 14 of fire. 15 BRIGADIER CALITZ: Dit is ook nie korrek 16 nie, dit is Papa10. 17 MR MPOFU: Okay, fine. 18 BRIGADIER CALITZ: So Chaskalson het u 19 verkeerd geadviseer. Ek, mnr die Voorsitter, ek weet nie 20 of ons weer oor die punt moet gaan nie, ek dink u – 21 CHAIRPERSON: Maybe – 22 BRIGADIER CALITZ: - maar ek is bereid om 23 dit weer te antwoord. 24 CHAIRPERSON: Sorry, can I interrupt you? 25 Maybe it might be sensible if we get that video clip and</p>	<p style="text-align: right;">Page 20080</p> <p>1 Voorsitter, - 2 CHAIRPERSON: - do you want me to take 3 the tea adjournment now? 4 BRIGADIER CALITZ: Nee, mnr die 5 Voorsitter, ek wil net vra of ek weet nie hoe, ek wil net 6 uitklaring gehad het, ek wou dalk 'n vraag gevra het maar 7 ek weet nie of ek mag nie, of – 8 CHAIRPERSON: Well, he hasn't put the 9 question yet as I understand it. 10 BRIGADIER CALITZ: Okay, nee, ek sal dit 11 liever los tot ons, – 12 CHAIRPERSON: Well, if it is – 13 BRIGADIER CALITZ: - miskien in 'n latere 14 – 15 CHAIRPERSON: If it is something you want 16 to say – 17 BRIGADIER CALITZ: Nee, nee, nee – 18 CHAIRPERSON: I'm sorry, if it is 19 something you want to say that you consider important in 20 response to what Mr Mpofu has said, obviously you must say 21 it. I'm not here to stop you saying things you want to say 22 that are necessary and – 23 BRIGADIER CALITZ: Nee, ek verstaan, mnr 24 die Voorsitter, - 25 CHAIRPERSON: - I'm not here to do the</p>
<p style="text-align: right;">Page 20079</p> <p>1 have a look at it. 2 BRIGADIER CALITZ: Ja. 3 CHAIRPERSON: And I think we will see a 4 video moving, - sorry, we will see a vehicle moving across 5 the screen and we will then see various other things and 6 based upon what we see Mr Mpofu may be able to ask you 7 some, I'm sure he will be able to ask you some helpful 8 questions which will elicit helpful answers, either one 9 side or the other or possibly both. 10 MR MPOFU: Yes, I think that's correct, 11 Chairperson, but I promise you this is the last point I'm 12 making apropos this issue of whether or not the strikers 13 were aware of the basic line. I've said firstly it wasn't 14 there, secondly – 15 CHAIRPERSON: You've made the point, Mr 16 Mpofu, - 17 MR MPOFU: Yes, - 18 CHAIRPERSON: - don't repeat it again. 19 (a), it is in the transcript and, (b), some of us were 20 listening to you, but just move on to your next point. 21 MR MPOFU: Okay. Alright, we'll do, - 22 Chairperson, can I – 23 CHAIRPERSON: Mr Mpofu, before we carry 24 on, - 25 BRIGADIER CALITZ: Ekskuus, mnr die</p>	<p style="text-align: right;">Page 20081</p> <p>1 same to Mr Mpofu either. 2 BRIGADIER CALITZ: Ek sal dit los, dat ek 3 sien of mnr Mpofu die vraag vra wat ek hom mee wil 4 behulpsaam wees. 5 MR MPOFU: You can ask me a question, ja. 6 BRIGADIER CALITZ: Nee, nee, dit is okay, 7 ek sal los dat u die vrae vra en dan sal ons dit hanteer, 8 dankie, mnr die Voorsitter. 9 MR MPOFU: Thanks, Chairperson. If we 10 may, just so that we set up the video, if we can bring – 11 CHAIRPERSON: Do you want me to take the 12 tea adjournment now? 13 MR MPOFU: If it – 14 CHAIRPERSON: Alright, let's take the tea 15 adjournment. Now let's try to be back by about, these 16 things aren't always complied with but never mind, let's 17 try very hard to be back here by 20 past 3 and then we have 18 a clear run from 20 past 3 to 4 o'clock and you can deal 19 with this matter and the video and so on, and then 20 presumably by tomorrow we can get to koppie 3, I hope. We 21 take the tea adjournment now. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [15:24] CHAIRPERSON: The commission resumes. 24 Brigadier, you're still under oath. 25 BRIGADIER CALITZ: Dankie.</p>

