

# 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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1 [PROCEEDINGS ON 18 FEBRUARY 2014]  
 2 [09:09] CHAIRPERSON: The Commission resumes.  
 3 Provincial Commissioner, you're under oath still.  
 4 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 5 CHAIRPERSON: Mr Budlender, I understood  
 6 that you wanted to ask, you told me privately outside the  
 7 chamber that you wanted to ask the witness some questions  
 8 flowing from the Mkhwanazi report which is now an exhibit.  
 9 Please do so.  
 10 FURTHER CROSS-EXAMINATION BY MR BUDLENDER SC:  
 11 Thank you, Chair. Lieutenant General, good morning again.  
 12 GENERAL MBOMBO: Good morning, Counsel.  
 13 MR BUDLENDER SC: I just want to ask you  
 14 some couple of matters arising from the, what we call the  
 15 Mkhwanazi report, or the Task Team report. It's LLL11,  
 16 which you were asked about earlier. Do you have it?  
 17 GENERAL MBOMBO: Yes, I do.  
 18 MR BUDLENDER SC: It's called "Final  
 19 interim report Marikana 16 August 2012." What I'd like you  
 20 to do is to look, is to go to page 3, or perhaps before  
 21 that, page 2 has the heading, paragraph 3 "Weaknesses," and  
 22 it identifies various weaknesses and then one of those is  
 23 paragraph 3.4 on the next page called "Means," and could  
 24 you go to the fourth paragraph there and we can read it  
 25 together, it says the following, "The management decision

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1 to downsize" –  
 2 CHAIRPERSON: I'm sorry, Mr Budlender, is  
 3 it possible for this to be put on the screen so that we can  
 4 follow it?  
 5 MR BUDLENDER SC: Could we have it?  
 6 CHAIRPERSON: Is it available  
 7 electronically? You have the document, do you, Provincial  
 8 Commissioner?  
 9 GENERAL MBOMBO: I have it, Mr Chair.  
 10 CHAIRPERSON: Good.  
 11 MR BUDLENDER SC: The technical people  
 12 don't have a copy, Chair. They're busy arranging that at  
 13 the moment. Would you like me to wait or to proceed?  
 14 CHAIRPERSON: Well, how long will it  
 15 take?  
 16 MR BUDLENDER SC: Two to three minutes,  
 17 Chair.  
 18 CHAIRPERSON: Oh well, I think we can  
 19 wait two to three minutes.  
 20 MR BUDLENDER SC: So I'm instructed.  
 21 CHAIRPERSON: While we're waiting,  
 22 Provincial Commissioner, did you get an opportunity to read  
 23 all the documents that were made available by the Human  
 24 Rights Commission?  
 25 GENERAL MBOMBO: That is so, Mr Chair.

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1 CHAIRPERSON: So you'll be ready for Ms  
 2 Le Roux's cross-examination.  
 3 GENERAL MBOMBO: That is correct.  
 4 MR BUDLENDER SC: Chair, we don't have an  
 5 electronic copy available, so we'll need to proceed on the  
 6 hardcopy –  
 7 CHAIRPERSON: Well, can you please read  
 8 it out slowly and clearly?  
 9 MR BUDLENDER SC: This is the fourth  
 10 paragraph of the paragraph numbered 3.4 of exhibit LLL11,  
 11 and I'll read it slowly. Quote, "The management decision  
 12 to downsize Crime Combating Units (CCU) negatively impacted  
 13 to SAPS' ability to maintain public order. The re-  
 14 establishment of POP based on the current demand in the  
 15 country indicates that the capacity and the strength must  
 16 be reviewed." You see that, General?  
 17 GENERAL MBOMBO: I see it.  
 18 MR BUDLENDER SC: I just want to identify  
 19 what was this decision to downsize and I think the easiest  
 20 way to do it may be to go to exhibit R. Could we go to  
 21 exhibit R, which is the Minister's policy statement of 29  
 22 August 2011, and go to page 14 of that, and at page 14 we  
 23 see the subheading, "Establishment of a dedicated Public  
 24 Order Policing POPS unit," and the policy statement refers  
 25 to the obligation on the National Commissioner under the

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1 SAPS Act to establish a national Public Order Policing unit  
 2 and maintain the same, and then it says, second sentence,  
 3 "Such a unit was indeed established during 1996" –  
 4 CHAIRPERSON: I'm sorry to interrupt you.  
 5 That passage you're now reading is not on – yes, I see – is  
 6 not on the screen. What we now have is the relevant  
 7 passage on the screen, so you now may proceed. It's near  
 8 the foot of the page and as you say, it's the section  
 9 headed "Establishment of a dedicated Public Order Policing  
 10 POPS unit," and you're now reading from the second  
 11 sentence.  
 12 MR BUDLENDER SC: Thank you, Chair.  
 13 Second sentence, "Such a unit was indeed established during  
 14 1996. During 2002 the POPS unit was subject to the SAPS  
 15 restructuring and aligned to function at policing area  
 16 level as the Area Crime Combating Units. As the latter  
 17 name suggests, the functions also changed to include crime  
 18 combating. Unfortunately this relegated the crowd  
 19 management function into a secondary function. During the  
 20 subsequent restructuring process in 2006 the policing areas  
 21 were disbanded and policing resources 'released' to  
 22 supplement much needed capacity at station level. Again  
 23 the ACCUS was affected and the name was changed to Crime  
 24 Combating Units."  
 25 And on the next page, "The restructuring also had

