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 187 18 FEBRUARY 2014

PAGES 22580 TO 22740



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Marikana Commission of Inquiry

| 1 | Page 22580 | 1 | Page 22582 |
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| 1 | [PROCEEDINGS ON 18 FEBRUARY 2014] | 1 | CHAIRPERSON: So you'll be ready for Ms |
| 2 | [09:09] CHAIRPERSON: The Commission resumes. | 2 | Le Roux's cross-examination. |
| 3 | Provincial Commissioner, you're under oath still. | 3 | GENERAL MBOMBO: That is correct. |
| 4 | MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. | 4 | MR BUDLENDER SC: Chair, we don't have an |
| 5 | CHAIRPERSON: Mr Budlender, I understood | 5 | electronic copy available, so we'll need to proceed on the |
| 6 | that you wanted to ask, you told me privately outside the | 6 | hardcopy – |
| 7 | chamber that you wanted to ask the witness some questions | 7 | CHAIRPERSON: Well, can you please read |
| 8 | flowing from the Mkhwanazi report which is now an exhibit. | 8 | it out slowly and clearly? |
| 9 | Please do so. | 9 | MR BUDLENDER SC: This is the fourth |
| 10 | FURTHER CROSS-EXAMINATION BY MR BUDLENDER SC: | 10 | paragraph of the paragraph numbered 3.4 of exhibit LLL11, |
| 11 | Thank you, Chair. Lieutenant General, good morning again. | 11 | and I'll read it slowly. Quote, "The management decision |
| 12 | GENERAL MBOMBO: Good morning, Counsel. | 12 | to downsize Crime Combating Units (CCU) negatively impacted |
| 13 | MR BUDLENDER SC: I just want to ask you | 13 | to SAPS' ability to maintain public order. The re- |
| 14 | some couple of matters arising from the, what we call the | 14 | establishment of POP based on the current demand in the |
| 15 | Mkhwanazi report, or the Task Team report. It's LLL11, | 15 | country indicates that the capacity and the strength must |
| 16 | which you were asked about earlier. Do you have it? | 16 | be reviewed." You see that, General? |
| 17 | GENERAL MBOMBO: Yes, I do. | 17 | GENERAL MBOMBO: I see it. |
| 18 | MR BUDLENDER SC: It's called "Final | 18 | MR BUDLENDER SC: I just want to identify |
| 19 | interim report Marikana 16 August 2012." What I'd like you | 19 | what was this decision to downsize and I think the easiest |
| 20 | to do is to look, is to go to page 3, or perhaps before | 20 | way to do it may be to go to exhibit R. Could we go to |
| 21 | that, page 2 has the heading, paragraph 3 "Weaknesses," and | 21 | exhibit R, which is the Minister's policy statement of 29 |
| 22 | it identifies various weaknesses and then one of those is | 22 | August 2011, and go to page 14 of that, and at page 14 we |
| 23 | paragraph 3.4 on the next page called "Means," and could | 23 | see the subheading, "Establishment of a dedicated Public |
| 24 | you go to the fourth paragraph there and we can read it | 24 | Order Policing POPS unit," and the policy statement refers |
| 25 | together, it says the following, "The management decision | 25 | to the obligation on the National Commissioner under the |
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| | Page 22581 | | Page 22583 |
| 1 | Page 22581 to downsize" – | 1 | Page 22583 SAPS Act to establish a national Public Order Policing unit |
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| | Page 22584 | | Page 22586 |
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| 1 | the effect that the CCUS were incorporated as a section | 1 | management had gone down whilst the crime increased at the |
| 2 | under the division Operational Response Services. The | 2 | station levels. |
| 3 | ACCUS was drastically rationalised and more than half of | 3 | MR BUDLENDER SC: Can you recall who was |
| 4 | its members seen deployed to police station level to | 4 | the National Commissioner of Police at the various stages, |
| 5 | strengthen the local crime combating initiatives. The | 5 | 2002, 2004, and 2006? |
| 6 | remaining half of members found themselves in a situation | 6 | GENERAL MBOMBO: If I remember correctly |
| 7 | where they had to cover bigger areas with lesser | 7 | the one of 2004 when this decision was taken it was |
| 8 | resources." | 8 | Commissioner Selebe. It was still him in 2006 as well. |
| 9 | It then goes on in the next paragraph, "It is | 9 | MR BUDLENDER SC: And I understand what |
| 10 | indeed the 2006 restructuring of the ACCUS which provoked | 10 | you say about needing to balance crime prevention and crowd |
| 11 | serious criticism since it was indicative that specifically | 11 | management, depending on the needs, but we see in the |
| 12 | from this period a remarkable increase incurred in the | 12 | passage that we read a bit earlier at the foot of page 15 |
| 13 | number of service delivery protests. However, the reasons | 13 | of the - in fact it's right up on the screen there, right |
| 14 | advanced for the transformation of the initial POP unit and | 14 | there, page 15 of exhibit R, if you look at the fifth line |
| 15 | the subsequent rationalisation of the ACCUS was firstly | 15 | of that last paragraph it says, "Due to changes, demands, |
| 16 | that the functions of the unit could not be justified since | 16 | and an increase in public protests and demonstrations, |
| 17 | they did not have much duties to perform and thus not value | 17 | especially incidences with a violent nature, since 2006, |
| 18 | for money in line with the PFMA; secondly that the skills | 18 | the need for a specialised Public Order Policing unit |
| 19 | and experience of the POPS unit were deemed necessary in | 19 | becomes more and more justified. This notion is |
| 20 | creating capacity to boost police station crime combating | 20 | strengthened by the constant negative public scrutiny of |
| 21 | initiatives. | 21 | current policing methods." So we see from that that in |
| 22 | The conclusion is that the current Operational | 22 | fact since 2006 there was increased need for Public Order |
| 23 | Response Services operates as a division which includes the | 23 | Policing. Is that correct? |
| 24 | CCUS as a unit. Although the CCUS are still used for crowd | 24 | GENERAL MBOMBO: Mr Chair, I'm not sure |
| 25 | management, it's primary function remains crime combating." | 25 | about the figure showing the decrease or increase, but I'm |
| | | | |
| | Page 22585 | | Page 22587 |
| 1 | Now I take it that this is the decision which is | 1 | sure those details can be obtained. |
| 2 | referred to in the Mkhwanazi report about the downsizing of | 2 | MR BUDLENDER SC: Yes, we don't have the |
| 3 | the CCUS. It was these decisions in 2002 and 2006. Am I | 3 | figures, but this is the policy statement issued by the |
| 4 | correct in understanding that? | 4 | Minister in 2011 and we can rely on that as reliable. I |
| | | | - |
| 5 | GENERAL MBOMBO: That is so, Mr Chair, | 5 | mean if he says that since 2006 there's been an increase in |
| 5 6 | GENERAL MBOMBO: That is so, Mr Chair, but a decision to make them more on the side of combating | | - |
| | | 5 | mean if he says that since 2006 there's been an increase in |
| 6 | but a decision to make them more on the side of combating | 5 6 | mean if he says that since 2006 there's been an increase in public protests and demonstrations, especially with a |
| 6 7 | but a decision to make them more on the side of combating crime on the station level was started, if I remember | 5 6 7 | mean if he says that since 2006 there's been an increase in public protests and demonstrations, especially with a violent nature, we can accept that that is the case. |
| 6 7 8 | but a decision to make them more on the side of combating crime on the station level was started, if I remember correctly, in 2004. | 5 6 7 8 | mean if he says that since 2006 there's been an increase in public protests and demonstrations, especially with a violent nature, we can accept that that is the case. GENERAL MBOMBO: I can agree with you, as |
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| | Page 22588 | | Page 22590 |
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| 1 | the trainings that were necessary and the resources, all | 1 | question. |
| 2 | those things continued. The only thing that changed is the | 2 | MR BUDLENDER SC: If you look at the |
| 3 | name and the way they worked, namely that they will help | 3 | heading it says, "Final Interim Report Marikana 16 August |
| 4 | mostly in the crime prevention. Now to answer your | 4 | 2012." Now if this is the final interim report then it |
| 5 | question, it is so that the police had the Public Order, | 5 | means there must have been some previous interim reports. |
| 6 | although it was not called Public Order. Then in 2000 – | 6 | Where will we find the previous interim reports? |
| 7 | I'm not sure whether it was 2008 or 9 – it was agreed that | 7 | GENERAL MBOMBO: Mr Chair, I have no |
| 8 | their name should be changed and they should again go back | 8 | knowledge of the interim report, but I think we can look |
| 9 | to the name POP. So since 2011 the police ensured that the | 9 | for it. |
| 10 | Public Order Policing is enhanced in order to comply with | 10 | [09:29] MR BUDLENDER SC: Well, should it have |
| 11 | this policy, although they have not reached the desired | 11 | been submitted to your office, given that this happened in |
| 12 | level. | 12 | your province? |
| 13 | MR BUDLENDER SC: Yes, I think that's | 13 | GENERAL MBOMBO: It could have been |
| 14 | really the point, the last point I wanted to raise. There | 14 | submitted to the National Commissioner and I also was |
| 15 | is still, as I understand the evidence, a shortage of | 15 | expected to get it but I do not remember receiving it. |
| 16 | Public Order police officers. Is that correct? | 16 | MR BUDLENDER SC: I understand. Could I |
| 17 | GENERAL MBOMBO: Yes, there is really a | 17 | ask you to ask someone in your office to make a search to |
| 18 | shortage. | 18 | see whether you have the previous interim reports submitted |
| 19 | MR BUDLENDER SC: And if we can just go | 19 | by the Task Team and perhaps the SAPS team could do the |
| 20 | to the first paragraph, next page, page 16, there it says, | 20 | same in respect of the National Commissioner's office. |
| 21 | "The National Commissioner must ensure that sufficient | 21 | GENERAL MBOMBO: I will do that. |
| 22 | appropriate capacity is created, whether by transferring | 22 | MR BUDLENDER SC: Thank you, Chair, I |
| 23 | back previous experienced and skilled members or building | 23 | have no further questions. |
| 24 | capacity through effective and focussed training to other | 24 | CHAIRPERSON: Thank you, Mr Budlender. |
| 25 | members deemed fit, and must ensure that the unit is | 25 | Thank you, Provincial Commissioner, for that information |
| | | | |
| 1 | Page 22589 appropriately resourced. These deliberations must be based | 1 | Page 22591 which will help us in our work. |
| 2 | within the context of current international trends, | 2 | COMMISSIONER HEMRAJ: Mr Budlender, as a |
| 3 | developments, norms, and standards." As I understand it | 3 | matter of interest, the model for the community policing |
| 4 | what you're saying is that that has not yet been completed? | 4 | and the CC units at station level emanated, if you look at |
| 5 | GENERAL MBOMBO: As we speak now, Mr | 5 | the documents on the SAPS hard drive, from the |
| 6 | Chair, there was a big meeting where these things were | 6 | collaboration between the Belgium and the South African |
| 7 | addressed where it was expected that Public Order should | 7 | Police. It's very clearly minuted in those documents. |
| 8 | have presentations, and it must be brought to light what | 8 | MR BUDLENDER SC: I think that must be |
| 9 | are the things that we need. | 9 | so, Commissioner, but I think the only question is the |
| 10 | MR BUDLENDER SC: Yes, I understand that. | 10 | quantum of resources allocated at the task. The fact that |
| 11 | Well, the only point I'm seeking to clarify is that it | 11 | it was a decentralised operation, with respect seems to |
| 12 | seems from your evidence and what we've heard previously | 12 | make a great deal of sense. |
| 13 | that we are currently still experiencing the consequences | 13 | COMMISSIONER HEMRAJ: It's all the |
| 14 | of those decisions which were made in 2002, 2004, and 2006. | 14 | recommendations and they seem to have been implemented to |
| 15 | GENERAL MBOMBO: I can agree, Mr Chair, | 15 | the - |
| 16 | and say that is so. | 16 | MR BUDLENDER SC: Well, perhaps Mr |
| 17 | MR BUDLENDER SC: And this is the final, | 17 | Hendrickx when he comes can tell us more about that. |
| 18 | finally, Provincial Commissioner; this document LLL11, the | 18 | COMMISSIONER HEMRAJ: Yes, correct. |
| 19 | Mkhwanazi document, if I can call it that for shorthand, | 19 | CHAIRPERSON: Alright, Ms Le Roux, are |
| 20 | that's called "Final Interim" – if you look at the front | 20 | you now ready to commence your cross-examination? |
| 21 | page the heading is "Final Interim Report." Now that | 21 | MS LE ROUX: Yes, thank you, Chair. Good |
| 22 23 | implies that there were previous interim reports and this is now the final interim report. Where will we find the | 22 | morning, Provincial Commissioner. |
| 1/5 | | 23 | GENERAL MBOMBO: Good morning, Counsel. |
| | | 24 | CHAIRPERSON: Now before you get |
| 24 25 | previous interim reports? GENERAL MBOMBO: I do not get the | 24 25 | CHAIRPERSON: Now before you get underway, if I can put it that way, it might be sensible |

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| | for us to engage in some housekeeping and mark the | 1 | hopefully we'll get the last page with the attestation |
| | documents that you want to hand in as exhibits. Let me see | 2 | certificate at a later date. Then we have the diary, or |
| | from my book where we are. We are, I presume that would be | 3 | actually pocketbook - |
| 4 | part of the L-series and according to my notebook we've got | 4 | MS LE ROUX: Pocketbook. |
| 5 | as far as LLL11, so I suggest that we mark the documents | 5 | CHAIRPERSON: - because he's a Warrant |
| 6 | you want to hand in as part of the LLL-series and then once | 6 | Officer. The pocketbook of Warrant Officer Swartz for the |
| 7 | we've done that it will make your cross-examination flow | 7 | dates dealing essentially with 15th and 16th of August 2012. |
| 8 | more smoothly. Now the statement of Eddie Hendrickx, this | 8 | That LLL15. Yes, Provincial Commissioner, do you want to |
| 9 | is the final one, is it? Do we know whether that's an | 9 | say something? |
| 10 | exhibit yet? | 10 | GENERAL MBOMBO: Just that I do not have |
| 11 | MR BUDLENDER SC: I don't think it is, | 11 | all these documents, Mr Chair. |
| 12 | Chair. | 12 | CHAIRPERSON: Oh dear. Well, we will – |
| 13 | CHAIRPERSON: Yes, so we'll make this one | 13 | what's that black file you've got on your left there? |
| 14 | LLL12, shall we? The statement of Eddie Hendrickx. | 14 | GENERAL MBOMBO: No – |
| 15 | MR BUDLENDER SC: Chair, could we just | 15 | CHAIRPERSON: No, no, no, under that. |
| 16 | put a date to it, because we have a couple of versions of | 16 | What's that one? |
| 17 | Mr Hendrickx's statement. Is it dated? | 17 | GENERAL MBOMBO: No, this one it has got |
| 18 | CHAIRPERSON: Yes, quite right. Quite | 18 | the statement of Mr – oh, there's that pocketbook. |
| 19 | right. This one is January 2014. I remember he took his | 19 | CHAIRPERSON: Mr Tokota solved the |
| | oath in the embassy in Brussels. | 20 | mystery with one fell swoop. |
| 21 | MR BUDLENDER SC: That's the very recent | 21 | GENERAL MBOMBO: Oh, I see Swartz – oh, |
| | one then. | 22 | sorry, Chairperson. |
| 23 | CHAIRPERSON: Yes, that's the one we're | 23 | CHAIRPERSON: Have you got it? |
| | busy with. Yes, it appears on page 67 that on the 27th of | 24 | GENERAL MBOMBO: Ja. |
| | January this year he swore to this affidavit in the South | 25 | CHAIRPERSON: No, that's fine. Does that |
| 20 | | 25 | |
| | Page 22593 | | Page 22595 |
| | African embassy in Brussels. So this will then be LLL12. | 1 | mean that you haven't read it or you did read it but you - |
| 2 | Then we have a barely legible manuscript statement by | 2 | GENERAL MBOMBO: No, I have looked at it, |
| 3 | Warrant Officer Jan Jacobus Swartz. I don't think that's | 3 | but I – |
| 4 | in either, is it? | 4 | CHAIRPERSON: I see, well okay. Okay, so |
| 5 | MS LE ROUX: No, Chair. | 5 | these things happen in the best regulated families, I'm |
| 6 | CHAIRPERSON: So that will be LLL13. We | 6 | sure. It does cause a problem. It's been solved. So just |
| 7 | then have a typed document, also a statement from Warrant | 7 | as well we found it now so we don't have difficulties |
| 8 | Officer Swartz. I'll give the date in a moment. That will | 8 | later. Anyway, so LLL15 is the pocketbook of Warrant |
| 9 | be LLL14 – sorry, the first one, the manuscript one is – it | 9 | Officer Swartz. Then we've got the Protected Disclosures |
| 10 | hasn't got a date on it, but so I haven't got an | 10 | Act which is LLL16, Protected Disclosures Act No. 26 of |
| 11 | attestation either and it may not even be an affidavit, | 11 | 2000. That's then followed by a batch of - then we've got |
| 12 | this may just be a statement. But anyway, we know what it | 12 | the regulations for the South African Police Service, |
| 13 | is. It's an undated manuscript statement of Warrant | 13 | regulation 20 thereof. That's LLL17. I take it it's just |
| | Officer Jan Jacobus Swartz and we've marked it LLL13. | 14 | regulation 20. I don't know whether it's the whole of |
| | LLL14 is a typed supplementary statement, also apparently | 15 | regulation 20, but it's certainly a page and a half |
| | not sworn, and this one also hasn't got a date, but anyway | 16 | containing – |
| | | 17 | MS LE ROUX: Yes, Chair – |
| | – is there a page missing? Is this an affidavit without an | | · |
| | is there a page missing? Is this an affidavit without an attestation certificate, or what is it? You see, and it's | 18 | CHAIRPERSON: - regulation 20 – |
| 18 | attestation certificate, or what is it? You see, and it's | 18 | CHAIRPERSON: - regulation 20 – MS LE ROUX: Correct. |
| 18 19 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to | 18 19 | MS LE ROUX: Correct. |
| 18 19 20 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – | 18 19 20 | MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the |
| 18 19 20 21 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've | 18 19 20 21 | MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. |
| 18 19 20 21 22 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation | 18 19 20 21 22 | MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct. |
| 18 19 20 21 22 23 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation certificate, so is this just missing perhaps or – | 18 19 20 21 22 23 | MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct. CHAIRPERSON: Without any indication as |
| 18 19 20 21 22 23 24 | attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation | 18 19 20 21 22 | MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct. |

| | Page 22596 | | Page 22598 |
|--|--|--|---|
| 1 | later. Then we start with LLL18. Now I'm not going to | 1 | MS LE ROUX: Ja. |
| 2 | waste time and mark them all, but can you tell me how many | 2 | CHAIRPERSON: Shooters who had failed |