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1 CHAIRPERSON: Mr Mpofo, you're still
 2 cross-examining?
 3 MR MPOFU: Yes, thank you, Chairperson.
 4 Sorry I was at the corner. Brigadier, I'm going to try and
 5 do this quickly. I'll show you a couple of videos back to
 6 back. Let's start with, okay but maybe just in fairness,
 7 the, what you should look out for the point that we were
 8 busy with which was that, this point that we were busy with
 9 which was that almost immediately, a few seconds before the
 10 volley of fire there was a Nyala that was effectively
 11 between, let's say, to use it loosely between the strikers
 12 and the TRT line and there's a difference between you and
 13 Mr Chaskalson as to whether P10 or P19, it doesn't matter,
 14 a Nyala. So that's one of the issues I'll, that you must
 15 look out for. The other one which you must look out for is
 16 what, although you and I had agreed on it, the TRT people
 17 running towards the basic line area and then also look out
 18 for the strikers walking close to the kraal, I don't want
 19 to say around the kraal because the kraal was almost to
 20 their right. Okay, but I'll stop at the right places, just
 21 those are the kinds of things I'm going to be dealing with.
 22 Can we start with AAA9.
 23 CHAIRPERSON: Is there a particular
 24 point on the video where we're going to start?
 25 MR MPOFU: Oh yes, you can start at –

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1 CHAIRPERSON: Just for those people
 2 reading the record in years to come.
 3 MR MPOFU: Yes.
 4 BRIGADIER CALITZ: Sorry you gave me –
 5 MR MPOFU: And the warning please
 6 Chairperson, for what it's worth. I don't think there's –
 7 BRIGADIER CALITZ: Is it AAA7?
 8 MR MPOFU: Ja.
 9 BRIGADIER CALITZ: AAA9 or 7?
 10 MR MPOFU: AAA9.
 11 BRIGADIER CALITZ: You didn't give it to
 12 me in your bundle.
 13 MR MPOFU: Ja well -
 14 CHAIRPERSON: If one –
 15 MR MPOFU: Those videos are the same.
 16 CHAIRPERSON: Is there anyone here who
 17 thinks that he or she may be upset by what is going to be
 18 shown because of a loved one or relative is shown having
 19 been shot then please leave the chamber. I don't think
 20 there is any body in that category here. But I mention it
 21 just in case.
 22 MR MPOFU: Thank you, okay. Start at 45
 23 seconds.
 24 [VIDEO SHOWN]
 25 Sorry, stop. Just Brigadier if, what I wanted

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1 you to see, I'll ask them to go slightly back, I want you
 2 to see that, what I was trying to say that it's almost as
 3 if, in fact I don't know how those Nyalas escaped the
 4 gunfire if they did. But it's almost as if the strikers
 5 come off the back of the one Nyala and then the shooting
 6 starts. Remember me making that remark.
 7 BRIGADIER CALITZ: Ek is met u.
 8 MR MPOFU: Okay.
 9 BRIGADIER CALITZ: Ek het dit gesien.
 10 MR MPOFU: Oh, good then we don't have to
 11 play it again.
 12 BRIGADIER CALITZ: Dit is korrek.
 13 MR MPOFU: There are surprises in life.
 14 Alright we'll move onto something else. I don't want to,
 15 okay, sorry about that. We'll move onto something else.
 16 You can play on.
 17 [VIDEO SHOWN]
 18 Thank you very much. Okay since the point has
 19 already been conceded can you go to AAA6.
 20 [VIDEO SHOWN]
 21 MR MPOFU: Okay, Brigadier, this is just
 22 the point of the TRT, I would call it advancing towards the
 23 point of the basic line. You'll remember we discussed
 24 that. You did say you saw it on the videos?
 25 BRIGADIER CALITZ: Dit is korrek, ja.