<p style="text-align: right;">Page 22584</p> <p>1 the effect that the CCUS were incorporated as a section  2 under the division Operational Response Services. The  3 ACCUS was drastically rationalised and more than half of  4 its members seen deployed to police station level to  5 strengthen the local crime combating initiatives. The  6 remaining half of members found themselves in a situation  7 where they had to cover bigger areas with lesser  8 resources.”</p> <p>9 It then goes on in the next paragraph, “It is  10 indeed the 2006 restructuring of the ACCUS which provoked  11 serious criticism since it was indicative that specifically  12 from this period a remarkable increase incurred in the  13 number of service delivery protests. However, the reasons  14 advanced for the transformation of the initial POP unit and  15 the subsequent rationalisation of the ACCUS was firstly  16 that the functions of the unit could not be justified since  17 they did not have much duties to perform and thus not value  18 for money in line with the PFMA; secondly that the skills  19 and experience of the POPS unit were deemed necessary in  20 creating capacity to boost police station crime combating  21 initiatives.</p> <p>22 The conclusion is that the current Operational  23 Response Services operates as a division which includes the  24 CCUS as a unit. Although the CCUS are still used for crowd  25 management, it’s primary function remains crime combating.”</p>	<p style="text-align: right;">Page 22586</p> <p>1 management had gone down whilst the crime increased at the  2 station levels.</p> <p>3 MR BUDLENDER SC: Can you recall who was  4 the National Commissioner of Police at the various stages,  5 2002, 2004, and 2006?</p> <p>6 GENERAL MBOMBO: If I remember correctly  7 the one of 2004 when this decision was taken it was  8 Commissioner Selebe. It was still him in 2006 as well.</p> <p>9 MR BUDLENDER SC: And I understand what  10 you say about needing to balance crime prevention and crowd  11 management, depending on the needs, but we see in the  12 passage that we read a bit earlier at the foot of page 15  13 of the – in fact it’s right up on the screen there, right  14 there, page 15 of exhibit R, if you look at the fifth line  15 of that last paragraph it says, “Due to changes, demands,  16 and an increase in public protests and demonstrations,  17 especially incidences with a violent nature, since 2006,  18 the need for a specialised Public Order Policing unit  19 becomes more and more justified. This notion is  20 strengthened by the constant negative public scrutiny of  21 current policing methods.” So we see from that that in  22 fact since 2006 there was increased need for Public Order  23 Policing. Is that correct?</p> <p>24 GENERAL MBOMBO: Mr Chair, I’m not sure  25 about the figure showing the decrease or increase, but I’m</p>
<p style="text-align: right;">Page 22585</p> <p>1 Now I take it that this is the decision which is  2 referred to in the Mkhwanazi report about the downsizing of  3 the CCUS. It was these decisions in 2002 and 2006. Am I  4 correct in understanding that?</p> <p>5 GENERAL MBOMBO: That is so, Mr Chair,  6 but a decision to make them more on the side of combating  7 crime on the station level was started, if I remember  8 correctly, in 2004.</p> <p>9 MR BUDLENDER SC: I see, thank you. And  10 who made those decisions, the first one in 2002, then 2004,  11 and then 2006? Do you know whose decisions those were?</p> <p>12 GENERAL MBOMBO: I am not sure about the  13 2002 decision, but I think it was management forum at that  14 time. I remember though the one of 2004, it was a  15 management decision taken in a meeting. If I remember  16 correctly, after that decision there is a letter or a  17 document that was written in connection with that decision.</p> <p>18 MR BUDLENDER SC: Thank you, and the 2006  19 decision? Can you recall whose decision that was?</p> <p>20 GENERAL MBOMBO: In 2006, Mr Chair, there  21 was a restructuring in the police. I think during that  22 time, that is when it was decided that other units be  23 closed or others be downsized in order to increase the  24 capacity in the station. If I remember correctly, in 2004  25 when this decision was taken, the incidents of crowd</p>	<p style="text-align: right;">Page 22587</p> <p>1 sure those details can be obtained.</p> <p>2 MR BUDLENDER SC: Yes, we don’t have the  3 figures, but this is the policy statement issued by the  4 Minister in 2011 and we can rely on that as reliable. I  5 mean if he says that since 2006 there’s been an increase in  6 public protests and demonstrations, especially with a  7 violent nature, we can accept that that is the case.</p> <p>8 GENERAL MBOMBO: I can agree with you, as  9 you say this is the Minister’s policy, but as I said I  10 personally am not sure unless we get the figures.</p> <p>11 MR BUDLENDER SC: No, I understand that.</p> <p>12 CHAIRPERSON: The Minister appears to  13 concede in the first two sentences in that paragraph, the  14 paragraph beginning “Technically,” that section 17 of the  15 SAP Act is not being complied with because there’s no  16 longer a specialised dedicated Public Order Policing  17 function and that’s why he says, “The POP unit must be re-  18 established, maintained and capacitated to execute those  19 functions the act confers upon it.” Do you know whether  20 any attention has been given to re-establishing a  21 specialised Public Order Policing function so as to comply  22 with section 17 of the act?</p> <p>23 GENERAL MBOMBO: Mr Chair, let me first  24 say although they were downsized, they never stopped to do  25 the work of crowd management. They also never stopped with</p>

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1 the trainings that were necessary and the resources, all  
2 those things continued. The only thing that changed is the  
3 name and the way they worked, namely that they will help  
4 mostly in the crime prevention. Now to answer your  
5 question, it is so that the police had the Public Order,  
6 although it was not called Public Order. Then in 2000 –  
7 I'm not sure whether it was 2008 or 9 – it was agreed that  
8 their name should be changed and they should again go back  
9 to the name POP. So since 2011 the police ensured that the  
10 Public Order Policing is enhanced in order to comply with  
11 this policy, although they have not reached the desired  
12 level.

13 MR BUDLENDER SC: Yes, I think that's  
14 really the point, the last point I wanted to raise. There  
15 is still, as I understand the evidence, a shortage of  
16 Public Order police officers. Is that correct?

17 GENERAL MBOMBO: Yes, there is really a  
18 shortage.

19 MR BUDLENDER SC: And if we can just go  
20 to the first paragraph, next page, page 16, there it says,  
21 "The National Commissioner must ensure that sufficient  
22 appropriate capacity is created, whether by transferring  
23 back previous experienced and skilled members or building  
24 capacity through effective and focussed training to other  
25 members deemed fit, and must ensure that the unit is

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1 question.