| 3 | there are? There are a number of documents which deal with | 3 | most recent shooting practice firearm training, LLL21 – |
| 4 | courses passed or in some cases, most cases failed, by some | 4 | MS LE ROUX: No, that should be 22 |
| 5 | of the members of the service, and they appear to be | 5 | because then we've got two 21s. |
| 6 | summarised in a document at the end, or a series of | 6 | CHAIRPERSON: Oh sorry, I beg your |
| 7 | documents at the end called, the first one is called "POP | 7 | pardon. I see. I'm sorry, I apologise for that senior |
| 8 | shooters training records," which I suspect is a summary of | 8 | moment. That's LLL22, and then, so shooters who had failed |
| 9 | the documents we just referred to. That's followed by TRT | 9 | most recent POP course, that's actually only one of them |
| 10 | shooters training analysis, NIU shooters training analysis, | 10 | really, but that's LLL23. Right, we've then got a number |
| 11 | and then shooters who had most recent shooting firearm | 11 | of documents – oh sorry, I beg your pardon, then I've |
| 12 | training. Now what I suggest we do is we actually – sorry, | 12 | missed the shooter not deemed fit to carry a firearm, it |
| 13 | what I suggest we do is we don't call the individual | 13 | says shooters but there's only one of them, deemed not fit |
| 14 | document in respect of the individual members of the | 14 | to carry a firearm, that will be LLL24. We've then got a |
| 15 | service LLL18 and following; let's just move over to the | 15 | batch, 22 I believe, of documents in respect of individual |
| 16 | summary which starts with POP shooters training records, if | 16 | members. What I'd suggest we do is we call those LLL25.1 |
| 17 | I'm correct. Let's call that LLL18, and then the next | 17 | down to point 22 and we won't mark them all now. I don't |
| 18 | document TRT shooters training analysis will be LLL19, and | 18 | know whether we'll do that in the tea adjournment, I think, |
| 19 | NIU shooters training analysis will be LLL20. Then the K9 | 19 | or someone will, I won't. And I don't know whether it will |
| 20 | shooters will be LLL21. Shooters who had failed most | 20 | be necessary for you actually in the course of your cross- |
| 21 | recent shooting practice firearm training, LLL21, and | 21 | examination to refer to these documents one by one because |
| 22 | shooters who had failed most recent POP course, LLL22, and | 22 | you have got the summary and if – |
| 23 | then shooters who were deemed not fit to carry – the | 23 | MS LE ROUX: Ja, no Chair, that was the |
| 24 | heading is wrong, it's actually to be singular, shooters | 24 | plan. I hope not to have to refer to individuals, but they |
| 25 | who were deemed unfit to carry a firearm should be LLL23. | 25 | are there. |
| _ | , | | |
| | | | |
| | Page 22597 | | Page 22599 |
| 1 | Page 22597 MS LE ROUX: Sorry, Chair, we seem to | 1 | Page 22599 CHAIRPERSON: If the witness doesn't |
| 1 2 | • | 1 2 | |
| | MS LE ROUX: Sorry, Chair, we seem to | | CHAIRPERSON: If the witness doesn't |
| 2 | MS LE ROUX: Sorry, Chair, we seem to have skipped one out. We've got two LLL21. | 2 | CHAIRPERSON: If the witness doesn't agree with the summary then we can look at the foundation |
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ARCHIVE FOR JUSTICE

Marikana Commission of Inquiry

| | | I | |
|-------------------------------|---|--|--|
| 1 COMM | Page IISSIONER HEMRAJ: Mr Pretorius, is | e 22600 s 1 | Page 22602 Annandale. |
| | lete set of these regulations available? | 2 | |
| | RETORIUS: I don't have them here. | | MS LE ROUX: But you understood that Colonel Scott would be involved with – he would be |
| | | | |
| | IISSIONER HEMRAJ: Yes, thank you | | primarily responsible for putting together the plan? GENERAL MBOMBO: That is not how I |
| | RPERSON: Yes, that's something that | | |
| | ded to in due course. Anyway, now that v | | understood it, it's as it was explained to me. |
| | sekeeping, can you now start your cross- | | MS LE ROUX: What was your understanding |
| 8 examination? | | 8 Thonk 0 | of what Colonel Scott's role was with respect to the plan? |
| | | Thank 9 | GENERAL MBOMBO: Mostly I was told that |
| • | Provincial Commissioner, I'd like to start | 10 | it's the person who had sufficient knowledge in computers. |
| | ct of Mr White's statement. You don't nee | | He is part of this team so that he can download this |
| • | , but just for the record, this is JJJ178, the | | operation into the computers for the presentation. |
| | nt of Gary White, commencing at page 63 | | MS LE ROUX: So you understood that |
| | the question of input into the final plan, | 14 | Colonel Scott was involved because of his knowledge of |
| | lan, and the challenge process. That's the | | computers and his ability to draw down Google Earth maps, |
| 16 topic we'll be | • | 16 | assume you mean? |
| | I ask you to turn in your amplified | 17 19 | GENERAL MBOMBO: That is so, Mr Chair, |
| | ibit LLL1, to page 5, please? And paragra | | and also the person who is operational. |
| 19 16 in particula | | 19 | MS LE ROUX: Were you aware with respect |
| | RAL MBOMBO: I found it. | 20 | to Colonel Scott's operational expertise that he was from |
| | ROUX: Thank you. Now in that | 21 | STF, not POP? |
| | u state that you "assumed that the opera- | | GENERAL MBOMBO: Initially I did not know |
| | e drawn up by experienced Public Order P | - | it but I became aware of that after I'd asked him. |
| - | ether with such assistance as would be ob | | MS LE ROUX: When did you ask him and |
| 25 nom other pr | rovinces and the national structures." You | 1 366 20 | what did you ask him? |
| | Pagu | e 22601 | Page 2260 |
| 1 that in that p | aragraph, correct? | 1 | GENERAL MBOMBO: I did not ask him |
| 2 GENER | RAL MBOMBO: I see it. | 2 | personally. I enquired about him and I was told that he |
| 3 MS LE | ROUX: And in your experience in | 3 | was from the STF. |
| 4 other operation | ons have the operational plans been drav | wn up 4 | MS LE ROUX: And who did you ask about |
| 5 by POP, by ex | xperienced Public Order Policing members | s? Has 5 | Colonel Scott? |
| 6 that been you | ur experience? | 6 | GENERAL MBOMBO: I can't remember now |
| 7 GENER | RAL MBOMBO: That is so, Mr Chair | [.] 7 | whether it was one of the people from STF or was it Genera |
| 8 MS LE | ROUX: You then say that you | 8 | Mpembe. I'm not sure. |
| 9 therefore did | not attempt to examine the adequacy or | 9 | MS LE ROUX: And when did you establish |
| 10 otherwise of | the plan, but the question we have is did | you 10 | that Colonel Scott was from STF? |
| 11 make enquirie | es about who was giving input into the pl | lan? 11 | GENERAL MBOMBO: I think it was in the |
| | RAL MBOMBO: I did that, yes. | 12 | afternoon, the Tuesday on the 14th. |
| | ROUX: And you were aware that | 13 | MS LE ROUX: So you knew that he was STF, |
| | was taking primary responsibility for | 14 | not POP, before the 16th? |
| 15 developing th | | 15 | GENERAL MBOMBO: Yes, I knew. |
| | RAL MBOMBO: I don't remember it | 16 | MS LE ROUX: Were you aware that Colonel |
| | ied to me like that. | 17 | Scott was not familiar because he had not been trained in |
| | ROUX: When you enquired as to v | who 18 | and was not aware of the contents of Standing Order 262? |
| 19 was giving in | put, what were you told? | 19 | Did you know that? |
| | RAL MBOMBO: I was told that there | | GENERAL MBOMBO: I did not have knowledge |
| | was together with Colonel Scott and that | they 21 | of that, Mr Chair. |
| 00 1 2.9 | and the second second | 22 | [09:49] MS LE ROUX: Were you aware that the 1:30 |
| 22 were busy wi | ROUX: Who did you make that | 23 | JOCCOM on the 16th of August was the first time that any |
| 22 were busy wi 23 MS LE | | | |
| 22 were busy wi | | 24 | stage 3 plan was put to the JOCCOM. |
| 18MS LE19was giving in20GENER | ROUX: When you enquired as to v put, what were you told? RAL MBOMBO: L was told that there was together with Colonel Scott and that ith the plan. | who 18 19 e is 20 they 21 22 | and was not aware of the contents of Did you know that? GENERAL MBOMBO: I of of that, Mr Chair. [09:49] MS LE ROUX: Were y |

| 1 | Page 22604 that. | 1 | Page 22606 version that was produced after much editing at Roots, you |
|--|---|--|---|
| 2 | MS LE ROUX: And did you notice that at | 2 | don't what the answer to that is do you? |
| 3 | that 1:30 JOCCOM there were no POP members present? | 3 | GENERAL MBOMBO: I do not have definite |
| 4 | GENERAL MBOMBO: I did not notice that | 4 | knowledge, Mr Chair. |
| 5 | whilst I was there, but I see it now on the minutes as to | 5 | MS LE ROUX: Provincial Commissioner, we |
| 6 | the people who attended. | 6 | may be talking past each other. It is true that before the |
| 7 | MS LE ROUX: So the Human Rights | 7 | 1:30 JOCCOM it was known that there would be a stage 3 and |
| 8 | Commission will submit in due course, that this led to the | 8 | that stage 3 entailed dispersal and disarmament. My point |
| 9 | failure of the operation because the plan to deal with a | 9 | is though, that until the 1:30 JOCCOM there was no |
| 10 | large and potentially dangerous crowd was first of all | 10 | operational plan for how to accept dispersal and |
| 11 | drawn up by somebody with no detailed knowledge of the | 11 | disarmament. You don't know of any evidence that that plan |
| 12 | requirements for public order policing, being Colonel | 12 | was developed before the 1:30 JOCCOM do you? |
| 13 | Scott. And secondly was then presented to a JOCCOM that | 13 | GENERAL MBOMBO: No, I do not have |
| 14 | had no POP expertise present. Do you have a comment on | 14 | knowledge of that. |
| 15 | that? | 15 | MS LE ROUX: Now as I understand the SAPS |
| 16 | GENERAL MBOMBO: I do not want to agree | 16 | position it's that the members of the JOCCOM are |
| 17 | with you about that because, as I say, according to me they | 17 | collectively responsible for any plan that is approved by |
| 18 | had come together concerning this plan. And on the second | 18 | the JOCCOM, correct? |
| 19 | point, again I do not agree with you completely because | 19 | GENERAL MBOMBO: That is so, Mr Chair. |
| 20 | even if the Public Order Police were not in that meeting | 20 | MS LE ROUX: But of course the JOCCOM is |
| 21 | General Mpembe and Annandale were present and they have | 21 | not there merely to rubber stamp whatever is put before it, |
| 22 23 | knowledge about working with the crowd management. MS LE ROUX: But, Provincial | 22 23 | is it? GENERAL MBOMBO: Yes, that is correct. |
| 23 24 | Commissioner, my question goes to there was no member | 23 24 | GENERAL MBOMBO: Yes, that is correct. MS LE ROUX: And what we know from |
| 24 | present at that 1:30 JOCCOM where the plan for stage 3 was | 24 | standing order 262, we don't need to go there, it's exhibit |
| 20 | present at that 1.50 50000m where the plan for stage 5 was | 25 | |
| | | | |
| | Page 22605 | | Page 22607 |
| 1 | Page 22605 discussed for the first time that has an explicit POP | 1 | Page 22607 SS2, page 8, paragraph 11 for record purposes, that because |
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| 1 | Page 22608 GENERAL MBOMBO: I remember seeing that, | 1 | Page 22610 that document? How long was it, what did it contain? Do |
| 2 | yes. | 2 | you remember anything about the detail of that document? |
| 3 | MS LE ROUX: Okay and you'd agree that | 3 | GENERAL MBOMBO: I do not remember |
| 4 | this type of challenge process is necessary? | 4 | clearly, but it would explain how much resources are there, |
| 5 | GENERAL MBOMBO: I agree with you there. | 5 | who is the operational commander, who is going to play what |
| 6 | MS LE ROUX: And this is all the more so, | 6 | role, things like that. |
| 7 | where, as you've accepted, there's a risk of injury and | 7 | MS LE ROUX: And would it detail the |
| 8 | even death as part of an operation. It would be even more | 8 | steps of the operation? So for example, if we use Marikana |
| 9 | important to make sure that you had a good plan where you | 9 | as an example, phase 3, would it detail for example how |
| 10 | foresaw a potential level of violence. | 10 | barbed wire will be deployed, where the different units |
| 11 | GENERAL MBOMBO: That is correct, yes. | 11 | will be stationed? What everybody's responsibility is and |
| 12 | MS LE ROUX: Now, Colonel Scott has told | 12 | when they should participate in the operation? Did it have |
| 13 | the Commission that there was no meaningful interrogation | 13 | that detail in it? |
| 14 | of the plan. It wasn't challenged, it was essentially | 14 | GENERAL MBOMBO: I think it did have such |
| 15 | accepted with very little discussion. In the other | 15 | details, yes. |
| 16 | operations that you've been involved in, have you seen that | 16 | CHAIRPERSON: Does standing order 262 |
| 17 | be the process, that the plan is generally just accepted | 17 | require a written operational plan? |
| 18 | when it's presented? Or have you ever been in an operation | 18 | GENERAL MBOMBO: That is correct. |
| 19 | where the police members who are present have interrogated | 19 | CHAIRPERSON: Do you know why there |
| 20 | and challenged and pulled apart and really had a good look | 20 | wasn't one here? |
| 21 | at what the plan is? What's your experience other than | 21 | GENERAL MBOMBO: I do not know, Mr Chair. |
| 22 | Marikana? | 22 | CHAIRPERSON: Did you not enquire, after |
| 23 | MR SEMENYA SC: Well for the record it is | 23 | the event when things had turned rather badly did you not |
| 24 | also the evidence of Colonel Scott that there was an | 24 | enquire? Did you not say look here 262 says there should |
| 25 | opportunity for those POP members who would have had | 25 | be a written operational plan, where is it? None could be |
| | | | |
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| | Page 22609 | | Page 22611 |
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| | Page 22612 | | Page 22614 |
|--|---|--|--|
| 1 | CHAIRPERSON: Have you got exhibit L | 1 | CHAIRPERSON: Sorry, what were you saying |
| 2 | there? | 2 | Provincial Commissioner? |
| 3 | GENERAL MBOMBO: I have it. | 3 | GENERAL MBOMBO: I had already finished, |
| 4 | CHAIRPERSON: If you look at slide 181, | 4 | Mr Chair. |
| 5 | you'll see – have you got that? It's on the screen now, | 5 | MS LE ROUX: Provincial Commissioner, for |
| 6 | but I suggest you have a look at it in front of you, your | 6 | the sake of the record and so that we don't miss each other |
| 7 | own copy of L. According to Colonel Scott that's what he | 7 | if I could ask for slide 149 to be displayed from exhibit |
| 8 | showed the people, certainly out in the field at 2:30 and I | 8 | L? Because that is the image that Colonel Scott presented |
| 9 | assume he did so at the JOCCOM meeting, I'm not sure about | 9 | at the 1:30 JOCCOM, not slide 181 which is presently on the |
| 10 | that. All he showed the commanders in the field was that | 10 | screen. |
| 11 | slide minus the white blocks. Do you see the white blocks | 11 | CHAIRPERSON: My understanding is 181 is |
| 12 | with writing? Minus that. And he had to explain to them | 12 | what he says he showed the commanders in the field at 2:30. |
| 13 | orally what is contained in those white blocks. There was | 13 | It wasn't clear in my mind what he said at 1:30 but that |
| 14 | no written plan, operational plan. All he had to show the | 14 | was the only thing he showed, according to his evidence, |
| 15 | people out in the field, about an hour before the operation | 15 | the only thing he showed the commanders in the field at |
| 16 | was to take place, was that slide which was on his computer | 16 | 2:30 on his laptop. |
| 17 | screen minus the white blocks. Where you aware of that, | 17 | MS LE ROUX: Correct, Chair, and slide |
| 18 | was that disclosed to you when you enquired afterwards? | 18 | 149 is what he presented to the 1:30 JOCCOM. If we can go |
| 19 | GENERAL MBOMBO: Mr Chair, I don't | 19 | to 149, thank you. Which of course, the stage 2 briefing, |
| 20 | remember clearly but when I inquired I was told that the | 20 | it doesn't reflect the ultimate stage 3 briefing that he |
| 21 | plan was on the computer. | 21 | gave late that afternoon. Provincial Commissioner, do you |
| 22 | CHAIRPERSON: No, but I'm asking you now. | 22 | recall that image being presented to you at the 1:30 |
| 23 | Is this the first time you hear that what was on the | 23 | JOCCOM, did you see that at the 1:30 JOCCOM? |
| 24 | computer and shown to the commanders in the field was that | 24 | GENERAL MBOMBO: Chair, when Colonel |
| 25 | slide minus the writing in the white blocks? | 25 | Scott was giving a presentation at that meeting I'd already |
| | | | |
| | | | |
| 1 | Page 22613 | 1 | Page 22615 |
| 1 | GENERAL MBOMBO: Mr Chair, when we were | 1 | left. |
| 2 | GENERAL MBOMBO: Mr Chair, when we were at Roots there was a plan that Colonel Scott presented to | 2 | left. MS LE ROUX: So during the time that you |
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| | Page 22616 | | Page 22618 |
| 1 | plan on the Thursday in time for the 1:30 meeting? | 1 | on, Mr Semenya, can someone in your team assist me with |
| 2 | GENERAL MBOMBO: Mr Chair, really I am | 2 | that part of the record that deals with Colonel Scott's |
| 3 | surprised because I really believe that even if it is in | 3 | evidence about what was presented as regards the plan? I |
| 4 | the computer, but it is available, it's there. | 4 | don't have my transcript with my, but I do have it marked, |
| 5 | MS LE ROUX: Provincial Commissioner, can | 5 | but can somebody in your team assist me with that just to |
| 6 | I ask you to turn to exhibit EE, which is the 1:30 JOCCOM | 6 | get some clarity, please? |
| 7 | minutes, please? And then if you can follow through the | 7 | MR SEMENYA SC: You mean at the 1:30 |
| 8 | three pages with me because it indicates your attendance, | 8 | meeting? |
| 9 | then you address the meeting regarding the purpose of the | 9 | COMMISSIONER HEMRAJ: Yes, at the 1:30 |
| 10 | meeting, then there's a discussion of the execution of | 10 | meeting, exactly what was presented, because I seem to |
| 11 | stage 3 with Major General Annandale beginning that, then | 11 | recall that more than just a slide was presented. But it |
| 12 | Lieutenant Colonel Scott giving a slide presentation, and | 12 | need not be done now. It can be done at a later stage. |
| 13 | that then on the top of the next page is set out in some | 13 | MR SEMENYA SC: We will, Commissioner. |
| 14 | detail. Then Major General Annandale goes through a | 14 | COMMISSIONER HEMRAJ: Thank you. |
| 15 | checklist and then we have closing remarks and the second | 15 | MS LE ROUX: Provincial Commissioner, I'd |
| 16 | paragraph there has the Provincial Commissioner indicated | 16 | like your comment on a submission that the Human Rights |
| 17 | as giving that you'd already communicated with the National | 17 | Commission will make in due course, which is this; that |
| 18 | Commissioner, informing her of the current situation, a | 18 | it's clear that there was no comprehensive written |
| 19 | deadlock was reached, stage 3 of the operational plan is | 19 | operational plan as required by Standing Order 262 |
| 20 | being executed, and that the National Commissioner had | 20 | presented to the JOCCOM, and at best it received an oral |