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1 CHAIRPERSON: Are those helmets that
 2 they are wearing, TRT helmets?
 3 BRIGADIER CALITZ: Dit is korrek, TRT is
 4 ook uitgereik met die helmets so ook NIU, mnr die
 5 Voorsitter.
 6 MR MPOFU: So, yes, okay, thank you.
 7 Please carry on.
 8 [VIDEO SHOWN]
 9 Thank you. Again you saw, let's take your
 10 version Nyala 10 moving in slightly just before the volley
 11 of fire, correct?
 12 BRIGADIER CALITZ: Ek sien dit, mnr die
 13 Voorsitter.
 14 MR MPOFU: Thanks. Alright there's just
 15 one more thing that I want you to look at and I'll describe
 16 it because I think it will be the first time that we see
 17 this. I'm going to show you a very short clip where
 18 there's, what I think is a member of the TRT, you can
 19 correct me if I'm wrong who makes a signal, signal which
 20 I'm not a sign language interpreter, thank God, but if
 21 you'll agree with me that signal, you see it in American
 22 movies and things like that. Something like, I'm watching
 23 you. You know what it is in the movies. Our kids also do
 24 it to us sometimes. You know what I'm talking about.
 25 BRIGADIER CALITZ: I'm tempted to say my

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1 daughter is 8, she's not doing it and the other ones is big
2 but it's fine, I will see what you –
3 MR MPOFU: But you know what I'm talking
4 about, you see it in movies. That kind of thing.
5 BRIGADIER CALITZ: I saw that in that you
6 show me, yes.
7 MR MPOFU: Ja, thank you. Okay. Can we
8 go to 11194.8.
9 MR CHASKALSON SC: Chairperson, maybe we
10 describe that gesture for the record.
11 CHAIRPERSON: Perhaps you can.
12 MR MPOFU: Oh ja, sorry.
13 MR CHASKALSON SC: I didn't even see it.
14 So I can't –
15 MR MPOFU: I think, Mr Chaskalson will be
16 in a better position. Thank you, Chairperson. Well –
17 CHAIRPERSON: For those who can read the
18 record in years to come will want to know what the gesture
19 was.
20 MR MPOFU: Yes, no fair enough.
21 CHAIRPERSON: You can put them out of
22 their misery now.
23 MR MPOFU: Fair enough. I just find it
24 difficult. I accept that. Chairperson what the, what I
25 was describing to the witness is a gesture where somebody,

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1 as I say it's usually in movies or things like that.
2 Points to their eyes and then points to you. It's
3 colloquially understood to mean I'm watching you or watch
4 out. But points with both eyes towards themselves and then
5 to the person.
6 CHAIRPERSON: He points with his fingers
7 to his eyes, two fingers effectively apart.
8 MR MPOFU: Yes.
9 CHAIRPERSON: Pointing to two eyes and
10 then he does the same with the same two fingers pointing to
11 another person.
12 MR MPOFU: With one or two, if I was
13 doing it with the Brigadier Calitz I would do this, gives
14 me an answer that I don't like to show that I'm going to
15 catch him in the car park.
16 BRIGADIER CALITZ: You will have
17 difficulty.
18 MR MPOFU: I accept that.
19 CHAIRPERSON: Do we have to have this
20 fighting talk in the hearing.
21 MR MPOFU: - a fighting.
22 CHAIRPERSON: If you do anything to him
23 in the car park you'll be reported to the bar council Mr
24 Mpofo.
25 MR MPOFU: Thank you.

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1 CHAIRPERSON: And if you do anything to
2 him in the car park Brigadier I'll report you to IPID. Can
3 we carry on.
4 BRIGADIER CALITZ: It will be self
5 defence.
6 MR MPOFU: Thank you. Okay it's
7 JJJ194.8.
8 MR BIZOS SC: Mr Chairman, may I ask that
9 it be recorded for the purposes of the record that the
10 police officers with guns are almost invariably moving
11 forward and we don't see any one of them stepping backwards
12 in order to put greater distance between the policemen and
13 the aggressive crowd. If I am correct, I would like it to
14 be recorded on –
15 CHAIRPERSON: I don't think that's
16 correct, I can recall having seen a video where there is,
17 there are people walking back but I think you're correct in
18 relation to the video we've just seen. But there are other
19 videos, that's a matter that can be discussed if necessary
20 put on record later. We're now any way going to see
21 another video, let's see whether someone walks back there,
22 but I seem to recall seen a video where police walked back,
23 a short distance before the necessary action but, if I'm
24 wrong on that that can be sorted out.
25 MR BIZOS SC: With due respect this is