2 MR BUDLENDER SC: If you look at the  
3 heading it says, "Final Interim Report Marikana 16 August  
4 2012." Now if this is the final interim report then it  
5 means there must have been some previous interim reports.  
6 Where will we find the previous interim reports?

7 GENERAL MBOMBO: Mr Chair, I have no  
8 knowledge of the interim report, but I think we can look  
9 for it.

10 [09:29] MR BUDLENDER SC: Well, should it have  
11 been submitted to your office, given that this happened in  
12 your province?

13 GENERAL MBOMBO: It could have been  
14 submitted to the National Commissioner and I also was  
15 expected to get it but I do not remember receiving it.

16 MR BUDLENDER SC: I understand. Could I  
17 ask you to ask someone in your office to make a search to  
18 see whether you have the previous interim reports submitted  
19 by the Task Team and perhaps the SAPS team could do the  
20 same in respect of the National Commissioner's office.

21 GENERAL MBOMBO: I will do that.

22 MR BUDLENDER SC: Thank you, Chair, I  
23 have no further questions.

24 CHAIRPERSON: Thank you, Mr Budlender.  
25 Thank you, Provincial Commissioner, for that information

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1 appropriately resourced. These deliberations must be based  
2 within the context of current international trends,  
3 developments, norms, and standards." As I understand it  
4 what you're saying is that that has not yet been completed?

5 GENERAL MBOMBO: As we speak now, Mr  
6 Chair, there was a big meeting where these things were  
7 addressed where it was expected that Public Order should  
8 have presentations, and it must be brought to light what  
9 are the things that we need.

10 MR BUDLENDER SC: Yes, I understand that.  
11 Well, the only point I'm seeking to clarify is that it  
12 seems from your evidence and what we've heard previously  
13 that we are currently still experiencing the consequences  
14 of those decisions which were made in 2002, 2004, and 2006.

15 GENERAL MBOMBO: I can agree, Mr Chair,  
16 and say that is so.

17 MR BUDLENDER SC: And this is the final,  
18 finally, Provincial Commissioner; this document LLL11, the  
19 Mkhwanazi document, if I can call it that for shorthand,  
20 that's called "Final Interim" – if you look at the front  
21 page the heading is "Final Interim Report." Now that  
22 implies that there were previous interim reports and this  
23 is now the final interim report. Where will we find the  
24 previous interim reports?

25 GENERAL MBOMBO: I do not get the

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1 which will help us in our work.

2 COMMISSIONER HEMRAJ: Mr Budlender, as a  
3 matter of interest, the model for the community policing  
4 and the CC units at station level emanated, if you look at  
5 the documents on the SAPS hard drive, from the  
6 collaboration between the Belgium and the South African  
7 Police. It's very clearly minuted in those documents.

8 MR BUDLENDER SC: I think that must be  
9 so, Commissioner, but I think the only question is the  
10 quantum of resources allocated at the task. The fact that  
11 it was a decentralised operation, with respect seems to  
12 make a great deal of sense.

13 COMMISSIONER HEMRAJ: It's all the  
14 recommendations and they seem to have been implemented to  
15 the –

16 MR BUDLENDER SC: Well, perhaps Mr  
17 Hendrickx when he comes can tell us more about that.

18 COMMISSIONER HEMRAJ: Yes, correct.

19 CHAIRPERSON: Alright, Ms Le Roux, are  
20 you now ready to commence your cross-examination?

21 MS LE ROUX: Yes, thank you, Chair. Good  
22 morning, Provincial Commissioner.

23 GENERAL MBOMBO: Good morning, Counsel.

24 CHAIRPERSON: Now before you get  
25 underway, if I can put it that way, it might be sensible

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1 for us to engage in some housekeeping and mark the  
 2 documents that you want to hand in as exhibits. Let me see  
 3 from my book where we are. We are, I presume that would be  
 4 part of the L-series and according to my notebook we've got  
 5 as far as LLL11, so I suggest that we mark the documents  
 6 you want to hand in as part of the LLL-series and then once  
 7 we've done that it will make your cross-examination flow  
 8 more smoothly. Now the statement of Eddie Hendrickx, this  
 9 is the final one, is it? Do we know whether that's an  
 10 exhibit yet?  
 11 MR BUDLENDER SC: I don't think it is,  
 12 Chair.  
 13 CHAIRPERSON: Yes, so we'll make this one  
 14 LLL12, shall we? The statement of Eddie Hendrickx.  
 15 MR BUDLENDER SC: Chair, could we just  
 16 put a date to it, because we have a couple of versions of  
 17 Mr Hendrickx's statement. Is it dated?  
 18 CHAIRPERSON: Yes, quite right. Quite  
 19 right. This one is January 2014. I remember he took his  
 20 oath in the embassy in Brussels.  
 21 MR BUDLENDER SC: That's the very recent  
 22 one then.  
 23 CHAIRPERSON: Yes, that's the one we're  
 24 busy with. Yes, it appears on page 67 that on the 27th of  
 25 January this year he swore to this affidavit in the South

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1 African embassy in Brussels. So this will then be LLL12.  
 2 Then we have a barely legible manuscript statement by  
 3 Warrant Officer Jan Jacobus Swartz. I don't think that's  
 4 in either, is it?  
 5 MS LE ROUX: No, Chair.  
 6 CHAIRPERSON: So that will be LLL13. We  
 7 then have a typed document, also a statement from Warrant  
 8 Officer Swartz. I'll give the date in a moment. That will  
 9 be LLL14 – sorry, the first one, the manuscript one is – it  
 10 hasn't got a date on it, but so I haven't got an  
 11 attestation either and it may not even be an affidavit,  
 12 this may just be a statement. But anyway, we know what it  
 13 is. It's an undated manuscript statement of Warrant  
 14 Officer Jan Jacobus Swartz and we've marked it LLL13.  
 15 LLL14 is a typed supplementary statement, also apparently  
 16 not sworn, and this one also hasn't got a date, but anyway  
 17 – is there a page missing? Is this an affidavit without an  
 18 attestation certificate, or what is it? You see, and it's  
 19 headed "Supplementary statement," so it doesn't purport to  
 20 be under oath, but is there –  
 21 COMMISSIONER HEMRAJ: All the others I've  
 22 seen do seem to have a last page with an attestation  
 23 certificate, so is this just missing perhaps or –  
 24 CHAIRPERSON: There's a page missing,  
 25 alright. Anyway, so we'll mark the front page LLL14 and