| 21 | indicated she would inform the Minister of Police about the | 21 | briefing with some visual aid. So we will submit that the |
| 22 | current situation. Major General Annandale then gives a | 22 | Marikana operation on 16 August, phase 3, had no |
| 23 | final instruction and the meeting adjourns. So the minutes | 23 | operational plan. Do you have a comment on that? |
| 24 25 | seem to indicate that you were present during Lieutenant | 24 25 | CHAIRPERSON: Sorry, you dropped your |
| 25 | Colonel Scott's slide presentation because you then make | 25 | voice. You will submit that the? |
| | | | |
| | Page 22617 | | Page 22619 |
| 1 | Page 22617 closing remarks that follow that in the minutes. Do you | 1 | Page 22619 MS LE ROUX: That the phase 3 of the |
| 1 2 | | 1 2 | |
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| | Page 22620 | | Page 22622 |
|--|---|--|---|
| 1 | operational plan as required by Standing Order 262, that | 1 | outline of phase 3 as phase 2 was in essence also a pre- |
| 2 | you should not have merely said I assume the other members | 2 | positioning in case phase 3 was to be implemented." So |
| 3 | of the JOCCOM know what they're doing. Do you have a | 3 | what we have there – and then if we can go to the |
| 4 | comment? | 4 | transcript – |
| 5 | GENERAL MBOMBO: I will not agree with | 5 | CHAIRPERSON: Is there anything further |
| 6 | you there. | 6 | in 9.4, in any of the subparagraphs thereof which enlarges |
| 7 | CHAIRPERSON: Forgive me, Ms Le Roux, are | 7 | on that introductory statement at the beginning? |
| 8 | you now moving on to a new point? Because what we've been | 8 | MS LE ROUX: No, Chair, it doesn't |
| 9 | doing lately for reasons that I don't have to explain, | 9 | identify the two icons, but perhaps let's just stay in the |
| 10 | we've been taking comfort breaks every hour for the benefit | 10 | document and go to paragraph 12.4, which is where Colonel |
| 11 | of those who have difficulty sitting for long periods and | 11 | Scott is detailing the 1:30 JOCCOM and Major General |
| 12 | at a suitable stage in your cross-examination will you let | 12 | Annandale had asked how they were going to execute phase 3 |
| 13 | me know when it will be appropriate for a comfort break to | 13 | and then 12.4 Colonel Scott says, "I asked if I may suggest |
| 14 | be taken? | 14 | a course of action, to which I was given the floor to brief |
| 15 | MS LE ROUX: Chair, I think let's take it | 15 | the JOCCOM. I explained on the Google Earth satellite |
| 16 | now because to wrap this up will take a little bit longer. | 16 | photo which I had printed out for the commanders that |
| 17 | CHAIRPERSON: We'll now take a comfort | 17 | morning for the phase 2 deployment where I felt the |
| 18 | break for 10 minutes. | 18 | dispersion should take place with the different units in |
| 19 | [COMMISSION ADJOURNS COMMISSION RESUMES] | 19 | their different roles and areas of responsibility." So |
| 20 | [10:34] CHAIRPERSON: The Commission resumes. | 20 | what 9.4 and 12.4 show us is Colonel Scott saying he |
| 21 | Provincial Commissioner, you're still under oath. | 21 | printed out Google Earth images that related to phase 2 for |
| 22 | MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. | 22 | the 6AM JOC and then at the 1:30 JOCCOM he used those phase |
| 23 | CHAIRPERSON: Ms Le Roux. | 23 | 2 Google Earth images to speak to phase 3. |
| 24 | CROSS-EXAMINATION BY MS LE ROUX (CONTD.): | 24 | Then if we can turn now to the transcript, day |
| 25 | Thank you, Chair, Provincial Commissioner. Chair, I tried | 25 | 134, and if we start at the bottom of page 14235, line 20, |
| | | | |
| | | | |
| | Page 22621 | | Page 22623 |
| 1 | to use the tea adjournment to address Commissioner Hemraj's | 1 | right, so if we go down to line 20, Mr Chaskalson then |
| 2 | to use the tea adjournment to address Commissioner Hemraj's question relating to establishing the documents that were | 2 | right, so if we go down to line 20, Mr Chaskalson then starts, so he says, well line 22, "In terms of the |
| | to use the tea adjournment to address Commissioner Hemraj's question relating to establishing the documents that were presented at the JOCCOM early in the day and then at 1:30, | 2 3 | right, so if we go down to line 20, Mr Chaskalson then starts, so he says, well line 22, "In terms of the contemporaneous documents," he takes him to paragraph 9.4, |
| 2 3 4 | to use the tea adjournment to address Commissioner Hemraj's question relating to establishing the documents that were presented at the JOCCOM early in the day and then at 1:30, so if I can just go through what we've managed to | 2 3 4 | right, so if we go down to line 20, Mr Chaskalson then starts, so he says, well line 22, "In terms of the contemporaneous documents," he takes him to paragraph 9.4, "where you mentioned the Google Earth satellite images." |
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| | Page 22624 | | Page 22626 |
| 1 | Lieutenant Colonel Scott confirms, "That's correct. They | 1 | because there Adv Bizos asked you whether you agree with |
| 2 | were given out to show the stage, or the phase 2 deployment | 2 | the experts who have criticised the lack of a written |
| 3 | to the commanders. That was given to commanders just after | 3 | operational plan for phase 3 and you said you didn't agree |
| 4 | the JOCCOM of the 16th in the morning 6 o'clock," and then | 4 | with that expert criticism. In light of the fact that |
| 5 | they left to brief meetings. | 5 | we've established this morning that now you have become |
| 6 | So if we then go to JJJ107, you'll recall those | 6 | aware that there never was a written operational plan and |
| 7 | are the pictures taken in the JOC and on the wall are two | 7 | you said that you were shocked that there was never a |
| 8 | gridded aerial photographs which Colonel Scott has | 8 | proper written operational plan, do you still disagree with |
| 9 | confirmed at page 14237 as being the two images that he | 9 | the experts when they criticise the lack of an operational |
| 10 | handed out – | 10 | plan? |
| 11 | CHAIRPERSON: No, it can't be JJJ107 | 11 | MR SEMENYA SC: No, the lack of a written |
| 12 | because that's – | 12 | operational plan, not – |
| 13 | MS LE ROUX: JJJ – | 13 | CHAIRPERSON: Yes, yes, I think the |
| 14 | CHAIRPERSON: That's Brigadier Calitz's | 14 | word – |
| 15 | statement. | 15 | MS LE ROUX: Of a written operational |
| 16 | MS LE ROUX: No, sorry, it's JJJ07, so 7, | 16 | plan. |
| 17 | apologies. | 17 | CHAIRPERSON: I think the word "written" |
| 18 | CHAIRPERSON: JJJ7? Yes, those are the | 18 | was intended by Ms Le Roux, but Mr Semenya is right, the |
| 19 | Van Heerden photographs, yes. | 19 | question is the lack of a written operational plan. |
| 20 | MS LE ROUX: Yes, those, Chair. So these | 20 | MS LE ROUX: Correct, Chair. |
| 21 | show the gridded – and then the next one is 1020197. So | 21 | GENERAL MBOMBO: Mr Chair, I would agree |
| 22 | what we've established, Chair and Commissioners, these two | 22 | with this criticism if really there was no plan, written |
| 23 | Van Heerden photographs show you the two images that were | 23 | plan on the computer. |
| 24 | printed out for the morning JOCCOM on the 16th that speak to | 24 | CHAIRPERSON: We saw what he showed the |
| 25 | phase 2 deployment, and that is what was used at the 1:30 | 25 | people at 2:30 was that slide that I showed you which is in |
| - | | | |
| | Dogo 22425 | | Dago 22627 |
| 1 | Page 22625 JOCCOM when Colonel Scott speaks to phase 3. Thank you, | 1 | Page 22627 exhibit L, and the writing on it in the white blocks wasn't |
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| 2 | JOCCOM when Colonel Scott speaks to phase 3. Thank you, Chair. So in the absence of any further questions on | 2 | exhibit L, and the writing on it in the white blocks wasn't |
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| | | 1 | |
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| | Page 22628 | | Page 22630 |
| 1 | Mr White criticises the SAPS because he says that he is not | 1 | justification for ordering the commencement of stage 3, nor |
| 2 | satisfied on the evidence available that there was an | 2 | is it consistent with the requirements of the SAPS policy |
| 3 | urgent need to launch stage 3 on the afternoon of 16 | 3 | to avoid the use of force at all cost. So he says it's |
| 4 | August. For the record, this is at page 74 of Mr White's | 4 | insufficient to say negotiations have failed, therefore |
| 5 | statement, and he raised a number of points there that | 5 | stage 3, and one of the reasons he says that is because |
| 6 | relate to how the SAPS members who were present on the day | 6 | stage 2 was working. There hadn't been further violence. |
| 7 | accepted, or failed to challenge the move to actually go to | 7 | The show of force was having some effect at keeping the |
| 8 | stage 3. So I need to just put these points to you for | 8 | peace, and therefore he says there's no – that the failure |
| 9 | comment. | 9 | of negotiations is an insufficient reason to move to stage |
| 10 | Now first of all we know that Lieutenant Colonel | 10 | 3, but that's the reason you give for why you wanted to |
| 11 | Scott set his criteria for the move to stage 3 as saying | 11 | move to stage 3. So I'm asking you whether you have any |
| 12 | that that should only happen if all other options to | 12 | comment on his view that the failure of negotiations is not |
| 13 | resolve the situation without force were exhausted. Now is | 13 | a basis to move to stage 3, nor is it consistent with the |
| 14 | it your view that all other options to resolve the | 14 | SAPS policy to avoid the use of force at all cost. |
| 15 | situation without force had been exhausted? | 15 | GENERAL MBOMBO: Then I think, Mr Chair, |
| 16 | GENERAL MBOMBO: I think, Mr Chair, as | 16 | that is his view. |
| 17 | counsel is also saying, it was Mr Scott's view. My view | 17 | MS LE ROUX: And you disagree with it? |
| 18 | was that if negotiations fail we would then go to stage 3. | 18 | GENERAL MBOMBO: Definitely, Mr Chair. |
| 19 | MS LE ROUX: If I can ask you to open up | 19 | COMMISSIONER HEMRAJ: Are you putting |
| 20 | Mr White's final statement, and if you go to page 74, | 20 | 6.5.4 to her as well, Ms Le Roux, if you're going to follow |
| 21 | paragraph 6.5.4, and then it follows through to 6.5.7, and | 21 | this line any further? |
| 22 | the conclusion is set out at 6.5.7, page 77. So if we can | 22 | MS LE ROUX: No, Commissioner, because |
| 23 | go there. | 23 | that relates to Colonel Scott's criteria. So I'm just |
| 24 | GENERAL MBOMBO: Page? | 24 | trying to tackle her own articulated reason to move, which |
| 25 | MS LE ROUX: 77. | 25 | is the failure of negotiation. Provincial Commissioner, |
| | | | |
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| 1 | Page 22629 | 1 | Page 22631 |
| 1 | GENERAL MBOMBO: Okay. | 1 | the other criticism made by Mr White against your conduct |
| 2 | GENERAL MBOMBO: Okay. MS LE ROUX: There Mr White directly | 2 | the other criticism made by Mr White against your conduct on the day, on the 16th, is set out at page 71, paragraph |
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| 1 | Page 22632 [10:54] GENERAL MBOMBO: Because I had an overall | 1 | Page 22634 happen because they got hold of Mr Mathunjwa and Mr |
|--|--|--|---|
| 2 | commander present there who was supposed to make those | 2 | Zokwana. |
| 3 | decisions. | 3 | CHAIRPERSON: I see. Now let me put |
| 4 | MS LE ROUX: Provincial Commissioner, I'd | 4 | something else to you. The criticism which Mr White makes |
| 5 | now like to move on to another – | 5 | in this paragraph which we have on the screen at the |
| 6 | CHAIRPERSON: Sorry, before you move away | 6 | moment, subparagraph (a) which was read says – let me just, |
| 7 | from this point, there's a question I'd like to ask about | 7 | it was read before but let me read it again so that those |
| 8 | this. You referred to Tuesday afternoon. Are you saying | 8 | who read the record in due course will understand what I'm |
| 9 | that you effectively approved the decision to move | 9 | asking you about. "What stage 3 plan did the Provincial |
| 10 | eventually to stage 3 on the Tuesday afternoon in the | 10 | Commissioner and/or Major General Mpembe, overall |
| 11 | absence of successful negotiations? | 11 | commander, approve? It appears that the decision to |
| 12 | GENERAL MBOMBO: That is so, Mr Chair. | 12 | proceed to stage 3 was made prior to the 13:30 JOCCOM. It |
| 13 | CHAIRPERSON: Now if Colonel Scott is | 13 | was only during that JOCCOM that Lieutenant Colonel Scott |
| 14 | correct, the only plan on the table at the JOCCOM on the | 14 | outlined orally how stage 3 might work. Therefore whoever |
| 15 | Thursday morning was the encirclement plan. So if that's | 15 | actually made the decision to proceed to stage 3 did so |
| 16 | correct, the only plan that you could have approved would | 16 | without a full appreciation of what stage 3 entailed. If |
| 17 | have been - on the Tuesday would have been the encirclement | 17 | correct, that is a very serious issue." That's the end of |
| 18 | plan, not the plan that was ultimately implemented. Now | 18 | the quotation. |
| 19 | what comment do you have to make about that? | 19 | Now if you are correct in saying that the minutes |
| 20 | GENERAL MBOMBO: Mr Chair, I did not know | 20 | are wrong in reflecting that you were there at the end of |
| 21 | anything about stage 3. I was briefed at the JOC when I | 21 | the meeting at the time the closing remarks were given, you |
| 22 | arrived on Tuesday in the afternoon. As I have already | 22 | say, your evidence is that that was incorrect, that what |
| 23 | said, Mr Chair, they spoke about the encirclement plan and | 23 | you said, which is reflected in that paragraph, was said at |
| 24 | they indicated to me that it was again criticised. There | 24 | the time you left, which was before Lieutenant Colonel |
| 25 | were some criticisms about it and as I was leaving on | 25 | Scott outlined how stage 3 might work, then of course |
| | | 20 | |
| | Page 22633 | | |
| | Page 22033 | | Page 22635 |
| 1 | Tuesday going to a meeting, after I've heard about a body | 1 | Page 22635 you'll have to deal with the criticism which presumably Mr |
| 1 2 | <u> </u> | 1 2 | 5 |
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| 2 | Tuesday going to a meeting, after I've heard about a body that was found on the koppie I then said that I phoned | 2 | you'll have to deal with the criticism which presumably Mr White would make that it's even worse if you approved stage |
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| | Page 22636 | | Page 22638 |
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| 1 | would, and I then thought about what had happened and when | 1 | was given significant thought." |
| 2 | I was on the way and said because of what had happened, | 2 | Provincial Commissioner, do you have a comment to |
| 3 | let's continue with this plan tomorrow. | 3 | that criticism by Mr White that is set out in the three |
| 4 | COMMISSIONER HEMRAJ: So on the 14th you | 4 | paragraphs I've read into the record? |
| 5 | also did not know the mechanics of the plan? | 5 | GENERAL MBOMBO: About the absence of |
| 6 | GENERAL MBOMBO: That is so, yes. | 6 | video material, I agree with him that was our problem. |
| 7 | COMMISSIONER HEMRAJ: And similarly on | 7 | About the statements of the officers I believe that the |
| 8 | the 16th? | 8 | police officers who made the arrests would explain that in |
| 9 | GENERAL MBOMBO: That is correct. | 9 | their statements, but I agree with him that video material |
| 10 | COMMISSIONER HEMRAJ: Thank you. | 10 | would have had to show the evidence. |
| 11 | MS LE ROUX: Provincial Commissioner, I'd | 11 | MS LE ROUX: And just to take this in |
| 12 | like to move on to my next topic. I'd ask you to turn to | 12 | stages; you agree with the criticism - Provincial |
| 13 | page 45 of Mr White's statement. This is section 4.4, | 13 | Commissioner, to break it down, you agree with the |
| 14 | which is titled, "Evidence for the criminal justice | 14 | criticism about the lack of video evidence. Do you also |
| 15 | process," and it covers, if we can just run through briefly | 15 | agree with the criticism about the lack of photographic |
| 16 | the three paragraphs that follow. So 4.4.1 Mr White says | 16 | evidence that could assist in the criminal justice process? |
| 17 | that, "Related to the previous point is the apparent | 17 | GENERAL MBOMBO: That is so, yes. |
| 18 | absence of material before the Commission to support the | 18 | MS LE ROUX: Then if we can focus with |
| 19 | prosecution of offenders in the criminal justice process. | 19 | respect to the statements - |
| 20 | One of the objectives of stage 3 of the operational plan | 20 | CHAIRPERSON: I'm sorry, I'm not sure |
| 21 | for 16 August was to make arrests for those who refused to | 21 | that that concession is necessarily rightly made. There's |
| 22 | disarm. I infer that those arrests were attended to lead | 22 | apparently quite a lot of photographic material of people |
| 23 | to prosecutions and convictions. However, I'm struck by | 23 | on the koppie with weapons and so forth, and the evidence |
| 24 | the absence of evidence before the Commission that would | 24 | is that during the run-up to the events on the Thursday |
| 25 | support the prosecution of many of those arrested. When | 25 | afternoon a number of Criminal Intelligence people were |
| | | | |
| 1 | Page 22637 | 1 | Page 22639 |
| 1 | planning for a large-scale Public Order operation where it is anticipated that arrests will be made, one would expect | 1 | brought in from Gauteng and they spent many hours working |
| 2 | | 2 | with Lonmin people trying to identify the people whose |
| 3 | to see video operators and photographers present to | 3 | faces could be seen on the photographs taken, which would |
| 4 | document the operation to ensure that the police have | 4 | presumably have led to various things, inter alia cordon |
| 5 | evidence of the commission of any criminal offences. | 5 | and search of their homes to see if there were arms there, |
| 6 | Moreover one would expect to see statements from all of the | 6 | but also could have been used as evidence in the criminal |
| 7 | officers who made arrests, with a detailed description of | 7 | prosecution of these people. So I'm not sure that the – I |
| 8 | those arrested, the circumstances of arrest, the suspected | 8 | understand the concession you make relating to the video |
| 9 | offence for which the arrests were made." That approach is | 9 | material, which is very, very unfortunate that there is a |
| 10 | supported by paragraph 5.2.7 of the POP policy document on | 10 | lack of that kind of material, particularly in the light of |
| 11 | crowd management, but from the evidence Mr White has seen | 11 | clear policy prescripts that applied, but as far as still |
| 12 | it does not appear to have been implemented in the Marikana | 12 | photographs were concerned, taken over the period from I |
| 13 | operation. | 13 | suppose the 10th of August, I'm not sure the concession you |
| 14 | Then he concludes, "There do not appear to be any | 14 | made was correct. |