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1 not what I see, Mr Chairman.
2 CHAIRPERSON: No, I think you're correct
3 –
4 MR BIZOS SC: Walking forward and
5 shooting.
6 CHAIRPERSON: Yes, I think you're
7 correct –
8 MR BIZOS SC: Nobody is walking backwards
9 to put greater distance if he was in immediate danger in
10 order to put greater distance from the attacker. This is
11 what I would like recorded.
12 CHAIRPERSON: I think what you said –
13 MR BIZOS SC: If my observation is
14 correct.
15 CHAIRPERSON: I'm sorry to interrupt
16 you. I think what you said correctly, is correct in
17 relation to the video we've just seen. But I seem to have
18 a recollection that we have a video where someone, a
19 policeman is, does step backwards.
20 MR CHASKALSON SC: Chairperson if we look
21 at JJJ, I think it's 194.17 we can see that members of the
22 TRT line are actually walking backwards while they are
23 shooting. So I don't know, I don't think Mr Bizos's
24 proposition can be put on the record. There is, certainly
25 in, it's JJJ194.17 which shows the shooting from behind the

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1 line of the parallel Nyalas going up the kraal. You can
2 see the TRT retreating as they shoot.
3 MR MPOFU: Well, Chairperson, with the,
4 I'm sure we'll have this argument one day. The point that
5 I made to the Brigadier and other witnesses maybe captured
6 what everyone has said. Because maybe it's a question of
7 relativity. The, where I come from and that's what I was
8 showing the Brigadier now, is to show the considerable
9 distance where people even run for some time towards a
10 particular point as compared to what Mr Chaskalson
11 correctly points out where at some point of the shooting
12 one or two of them takes one or two steps back.
13 CHAIRPERSON: The point is the –
14 MR BIZOS SC: Myself, Mr Chairman, to
15 what we saw now –
16 CHAIRPERSON: Ja, I think what –
17 MR BIZOS SC: I would like that recorded
18 because I would submit with respect somebody is entitled to
19 explain how that is consistent with self defence.
20 CHAIRPERSON: Mr Bizos, what you said
21 has gone on record. My recollection is that what we saw a
22 few minutes ago is in accordance with what you said. It's
23 suggested that there are other videos which shows something
24 different. But the videos are all before me, the
25 commission as exhibits so in due course the matter can be

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1 dealt with in argument. It's not a matter in effect to
2 which we require evidence. Let's see the, look at the
3 video now that's been shown to us.
4 MR MPOFU: Oh sorry, yes.
5 BRIGADIER CALITZ: Just give me the
6 reference please.
7 MR MPOFU: It's JJJ194 and its video
8 number 8. So you can call it 194.8. Okay can you play.
9 Just play it while we are waiting.
10 CHAIRPERSON: - it is pointed out to me
11 that we didn't actually see people shooting as they ran
12 forward, we saw them running forward but in any event it's
13 not matter we need debate now, the video, we know what the
14 video is. We can all look at it at our leisure and if
15 necessary we can all agree after we've looked at it several
16 times perhaps, agree at some future date what exactly can
17 be seen, it's not a matter that need hold us up at the
18 moment because it's an exhibit that's already before us.
19 Mr Semenya, do you want to say something?
20 MR SEMENYA SC: No, I was saying the clip
21 that we saw, Mr Bizos, is correct they're moving forward.
22 But not whilst shooting. That is wrong.
23 CHAIRPERSON: That's the point that I
24 made now. Alright, let's look at the video that we're now
25 going to be shown an then Mr Mpofu is going to ask some

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1 questions.
2 MR MPOFU: Thank you, firstly if you can
3 just look at it as it is and then, it's a very short clip,
4 Chairperson and then play it zooming on, on the –
5 CHAIRPERSON: Has this video been
6 identified, this exhibit been identified?
7 MR MPOFU: Yes, Chairperson, I've just
8 said it's JJJ194 video number 8.
9 CHAIRPERSON: And at what point do we
10 begin?
11 MR MPOFU: We, no it's a very short clip.
12 CHAIRPERSON: Alright. We see the whole
13 clip.
14 MR MPOFU: So this is the gentleman, oh
15 sorry, here when you play it again I want you to play it, a
16 few seconds, play it twice and then the second time if it's
17 possible to zoom into that gentleman.
18 CHAIRPERSON: That gentleman, there's a
19 whole lot of gentlemen –
20 MR MPOFU: Well the one I'm pointing,
21 Chairperson, this one. Just behind this one.
22 [VIDEO SHOWN]
23 [15:44] CHAIRPERSON: You are referring to a
24 policeman on the right hand side of the screen, I think he
25 is second from the right.