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1 hopefully we'll get the last page with the attestation  
 2 certificate at a later date. Then we have the diary, or  
 3 actually pocketbook –  
 4 MS LE ROUX: Pocketbook.  
 5 CHAIRPERSON: - because he's a Warrant  
 6 Officer. The pocketbook of Warrant Officer Swartz for the  
 7 dates dealing essentially with 15th and 16th of August 2012.  
 8 That LLL15. Yes, Provincial Commissioner, do you want to  
 9 say something?  
 10 GENERAL MBOMBO: Just that I do not have  
 11 all these documents, Mr Chair.  
 12 CHAIRPERSON: Oh dear. Well, we will –  
 13 what's that black file you've got on your left there?  
 14 GENERAL MBOMBO: No –  
 15 CHAIRPERSON: No, no, no, under that.  
 16 What's that one?  
 17 GENERAL MBOMBO: No, this one it has got  
 18 the statement of Mr – oh, there's that pocketbook.  
 19 CHAIRPERSON: Mr Tokota solved the  
 20 mystery with one fell swoop.  
 21 GENERAL MBOMBO: Oh, I see Swartz – oh,  
 22 sorry, Chairperson.  
 23 CHAIRPERSON: Have you got it?  
 24 GENERAL MBOMBO: Ja.  
 25 CHAIRPERSON: No, that's fine. Does that

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1 mean that you haven't read it or you did read it but you –  
 2 GENERAL MBOMBO: No, I have looked at it,  
 3 but I –  
 4 CHAIRPERSON: I see, well okay. Okay, so  
 5 these things happen in the best regulated families, I'm  
 6 sure. It does cause a problem. It's been solved. So just  
 7 as well we found it now so we don't have difficulties  
 8 later. Anyway, so LLL15 is the pocketbook of Warrant  
 9 Officer Swartz. Then we've got the Protected Disclosures  
 10 Act which is LLL16, Protected Disclosures Act No. 26 of  
 11 2000. That's then followed by a batch of – then we've got  
 12 the regulations for the South African Police Service,  
 13 regulation 20 thereof. That's LLL17. I take it it's just  
 14 regulation 20. I don't know whether it's the whole of  
 15 regulation 20, but it's certainly a page and a half  
 16 containing –  
 17 MS LE ROUX: Yes, Chair –  
 18 CHAIRPERSON: - regulation 20 –  
 19 MS LE ROUX: Correct.  
 20 CHAIRPERSON: - of the regulations of the  
 21 South African Police Service.  
 22 MS LE ROUX: Correct.  
 23 CHAIRPERSON: Without any indication as  
 24 to where one finds it in the relevant Gazettes and so on,  
 25 but these are problems that if necessary can be sorted out

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1 later. Then we start with LLL18. Now I'm not going to  
 2 waste time and mark them all, but can you tell me how many  
 3 there are? There are a number of documents which deal with  
 4 courses passed or in some cases, most cases failed, by some  
 5 of the members of the service, and they appear to be  
 6 summarised in a document at the end, or a series of  
 7 documents at the end called, the first one is called "POP  
 8 shooters training records," which I suspect is a summary of  
 9 the documents we just referred to. That's followed by TRT  
 10 shooters training analysis, NIU shooters training analysis,  
 11 and then shooters who had most recent shooting firearm  
 12 training. Now what I suggest we do is we actually – sorry,  
 13 what I suggest we do is we don't call the individual  
 14 document in respect of the individual members of the  
 15 service LLL18 and following; let's just move over to the  
 16 summary which starts with POP shooters training records, if  
 17 I'm correct. Let's call that LLL18, and then the next  
 18 document TRT shooters training analysis will be LLL19, and  
 19 NIU shooters training analysis will be LLL20. Then the K9  
 20 shooters will be LLL21. Shooters who had failed most  
 21 recent shooting practice firearm training, LLL21, and  
 22 shooters who had failed most recent POP course, LLL22, and  
 23 then shooters who were deemed not fit to carry – the  
 24 heading is wrong, it's actually to be singular, shooters  
 25 who were deemed unfit to carry a firearm should be LLL23.

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1 MS LE ROUX: Sorry, Chair, we seem to  
 2 have skipped one out. We've got two LLL21.  
 3 CHAIRPERSON: Oh no, which one did I skip  
 4 over? There's a batch, I understand there are 22 documents  
 5 in respect of individual members setting out their courses,  
 6 which we'll look at in a moment. Then we've got documents  
 7 which are effectively summaries of those documents.  
 8 MS LE ROUX: Correct, Chair, so -  
 9 CHAIRPERSON: And the first one is POP  
 10 shooters training records, according to my bundle -  
 11 MS LE ROUX: So that's 18.  
 12 CHAIRPERSON: That's LLL18, right.  
 13 MS LE ROUX: 19 -  
 14 CHAIRPERSON: Then the next one in my  
 15 bundle is -  
 16 MS LE ROUX: TRT.  
 17 CHAIRPERSON: - TRT shooters training  
 18 analysis, that's LLL19. Then the next one in my bundle  
 19 is -  
 20 MS LE ROUX: Is NIU.  
 21 CHAIRPERSON: - NIU shooters training  
 22 analysis, LLL20.  
 23 MS LE ROUX: Yup.  
 24 CHAIRPERSON: K9 shooters training  
 25 analysis, LLL21.