| 15 | police videos or police photographs of the alleged violent | 15 | MR SEMENYA SC: Chair, may we also add – |
| 16 | attacks at scene 1 or 2. Additionally there do not appear | 16 | GENERAL MBOMBO: Thank you, you helped |
| 17 | to be statements from all of the members who made arrests, | 17 | me, Mr Chair. |
| 18 | detailing the identity of the person arrested and the | 18 | MR SEMENYA SC: This witness is really |
| 19 | circumstances of arrest. I make this point to illustrate | 19 | confronted about operational matters where she wasn't, but |
| 20 | that careful videoing and photographing of operations and | 20 | there is also evidence of the, what I'd call the Calitz |
| 21 | the provision of detailed statements after the event is | 21 | arrests, which is videotaped. There is also the arrests at |
| 22 | important not simply to account to the Commission of | 22 | koppie 3 which are videotaped. |
| 23 | Inquiry, but also in order to ensure there is sufficient | 23 | CHAIRPERSON: Yes, but the point that I |
| 24 | evidence for the criminal justice process. It does not | 24 | think Ms Le Roux is making, based upon what Mr White said, |
| 176 | appear that the criminal justice element of the operation | 25 | in this very document on crowd management it's said part of |
| 25 | RCHIVE FOR JUSTICE | | |

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| | Page 22640 | | Page 22642 |
| 1 | the process must be collecting evidence which can be used | 1 | on that page seems to be the point at which you begin with |
| 2 | against people arrested. You can't just have an operation | 2 | the point. |
| 3 | to arrest people because if you arrest people you're arresting them not just to stop them from doing what | 3 | MS LE ROUX: So the question is, "There |
| 4 | | 4 | was no coherent plan to capture, deal with and retain the |
| 5 | they're doing, but to bring them before the courts to be | 5 | best evidence that will be available to assist the |
| 6 | charged with something. So you've got to have evidence | 6 | prosecution?" Sorry, Chair, I've made an error. It was |
| 7 | upon which a prosecution can be based and the complaint is | 7 8 | obviously Colonel Scott, not Major General Mpembe. So if |
| 8 9 | that that doesn't appear to be attended to. Certainly the | 0 9 | we proceed, I'm asking the same question of Colonel Scott |
| 10 | point would be true in the case of police videos to some extent at least – to what extent is a matter for debate | 9 10 | and he then says from line 19, "What you're saying is a coherent plan comes down to the Standing Orders and I |
| 11 | later, and certainly in relation to police photographs of | 11 | wouldn't need to explain to detective what he needs to do |
| 12 | the alleged violent attacks at scenes 1 and 2, as you say | 12 | to process the person, wouldn't have to explain to a police |
| 13 | there is some material. But I was concerned more with | 13 | official what they need to provide when arresting a person |
| 14 | photographs being taken from the 10th of August onwards | 14 | because they know they would need to provide an arresting |
| 15 | dealing with people with weapons who are seen on the koppie | 15 | statement, similarly with the evidence chain, physical |
| 16 | or in front of the koppie. But anyway, the point has been | 16 | evidence, the crime scene experts, so for me to dictate |
| 17 | made. You obviously wish to say something further. | 17 | their action is out of place." Then I say, "Thank you, |
| 18 | MR SEMENYA SC: I was going to say, | 18 | Chair, we'll follow up through the evidence leaders, but if |
| 19 | Chair, that the criticism that there is no video material | 19 | the SAPS could confirm whether there are any such arresting |
| 20 | at all would be incorrect. | 20 | statements or video evidence," and then if we keep going, |
| 21 | COMMISSIONER HEMRAJ: There's a further | 21 | Chair, you ask Mr Semenya and the rest of the team one |
| 22 | aspect, the criticism about the provision of detailed | 22 | question regarding whether there, "Are you aware of the |
| 23 | statements, we're not privy to the contents of those | 23 | fact as to any instructions." |
| 24 | dockets so we don't know if there are indeed detailed | 24 | Now we have followed up in this respect with the |
| 25 | statements as part of the investigations. | 25 | SAPS team relating to the provision of arresting statements |
| | | | |
| | | | |
| | Page 22641 | | Page 22643 |
| 1 | CHAIRPERSON: At any rate, Ms Le Roux put | 1 | and we haven't been provided with any. Provincial |
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Marikana Commission of Inquiry

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| 1 | COMMISSIONER HEMRAJ: But that would have | 1 | intervene at this stage and ask a question? My |
| 2 | been a while ago. | 2 | understanding of the relevant provision of the Criminal |
| 3 | MR BUDLENDER SC: Probably. We'll have | 3 | Procedure Act - I can't remember the number, but I'm sure |
| 4 | to check that, Chair. | 4 | the people here will know – is basically a peace officer, I |
| 5 | CHAIRPERSON: In every docket of someone | 5 | think is the phrase used in the Criminal Procedure Act – is |
| 6 | who's arrested for public violence or possession of | 6 | entitled generally to make an arrest for two purposes. The |
| 7 | dangerous weapons, every docket should contain an arresting | 7 | first is so that someone can eventually be brought before a |
| 8 | statement. I mean that's elementary. So there must be | 8 | court and prosecuted, so that the arrested person can be |
| 9 | arresting statements, and generally speaking it's difficult | 9 | brought before the court and be prosecuted. Arrest is a |
| 10 | to see how an arresting statement could be sensitive | 10 | means of obtaining the attendance of an accused person |
| 11 | because the arrestor will say I arrested such-and-such a | 11 | before the court, the criminal court. That's the main |
| 12 | person and will say what he observed or she observed which | 12 | purpose for which arrests are effected, but there's also a |
| 13 | led him or her to make the arrest. | 13 | section in the Criminal Procedure Act which provides, as |
| 14 | Anyway, perhaps this is a matter which can be | 14 | far as I remember, that a peace officer can arrest someone |
| 15 | explored later. We don't have to explore it further in the | 15 | who appears to be about to commit an offence, and that kind |
| 16 | chamber, and clearly to be fair to the Provincial | 16 | of arrest is a preventative arrest. The person obviously |
| 17 | Commissioner, I don't think she has facts at her fingertips | 17 | isn't charged. The person normally would be released |
| 18 | to be able to deal with the questions put. These are | 18 | shortly thereafter without having been brought before a |
| 19 | matters that I would hope could be dealt with by agreement | 19 | court. There is a period which a person can be detained |
| 20 | between the police, the Provincial Director of Public | 20 | without being brought before court. But generally speaking |
| 21 | Prosecution's office, and the Human Rights Commission, the | 21 | probably 99%, if not higher percentage, of people arrested |
| 22 | evidence leaders, and the result of such agreement or | 22 | are arrested with a view that they're being brought before |
| 23 | negotiation can be put before us in due course without | 23 | a court to face a charge, being guilty of some or other |
| 24 | troubling the Provincial Commissioner who, to be fair, I | 24 | criminal conduct. |
| 25 | think can't be expected to answer the questions with any | 25 | Now what is your understanding, what was your |
| | | | |
| 1 | Page 22645 degree of detail. | 1 | Page 22647 intention as far as what was happening at Marikana was |
| 2 | - | | intention as fai as what was happening at maritana was |
| | MSTEROUX: Indeed Chair and we will | 2 | concerned what was your understanding, were the people who |
| | MS LE ROUX: Indeed, Chair, and we will follow up with the SAPS, the relevant prosecution | 2 | concerned, what was your understanding; were the people who were arrested, arrested to prevent them from committing |
| 3 | follow up with the SAPS, the relevant prosecution | 3 | were arrested, arrested to prevent them from committing |
| 3 4 | follow up with the SAPS, the relevant prosecution authorities, and the evidence leaders to see if we can | 3 4 | were arrested, arrested to prevent them from committing crimes, in other words in terms of that exceptional |
| 3 4 5 | follow up with the SAPS, the relevant prosecution authorities, and the evidence leaders to see if we can establish anything about the arresting statements. | 3 4 5 | were arrested, arrested to prevent them from committing crimes, in other words in terms of that exceptional provision of the Criminal Procedure Act to which I |
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| | Page 22648 | | Page 22650 |
| 1 | CHAIRPERSON: Sorry, yes. Yes, forgive | 1 | facts that the Human Rights Commission team has been able |
| 2 | me, Provincial Commissioner, you want to make a comment? | 2 | to establish and then ask for your comment on this. So |
| 3 | Would you like a – you want to suggest that we take the tea | 3 | we've analysed the statements before the Commission and |
| 4 | adjournment at this stage? I don't think there will be any | 4 | we've managed to establish the following, that of the |
| 5 | opposition to that and we will take the tea adjournment - | 5 | approximately 200 POP members present at Marikana on 16 |
| 6 | GENERAL MBOMBO: That is my request. | 6 | August we have only 65 statements, that 32.5% of all POP |
| 7 | [COMMISSION ADJOURNS COMMISSION RESUMES] | 7 | members have given statements that are before the |
| 8 | [11:48] CHAIRPERSON: The Commission resumes. | 8 | Commission. Oh, apologies, the percentage is the |
| 9 | Provincial Commissioner, you're still under oath. | 9 | percentage missing, not the percentage obtained. So 32.5% |
| 10 | MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. | 10 | have not given us statements. |
| 11 | CHAIRPERSON: Ms Le Roux. | 11 | CHAIRPERSON: You'll have to revise your |
| 12 | MS LE ROUX: Thank you, Chair. | 12 | earlier figure then; of the 200 POP members how many have |
| 13 | Provincial Commissioner, I just want to round out this – | 13 | provided statements, or in respect of how many have |
| 14 | CHAIRPERSON: I'm sorry, before you | 14 | statements been provided? If it's 33% it looks as if we're |
| 15 | [microphone off, inaudible] we've been given a document | 15 | looking at about – |
| 16 | which some kind person has caused to be placed before us. | 16 | MS LE ROUX: So 135 have provided – |
| 17 | It's headed "Key to training analysis documents." | 17 | CHAIRPERSON: Yes – |
| 18 | MS LE ROUX: Yes, Chair, this is a | 18 | MS LE ROUX: Approximately 65 have not |
| 19 | document that we should probably just mark as LLL18.1. | 19 | provided. |
| 20 | It's the key to the spreadsheets that summarise the | 20 | CHAIRPERSON: I see, alright. |
| 21 | training records that I'll get to in due course. | 21 | MS LE ROUX: With respect to the |
| 22 | CHAIRPERSON: Alright, well let me write | 22 | approximately 165 TRT members we don't have statements from |
| 23 24 | it in my book. 18.1, key to? MS LE ROUX: Key to – | 23 24 | more than 70 of those, so 42% of TRT members' statements |
| 24 25 | CHAIRPERSON: Analysis document – | 24 25 | are outstanding. Of the 110 NIU members there are still more than 30 outstanding, meaning 27% have still not |
| 23 | CHAIN ENSON. Analysis document – | 25 | more than 50 outstanding, meaning 2776 have still not |
| | | | |
| | Page 22649 | | Page 22651 |
| 1 | Page 22649 MS LE ROUX: CALS analysis, training and | 1 | Page 22651 provided a statement. With respect to the 22 STF members, |
| 1 2 | 6 | 1 2 | 6 |
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| 2 | MS LE ROUX: CALS analysis, training and disciplinary record. | 2 | provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we |
| 2 3 | MS LE ROUX: CALS analysis, training and disciplinary record. CHAIRPERSON: CALS analysis documents, | 2 3 | provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we still await, and of the 38 K9 members we still don't have |
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| | Page 22652 | | Page 22654 |
|---|--|--|---|
| 1 | will get an opportunity to comment either directly from the | 1 | we can go to page 10, the two paragraphs that appear on |
| 2 | bar, as it were, or in re-examination of the witness on the | 2 | that page state, "Current international research supports |
| 3 | points that you've put. He may agree with your statistics, | 3 | continuous police training in crowd control and management. |
| 4 | he may disagree. He may make further statements in respect | 4 | Education and training in crowd control depend on a |
| 5 | of those statements that have not yet been provided, but I | 5 | knowledge management systems available within the police |
| 6 | won't ask him to do it now because he obviously needs time | 6 | which capture operational reports on successes and |
| 7 | to take instructions. Is that right, Mr Semenya? | 7 | failures. The knowledge management system is an |
| 8 | MR SEMENYA SC: That's correct, Chair. | 8 | organisation's ability to capture lessons learnt and best |
| 9 | MS LE ROUX: And Chair, to assist my | 9 | and worst practices in the context of crowd control |
| 10 | learned friend, the correspondence is dated 19 November | 10 | operations," and it continues to describe "how there's a |
| 11 | 2013 which sets out this analysis. Provincial | 11 | need for clear and comprehensive police leadership to |
| 12 | Commissioner, I'd like to turn to my penultimate topic, | 12 | ensure that such training actually occurs within all |
| 13 | which relates to training and disciplinary records, well | 13 | appropriate police structures. In principle every law |
| 14 | the training and discipline of SAPS members. Now as I | 14 | enforcement agency is required to conduct and document |
| 15 | understand it from your statement – we don't need to go | 15 | semi-annual training for all officers on the lawful and |
| 16 | there unless there's controversy with this; for the record, | 16 | appropriate or professional use of force and deadly force. |
| 17 | it's page 4 of exhibit LLL1, paragraph 11.6 – I understand | 17 | This training should be designed to reflect current |
| 18 | that you are responsible for the implementation of HR | 18 | standards established by statutory and law" – I think they |
| 19 | programmes and procedures. Am I correct that that would | 19 | mean statute and law – "as well as State-wide, country and |
| 20 | include oversight with respect to training and discipline? | 20 | individual agency policy. It should include, but not be |
| 21 | GENERAL MBOMBO: It is correct. | 21 | limited to," and then it lists a series of substantive |
| 22 | MS LE ROUX: Now I'd like us to look at | 22 | topics that should be covered, and of interest here of |
| 23 | the training and discipline of the members that were on | 23 | course is the use of force in general, the use of physical |
| 24 | duty at Marikana specifically on the 16th, but including the | 24 | and mechanical force, the use of deadly force, limitations |
| 25 | commanders that were in charge during the course of the | 25 | that govern the use of force, and deadly force. "The |
| | | | |
| 1 | Page 22653 week, and I'd like to start at a policy level. So exhibit | 1 | Page 22655 international perspective on the broader aspects of police |
| 2 | R, if we can call that up, is SAPS policy and guidelines, | 2 | training in crowd control and management highlight that |
| 3 | policing of public protests, gatherings and major events, | 3 | training should include review and reinforcement of the |
| 4 | and this is a document that we understand to be dated | 4 | applicable laws, State statutes, department policies, a |
| 5 | August 2012, but am I correct this document remains in | | |
| | | 5 | |
| 6 | - | 5 6 | review of civil rights issues inherent in mass demonstration events, a uniform understanding of rules of |
| 6 | force? You don't know of any other policy document that | 6 | demonstration events, a uniform understanding of rules of |
| 7 | force? You don't know of any other policy document that governs policing of public protests, gatherings, and major | 6 7 | demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest |
| 7 8 | force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? | 6 7 8 | demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- |
| 7 8 9 | force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, | 6 7 8 9 | demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated |
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| Page 2258 The Page 2258 1 involved in POP. So Mr Hendrick: as one of the seprets in this process confirms that this is something that he thinks The Page 2258 2 this process confirms that this is something that he thinks Commanders should be experienced, but they also should be operation. 3 motods to be implemented. Tailed. You accept that? 4 What was of rom the policy document, and if we can then policy document, the training of once is appropriately used, civil rights, questions of adf-cantrol of and judgment, as well as teamon, cammand and cantrol of and polyment, as well as teamon, cammand and cantrol of a practices. So in the poly document, if we then move to the appropriately used, because were analysed them, unless to addrocs? A is Righter Fitz. New Years Ween when SAPS responses to the following transmittals are produced strates gate in the six strates. 10 brows type of operations. This poly document, if we then move to the avel analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween years and the there some disput there some disput these because were analysed them, unless to addrocs? A is Righter Fitz. New Years ween years and the there some disput themes the sole. 11 indication poly and the source asset in the poly of the poly and the there some disput themes because were analysed them, unless to addrocs and the there some disput themes because mere analysed theme. 12 | | | 1 | |
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| | Page 22660 | | Page 22662 |
|--|---|--|---|
| 1 | MS LE ROUX: Provincial Commissioner, | 1 | did not have that occupational competence; they were not |
| 2 | could you then turn to page 106 of Mr White's statement? | 2 | properly trained. Do you accept that? |
| 3 | That's JJJ178. JJJ178, final statement of Gary White, and | 3 | GENERAL MBOMBO: According to what he |
| 4 | page 106, paragraph 7.3.19, there Mr White recites his | 4 | says, yes, but all these people normally work in POP |
| 5 | understandings that the senior leadership have no up-to- | 5 | operations. General Annandale, he is at head office, |
| 6 | date POP training, albeit that they are experienced, and Mr | 6 | working in the Public Order division of head office. |
| 7 | White then says he disagrees that experience is sufficient. | 7 | According to records he might not be trained, but in |
| 8 | He says, "Experience is undoubtedly useful and necessary in order to command a major POP aparation. However, it is not | 8 9 | practice he is always involved with such matters. |