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1 MR MPOFU: Ja.
2 [VIDEO SHOWN]
3 MR MPOFU: Okay, did you see that
4 gesticulation? It is –
5 BRIGADIER CALITZ: Ja, dit lyk vir my of
6 hy iets opmerk en iemand se aandag daarop verg, dat hy iets
7 opmerk.
8 MR MPOFU: And so when he points his
9 finger to his eyes is he saying, I've just "opmerk"
10 something?
11 CHAIRPERSON: - went so far, I didn't see
12 him pointing to his eyes.
13 MR MPOFU: Yes. Okay, let's do it very
14 slowly.
15 CHAIRPERSON: Let's have it again.
16 MR MPOFU: Okay, let's zoom onto this
17 gentleman and go and have a ghost, what do you call it, a
18 slow motion, sorry, if it is possible?
19 [VIDEO SHOWN]
20 Okay.
21 CHAIRPERSON: I didn't see him pointing
22 to his eyes, I saw him waiving his finger in front of his
23 nose and then I saw him pointing forward with his fingers,
24 but I didn't see him pointing to his eyes.
25 MR MPOFU: Ah, well, in that case I'll, -

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1 I think he did it twice quite frankly, can you play it
2 again, please, in slower motion if it is possible?
3 [VIDEO SHOWN]
4 Otherwise we'll call a silent language
5 interpreter as an expert, -
6 [VIDEO SHOWN]
7 Well, let me put it this way, if you are not
8 prepared to say what you saw in relation to what I've said,
9 then seriously we will call -
10 CHAIRPERSON: I'm not prepared to say
11 what, I'm not prepared to say I saw what you say you saw.
12 MR MPOFU: Ja, but you're not the
13 witness, Chairperson, I'm asking the witness.
14 CHAIRPERSON: Oh, oh.
15 MR MPOFU: Maybe he says. Brigadier, -
16 CHAIRPERSON: Well, okay, okay.
17 MR MPOFU: Ja.
18 CHAIRPERSON: Brigadier, did you see what
19 Mr Mpofu says can be seen namely the policeman who is the
20 second from the right, pointing first with his two fingers
21 towards his eyes and thereafter pointing his fingers
22 forward? Did you see that?
23 MR MPOFU: As it is now on the still,
24 that's the last motion which is pointing away.
25 BRIGADIER CALITZ: Mnr die Voorsitter,

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1 nee, ek het op die groot skerm gekyk, so ek kan ongelukkig
2 nie sien, nie duidelik dat hy na sy eie oë toe wys nie, ek
3 kan wel sien hy beduie met sy hand vorentoe en asof hy dan
4 die aandag van die ander persone op iets verg, dit is wat
5 ek sien.
6 MR MPOFU: That's fine.
7 CHAIRPERSON: One can add that we
8 actually saw his lips moved, whether he was actually saying
9 something one doesn't know but his lips moved as well and
10 he may well have been saying something.
11 BRIGADIER CALITZ: I saw the two guys
12 next to him, looking at him and maybe he was showing them
13 something in some direction. Ek kan nie weet van watter
14 angle dit af is of waar dit was nie.
15 MR MPOFU: That's fine, I can assure you
16 we're going to get to the bottom of this one at another
17 stage, but thank you, as far as you are a witness I'm happy
18 with your answers. If I may ask SAPS maybe or the evidence
19 leaders, Chairperson, to maybe assist us to identify that
20 gentleman because he is clearly visible, so that we can
21 subpoena him if this thing goes any further, if people
22 really can't see what is on here?
23 CHAIRPERSON: I don't know how much, -
24 well, I certainly can't see it, but let's not debate that,
25 maybe you can see something I can't see.

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1 MR MPOFU: That's fine.
2 CHAIRPERSON: But how material this is in
3 any event I don't know and whether I'll be prepared to have
4 the subpoena issued to deal with an issue which doesn't
5 seem to be material -
6 MR MPOFU: Well, we'll deal with that -
7 CHAIRPERSON: - to the matter we can
8 debate later, but in any event let's move on. You
9 understand, Brigadier, what Mr Mpofu says is there to be
10 seen and perhaps you can move to your next question.
11 MR MPOFU: Yes, now if it is established
12 that the gesture that I refer to has occurred, would you as
13 operational commander condone a situation where a member of
14 the TRT is effectively threatening a citizen while he is
15 holding an R5 -
16 CHAIRPERSON: I think -
17 MR MPOFU: - which might kill that
18 citizen?
19 CHAIRPERSON: Mr Mpofu, I think that
20 question is based upon an assumption which is not
21 established.
22 MR MPOFU: Yes, of course.
23 CHAIRPERSON: I can understand, I would
24 imagine the first thing to do will be to try to establish
25 whether the gesture which you say you saw constitutes a