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1 MS LE ROUX: Ja.  
 2 CHAIRPERSON: Shooters who had failed  
 3 most recent shooting practice firearm training, LLL21 -  
 4 MS LE ROUX: No, that should be 22  
 5 because then we've got two 21s.  
 6 CHAIRPERSON: Oh sorry, I beg your  
 7 pardon. I see. I'm sorry, I apologise for that senior  
 8 moment. That's LLL22, and then, so shooters who had failed  
 9 most recent POP course, that's actually only one of them  
 10 really, but that's LLL23. Right, we've then got a number  
 11 of documents - oh sorry, I beg your pardon, then I've  
 12 missed the shooter not deemed fit to carry a firearm, it  
 13 says shooters but there's only one of them, deemed not fit  
 14 to carry a firearm, that will be LLL24. We've then got a  
 15 batch, 22 I believe, of documents in respect of individual  
 16 members. What I'd suggest we do is we call those LLL25.1  
 17 down to point 22 and we won't mark them all now. I don't  
 18 know whether we'll do that in the tea adjournment, I think,  
 19 or someone will, I won't. And I don't know whether it will  
 20 be necessary for you actually in the course of your cross-  
 21 examination to refer to these documents one by one because  
 22 you have got the summary and if -  
 23 MS LE ROUX: Ja, no Chair, that was the  
 24 plan. I hope not to have to refer to individuals, but they  
 25 are there.

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1 CHAIRPERSON: If the witness doesn't  
 2 agree with the summary then we can look at the foundation  
 3 documents. Right, so it's LLL25.1 and the last one will be  
 4 LLL25.22 and the ones in between will be numbered  
 5 accordingly. Are you happy with that?  
 6 MS LE ROUX: Yes, thank you, Chair.  
 7 CHAIRPERSON: Alright, I'm sorry about  
 8 missing one, but these things happen, I'm afraid. Are you  
 9 with us, Provincial Commissioner? Have you got the numbers  
 10 and things  
 11 GENERAL MBOMBO: I tried, Mr Chair.  
 12 CHAIRPERSON: So did I, but like me you  
 13 found it a rather trying experience. Alright, so Ms Le  
 14 Roux, are you now ready to commence your cross-examination,  
 15 the necessary housekeeping having been done?  
 16 MS LE ROUX: Yes, Chair. I should just  
 17 note for the record the training records that have been  
 18 provided and we've now marked as LLL25.1 to 22, they  
 19 underpin LLL22, 23, and 24. So obviously we can, if an  
 20 issue arises, but we haven't burdened you with all of the  
 21 training records that are analysed in LLL18 to 21. But we  
 22 can of course provide those if necessary.  
 23 CHAIRPERSON: Yes, yes, well you can  
 24 provide them if the police want them or challenge any  
 25 assertion you make, then they can do so.

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1 COMMISSIONER HEMRAJ: Mr Pretorius, is  
 2 there a complete set of these regulations available?  
 3 MR PRETORIUS: I don't have them here.  
 4 COMMISSIONER HEMRAJ: Yes, thank you.  
 5 CHAIRPERSON: Yes, that's something that  
 6 can be attended to in due course. Anyway, now that we've  
 7 done the housekeeping, can you now start your cross-  
 8 examination?  
 9 CROSS-EXAMINATION BY MS LE ROUX: Thank  
 10 you, Chair. Provincial Commissioner, I'd like to start  
 11 with an aspect of Mr White's statement. You don't need to  
 12 go there now, but just for the record, this is JJJ178, the  
 13 final statement of Gary White, commencing at page 63, and  
 14 this relates to the question of input into the final plan,  
 15 operational plan, and the challenge process. That's the  
 16 topic we'll be dealing with.  
 17 Could I ask you to turn in your amplified  
 18 affidavit, exhibit LLL1, to page 5, please? And paragraph  
 19 16 in particular.  
 20 GENERAL MBOMBO: I found it.  
 21 MS LE ROUX: Thank you. Now in that  
 22 paragraph you state that you "assumed that the operational  
 23 plan would be drawn up by experienced Public Order Policing  
 24 members together with such assistance as would be obtained  
 25 from other provinces and the national structures." You see

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1 that in that paragraph, correct?  
 2 GENERAL MBOMBO: I see it.  
 3 MS LE ROUX: And in your experience in  
 4 other operations have the operational plans been drawn up  
 5 by POP, by experienced Public Order Policing members? Has  
 6 that been your experience?  
 7 GENERAL MBOMBO: That is so, Mr Chair.  
 8 MS LE ROUX: You then say that you  
 9 therefore did not attempt to examine the adequacy or  
 10 otherwise of the plan, but the question we have is did you  
 11 make enquiries about who was giving input into the plan?  
 12 GENERAL MBOMBO: I did that, yes.  
 13 MS LE ROUX: And you were aware that  
 14 Colonel Scott was taking primary responsibility for  
 15 developing the plan?  
 16 GENERAL MBOMBO: I don't remember it  
 17 being explained to me like that.  
 18 MS LE ROUX: When you enquired as to who  
 19 was giving input, what were you told?  
 20 GENERAL MBOMBO: I was told that there is  
 21 a team that was together with Colonel Scott and that they  
 22 were busy with the plan.  
 23 MS LE ROUX: Who did you make that  
 24 enquiry of?  
 25 GENERAL MBOMBO: Generals Mpmembe and

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1 Annandale.  
 2 MS LE ROUX: But you understood that  
 3 Colonel Scott would be involved with – he would be  
 4 primarily responsible for putting together the plan?  
 5 GENERAL MBOMBO: That is not how I  
 6 understood it, it's as it was explained to me.  
 7 MS LE ROUX: What was your understanding  
 8 of what Colonel Scott's role was with respect to the plan?  
 9 GENERAL MBOMBO: Mostly I was told that  
 10 it's the person who had sufficient knowledge in computers.  
 11 He is part of this team so that he can download this  
 12 operation into the computers for the presentation.  
 13 MS LE ROUX: So you understood that  
 14 Colonel Scott was involved because of his knowledge of  
 15 computers and his ability to draw down Google Earth maps, I  
 16 assume you mean?  
 17 GENERAL MBOMBO: That is so, Mr Chair,  
 18 and also the person who is operational.  
 19 MS LE ROUX: Were you aware with respect  
 20 to Colonel Scott's operational expertise that he was from  
 21 STF, not POP?  
 22 GENERAL MBOMBO: Initially I did not know  
 23 it but I became aware of that after I'd asked him.  
 24 MS LE ROUX: When did you ask him and  
 25 what did you ask him?