| 9 10 | order to command a major POP operation. However, it is not sufficient. Unless you're properly trained in what is | 9 10 | General Mpembe might not have had recent training, as you say, but according to his job he is always |
| 10 | considered as best practice, you can never be sure if your | 10 | involved in such operations. |
| 12 | experience is still relevant. Over time | 12 | Brigadier Calitz, since I've known him from my |
| 13 | [12:07] laws change, tactics change and equipment | 13 | arrival in this province he is in charge of the Public |
| 14 | changes. Professional police officers, even highly | 14 | Order Police, working together with Public Order people in |
| 15 | experienced officers, need to refresh their training to | 15 | his job. |
| 16 | ensure they remain fit for purpose and contemporary in | 16 | I am not disputing that training should be |
| 17 | their knowledge. In the UK context commanders of Public | 17 | continuous, but I think if a person is continuously |
| 18 | Order operations must be both occupationally and | 18 | involved in this job you get the necessary experience in |
| 19 | operationally competent. Occupational competence requires | 19 | order to be competent in the job. |
| 20 | the completion of a set of specific training modules, | 20 | MS LE ROUX: But Provincial Commissioner, |
| 21 | continuing professional training and development, and | 21 | this is precisely the Human Rights Commission's point, that |
| 22 | yearly reaccreditation. Operational competence requires | 22 | your senior commanders of the Marikana operation, while |
| 23 | not only experience in the role, but confirmation by other | 23 | they may be very experienced, have not been properly |
| 24 | commanders that the officer's performance in the role was | 24 | trained and it's the SAPS' own document, own policy |
| 25 | and is in accordance with the national standards." | 25 | document which says they should be continuously trained and |
| | | | |
| | | | |
| | Page 22661 | | Page 22663 |
| 1 | Now Provincial Commissioner, do you agree that | 1 | as the Provincial Commissioner it would be your |
| 2 | Now Provincial Commissioner, do you agree that there is a distinction between occupational competence of a | 2 | as the Provincial Commissioner it would be your responsibility for your province to make sure that they |
| | Now Provincial Commissioner, do you agree that there is a distinction between occupational competence of a police officer, which is based on the training that they | | as the Provincial Commissioner it would be your responsibility for your province to make sure that they were getting properly trained, and that hasn't happened. |
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| | Page 22664 | | Page 22666 |
| 1 | questioning, which was in your statement where you say | 1 | training they have not received which they still need to |
| 2 | you're responsible for the implementation of HR programmes | 2 | have. We do have that system, but I must say again even if |
| 3 | and procedures and you confirm that that includes an | 3 | I have that and I see that my members of my police need |
| 4 | oversight role for training and discipline of members in | 4 | training, it does not depend on me as to when they receive |
| 5 | your province. So what have you done in your province, or | 5 | their training, except those that I have explained the |
| 6 | what systems have you put in place in your province to | 6 | courses. |
| 7 | ensure that your members are getting trained the way the | 7 | CHAIRPERSON: Sorry, I don't quite |
| 8 | SAPS policy document require them to be trained? | 8 | understand. Is there a computer program that you have |
| 9 | GENERAL MBOMBO: The powers that I have, | 9 | somewhere that keeps track of the various POP members and |
| 10 | Mr Chairperson, in connection with the Public Order is that | 10 | the training that they have received, or is it just |
| 11 | members of the POP once in a week should, to go for | 11 | recorded on paper somewhere in records that are kept in |
| 12 | refresher courses. To correct that, it's not a once-a-week | 12 | your office? How does it work? |
| 13 | refresher course, Chairperson. It is in-service training. | 13 | GENERAL MBOMBO: Chairperson, each and |
| 14 | I'm not quite certain here, but in a month they have to go | 14 | every member of the police appears on computer, indicating |
| 15 | for a refresher course. That is the only thing in the | 15 | training and what that person has been trained. |
| 16 | province that I have the right to do. When it comes to | 16 | CHAIRPERSON: Now let's take by way of |
| 17 | formal training interventions, Chairperson, that is the | 17 | example, let's look at this schedule that's been prepared |
| 18 | responsibility of the Public Order at national level. | 18 | for us, LLL18, that gives POP shooters training records. |
| 19 | MS LE ROUX: But Provincial Commissioner, | 19 | Now let's take the first name there, Sergeant Baloyi, top |
| 20 | I go back to my question. What system do you have to | 20 | of the list, Sergeant Baloyi. He apparently hasn't done a |
| 21 | establish that your POP members in your province are going | 21 | course in human rights at all, but he doesn't appear to |
| 22 | for the training they should be going for? I understand | 22 | have done basic training either as a matter of fact. Well, |
| 23 | your answer to be it's the head office responsibility to | 23 | I don't know how he got in there if he hasn't got basic |
| 24 | organise. My question is in your role as having oversight | 24 | training, unless this schedule is wrong. But anyway, let's |
| 25 | over training of members in your province, what have you | 25 | not concentrate on the details; let's take him as an |
| | | | |
| | D | | |
| 1 | Page 22665 | 1 | Page 22667 example Now do your records tell you, are you able to say |
| 1 | done to establish that they are being trained regularly as | 1 | example. Now do your records tell you, are you able to say |
| 2 | done to establish that they are being trained regularly as they are supposed to be trained? | 2 | example. Now do your records tell you, are you able to say at any given time that what training Sergeant Baloyi has |
| 2 3 | done to establish that they are being trained regularly as they are supposed to be trained? GENERAL MBOMBO: I don't know whether you | 2 3 | example. Now do your records tell you, are you able to say at any given time that what training Sergeant Baloyi has received, what courses he received, and when last he |
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Marikana Commission of Inquiry

| 1 | Page 22668 GENERAL MBOMBO: Mostly the formal | 1 | Page 22670 [12:27] GENERAL MBOMBO: I wouldn't say certainly |
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| | interventions in the Public Order. | | |
| 2 | | 2 | so, Chairperson, particularly now, Chairperson, that the |
| 3 | CHAIRPERSON: Now do you have a number of | 3 | training of Public Order is being prioritised. |
| 4 | places – I take it they have courses from time to time. Do | 4 | CHAIRPERSON: If you say now, is this |
| 5 | they allocate a number of places to your province in | 5 | post August 2012 or was that the case even before August |
| 6 | respect of the courses that they are organising? | 6 | 2012? |
| 7 | GENERAL MBOMBO: It is correct, | 7 | GENERAL MBOMBO: From the beginning of |
| 8 | Chairperson. They make it a national course, but each and | 8 | last year, Chairperson. |
| 9 | every province receives a number of seats there. | 9 | CHAIRPERSON: Would it be fair to say |
| 10 | CHAIRPERSON: And how many of these | 10 | that since the events at Marikana, since the beginning of |
| 11 | courses are there every year? | 11 | last year the number of places available to your province |
| 12 | GENERAL MBOMBO: I'm not certain. No, | 12 | at these various training courses has risen substantially? |
| 13 | I'm not sure, Chairperson. | 13 | GENERAL MBOMBO: I'd agree with you, Sir. |
| 14 | CHAIRPERSON: One a month or one a year | 14 | I'd agree with you there, Chairperson. |
| 15 | or how frequently are they – roughly, I understand you | 15 | CHAIRPERSON: I didn't hear the answer. |
| 16 | can't, you haven't got the exact facts at your fingertips. | 16 | GENERAL MBOMBO: I agree with you there, |
| 17 | I don't expect that. | 17 | Chairperson. |
| 18 | GENERAL MBOMBO: Though I'm not quite | 18 | CHAIRPERSON: You agree with that, thank |
| 19 | certain of the number, Chairperson, but I remember that | 19 | you. Ms Le Roux, I've tried to open up some of the – cut |
| 20 | last year we sent our people to two different courses. | 20 | some of the bush away for you so you can proceed with your |
| 21 | CHAIRPERSON: Alright, so let's take two | 21 | cross-examination. I don't know how successful I was, but |
| 22 | as a provisional number. How many persons did you send to | 22 | I tried. |
| 23 | each course? How many positions on the courses were made | 23 | MS LE ROUX: Thank you, Chair. |
| 24 | available to your province? | 24 | Provincial Commissioner, following up on the Chair's line |
| 25 | GENERAL MBOMBO: I don't remember, but I | 25 | of questioning, I understand that the system you've |
| 20 | | 20 | or questioning, i understand that the system you've |
| | | | |
| | Page 22669 | | Page 22671 |
| 1 | Page 22669 can get these figures for the Chair. | 1 | Page 22671 described records when training is done. When you're |
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| 1 | Page 22672 the members that are there, trying to identify gaps that | 1 | Page 22674 Now what's the reason for that? |
| 2 | are there in each unit concerning the training. Those gaps | 2 | GENERAL MBOMBO: Chairperson, I wouldn't |
| 3 | will then be put into what we call workplace skills plan. | 3 | be sure of the reasons. |
| 4 | That is what we then submit to the national office so that | 4 | CHAIRPERSON: It does look, does it not, |
| 5 | the interventions done by the national office will be seen | 5 | as if human rights was not given a very high priority when |
| 6 | and identified where we lack. We also assist them | 6 | it came to deciding what courses to be made available to |
| 7 | according to the budgeting in terms of those interventions. | 7 | the POP people. Is that correct? |
| 8 | We then use that workplace skills plan to budget as a | 8 | GENERAL MBOMBO: It looks as though that |
| 9 | province in order to make provision for the people that we | 9 | was the position, Chairperson, but I wouldn't be sure of |
| 10 | can train as a province and budget for them. | 10 | what the problems were, Chairperson. Those would then be |
| 11 | MS LE ROUX: Provincial Commissioner, I | 11 | known by the people at training. |
| 12 | understand your evidence to be that since Marikana | 12 | CHAIRPERSON: Isn't some oversight |
| 13 | happened, so for 2013 at least there was more POP training | 13 | exercised by your office, or wasn't it exercised - we're |
| 14 | provided in your province. That's your evidence, correct? | 14 | talking about the period ending in on August 25th, wasn't |
| 15 | GENERAL MBOMBO: That is so, Mr Chair. | 15 | some oversight being exercised by your office in seeing to |
| 16 | MS LE ROUX: So do you accept that before | 16 | it that the various POP members received adequate training |
| 17 | 2013 there was insufficient POP training in your province? | 17 | in all important aspects of Public Order Policing, |
| 18 | GENERAL MBOMBO: I would not say I don't | 18 | including human rights? |
| 19 | agree with you, though I would not be in - I don't totally | 19 | GENERAL MBOMBO: I agree there, |
| 20 | agree, fully agree with you. | 20 | Chairperson, with you. It could possible by so that we |
| 21 | CHAIRPERSON: Let's just concentrate on | 21 | also did not look at it thoroughly, but I'm not quite |
| 22 | human rights. Human rights is quite an important course | 22 | certain as to what the problems encountered are. |
| 23 | for people involved in Public Order Policing. Is that | 23 | CHAIRPERSON: But if you were keeping |
| 24 25 | correct? GENERAL MBOMBO: Correct, Chairperson. | 24 25 | oversight of this matter yourself you would have picked it up over the period, wouldn't you? When did you arrive in |
| 20 | GENERAL MBOMBO: Correct, Chairperson. | 20 | up over the period, wouldn't you? When ald you arrive in |
| | | | |
| | Page 22673 | | Page 22675 |
| 1 | Page 22673 CHAIRPERSON: Now according to exhibit | 1 | Page 22675 the North West province, take over as Provincial |
| 1 2 | 5 | 1 2 | |
| | CHAIRPERSON: Now according to exhibit | | the North West province, take over as Provincial |
| 2 | CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but | 2 | the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson. |
| 2 3 | CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but let's not worry about that for the moment. There are 55 on | 2 3 | the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson. CHAIRPERSON: So for two years from |
| 2 3 4 5 6 | CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but let's not worry about that for the moment. There are 55 on the list. Now on this basis – | 2 3 4 5 6 | the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson. CHAIRPERSON: So for two years from August 2010 to August 2012 you were in charge and you |
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| 1 | Page 22676 what happened on this issue. | 1 | Page 22678 the witness says. What do you say about that, Provincial |
|--|---|--|---|
| 2 | MS LE ROUX: Provincial Commissioner, if | 2 | Commissioner? Is that a good point or a bad point? |
| 3 | you could then stay with the POP shooters spreadsheet. It | 3 | MS LE ROUX: Chair, I must just first |
| 4 | also indicates that POP members are trained far more often | 4 | clarify; we would accept that obviously we want police |
| 5 | in shooting practice and firearms training than they are in | 5 | officers trained in firearms handling and have regular |
| 6 | crowd management or human rights. So if we look at the | 6 | shooting practice, of course, and it may well be true that |
| 7 | column headed "Shooting practice or firearms training," we | 7 | human rights training needs to happen less frequently, but |
| 8 | see that there these members are trained in those 183 and | 8 | we would not accept that proposition with respect to crowd |
| 9 | 83 times respectively in the last five years. So what that | 9 | management training, and indeed the policy documents that |
| 10 | means is POP members are getting trained in shooting | 10 | we started with contemplate refresher courses, regular |
| 11 | practice and firearms training about four times as often as | 11 | crowd management courses. Those, you know, we don't know |
| 12 | they are in human rights and crowd management. Now of | 12 | exactly what that frequency should be. Mr White does |
| 13 | course we accept that it's important that members are | 13 | indicate that in his experience there's at least an annual |
| 14 | properly trained in firearms handling and that they're | 14 | revisiting around crowd management techniques, so I think |
| 15 | regularly tested in their competence at doing that, but why | 15 | we would say with respect to crowd management it certainly |
| 16 | is it prioritised to this degree over POP and human rights | 16 | can't be a once-off. |
| 17 | training? | 17 | CHAIRPERSON: I understand that, but |
| 18 | GENERAL MBOMBO: I wouldn't be very | 18 | let's accept a year is desirable, an annual course is |
| 19 | certain to know what exactly the reason is for that, but I | 19 | desirable for crowd management. You'll probably find that |
| 20 | can see as you're indicating it now. | 20 | as far as shooting practice is concerned you should do it |
| 21 | MS LE ROUX: And when you engage with | 21 | far more frequently than that, and if you do it once a |
| 22 | your system that monitors training in your province or you | 22 | quarter versus once a year then you've got times more |
| 23 | set out your workplace skills plan, do those prioritise | 23 | courses, which is probably the way things should be done. |
| 24 | shooting and firearms handling over Public Order Policing | 24 | Anyway, I don't know whether the witness can help us. |
| 25 | and human rights? | 25 | Maybe it's a matter that Mr White will be able to help us |
| | | | |
| | Dago 22677 | | Page 22670 |
| 1 | Page 22677 GENERAL MBOMBO: If you'd just repeat | 1 | Page 22679 on when he comes, but anyway, we must make sure the points |
| 1 2 | Page 22677 GENERAL MBOMBO: If you'd just repeat that question? | 1 2 | Page 22679 on when he comes, but anyway, we must make sure the points that are being made are realistic points. |
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| Page 22680 | |
|--|---|
| | Page 22682 |
| | er we had the evidence of Brigadier Calitz who said, |
| - | nen I was giving instructions, I was giving |
| | ns in relation to koppie 3 to POP members, never |
| | wd dispersal instructions to the other units." |
| 5 Provincial Commissioner, in the analysis LLL19 that sets 5 That's the | e correct evidence as I know it. |
| 6 out the TRT shooters' training records, there we see we 6 MS | S LE ROUX: Chair, we'll make |
| 7 have 56 TRT members. Of those we have two completed 7 submission | ons in due course. Obviously Provincial |
| 8 courses in human rights in the past five years, zero in the 8 Commissi | ioner, the only point I want you to deal with is |
| 9 period preceding that, and then 189 and 42 respectively 9 given the | TRT are often deployed in the same operation as |
| 10with respect to shooting practice and firearms training,10POP, and | we see from the training records that most of them |
| 11and 161 courses in what we've called the specialist TRT11don't even | n have one course in crowd management, in |
| 12 category completed. Now my question with respect to TRT 12 understar | nding what the POP members would be doing, the |
| 13training is that it's not exceptional that TRT members will13point is w | vhy wouldn't they be given even just one course in |
| 14be called in to support POP, is it? It often happens?14POP so the | nat when they are deployed together with POP |
| | they understand the crowd management principles |
| | being used? Wouldn't it help the TRT members when |
| 17 given crowd management or POP-related training?17 they are d | deployed together to know what the crowd |
| 18 GENERAL MBOMBO: Just repeat the question 18 management | nent principles are that the POP are busy using? |
| 19 again. 19 GE | ENERAL MBOMBO: I think what you should |
| 20 MS LE ROUX: Sure. We see from the 20 first under | erstand, Chairperson, is if these people are |
| 21 training records the TRT members have done barely any crowd 21 deployed, | , what are they really deployed to do. We do not |
| | e TRT for crowd management in the frontline. As |
| | person has said that in the one incident it did |
| | but that was not the purpose of their deployment. |
| 25 regular POP training, or in fact any POP training with 25 MS | S LE ROUX: Provincial Commissioner, for |
| Page 22681 | Page 22683 |
| • • | d, we don't have to go there now but in Mr White's |
| 2 important that your TRT members understand crowd management 2 statemen | t, page 122, section 8, he deals with the first aid |
| 3 principles and POP principles? 3 that was | provided or not provided to the wounded on the 16th |