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1 threat and then once you've established that you can then
2 move on to the next point, but the question you've asked
3 assumes that to be correct and which is something which is
4 not being established, so perhaps you can reformulate the
5 question so that we get the point dealt with correctly.
6 MR MPOFU: Ja, I'll do it, Chairperson, I
7 thought by using the word "if", I thought that I was
8 covering exactly that. If, again if, a big "if", what I
9 postulated the gentleman to be doing, if he is doing that
10 to somebody and you said if I was doing it with you I
11 wouldn't come right, is that the kind of behaviour that you
12 would expect from a person armed with an R5 to do towards
13 somebody else, if?
14 BRIGADIER CALITZ: Mnr die Voorsitter,
15 kom ek gebruik u woorde dat ons nou nie mekaar verkeerd
16 verstaan nie. As hy en dit kan bewys word dat hy dit wel
17 aan 'n persoon gedoen het, die gesture wat hy daar gesien
18 het, het ek gesien dat hy beduie iets en die twee lede wat
19 na aan hom was het aandag gegee, so volgens my sou hy hulle
20 twee se aandag op iets gevestig het. Ek sou dit nie sien
21 as 'n gesture van ek het 'n R5, ek waarsku jou oor iets of
22 iets in daardie lyn nie, nee. So my antwoord kortweg is,
23 ek stem nie saam met u nie.
24 MR MPOFU: No, then you're not listening
25 to me. I'm saying I accept that your evidence is that you

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1 did not see what I've said we have seen. I have said that
 2 we will call a witness or subpoena that person, that may or
 3 may not be allowed. When that happened I don't want to
 4 have to call you back here to answer the question. To save
 5 that situation I'm saying to you if that gesture is
 6 established to be made, obviously if it is established
 7 never to have been made that's the end of the matter. If
 8 it is established to have been made either by calling that
 9 gentleman and he acknowledges it or calling someone else
 10 who will acknowledge it, in the manner that I describe
 11 which is, I'm watching you, you, I'm watching you, that
 12 might be quoting of what he was saying. If that is
 13 established then would you, is it the kind of behaviour
 14 that you would expect from a gun wielding person with an
 15 R5?

16 BRIGADIER CALITZ: Soos u dit nou gestel
 17 het, indien hy wel daardie gesture gemaak het wat u sê hy
 18 het gemaak en dit was wel gemaak na 'n persoon toe van die
 19 publiek wat kan bewys word, beteken dit dat ek kyk vir jou.
 20 So ek kan dit nie sien as 'n dreigement nie, miskien is dit
 21 dat ek hou jou dop, ek kyk waarnatoe jy gaan, as dit wel,
 22 so iets kan vasgestel word, maar weereens dit is glad nie
 23 wat ek sien of wat die video bewys nie, maar dit is my
 24 antwoord.

25 MR MPOFU: Okay, thank you very much,

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1 Brigadier. Let's turn the situation around now. You
 2 testified about the alleged threats made by the strikers,
 3 correct?

4 BRIGADIER CALITZ: Nie strikers nie, mnr
 5 Noki aan ons voertuig en aan die Nyala 6 dink ek, ja.

6 MR MPOFU: You yourself cannot tell us
 7 what Mr Noki said, you can tell us what you remember the
 8 interpreter to have said, correct?

9 BRIGADIER CALITZ: Dit is korrek, die
 10 interpreter en dan Kolonel Scott, - ekskuus tog, Kolonel
 11 McIntosh -

12 MR MPOFU: Yes -

13 BRIGADIER CALITZ: - het dit oorgedra aan
 14 my, ja.

15 MR MPOFU: Well, okay, until we are told
 16 otherwise Mr McIntosh is in the same position as you, he
 17 would also be relying on the interpreter, correct?

18 BRIGADIER CALITZ: Die interpreter het
 19 wel vir ons dele ge-interpret wat gesê is, ja.

20 MR MPOFU: Ja, so if the, excuse me. You
 21 see there are two versions of what was said there by Mr
 22 Noki and each one of them has completely different
 23 implications, you'll agree with me. If Mr Noki indeed said
 24 you, the police are going to die, that's one thing, but if
 25 he said "they", the strikers had accepted that they would

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1 die or would be killed, it is a different thing, you agree
 2 with that, correct?