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1 GENERAL MBOMBO: I did not ask him  
 2 personally. I enquired about him and I was told that he  
 3 was from the STF.  
 4 MS LE ROUX: And who did you ask about  
 5 Colonel Scott?  
 6 GENERAL MBOMBO: I can't remember now  
 7 whether it was one of the people from STF or was it General  
 8 Mpmembe. I'm not sure.  
 9 MS LE ROUX: And when did you establish  
 10 that Colonel Scott was from STF?  
 11 GENERAL MBOMBO: I think it was in the  
 12 afternoon, the Tuesday on the 14th.  
 13 MS LE ROUX: So you knew that he was STF,  
 14 not POP, before the 16th?  
 15 GENERAL MBOMBO: Yes, I knew.  
 16 MS LE ROUX: Were you aware that Colonel  
 17 Scott was not familiar because he had not been trained in  
 18 and was not aware of the contents of Standing Order 262?  
 19 Did you know that?  
 20 GENERAL MBOMBO: I did not have knowledge  
 21 of that, Mr Chair.  
 22 [09:49] MS LE ROUX: Were you aware that the 1:30  
 23 JOCCOM on the 16th of August was the first time that any  
 24 stage 3 plan was put to the JOCCOM.  
 25 GENERAL MBOMBO: No, I did not know about

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1 that.

2 MS LE ROUX: And did you notice that at

3 that 1:30 JOCCOM there were no POP members present?

4 GENERAL MBOMBO: I did not notice that

5 whilst I was there, but I see it now on the minutes as to

6 the people who attended.

7 MS LE ROUX: So the Human Rights

8 Commission will submit in due course, that this led to the

9 failure of the operation because the plan to deal with a

10 large and potentially dangerous crowd was first of all

11 drawn up by somebody with no detailed knowledge of the

12 requirements for public order policing, being Colonel

13 Scott. And secondly was then presented to a JOCCOM that

14 had no POP expertise present. Do you have a comment on

15 that?

16 GENERAL MBOMBO: I do not want to agree

17 with you about that because, as I say, according to me they

18 had come together concerning this plan. And on the second

19 point, again I do not agree with you completely because

20 even if the Public Order Police were not in that meeting

21 General Mpmembe and Annandale were present and they have

22 knowledge about working with the crowd management.

23 MS LE ROUX: But, Provincial

24 Commissioner, my question goes to there was no member

25 present at that 1:30 JOCCOM where the plan for stage 3 was

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1 discussed for the first time that has an explicit POP

2 training or background.

3 GENERAL MBOMBO: I'm trying to say, Mr

4 Chair, I do not agree with you that it was the first time

5 this was being discussed, according to my knowledge.

6 MS LE ROUX: Provincial Commissioner, are

7 you familiar with both the statement and the evidence of

8 Colonel Scott because his evidence was that this was the

9 first time that any plan with respect to stage 3 was

10 presented to the JOCCOM was at 1:30 on the 16th of August?

11 So you're not aware of any other evidence that disputes

12 what Colonel Scott says when he says the 1:30 JOCCOM is the

13 first time the phase 3 plan is discussed?

14 GENERAL MBOMBO: I heard about that, Mr

15 Chair. But when I look at exhibit EE, the minutes of the

16 JOCCOM, the meeting of the morning of the 16th, it gives me

17 the impression that the plan of stage 3 was known already

18 at that time because in this meeting –

19 CHAIRPERSON: EE is 1:30, 6 o'clock –

20 there are problems in the minutes of that meeting. But you

21 weren't in the meeting anyway were you?

22 GENERAL MBOMBO: No.

23 CHAIRPERSON: So you don't know what

24 happened in the meeting. You don't know whether we should

25 prefer the manuscript notes made at the time or the final

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1 version that was produced after much editing at Roots, you

2 don't what the answer to that is do you?

3 GENERAL MBOMBO: I do not have definite

4 knowledge, Mr Chair.

5 MS LE ROUX: Provincial Commissioner, we

6 may be talking past each other. It is true that before the

7 1:30 JOCCOM it was known that there would be a stage 3 and

8 that stage 3 entailed dispersal and disarmament. My point

9 is though, that until the 1:30 JOCCOM there was no

10 operational plan for how to accept dispersal and

11 disarmament. You don't know of any evidence that that plan

12 was developed before the 1:30 JOCCOM do you?

13 GENERAL MBOMBO: No, I do not have

14 knowledge of that.

15 MS LE ROUX: Now as I understand the SAPS

16 position it's that the members of the JOCCOM are

17 collectively responsible for any plan that is approved by

18 the JOCCOM, correct?

19 GENERAL MBOMBO: That is so, Mr Chair.

20 MS LE ROUX: But of course the JOCCOM is

21 not there merely to rubber stamp whatever is put before it,

22 is it?

23 GENERAL MBOMBO: Yes, that is correct.

24 MS LE ROUX: And what we know from

25 standing order 262, we don't need to go there, it's exhibit

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1 SS2, page 8, paragraph 11 for record purposes, that because

2 the requirement of standing order 262 to avoid the use of

3 force at all costs, am I correct that members of the JOCCOM

4 need to satisfy each of themselves before approving any

5 plan that the plan achieves that goal?

6 GENERAL MBOMBO: That is so, yes.

7 MS LE ROUX: So the members of the JOC

8 have an obligation to understand the plan that's being put

9 before them, to interrogate that plan, to test any aspects

10 of the plan that they have concerns about, clarify any

11 uncertainties, understand the reasoning that produces the

12 plan. They need to really interrogate and challenge the

13 plan, correct?