| 4 MR SEMENYA SC: Chair, my recollection of 4 and we're | e obviously dealing with respect to scene 1, and |
| 5 the evidence is that the TRT do not do crowd management 5 these are | obviously the TRT members that he's criticising |
| 6 operations themselves. Even on the 16th the contemplation 6 at that po | pint. Could I ask you to look at the TRT shooters |
| 7 was POP would do that element of the operation and the 7 training a | analysis, because there we've added in a column |
| 8 others would come for different reasons completely 9 that look | s at when they received first aid training and |
| 8 others would come for different reasons completely. 8 that looks | |
| | see is from the 56 members of the TRT only three |
| 9 CHAIRPERSON: Yes, yes, I think there is 9 what we | see is from the 56 members of the TRT only three elived any first aid training. One of those was in |
| 9CHAIRPERSON:Yes, yes, I think there is9what we start10evidence that on occasions, I think there was an incident10have received | 2 |
| 9CHAIRPERSON:Yes, yes, I think there is9what we10evidence that on occasions, I think there was an incident10have rece11that Colonel Vermaak wrote a letter about that on occasions112000. Th | eived any first aid training. One of those was in |
| 9CHAIRPERSON:Yes, yes, I think there is9what we is10evidence that on occasions, I think there was an incident10have recent11that Colonel Vermaak wrote a letter about that on occasions112000. The12in crowd management situations the TRT people were being12courses description | eived any first aid training. One of those was in here is one member who completed two first aid |
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| | Page 22684 | | Page 22686 |
| 1 | to do in the execution of their task? Is that what you're | 1 | apparently providing immediate first aid to what I'm told |
| 2 | saying? | 2 | is body C near scene 2. However," he says, "there's no |
| 3 | GENERAL MBOMBO: No, no, that's not what | 3 | evidence of such immediate first aid being provided at |
| 4 | I'm saying, Commissioner. That is why I'm saying if there | 4 | scene 1." |
| 5 | is a chance to do so. | 5 | Now the reason I'm asking you the question is I'm |
| 6 | MS LE ROUX: Provincial Commissioner, let | 6 | looking ahead; one of the things we have to do in this |
| 7 | me take to you to Mr White's statement. That will be the | 7 | Commission is make recommendations for the future and |
| 8 | fairest and easiest way to do this. So Mr White's final | 8 | clearly we're going to be asked by the Human Rights |
| 9 | statement JJJ178, page 122 and paragraph 8.1.3, there Mr | 9 | Commission who presented us with Mr White's report, clearly |
| 10 | White explains why it's important that the equivalent of | 10 | they're going to ask us to recommend that officers who are |
| 11 | TRT members in the Marikana operation receive firearms | 11 | provided with firearms, particularly people like the TRT, |
| 12 | training. He says, "Specialist firearms officers," which | 12 | should be given first aid training so that they can do the |
| 13 | is the TRT here, "receive additional training in | 13 | kind of things that are described in this paragraph and |
| 14 | administering first aid for those with bullet wounds. This | 14 | what Lieutenant Colonel McIntosh very properly did at, near |
| 15 | is done on the principle that if you provide an officer | 15 | scene 2. |
| 16 | with a firearm, you increase the likelihood that gunshot | 16 | So when you answer my question, don't necessarily |
| 17 | injuries might arise, therefore to mitigate this the police | 17 | look backwards at what didn't happen because a question may |
| 18 | should provide those officers with the basic first aid | 18 | arise about that, but you know, hindsight they say is |
| 19 | skills to assist any person that they have been forced to | 19 | 20/20. We're busy now looking ahead. So looking ahead |
| 20 | shoot with that firearm." He goes on to then say that, | 20 | into the future, would you support a recommendation that |
| 21 | "Footage from the recent high-profile murder of a soldier | 21 | TRT members, generally speaking officers equipped with |
| 22 | in Woolwich, London, is instructive. Firearms officers are | 22 | firearms, particularly firearms of the nature we're dealing |
| 23 | seen shooting both suspects, but within a matter of seconds | 23 | with here, should receive basic first aid training so they |
| 24 | the same officers provide urgent first aid attention to | 24 | can act in the manner in which Colonel McIntosh acted at |
| 25 | those suspects and by doing so may have saved both of their | 25 | scene 2? |
| | | | |
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| | Page 22685 | | Page 22687 |
| 1 | lives." So the point of Mr White's criticism here is that | 1 | GENERAL MBOMBO: I think, Chairperson, if |
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| | Page 22688 | | Page 22690 |
| 1 | Roux. | 1 | training, this is shooting practise that members continue |
| 2 | MS LE ROUX: Thank you, Chair. | 2 | to go through. |
| 3 | Provincial Commissioner, I'd now like to explore the | 3 | COMMISSIONER HEMRAJ: Well let's ask the |
| 4 | consequences of failing particular courses and I want to | 4 | General. Shooting practise, when you speak of shooting |
| 5 | start with shooting practise. Now am I correct that | 5 | practise is that what you envisage takes place at the |
| 6 | shooting practise faces two different skills. The first is | 6 | police station level? |
| 7 | the ability to accurately hit a target and the second is | 7 | GENERAL MBOMBO: That is so, Mr Chair. |
| 8 | the ability to distinguish between threats, so to | 8 | COMMISSIONER HEMRAJ: And at that stage |
| 9 | distinguish when to shoot. Whether there's a lethal threat | 9 | what are they practising, the actual shooting of the |
| 10 | or non-lethal threat it's an element of judgment. Am I | 10 | targets and accuracy? |
| 11 | correct that those are the two skills that shooting | 11 | GENERAL MBOMBO: That is why I'm saying |
| 12 | practise tests, accuracy of hitting a target and judgment | 12 | I'm not sure whether accuracy is part of this exercise, but |
| 13 | as to when to shoot? | 13 | aiming at the target is one. |
| 14 | GENERAL MBOMBO: Mr Chair, I'm not sure | 14 | COMMISSIONER HEMRAJ: And this is |
| 15 | about that. Yes I know that one of them – I know one | 15 | conducted on the shooting range, this practise, this |
| 16 | objective is to aim at the target, but I'm not sure about | 16 | shooting practise? |
| 17 | all the objectives that you put. | 17 | GENERALM MBOMBO: That is correct. |
| 18 | MS LE ROUX: Other than shooting practise | 18 | MS LE ROUX: Thank you, Provincial |
| 19 | are you aware of any other way in which the SAPS tests or | 19 | Commissioner, so let's just focus on the accuracy. So |
| 20 | trains members on that second element, the judgment element | 20 | shooting practise is being able to hit the target. If a |
| 21 | as to when to shoot or not to shoot? | 21 | member fails shooting practise what are the consequences? |
| 22 | GENERAL MBOMBO: Can you repeat the | 22 | Does it mean they can't carry a firearm when they're on |
| 23 | question please? | 23 | duty? |
| 24 | MS LE ROUX: Sure. As I understand your | 24 | GENERAL MBOMBO: There's a difference, Mr |
| 25 | answer you accept that the SAPS shooting practise, that you | 25 | Chair, I don't know whether this shooting practise is |
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| | Page 22689 | | Page 22691 |
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| 2 | know of, tests accuracy, tests the ability to hit the target. You don't know if shooting practise tests the | 2 | connected to the maintenance, shooting practise, the shooting practise that is done at station or unit level. I |
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| Page 22692Page 226921carrying your firearm during this year period when you've1schedule, I take it fit was incorrect our attention would2been given the chance to pass the test, is that correct?1schedule, I take it fit was incorrect our attention would3GENERAL MBOMBO: Yes, the firearms that0on the 24th of August 2012 Constable Mabasa? failed4you are proficient in, yes.5on the 24th of August 2012 Constable Mabasa? failed5COMMISSIONER HEMRAJ: What is the import6on failing this test, that you're a bad shot?6of failing this test, that you're a bad shot?67GENERAL MBOMBO: I did nt get the69COMMISSIONER HEMRAJ: Yes what is the610import, what does it mean when you fail this test, that you111cannot shoot accurately at a target?1112GENERAL MBOMBO: I do not know what exactly they look at1113COMMISSIONER HEMRAJ: That does not1616include that you're a danger to anyone that you are1716carying that firearm?1118GENERAL MBOMBO: I do not think so, Mr19Chair, because the people who attend that exercise had20already been tested, they are able to carry firearm, they21know how to fire. They are just attending in order to23CHAIRPERSON: Now you're taiking about24maintenance shooting practise. Now that does that involve,25CHAIRPERSON: Now you're taiking about26t |
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| 2 question Chair |
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| 4 CHAIRPERSON: It appears that there's 4 CHAIRPERSON: The course of 1st of |
| 5 another course simply called shooting practise. There are 5 February 2011 it appears, according to the list, as being |
| 6 some courses called maintenance shooting practise and there 6 maintenance shooting practise risk group high. You don't |
| 7 are courses simply called shooting practise. Now you've 7 know what that means. And the other one, the one in August |
| 8 told us you don't know what exactly maintenance shooting 8 2011 that's maintenance shooting practise medium risk |
| 9 practise involves. So we can't ask you any further 9 group, that's the way it's described. You don't know what |
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| 10 questions about that, but in the case of a course called 11 cheating provide what does that involve? 11 constraints and c |
| 11shooting practise what does that involve?11GENERAL MBOMBO:I do not have the |
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| 1 | Page 22696 of shooting practise in February 2011 and August 2011 and | 1 | Page 22698 [14:20] Maintenance shooting is done by someone who is |
| 2 | failed in service firearms training in September 2011, yet | 2 | already proficient in carrying and using of a firearm. As |
| 3 | he is sent off to scene 2. He is a member of TRT and he's | 3 | counsel explained, it is done by means of three firearms, |
| 4 | sent off to scene 2, armed with an R5 rifle and he fires it | 4 | an R5, shotgun, and a 9mm. Initially when you were tested |
| 5 | six times. Now unless we know the significance of his | 5 | in those three different firearms and you fail one, you |
| 6 | consistent failures of these various courses it does tend | 6 | were regarded as having failed the course, the shooting |
| 7 | to cause alarm bells to ring. Now can you help us on that? | 7 | course. That was then changed to say if you pass one or |
| 8 | MR SEMENYA SC: That's the type of | 8 | two of those tests or different firearms, then you are |
| 9 | evidence I propose to make available to the Commission. | 9 | regarded as having passed that particular calibre. You are |
| 10 | For instance maintenance shooting entails the proficiency | 10 | then given a chance, a remedial chance for the firearms |
| 11 | of the use of three types of firearms. You fail one | 11 | that you have not passed. So I can say that there is no |
| 12 | because you have failed the course but all this evidence | 12 | way that we will deploy an officer with a firearm that he |
| 13 | I'll put on affidavit for the benefit of the – | 13 | is not able to use as he's supposed to be, or a firearm |
| 14 | CHAIRPERSON: Ms Le Roux, it does sound | 14 | that he is not permitted to use. |
| 15 | | 15 | MS LE ROUX: Provincial Commissioner, I |
| 16 | from what we've heard as if the present witness isn't going to be able to help us, but it may be that in the light of | 16 | |
| | | | understand you saying that you are tested as being |
| 17 18 | the extra information which Mr Semenya proposes to put before us that we'll be able to deal constructively with | 17 18 | proficient and then this maintenance shooting practice tests you on the three weapons. Does there ever come a |
| | - | 10 | point though where repeatedly failing maintenance shooting |
| 19 20 | this point. Would you agree with that? MS LE ROUX: Yes, Chair, and we'll | 20 | |
| 20 | certainly engage with the police legal team about getting | 20 | practice means you're no longer proficient, or once you've been declared proficient once to carry a firearm, is that |
| 22 | that explanation of what is entailed in the different | 22 | good forever? Is there any consequence to repeatedly |
| 22 | courses. The next question, I just have one more question | 22 | failing shooting practice? |
| 23 | on this which is do you have any system or process whereby | 23 | GENERAL MBOMBO: At the moment we don't |
| 25 | you receive the results of these shooting practise | 25 | have anything in place as to what should be done with such |
| 20 | Jou receive the results of these shooting processe | 20 | have anything in place us to what should be done with such |
| | | | |
| | Page 22697 | | Page 22699 |
| 1 | Page 22697 exercises? So do you get told when a member has failed a | 1 | Page 22699 a person, except when there are signs that he is not able |
| 1 2 | | 1 2 | 5 |
| | exercises? So do you get told when a member has failed a | | a person, except when there are signs that he is not able |
| 2 | exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. | 2 | a person, except when there are signs that he is not able to use that particular firearm. The police officials are |
| 2 3 | exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. Do you get told that a member has failed the shooting | 2 3 | a person, except when there are signs that he is not able to use that particular firearm. The police officials are looked at every quarter to ensure that they are still fit |
| 2 3 4 | exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. Do you get told that a member has failed the shooting practise? | 2 3 4 | a person, except when there are signs that he is not able to use that particular firearm. The police officials are looked at every quarter to ensure that they are still fit to carry that firearm, even if that officer had failed the |
| 2 3 4 5 | exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. Do you get told that a member has failed the shooting practise? GENERAL MBOMBO: We get reports of the | 2 3 4 5 | a person, except when there are signs that he is not able to use that particular firearm. The police officials are looked at every quarter to ensure that they are still fit to carry that firearm, even if that officer had failed the maintenance shooting. |
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| 1 | Page 22700 | 1 | Page 22702 |
|--|---|--|---|
| 1 | degree of deficiency in a person's ability is. So the | 1 | that failure at section level relates to POP management or |
| 2 | point Mr Semenya makes, as you've heard, he's not | 2 | to the section leader of a particular POP unit? Because |
| 3 | suggesting that the point should be dismissed out of hand, | 3 | the conclusions we are likely to draw from this evidence |
| 4 | but we should only revert to it once we have information as | 4 | may be unhelpful unless we understand what it entails – |
| 5 | to what exactly these things mean. | 5 | MS LE ROUX: Chair, all I – |
| 6 | MS LE ROUX: I understand the point, | 6 | CHAIRPERSON: The witness has said that |
| 7 | Chair, but the difficulty is my learned friend objected | 7 | she wants to find out what it involves and she will then be |
| 8 | before the question came. So all I'd said is that we have | 8 | able to express an opinion on that. Isn't that right? |
| 9 | 20 members who failed their most recent shooting practice | 9 | Prima facie it doesn't look good, but it may be that the |
| 10 | with firearms at Marikana, 18 of them shoot live | 10 | important words are "on section level" and it may be the |
| 11 | ammunition. The question to the Provincial Commissioner is | 11 | inability to pass, or the failure to pass the test at |
| 12 | whether she has any comment on whether the fact that they | 12 | section level may not disable someone, or disqualify |
| 13 | had failed has any relevance to what they did at Marikana, | 13 | someone from acting as an ordinary foot soldier, as it |
| 14 | in your opinion. Is there anything relevant to how they | 14 | were, carrying a shotgun and firing rubber balls, but that |
| 15 | conducted themselves on the 16th that we should draw from | 15 | person might not be able to exercise any kind of command |
| 16 | the fact that they had failed shooting practice? | 16 | over a section, but we don't know. It's something we're |
| 17 | COMMISSIONER HEMRAJ: But Ms Le Roux, | 17 | going to find out. |
| 18 | aren't we going back to the same question if we don't quite | 18 | MS LE ROUX: Yes, Chair, and obviously we |
| 19 | know what it is that they were tested for and in what | 19 | only have the evidence that SAPS has disclosed to us, but |
| 20 | aspect they failed? Isn't that a basic problem with this | 20 | we'll follow up to establish what that means. But |
| 21 | approach? | 21 | Provincial Commissioner, one more question then on this; do |
| 22 | CHAIRPERSON: Well, she was just asking | 22 | you know of any consequences for failing a POP course? |
| 23 | the Provincial Commissioner – if the Provincial | 23 | Does it affect your – can that member still be deployed in |
| 24 | Commissioner says she doesn't know, well then that's where | 24 | a POP operation if they failed a POP course? Do you know? |
| 25 | it ends, but the Provincial Commissioner may say something | 25 | GENERAL MBOMBO: What I know is that when |
| | | | |
| | Page 22701 | | Page 22703 |
| 1 | else. Provincial Commissioner, what do you say about - | 1 | police officers have failed a course that is core in their |
| 2 | you've heard the question; are you able to comment on the | 2 | duties, an important course, they are given what is called |
| 3 | point or is it a matter which you have to leave unanswered | 3 | a remedial opportunity and if they fail all those |
| 4 | because you don't know what these things mean? | 4 | opportunities they will then be stationed in functions that |
| 5 | GENERAL MBOMBO: Mr Chair, I think I | 5 | are alternative places that are not the core functions of |
| 6 | tried to explain what I know and I also said I do not have | 6 | their training. |
| 7 | the knowledge about how the training is done, the details | 7 | MS LE ROUX: Thank you, Provincial |
| 8 | of the training. | 8 | Commissioner If we can then mays on to 111.24 which |
| 9 | | | Commissioner. If we can then move on to LLL24, which |
| | MS LE ROUX: Provincial Commissioner, let | 9 | relates to – |
| 10 | MS LE ROUX: Provincial Commissioner, let me move on then. If you could turn to LLL23, this is a | 9 10 | |
| 10 11 | | | relates to – |
| | me move on then. If you could turn to LLL23, this is a | 10 | relates to – COMMISSIONER HEMRAJ: Ms Le Roux, before |