3 MR SEMENYA SC: Chair, I don't understand
 4 where Mr Mpofo -

5 CHAIRPERSON: It sounds like a self
 6 evident proposition, if what was said was, "You're going to
 7 die," that's different from, "We are going to die," if that
 8 was said. The question is what was said? If it was the
 9 one it is different from the other. I don't think you'll
 10 have to, if I was cross-examining I wouldn't even asked the
 11 witness a question of the two different, because it is
 12 often obvious like saying, is a cat different from a dog,
 13 and the answer is, yes. So that's what the point is.

14 MR MPOFU: Ja, but Mr Semenya doesn't
 15 understand -

16 CHAIRPERSON: No, I've explained it now -
 17 MR MPOFU: - that a cat is different from
 18 a dog.

19 CHAIRPERSON: I've explained it to him
 20 nicely and, Mr Mpofo, that wasn't a worthy observation.
 21 I've explained it to him and he understands it.

22 MR MPOFU: Thanks.

23 CHAIRPERSON: The big issue is going to
 24 be what was said, was it A or B? Now before you carry on
 25 let me ask a question about it. In your Nyala, apart from

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1 the interpreter who was provided by Lonmin, I think, did
 2 you have any member of SAPS who could understand what was
 3 being said in the language which is being used?

4 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 5 sal moet vasstel. Ek het vir Adjudant-Offisier Nong gehad
 6 en dan Kaptein Makwena en dan, daar was nog twee lede,
 7 Seoge, Kgosana en nog 'n lid, so ek sal maar net vasstel of
 8 hulle dan -

9 CHAIRPERSON: Perhaps you can -

10 BRIGADIER CALITZ: - Xhosa of Fanagalo
 11 verstaan.

12 CHAIRPERSON: It might be sensible for
 13 you not to ascertain it, but the evidence leaders can
 14 investigate that point I think. Alright, Mr Mpofo, you may
 15 proceed?

16 MR MPOFU: Okay, we'll return to that, I
 17 just can't find the passage where one of the police
 18 witnesses says that he said they are going to be killed,
 19 but what I can tell you is that Mr Mathunjwa who addressed
 20 them just before that, it is common cause that he said they
 21 were going to be killed. Do you dispute that?

22 BRIGADIER CALITZ: Ek dink ek het op 'n
 23 video gesien in hindsight, die presiese woorde kan ek nie
 24 vir jou onthou nie, -

25 MR MPOFU: Ja, -

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1 BRIGADIER CALITZ: - maar ek dink hy het
 2 hulle gewaarsku en gesê dat hulle moet die koppie verlaat.
 3 MR MPOFU: Want?
 4 BRIGADIER CALITZ: Nee, ek sê mos ek kan
 5 nie die presiese woorde, u sê dat hulle sal, hulle gaan
 6 doodgaan, -
 7 MR MPOFU: Ja, -
 8 BRIGADIER CALITZ: - so ek weet nie of
 9 dit die woorde was nie, maar ek weet daar was so 'n video
 10 gewees.
 11 CHAIRPERSON: So he did tell them, he did
 12 warn them that if they didn't leave the koppie they'll be
 13 killed.
 14 MR MPOFU: Ja.
 15 CHAIRPERSON: And they don't seem to take
 16 -
 17 BRIGADIER CALITZ: Ek aanvaar dit -
 18 CHAIRPERSON: - what he says -
 19 BRIGADIER CALITZ: Ek aanvaar dit so, ek
 20 kan net nie die woorde onthou het nie, mnr die Voorsitter.
 21 CHAIRPERSON: There is also of course
 22 apart from the, what was said to the negotiators in the
 23 Nyala, there is also a recording which is an exhibit and on
 24 which we have a translation, but one at least of the
 25 strikers said something about a policeman from the