14 GENERAL MBOMBO: That is correct, yes.

15 MS LE ROUX: And for the record, again we

16 don't need to go there, Mr White, page 64, paragraph 6.3.8

17 sets out the kind of challenge process that he is familiar

18 with in an operation. Have you seen that aspect of Mr

19 White's report? To summaries, he says essentially the plan

20 is presented and those that are present are required to

21 challenge and interrogate the different aspects of the

22 plan, to test whether it has taken into account all factors

23 that would be relevant. Whether every possibility has been

24 thought through and has been properly tested. You're

25 familiar with that portion of his evidence?



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1 GENERAL MBOMBO: I remember seeing that,  
2 yes.

3 MS LE ROUX: Okay and you'd agree that  
4 this type of challenge process is necessary?

5 GENERAL MBOMBO: I agree with you there.

6 MS LE ROUX: And this is all the more so,  
7 where, as you've accepted, there's a risk of injury and  
8 even death as part of an operation. It would be even more  
9 important to make sure that you had a good plan where you  
10 foresaw a potential level of violence.

11 GENERAL MBOMBO: That is correct, yes.

12 MS LE ROUX: Now, Colonel Scott has told  
13 the Commission that there was no meaningful interrogation  
14 of the plan. It wasn't challenged, it was essentially  
15 accepted with very little discussion. In the other  
16 operations that you've been involved in, have you seen that  
17 be the process, that the plan is generally just accepted  
18 when it's presented? Or have you ever been in an operation  
19 where the police members who are present have interrogated  
20 and challenged and pulled apart and really had a good look  
21 at what the plan is? What's your experience other than  
22 Marikana?

23 MR SEMENYA SC: Well for the record it is  
24 also the evidence of Colonel Scott that there was an  
25 opportunity for those POP members who would have had

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1 questions on it to do so. The witness must be given –

2 CHAIRPERSON: This is half past two in  
3 the field shortly before the operation is due to be  
4 implemented, that is correct though, the point you make is  
5 on the record.

6 MS LE ROUX: Provincial Commissioner, do  
7 you recall the question again? Other than Marikana have  
8 you seen an operational plan be challenged in the way that  
9 Mr White explained it should be?

10 GENERAL MBOMBO: I normally see it being  
11 done like that, yes.

12 MS LE ROUX: And what have you seen?

13 GENERAL MBOMBO: Both the discussion  
14 about the operation or the report presented, how it's going  
15 to be dealt with and people would agree.

16 MS LE ROUX: And in those other  
17 experiences was a written document distributed for everyone  
18 to have a look at or how was the plan presented in your  
19 other experiences?

20 GENERAL MBOMBO: The one I remember when  
21 I was present, yes there was an operational plan presented.

22 MS LE ROUX: And that was a written  
23 document?

24 GENERAL MBOMBO: That is correct, yes.

25 MS LE ROUX: And what do you recall of

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1 that document? How long was it, what did it contain? Do  
2 you remember anything about the detail of that document?

3 GENERAL MBOMBO: I do not remember  
4 clearly, but it would explain how much resources are there,  
5 who is the operational commander, who is going to play what  
6 role, things like that.

7 MS LE ROUX: And would it detail the  
8 steps of the operation? So for example, if we use Marikana  
9 as an example, phase 3, would it detail for example how  
10 barbed wire will be deployed, where the different units  
11 will be stationed? What everybody's responsibility is and  
12 when they should participate in the operation? Did it have  
13 that detail in it?

14 GENERAL MBOMBO: I think it did have such  
15 details, yes.

16 CHAIRPERSON: Does standing order 262  
17 require a written operational plan?

18 GENERAL MBOMBO: That is correct.

19 CHAIRPERSON: Do you know why there  
20 wasn't one here?

21 GENERAL MBOMBO: I do not know, Mr Chair.

22 CHAIRPERSON: Did you not enquire, after  
23 the event when things had turned rather badly did you not  
24 enquire? Did you not say look here 262 says there should  
25 be a written operational plan, where is it? None could be

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1 produced, why wasn't there one? Did you not ask those  
2 questions?

3 GENERAL MBOMBO: I did ask those  
4 questions, Mr Chair, after the incident.

5 CHAIRPERSON: What answers did you get  
6 and from whom?

7 GENERAL MBOMBO: I saw that the  
8 operational plan was done on the computer to be presented,  
9 discussed, alterations would be made where necessary. If I  
10 remember correctly, the person who gave that explanation  
11 was Colonel Scott.

12 MS LE ROUX: Provincial Commissioner, the  
13 only document you saw at the 1:30 JOCCOM and that you saw  
14 on the 16th, was the single Google Earth image that Colonel  
15 Scott used for his briefing, correct?

16 GENERAL MBOMBO: I was no longer there  
17 when he gave that briefing, so there is no document I have  
18 seen.

19 MS LE ROUX: I think you may have  
20 misunderstood or my question wasn't clear. At the 1:30  
21 JOCCOM the only document that was presented was the Google  
22 Earth Image that Colonel Scott had used, correct?

23 GENERAL MBOMBO: No, I'm trying to  
24 explain that when the presentation was made, if it was  
25 made, I was no longer there.

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1 CHAIRPERSON: Have you got exhibit L  
2 there?

3 GENERAL MBOMBO: I have it.

4 CHAIRPERSON: If you look at slide 181,  
5 you'll see – have you got that? It's on the screen now,  
6 but I suggest you have a look at it in front of you, your  
7 own copy of L. According to Colonel Scott that's what he  
8 showed the people, certainly out in the field at 2:30 and I  
9 assume he did so at the JOCCOM meeting, I'm not sure about  
10 that. All he showed the commanders in the field was that  
11 slide minus the white blocks. Do you see the white blocks  
12 with writing? Minus that. And he had to explain to them  
13 orally what is contained in those white blocks. There was  
14 no written plan, operational plan. All he had to show the  
15 people out in the field, about an hour before the operation  
16 was to take place, was that slide which was on his computer  
17 screen minus the white blocks. Where you aware of that,  
18 was that disclosed to you when you enquired afterwards?