| 11 | me move on then. If you could turn to LLL23, this is a summary with respect to Warrant Officer Motlabane. Now in | 10 11 | relates to – COMMISSIONER HEMRAJ: Ms Le Roux, before you do that, this warrant officer failed the course on 22 |
| 11 12 | me move on then. If you could turn to LLL23, this is a summary with respect to Warrant Officer Motlabane. Now in line with the point that has been taken, I understand your answer may be that you simply don't know, but here we have | 10 11 12 | relates to – COMMISSIONER HEMRAJ: Ms Le Roux, before you do that, this warrant officer failed the course on 22 June 2012, then in your analysis on page 2 you've got him attending two crowd management courses between the period |
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| | Page 22704 | | Page 22706 |
| 1 | practice and the use of firearm and so on. It's the crowd | 1 | did something on the 26th of April 2012 which endangered the |
| 2 | – POP course described as "Crowd management on section | 2 | lives of others, by disregarding safety rules and it looks |
| 3 | level," and then on the next page it goes on, "Institution | 3 | to me as if he was then before a disciplinary tribunal |
| 4 | divisional training, in-service training PSS," whatever | 4 | which found him guilty and declared him unfit to handle a |
| 5 | that stands for. There it says, "Completed, failed." Then | 5 | firearm for five years from the 8th of October 2017 – sorry, |
| 6 | he's passed, he's completed other tests, shooting practice | 6 | the 8th of October 2012 to the 8th of October 2017. So the |
| 7 | for example he's completed and so forth, so it may be that | 7 | point appears to be that he was the subject of a |
| 8 | it isn't a problem in giving him a shotgun and letting him | 8 | disciplinary inquiry which had this result, but in respect |
| 9 | shoot rubber balls, but he shot, passed the shooting | 9 | of something that had happened on the 26th of April 2012, |
| 10 | practice. It would depend therefore what exactly the | 10 | and the question would be was it appropriate to send |
| 11 | course that he failed involved, but again that's something | 11 | someone who was facing a charge of that kind to take part |
| 12 | we'd have to find out in due course, isn't it? | 12 | in the activities at, police operations at Marikana where |
| 13 | MS LE ROUX: Yes, and of course, Chair, | 13 | he was called upon to fire an R5 and did so five times at |
| 14 | all we were highlighting is his failure of the most recent | 14 | scene 1. |
| 15 | crowd management course that he took when he was on POP, | 15 | MS LE ROUX: Yes, Chair – |
| 16 | deployed – | 16 | CHAIRPERSON: Sorry to interrupt you, but |
| 17 | CHAIRPERSON: Yes, yes, I understand | 17 | I think that's right. He's a TRT member. I don't know |
| 18 | that, but I mean you know, if he was a mere foot soldier, | 18 | where – do you know where he came from? |
| 19 | as it were, in a crowd management operation under the | 19 | GENERAL MBOMBO: Soweto. |
| 20 | command of someone who'd passed and all he had to do really | 20 | MS LE ROUX: Soweto. |
| 21 | was fire rubber balls from a shotgun, then maybe there | 21 | CHAIRPERSON: Yes, I'm sorry, I'm wrong. |
| 22 | isn't a problem, but if he had to exercise some kind of | 22 | I'm shown the document which relates to him and the offence |
| 23 | judgment, as it were, in the management of a crowd then the | 23 | is recorded – I don't quite understand this – oh, the |
| 24 | point you make may have some substance. But we don't know | 24 | offence is recorded as having happened on the 23rd of April |
| 25 | the answer to that yet, do we? | 25 | 2012. He was fined on the 26th, so he'd already been |
| | | | |
| | Dage 22705 | | Page 22707 |
| 1 | Page 22705 MS LE ROUX: Correct, Chair. We'll need | 1 | Page 22707 convicted in April 2012 and then what stood over was the |
| 1 2 | MS LE ROUX: Correct, Chair. We'll need | 1 2 | Page 22707 convicted in April 2012 and then what stood over was the inquiry as to his fitness to handle a firearm and that |
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| 1 | | 1 | |
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| | Page 22708 | | Page 22710 |
| 1 | accurate information relating to this rather than solicit | 1 | convicted in connection with that firearm or an act |
| 2 | an answer from the Provincial Commissioner. | 2 | concerning that firearm, it would normally take us a month |
| 3 | MS LE ROUX: Chair, I'd welcome accurate | 3 | or maybe at the longest two months to finalise the fitness |
| 4 | information about this particular member, but to the extent | 4 | process. Maybe they might have their own reasons which are |
| 5 | that this is the way SAPS records disciplinary incidents in | 5 | unknown to me. |
| 6 | a member's employment history, if the Provincial | 6 | MS LE ROUX: And in that period where |
| 7 | Commissioner could assist us to explain how to read this | 7 | you're evaluating their fitness to carry a firearm, are |
| 8 | record, I would be grateful to her. | 8 | they nevertheless permitted to carry a firearm? |
| 9 | [14:40] CHAIRPERSON: Yes, I'm sorry, Ms Le Roux, | 9 | GENERAL MBOMBO: According to the law |
| 10 | please proceed. My colleague is drawing something to my | 10 | we're supposed to suspend that person in using a firearm if |
| 11 | attention. | 11 | they have been convicted. |
| 12 | MS LE ROUX: Thanks, Chair. Provincial | 12 | MS LE ROUX: So if Constable Pakati's |
| 13 | Commissioner, can you assist the Commission in | 13 | disciplinary record reflects that in April 2012 he was |
| 14 | understanding Constable Pakati's disciplinary record? Are | 14 | found guilty of the offence of endangering the lives of |
| 15 | we reading it correctly that the offence is committed on 23 | 15 | others by disregarding safety rules or regulations, and he |
| 16 | April, there's a verdict imposed three days later and then | 16 | was then in a period where his fitness to carry a firearm |
| 17 | later in October is when his fitness to carry a firearm is, | 17 | was being assessed, he should have been suspended? |
| 18 | that he's declared unfit to carry a firearm? Is that how | 18 | GENERAL MBOMBO: Not being suspended from |
| 19 | we should read that statement? Can you help us? | 19 | duty, but the use of firearm is suspended. He cannot use a |
| 20 | GENERAL MBOMBO: Mr Chair, I think | 20 | firearm. |
| 21 | Counsel Semenya was correct, was telling the truth that we | 21 | MS LE ROUX: And so your understanding of |
| 22 | would, the person who could be able to give us a correct | 22 | how that suspension would work, he certainly wouldn't be |
| 23 | answer is someone from Gauteng. | 23 | deployed with an R5 rifle? |
| 24 | MS LE ROUX: Provincial Commissioner, | 24 | GENERAL MBOMBO: I think so, Mr Chair. |
| 25 | sorry to interrupt you, but I understand that may be true | 25 | MS LE ROUX: Thank you, Provincial |
| | | | |
| 1 | Page 22709 with respect to this particular member, but is this a | 1 | Page 22711 |
| 1 2 | format of a disciplinary record that you are familiar with? | 1 2 | Commissioner. Provincial Commissioner, one more question on Constable Pakati; assuming he was in the phase of having |
| 2 | Have you seen a SAPS disciplinary record that looks like | 2 | his fitness evaluated and that he should have been |
| | this and can you help us in understanding the different | 4 | suspended from using a firearm, yet we know that he was in |
| 4 5 | dates that are entered? | 5 | Marikana with an R5 rifle and he fired five rounds, who |
| 6 | GENERAL MBOMBO: According to me I've | 6 | would be responsible for him being deployed with a firearm |
| 7 | never seen such a situation. A person commits an offence | 7 | on the 16th of August? Who would have been able to make |
| 8 | on the 23rd, sentenced on the 26th, it looks like the time | 8 | that deployment decision? |
| 9 | is too short, taking into account the investigations that | 9 | GENERAL MBOMBO: When we get members we |
| 10 | should be done. | 10 | get them when they come with their commanders, if they come |
| 11 | COMMISSIONER HEMRAJ: Madam, do you know | 11 | and assist in an operation. It would then be that |
| | | 1 | 2.2.2.2.2.5 of an epotention of the the thet |
| | | 12 | commander that is commanding them who will be able to know |
| 12 | whether the inquiry as to being able to carry a firearm is | 12 13 | commander that is commanding them who will be able to know all those details about all the members that are with him. |
| | whether the inquiry as to being able to carry a firearm is a separate inquiry, like in the criminal courts it's a | 12 13 14 | all those details about all the members that are with him. |
| 12 13 14 | whether the inquiry as to being able to carry a firearm is a separate inquiry, like in the criminal courts it's a separate inquiry from the actual incident of guilt. Do you | 13 14 | all those details about all the members that are with him. MS LE ROUX: Provincial Commissioner, I'm |
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| 1 | Page 22712 | 1 | Page 22714 |
| 1 | just provide the figures, or numbers of members who we need trained in the refresher course. | 1 | strikers who were arrested at scene 2? Did you know that at that time? |
| 2 | I further said, Mr Chair, last year we had better | 2 | |
| | figures of members who were sent for the training. I said | 3 4 | GENERAL MBOMBO: No, I did not know at that time, Mr Chair. |
| 4 5 | I was not sure about the exact number, but I said around | 4 5 | |
| 6 | hundred. I then verified that information and it is 130 | 6 | MS LE ROUX: And were you aware that some of the strikers who were arrested had alleged that SAPS |
| | | 7 | members had shot some of the strikers dead while they were |
| 7 8 | people who were trained, but again they were trained in refresher course, because I'm told that the formal crowd | 8 | surrendering? Were you aware of that? |
| 9 | management course, as far as that is concerned they are | 0 9 | GENERAL MBOMBO: At that time no, I did |
| | | 9 10 | |
| 10 11 | still finalising the enhancement of the curriculum. There are plans to train a significant number of police officers | 10 | not. MS LE ROUX: Now, Provincial |
| | as soon as that curriculum is finalised. I wish to | | |
| 12 | | 12 | Commissioner, you know that those allegations were widely |
| 13 | apologise to the Commission for misleading it first, the | 13 | reported in the media at the time. Did you not become |
| 14 | first time. | 14 | aware of them through the media at least? |
| 15 | MS LE ROUX: Provincial Commissioner, let | 15 | GENERAL MBOMBO: I'm not sure if I met, |
| 16 | me record that we obviously appreciate that you've | 16 | or became aware of that even in the media. |
| 17 | clarified the position and been able to place the | 17 | MS LE ROUX: But are you aware as you sit |
| 18 | additional information before the Commission, but I must | 18 | here today that allegations have been made that SAPS |
| 19 | ask you who you consulted with. Where did you get this | 19 | members shot strikers while they'd surrendered and they |
| 20 | information during the course of your cross-examination | 20 | were being arrested? Are you aware of those allegations as |
| 21 | today that you're able to now provide it to the Commission? | 21 | you sit here today? |
| 22 | GENERAL MBOMBO: I got that information | 22 | GENERAL MBOMBO: I hear about those now. |
| 23 | from the documents that I have, but what I really wanted | 23 | MS LE ROUX: But only in the Commission |
| 24 | from Brigadier Pretorius was the numbers, the figures that I was asked about. | 24 25 | process, correct? |
| 25 | T was asked about. | 20 | GENERAL MBOMBO: That is correct, yes. |
| | | | |
| | Page 22713 | | Page 22715 |
| 1 | Page 22713 MS LE ROUX: So you discussed these | 1 | Page 22715 MS LE ROUX: Now we understand from your |
| 1 2 | - | 1 2 | 5 |
| | MS LE ROUX: So you discussed these | | MS LE ROUX: Now we understand from your |
| 2 | MS LE ROUX: So you discussed these questions with Brigadier Pretorius. Did you do that over | 2 | MS LE ROUX: Now we understand from your statement and from your earlier evidence that with respect |
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| 1 | Page 22716 what he was saying. | 1 | Page 22718 GENERAL MBOMBO: Mr Chair, when a police |
| 2 | MS LE ROUX: But Provincial Commissioner, | 2 | officer has done something or reporting an act that |
| 3 | why didn't you make further enquiries? Because I | 3 | involved the police, especially if one carefully looks at |
| 4 | understand you would expect IPID to do its investigation, | 4 | Myburgh's statement, we do not go into that matter again. |
| 5 | but by then we knew there was going to be a commission of | 5 | We hand it over to IPID. |
| 6 | inquiry and we'd covered this morning, more than 250 | 6 | MS LE ROUX: And Provincial Commissioner, |
| 7 | members of the police that were at Marikana still haven't | 7 | where you knew there would be a commission of inquiry and |
| 8 | given any sort of statement. So – | 8 | what Warrant Officer Myburgh had told you would clearly be |
| 9 | MR SEMENYA SC: Chair – | 9 | important to the Commission's work, did you make any |
| 10 | MS LE ROUX: Why didn't you pursue | 10 | efforts internally to see if anyone could corroborate what |
| 11 | whether anyone could corroborate what Warrant Officer | 11 | Warrant Officer Myburgh had told you for the Commission? |
| 12 | Myburgh had told you? | 12 | [15:00] GENERAL MBOMBO: I did not do that |
| 13 | MR SEMENYA SC: Chair, we dealt with this | 13 | because I knew the Commission had discovered Myburgh's |
| 14 | subject at length and you even told Mr Mpofu that IPID is | 14 | statement. |
| 15 | an independent institution, the police are not supposed to | 15 | MS LE ROUX: Let me move on. Provincial |
| 16 | interfere in that type of investigation. We're going back | 16 | Commissioner, at the end of paragraph 51 in your statement |
| 17 | to the same subject. | 17 | Myburgh told you that in September he'd referred the matter |
| 18 | MS LE ROUX: Chair, I'm not enquiring as | 18 | to "a white man working at the Air Wing." Do you know who |
| 19 | to whether the Provincial Commissioner interfered with IPID | 19 | that white man working at the Air Wing was? |
| 20 | or pursued anything through the IPID process. I'm asking | 20 | GENERAL MBOMBO: At the moment I think he |
| 21 | whether she made any other enquiries, knowing there would | 21 | had told Colonel Vermaak about it because we asked him if |
| 22 | be a commission of inquiry, to corroborate what Warrant | 22 | he can point out this white man. |
| 23 | Officer Myburgh had told her. | 23 | MS LE ROUX: You asked him when you met |
| 24 | CHAIRPERSON: I think, Mr Semenya, it | 24 | with him on the 1st of October if he could point out the |
| 25 | sounds as if the question can be asked, provided it's | 25 | white man? |
| | | | |
| | | | |
| | Page 22717 | 1 | Page 22719 |
| 1 | limited in the way that Adv Le Roux has now indicated and | 1 | GENERAL MBOMBO: That is so, yes. |
| 2 | limited in the way that Adv Le Roux has now indicated and it doesn't involve any suggestion of interference with | 2 | GENERAL MBOMBO: That is so, yes. MS LE ROUX: And did he then point out |
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| 1 | Page 22720 | 1 | Page 22722 |
|--|---|---|--|
| 1 | CHAIRPERSON: Well, I don't think the | 1 | employee who has reason to believe that the information |
| 2 | question is in any way wrong. The witness is being asked | 2 | concerned shows or tends to show one or more of the |
| 3 | for her opinion as to Myburgh's conduct in doing what he | 3 | following," and one of those is that "Criminal offences |
| 4 | did. There are a number of inferences which can actually | 4 | being committed, has been committed, is being committed, or |
| 5 | be drawn, but I'll allow the question, but you heard the | 5 | is likely to be committed; (b), that the person has failed, |
| 6 | question? Would you agree with counsel it was a brave | 6 | is failing, or is likely to fail to comply with any legal |
| 7 | thing for Warrant Officer Myburgh to come forward with the | 7 | obligation to which that person is subject; that a |
| 8 | allegation that he made? Do you agree with that, or don't | 8 | miscarriage of justice has occurred, is occurring, or is |
| 9 | you agree? | 9 | likely to occur; that the health or safety of an individual |
| 10 | GENERAL MBOMBO: Mr Chair, it is not easy | 10 | has been, is being, or is likely to be endangered, or any |
| 11 | for me to say whether it is brave or not because I take it, | 11 | other matter that has been, is being, or is likely to be |
| 12 | it was the duty of the police officers to tell us | 12 | deliberately concealed." |
| 13 | everything that happened there and we've been trying for | 13 | So taking Warrant Officer Myburgh's account of |
| 14 | some time to get information as to what had happened there. | 14 | him seeing another SAPS member on his version as set out in |
| 15 | MS LE ROUX: Provincial Commissioner, as | 15 | your statement, that he sees an injured - he passes an |
| 16 | we understand what Warrant Officer Myburgh did, he was | 16 | injured striker leaning against a rock. One he passed him |
| 17 | acting in the role of what we know as a whistleblower. Are | 17 | he heard a gunshot behind him. When he turned to look he |
| 18 | you familiar with the term whistleblower? | 18 | saw an NIU member put his firearm in the holster, asked the |
| 19 | GENERAL MBOMBO: That is correct, Mr | 19 | member what he was doing and the member answered to the |
| 20 | Chair. | 20 | effect that "These people deserve to die." |
| 21 | MS LE ROUX: And I'm correct that SAPS | 21 | The Human Rights Commission submits that that |
| 22 | has no whistleblower policy, am I not? | 22 | would qualify as the type of disclosure covered by the |
| 23 | GENERAL MBOMBO: We use a public service | 23 | Protected Disclosures Act and therefore that it is a |
| 24 | policy. | 24 | whistle-blowing incident – |
| 25 | MR SEMENYA SC: Chair, I must confess my | 25 | CHAIRPERSON: Yes, but if you – |
| | Page 22721 | | Page 22723 |
| 1 | confusion. A police officer who witnesses a crime can't be | 1 | MS LE ROUX: But of course I don't need |
| 2 | a whistleblower. Maybe I'll have a look at the statute. | 2 | to convince the Provincial Commissioner of that fact or |
| 3 | COMMISSIONER HEMRAJ: Isn't he under a | 3 | version – |
| 4 | legal duty, Mr Semenya, to report any such act? | 4 | CHAIRPERSON: Is it suggested that the |
| 5 | CHAIRPERSON: Anyway, I could understand | 5 | warrant officer suffered any occupational detriment in |
| 6 | if a junior police officer sees a general doing something | 6 | consequence of this disclosure? You see, the whistle- |
| 7 | wrong and reports that, you argue he's got duties and so | 7 | blowing act says if you blow the whistle, in other words |
| 8 | on, but nevertheless he might be subject to all kind of de | 8 | |
| ~ | | Ŭ | you make a disclosure and it's a protected disclosure, and |
| 9 | facto sanctions for blowing the whistle, as it were, on the | 9 | you make a disclosure and it's a protected disclosure, and your employer then subjects you to an occupational |
| 9 10 | facto sanctions for blowing the whistle, as it were, on the general, but where he's making a report about another | _ | |