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1 homelands, one of the homelands who was going to be killed,
 2 but anyway that's, and we're not dependent upon the Lonmin
 3 interpreter for that, but anyway that's another matter.
 4 MR MPOFU: Well, -
 5 CHAIRPERSON: Mr Mpofo, it is now four
 6 o'clock, would you like to gather your points and your
 7 information and your cross-examination and questions and
 8 proceed on the morrow?
 9 MR MPOFU: Yes, I would, Chairperson,
 10 except that, just in case I forget overnight to, on your
 11 remark about what's called I think striker 6 or protestor
 12 6, that insofar it is necessary to tell this witness since
 13 he was told, that had happened in the morning around about
 14 12. I'm talking about Mr Mathunjwa's warning that they
 15 would be killed at about 3:40 or something.
 16 CHAIRPERSON: I understood you, Mr Mpofo,
 17 to be referring to Mr Mathunjwa's second speech.
 18 MR MPOFU: That's correct and you are
 19 referring to his first.
 20 CHAIRPERSON: No, and also you will
 21 remember that we were told yesterday, I think, that there
 22 is now a film that's being found of the speech and a
 23 transcript is available, I don't think it has been
 24 translated yet and I actually requested that we should get
 25 that, so when that would be ready of course we don't know

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1 but clearly that's something that will be available to the
 2 Commission and everybody else and so it will be apparent if
 3 Mr Mathunjwa then tells us what he said. So it would be
 4 quite apparent before the Commission is over that Mr
 5 Mathunjwa indeed did say what you say he said.
 6 MR MPOFU: Yes, Chairperson, I'm sorry, I
 7 accept that. Chairperson,-
 8 CHAIRPERSON: Ja, is that point sorted
 9 out for you satisfactory?
 10 MR MPOFU: No, Chairperson, if you may
 11 just give me one second, just so that we don't come back to
 12 this. The point I wanted to make is that my understanding
 13 is, you're quite right, it might be confirmed by video and
 14 what have you but that is common cause to, and the reason
 15 I'm saying that is because at slide 189, L189, sorry, the
 16 police version is, "The President of AMCU and
 17 representatives of AMCU are prepared to leave the scene.
 18 Mr Joseph Mathunjwa remarked to the protestors that they
 19 would die that day if they continue to do their cause of
 20 action, to which they responded that they were prepared to
 21 die there that day." So there is no controversy, I'm
 22 reading from the police's own version.
 23 CHAIRPERSON: Yes, no, we know that, we
 24 have read the exhibit and we remember that.
 25 MR MPOFU: Ja.

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1 CHAIRPERSON: But that of course is not
 2 part of the evidence that relates to alleged threats and
 3 this is the point that you're going to cross-examine more
 4 fully on in the morrow, I take it.
 5 MR MPOFU: Ja, well, Chairperson, I don't
 6 agree but for the sake of us going home I'll agree for now.
 7 CHAIRPERSON: No, no, no, I don't want
 8 you -
 9 MR MPOFU: I'm saying, Chairperson, -
 10 CHAIRPERSON: - to get you to agree to
 11 something which otherwise you wouldn't. There are two
 12 issues.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: The one is what Mathunjwa
 15 said to the people and what they said, the strikers, one or
 16 other of them said in reply, that's one issue.
 17 MR MPOFU: Ja.
 18 CHAIRPERSON: Another issue is whether,
 19 it's the police version that's dealt with in those slides,
 20 there were threats made to them by Mr Noki and that's the
 21 point -
 22 MR MPOFU: Oh, yes -
 23 CHAIRPERSON: - that you were going to
 24 deal with in the morrow.
 25 MR MPOFU: Yes, then I am with you,

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1 Chairperson, yes.

2 CHAIRPERSON: That's a separate issue.

3 MR MPOFU: Yes, the second issue, there

4 was a difference between me and the witness and there is

5 obviously a difference between me and SAPS. I was now

6 chasing, you're quite right, Chairperson, I was chasing the

7 whole issue to Mathunjwa's statement, obviously building up

8 to disputing that, yes, so these are two separate issues.

9 CHAIRPERSON: Ja, two totally separate

10 issues.

11 MR MPOFU: Thank you, Chairperson.

12 CHAIRPERSON: And then there is a third

13 issue about this remark which is recorded on one of the -

14 the soundtrack of one of the videos about this policeman

15 from the homelands that is going to be killed, but anyway,

16 but that's -

17 MR MPOFU: Which was at 12 o'clock, ja.

18 CHAIRPERSON: Ja, that's a third issue.

19 MR MPOFU: Ja.

20 CHAIRPERSON: Alright, anyway on that

21 threatening note we'll adjourn until tomorrow morning -

22 MR MPOFU: Thank you, Chairperson, -

23 CHAIRPERSON: - at nine o'clock.

24 [COMMISSION ADJOURNED]

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