| | - | 9 | your employer then subjects you to an occupational detriment, then there's, consequences follow. There are |
| 10 | general, but where he's making a report about another | 9 10 | your employer then subjects you to an occupational detriment, then there's, consequences follow. There are |
| 10 11 | general, but where he's making a report about another member who may even be his junior I think, I don't | 9 10 11 | your employer then subjects you to an occupational detriment, then there's, consequences follow. There are remedies available to the employee who's being subjected to |
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| 1 | Page 22724 though at some stage. If in fact it's not suggested that | 1 | Page 22726 whistleblower whether or not you're prejudiced. You're a |
| 2 | there's occupational detriment suffered by Myburgh, then I | 2 | whistleblower by making a protected disclosure. |
| 3 | | 3 | CHAIRPERSON: There are a number of |
| | don't see that there's a problem under the act. You'll | | |
| 4 | notice the statement of Warrant Officer Swartz, according | 4 | questions. The first one, was he a whistleblower. |
| 5 | to paragraph 13 thereof was provided to the evidence | 5 | MR BUDLENDER SC: Yes. |
| 6 | leaders at their request. But anyway, carry on with the | 6 | CHAIRPERSON: In other words did the act |
| 7 | questioning in the meanwhile. I don't want to stifle the | 7 | apply to the disclosure that he made. Right, the second |
| 8 | point because I'm not quite sure what it is, but I have | 8 | question is was he – clearly if he was, if he is a |
| 9 | indicated to you that I have certain problems which I'd be | 9 | whistleblower covered by the act, he's entitled to the |
| 10 | grateful if they were explained to me in due course. But | 10 | protection which the act affords and it applies clearly to |
| 11 | carry on for the time being. | 11 | the police service as well, even though they may - we're |
| 12 | COMMISSIONER HEMRAJ: Before we go there, | 12 | told they haven't got a policy, but it applies to employees |
| 13 | can we have some assistance with that part of the Police | 13 | in the private and the public sector. So the presumption |
| 14 | Act which refers to the obligation of a policeman to report | 14 | that the act doesn't apply to the State is rebutted by |
| 15 | any criminal act, Mr Semenya? I think that makes it clear | 15 | that. |
| 16 | beyond any doubt what he's obliged to do legally. | 16 | The next question is, once you accept he's a |
| 17 | MR SEMENYA SC: We'll get to it. | 17 | whistleblower he's entitled to protection. The next |
| 18 | COMMISSIONER HEMRAJ: You're shaking your | 18 | question is, does he need the protection in the sense that |
| 19 | head, Mr Budlender. Do you have something – | 19 | has he been exposed to any occupational detriment? That's |
| 20 | MR BUDLENDER SC: Well, Chair, a person | 20 | the question we're going to get to in due course, but Ms Le |
| | · · · · · | | |
| 21 | who is under an obligation to make a disclosure may | 21 | Roux is going to carry on for the time being and eventually |
| 22 | nevertheless be a whistleblower, whether or not persecuted | 22 | all these matters will be clear to us. |
| 23 | for it, and if persecuted is entitled to protection, but | 23 | MS LE ROUX: Thanks, Chair, and I'm |
| 24 | the fact that somebody is under an obligation to make a | 24 | indebted to my learned friend for his intervention. |
| 25 | disclosure doesn't mean that that person may not also be a | 25 | Provincial Commissioner, have you provided any particular |
| | | | |
| | Dago 22725 | | Dogo 20202 |
| 1 | Page 22725 person who falls under the Protected Disclosures Act. So | 1 | Page 22727 support to Warrant Officer Myburgh to prevent him being |
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| 2 | person who falls under the Protected Disclosures Act. So the Protected Disclosures Act deals with people who | 2 | support to Warrant Officer Myburgh to prevent him being intimidated or harassed in any way? Have you, are you |
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Marikana Commission of Inquiry

| | Page 22728 | | Page 22730 |
|--|---|--|---|
| 1 | they relate to what Warrant Officer Myburgh has reported to | 1 | Mr De Rover, at scene 2 and I was present when Warrant |
| 2 | you. So if we can start in LLL14, which is the new | 2 | Officer Breedt of K9 showed Mr De Rover where he saw |
| 3 | statement by Warrant Officer Swartz, and in particular if | 3 | Sergeant Myburgh turned into the rocks at scene 2." |
| 4 | we look at paragraphs 30 to 36, commencing on page 6, and | 4 | So Provincial Commissioner, what this new by |
| 5 | then 39 to 43, do you have that, Provincial Commissioner? | 5 | Warrant Officer Swartz says is that Myburgh admitted to him |
| 6 | GENERAL MBOMBO: Not yet. LLL? | 6 | that Myburgh had shot the person at scene 2, and laughed |
| 7 | MS LE ROUX: LLL14, which is the new | 7 | about it. Now of course that's a very serious allegation. |
| 8 | statement submitted by Warrant Officer Swartz – | 8 | Can I ask you to turn though to LLL13, which is |
| 9 | GENERAL MBOMBO: I have it. | 9 | the initial statement that we received in the Commission |
| 10 | MS LE ROUX: - and commencing on page 6 | 10 | from Warrant Officer Swartz. This is the manuscript |
| 11 | of that document, paragraph 30, if we just read through | 11 | statement. Now Chair, it runs to four pages, but |
| 12 | briefly, 30, "The police member with the K9 badge told me | 12 | Provincial Commissioner, nowhere in the initially statement |
| 13 | there is another striker in the bushy area at koppie 3 and | 13 | does Warrant Officer Swartz say anything at all about the |
| 14 | that he shot him. He further on told me he thought that | 14 | allegations he makes against Warrant Officer Myburgh. |
| 15 | the striker was dead. I asked him where the man that he | 15 | There's simply no reference to anything even like that. |
| 16 | shot is and he showed me in the direction of the big rocks | 16 | I then need you to turn to exhibit LLL15, which |
| 17 | and the bushy area of koppie 3. When the paramedics and | 17 | is the pocketbook completed by Warrant Officer Swartz, and |
| 18 | other personnel come to me I told them they must go and | 18 | if we turn to the page marked 68 – |
| 19 | look for the other striker that was shot by the unknown K9 | 19 | CHAIRPERSON: There's a passage there |
| 20 | member. The paramedic that came to me was from the mine | 20 | that's been highlighted so completely that we can't read |
| 21 | medics. After a short while they brought a wounded man | 21 | it. Do you know what the highlighted words are? |
| 22 | that was shot in his pelvic. They applied first aid. They | 22 | [15:20] MS LE ROUX: In the pocketbook, Chair, |
| 23 | searched the man, could not find any other weapons. After | 23 | no, we don't know. That's how we received it. |
| 24 25 | a short time had lapsed Captain Kidd came to me from the left-hand side and I told him what had happened and I | 24 25 | CHAIRPERSON: The trouble is if you photostat a document that's been highlighted sometimes the |
| 25 | nen-hand side and i told him what had happened and i | 23 | photostat a document that's been nightighted sometimes the |
| | Page 22729 | | Page 22731 |
| 1 | specifically told him what the sergeant of K9 had told me. | 1 | highlighted portions don't come out. I wonder whether that |
| 2 | He made some notes thereof and walked away." | 2 | can be looked into - it is time to take the tea adjournment |
| 3 | And then he leaves the scene, then goes to the | 3 | and I know there are people who have problems with sitting |
| 4 | JOC on the 18th and 19th of August and then from paragraph | 4 | for a long time and suffer discomfort if we go on sitting |
| 5 | 39 he states, "While we were waiting for the lawyers to | 5 | for too long. So we'll take the tea adjournment now and I |
| 6 | take our warning statements some of us were smoking and | 6 | hope that attempts can be made to obtain the original of |
| 7 | chatting with other police members. I saw the sergeant of | 7 | the diary because I – I mean the pocketbook, because |
| 8 | K9 and immediately recognised him as the man who told me | 8 | presumably the highlighted words will then be visible, or |
| 9 | he'd shot the striker. I made a joke and told him that he | 9 | readable on the original. But we'll take the tea |
| 10 | said he killed one of the strikers, but it seemed to me | 10 | adjournment now. |
| 11 | that he can't shoot very well. The sergeant of K9, who was | 11 | [COMMISSION ADJOURNS COMMISSION RESUMES] |
| 12 | unknown to me, only grinned and walked away. | 12 | [15:40] CHAIRPERSON: The Commission resumes. |
| 10 | lator the year we were called up to Siste Impela | 13 | Provincial Commissioner, you're still under oath. |
| 13 | Later the year we were called up to Siesta Impala | | |
| 14 | Mine to consult with the legal team of SAPS in Rustenburg. | 14 | MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. |
| 14 15 | Mine to consult with the legal team of SAPS in Rustenburg. I was asked by Captain Aucamp if I knew who Sergeant | 14 15 | MR BUDLENDER SC: Chair, may I just |
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| Page 227321 "I've just shot somebody." What we then did was, he1 rocks and noting that the sergeant said there2 reported that to us and we reported that to the SAPS legal2 man in the rocks." So just to recap where w3 team and we asked them to arrange for a statement to be4 taken from Warrant Officer Swartz, and the statement, the4 taken from Warrant Officer Swartz, and the statement, the5 fuller detail, and he says that it's Warrant Officer Swartz has the5 typed statement of Warrant Officer Swartz which you have is6 Myburgh who he identifies as doing, alleged6 the consequence of that enquiry which we initiated. Thank7 the shooting. Initial statement of Warrant O8 CHAIRPERSON:Now the question, the other9 question I want to know is, do we know what the words are9 this pocketbook where there seems to be sort10 that were highlighted which we can't read on the photostat?10 aspects missing from the account, would be11MR BUDLENDER SC:Mr Pretorius informs me | e are, because en, is the latest full detail, or ficer to have done fficer Swartz, |
|--|---|
| 2 reported that to us and we reported that to the SAPS legal 3 team and we asked them to arrange for a statement to be 4 taken from Warrant Officer Swartz, and the statement, the 5 typed statement of Warrant Officer Swartz which you have is 6 the consequence of that enquiry which we initiated. Thank 7 you, Chair. 8 CHAIRPERSON: Now the question, the other 9 question I want to know is, do we know what the words are 10 that were highlighted which we can't read on the photostat? 2 man in the rocks." So just to recap where w 3 I know we've had the adjournment in betwee 4 statement by Warrant Officer Swartz has the 5 fuller detail, and he says that it's Warrant Officer Swarta to for the shooting. Initial statement of Warrant O 8 there's no mention of any of this at all, and the statement of the shooting from the account, would be | e are, because en, is the latest full detail, or ficer to have done fficer Swartz, |
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| 10 that were highlighted which we can't read on the photostat? 10 aspects missing from the account, would be | |
| | - |
| 11 MR BUDLENDER SC: Mr Pretorius informs me 11 describe it. So he doesn't mention anything | • |
| | |
| 12 that they have requested Brigadier Pretorius to make the 12 sergeant reporting that he had shot the man | or thought that |
| 13original available and we're waiting for that.13the man was dead. | |
| 14CHAIRPERSON:It doesn't appear to be14Now of course there are two possibility | |
| 15 blocked out. My understanding is over many years battling 15 and the Human Rights Commission can't esta | ablish which of |
| 16with these things, that people highlight documents,16these is true, but you'll agree with me that the | |
| 17highlight things on documents and then photostat the17least two possibilities here. So the one possibilities | - |
| 18document, the highlighted section can't be read. But it18that Warrant Officer Swartz's account in his | |
| 19doesn't mean that you can't read it if you have the19statement is true and he failed to give a full | and truthful |
| 20 original because it will be highlighted on the original. 20 account in his first statement, because he on | |
| 21 So that problem is in the process of being solved. Where 21 completely, and then a deficient account in h | - |
| 22 is Brigadier Pretorius? Is she –22 So you'll accept that that's one possibility as | to what |
| 23 MR SEMENYA SC: She's at our JOC. There 23 could have happened here, that Warrant Off | |
| 24 are whole hundreds of pocketbooks that are in a box, so we 24 merely failed to put it into his first statement | |
| 25 will attempt to get the box to – if we cannot find it 25 it with all its material details in his pocketboo | k? You |
| | |
| Page 22733 1 legible, then we'll probably go to Swartz for him to help 1 accept that's one possibility? | Page 22735 |
| | ı, Chairperson, |
| 3 CHAIRPERSON: Alright. Well, I don't 3 as you are putting it. | , enan percent, |
| | |
| | mmissioner |
| 4 know whether Ms Le Roux needs the highlighted illegible 4 MS LE ROUX: And Provincial Co | |
| 4know whether Ms Le Roux needs the highlighted illegible4MS LE ROUX:And Provincial Co5section for purposes of her cross-examination.5would you agree with me that if that were tr | ue, if it's |
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| | Page 22736 | | Page 22738 |
|----------------------------|---|----------------|---|
| 1 | asking you whether you would accept that there's a | 1 | Officer Swartz's second statement which names Warrant |
| 2 | possibility that what Warrant Officer Swartz says in his | 2 | Officer Myburgh as the very member who shoots and kills one |
| 3 | second statement is not true. | 3 | of the strikers, do you accept the possibility that Warrant |
| 4 | GENERAL MBOMBO: It could happen. It | 4 | Officer Swartz may be saying that about Warrant Officer |
| 5 | could be so. | 5 | Myburgh because Warrant Officer Myburgh is the only SAPS |
| 6 | MS LE ROUX: So given that the | 6 | member who's alleged anything unlawful? Do you accept that |
| 7 | allegations made in the second statement come more than 16 | 7 | possibility exists? |
| 8 | months after what he saw, and given that it is inconsistent | 8 | GENERAL MBOMBO: I'm not sure, |
| 9 | in material respects with the statements and the | 9 | Chairperson, whether Warrant Officer Swartz was aware of |
| 10 | pocketbooks that are more contemporaneous, and given that | 10 | Warrant Officer Myburgh's disclosure, and that for me makes |
| 11 | what he says in the second statement are allegations that | 11 | it difficult to believe what you are putting to me. |
| 12 | are made against the only individual who is a member of the | 12 | MS LE ROUX: Provincial Commissioner, |
| 13 | SAPS who has given evidence about unlawful acts by SAPS at | 13 | you've met Warrant Officer Myburgh, but have you met |
| 14 | Marikana, do you accept the possibility that this second | 14 | Warrant Officer Swartz? |
| 15 | statement by Warrant Officer Swartz could amount to | 15 | GENERAL MBOMBO: No, I don't even know |
| 16 | precisely the type of harassment, intimidation or other | 16 | him. |
| 17 | adverse treatment that the Protected Disclosures Act – | 17 | MS LE ROUX: When you met Warrant Officer |
| 18 | MR SEMENYA SC: No, no, no, no – | 18 | Myburgh and you had the interaction where he reported to |
| 19 | CHAIRPERSON: No, I'm sorry, Ms Le Roux – | 19 | you what he saw, did you believe him to be telling you the |
| 20 | MS LE ROUX: - is designed to protect | 20 | truth? |
| 21 | whistleblowers – | 21 | GENERAL MBOMBO: What was important for |
| 22 | CHAIRPERSON: I don't understand the | 22 | me, Chairperson, was that I should accept what he was |
| 23 | basis on which this question can be asked. What you're | 23 | telling me at the time as being the truth. |
| 24 | asking really is the witness's opinion as to whether | 24 | CHAIRPERSON: I wasn't going to allow you |
| 25 | certain hypothetical facts constitute occupational | 25 | actually to ask the question whether she believed it, but |
| | Page 22737 | | Page 22739 |
| 1 | detriment under the act. Now I've ruled over and over | 1 | she gave the answer which would have been an answer to the |
| 2 | again in this Commission that whoever asks the question, I | 2 | question if you'd phrased it correctly, that she took it |
| 3 | don't allow it. If you ask a question of a witness to draw | 3 | sufficiently seriously to attach importance to it. |
| 4 | an inference which this Commission is in a position to draw | 4 | Alright, you can carry on. |
| 5 | equally as the witness is, I don't allow the question. If | 5 | MS LE ROUX: Chair, I could carry on, but |
| 6 | you ask the witness for the witness's opinion as to the | 6 | I have no further questions for the Provincial |
| 7 | law, I disallow the question. Now that's what's happening | 7 | Commissioner. Thank you very much, Provincial |
| 8 | here. | 8 | Commissioner. |
| 9 | MS LE ROUX: Chair, let me – | 9 | GENERAL MBOMBO: Thank you, Counsel. |
| 10 | CHAIRPERSON: I understand you can – | 10 | CHAIRPERSON: Alright, Mr Semenya, it's |
| 11 | MS LE ROUX: Let me then ask the | 11 | now 7 minutes to 4. I take it you would like to – I mean |
| 12 | question – | 12 | you can start your re-examination now if you wish, but if |
| 13 | CHAIRPERSON: I understand you can argue | 13 | you want me to postpone until 9 o'clock on Thursday so |
| 14 | points later, if necessary, but I don't think I should | 14 | maybe you can collect your thoughts, I will do so, but I'm |
| 15 | allow you to ask the witness for her views, because we | 15 | in your hands. |
| 16 | won't be bound by her views anyway. They may be right, | 16 | MR SEMENYA SC: My untrained background |
| 17 | they may be wrong, but we are obliged, I think, to form our | 17 | tells me that the Provincial Commissioner must be fatigued |
| 18 | own opinion on this matter. So anyway – | 18 | now. She did intimate at one point that she's really |
| 19 | MS LE ROUX: Chair, let me rephrase the | 19 | tired. |
| 20 | question then – | 20 | CHAIRPERSON: No, I understand. I can |
| | A 1 50 50 50 50 50 50 50 50 50 50 50 50 50 | 21 | understand her being tired and I sympathise with her |
| 21 | CHAIRPERSON: Ja, maybe - | - · | |
| 21 22 | CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial | 22 | entirely, but I would have thought that your questions are |
| 21 | CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of | 22 23 | entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions |
| 21 22 23 24 | CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of the Protected Disclosures Act or not. But Provincial | 22 23 24 | entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions asked in cross-examination. But you will be in a better |
| 21 22 23 24 25 | CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of | 22 23 | entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions |

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| 1 2 | until Thursday at 9 o'clock. MR SEMENYA SC: I'll be indebted, Chair. | |
| 3 | [COMMISSION ADJOURNED] | |
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