19 GENERAL MBOMBO: Mr Chair, I don't  
20 remember clearly but when I inquired I was told that the  
21 plan was on the computer.

22 CHAIRPERSON: No, but I'm asking you now.  
23 Is this the first time you hear that what was on the  
24 computer and shown to the commanders in the field was that  
25 slide minus the writing in the white blocks?

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1 GENERAL MBOMBO: Mr Chair, when we were  
2 at Roots there was a plan that Colonel Scott presented to  
3 us.

4 CHAIRPERSON: You know you're still not  
5 answering my question, Commissioner. I'm sure it's my  
6 fault, I'm not putting it clearly enough. Let me repeat it  
7 to you now. I understand that Colonel Scott created a lot  
8 of documents after the event to indicate what had been  
9 present as it were on some cases orally, but as far as  
10 actual documents are concerned, when he was asked about  
11 that he conceded that this document we see here was all he  
12 had on his computer to show the commanders in the field at  
13 the briefing at 2:30. But the words which are in the white  
14 blocks weren't there. He explained that orally, so if you  
15 look at that document, you take out in your mind's eye the  
16 white blocks and what's in them you will see all that he  
17 had to show the commanders in the field at 2:30. Now what  
18 I'm asking you is were you told about that or do you hear  
19 it for the first time today?

20 GENERAL MBOMBO: Mr Chair, yes he told us  
21 about this and he showed it to us and also said his plan  
22 was in the computer. I did not know that there was no real  
23 plan available.

24 MS LE ROUX: Provincial Commissioner,  
25 just so that we don't mislead you, if I could ask –

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1 CHAIRPERSON: Sorry, what were you saying  
2 Provincial Commissioner?

3 GENERAL MBOMBO: I had already finished,  
4 Mr Chair.

5 MS LE ROUX: Provincial Commissioner, for  
6 the sake of the record and so that we don't miss each other  
7 if I could ask for slide 149 to be displayed from exhibit  
8 L? Because that is the image that Colonel Scott presented  
9 at the 1:30 JOCCOM, not slide 181 which is presently on the  
10 screen.

11 CHAIRPERSON: My understanding is 181 is  
12 what he says he showed the commanders in the field at 2:30.  
13 It wasn't clear in my mind what he said at 1:30 but that  
14 was the only thing he showed, according to his evidence,  
15 the only thing he showed the commanders in the field at  
16 2:30 on his laptop.

17 MS LE ROUX: Correct, Chair, and slide  
18 149 is what he presented to the 1:30 JOCCOM. If we can go  
19 to 149, thank you. Which of course, the stage 2 briefing,  
20 it doesn't reflect the ultimate stage 3 briefing that he  
21 gave late that afternoon. Provincial Commissioner, do you  
22 recall that image being presented to you at the 1:30  
23 JOCCOM, did you see that at the 1:30 JOCCOM?

24 GENERAL MBOMBO: Chair, when Colonel  
25 Scott was giving a presentation at that meeting I'd already

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1 left.

2 MS LE ROUX: So during the time that you  
3 were present in the 1:30 JOCCOM you saw no presentation at  
4 all by Colonel Scott?

5 GENERAL MBOMBO: From my recollection I  
6 left before any presentation was given.

7 MS LE ROUX: And given your previous  
8 experience where a written detailed document was handed  
9 out, did you ask for a copy when you were leaving so that  
10 you could have a look at what was being presented?

11 GENERAL MBOMBO: I did not do that.

12 CHAIRPERSON: Are you surprised now when  
13 you hear, well never mind now, you heard subsequently I  
14 take it, that there was no written plan, you already told  
15 us that. Were you surprised about that?

16 [10:09] I mean they had the time in the morning to  
17 prepare a plan and according to one version that's before  
18 us the time, there was discussion about it even the day  
19 before. That's one version we have. But even on the other  
20 version that the matter was dealt with on the morning, the  
21 Thursday morning, were you surprised when you were told  
22 about that there was no written plan, you knew that's what  
23 262 requires, you knew that had happened in the past. Were  
24 you not surprised why someone apparently as competent and  
25 efficient as Colonel Scott wasn't able to produce a written

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1 plan on the Thursday in time for the 1:30 meeting?  
 2 GENERAL MBOMBO: Mr Chair, really I am  
 3 surprised because I really believe that even if it is in  
 4 the computer, but it is available, it's there.  
 5 MS LE ROUX: Provincial Commissioner, can  
 6 I ask you to turn to exhibit EE, which is the 1:30 JOCCOM  
 7 minutes, please? And then if you can follow through the  
 8 three pages with me because it indicates your attendance,  
 9 then you address the meeting regarding the purpose of the  
 10 meeting, then there's a discussion of the execution of  
 11 stage 3 with Major General Annandale beginning that, then  
 12 Lieutenant Colonel Scott giving a slide presentation, and  
 13 that then on the top of the next page is set out in some  
 14 detail. Then Major General Annandale goes through a  
 15 checklist and then we have closing remarks and the second  
 16 paragraph there has the Provincial Commissioner indicated  
 17 as giving that you'd already communicated with the National  
 18 Commissioner, informing her of the current situation, a  
 19 deadlock was reached, stage 3 of the operational plan is  
 20 being executed, and that the National Commissioner had  
 21 indicated she would inform the Minister of Police about the  
 22 current situation. Major General Annandale then gives a  
 23 final instruction and the meeting adjourns. So the minutes  
 24 seem to indicate that you were present during Lieutenant  
 25 Colonel Scott's slide presentation because you then make

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1 closing remarks that follow that in the minutes. Do you  
 2 care to comment on these minutes?  
 3 GENERAL MBOMBO: Mr Chair, I did correct  
 4 the issue of these minutes, explaining that I was not  
 5 present when the meeting came to a close, and explaining  
 6 also that these points mentioned here, I talked about it on  
 7 the other side when I was giving the instruction, and I  
 8 explained that I did not say it in the way it appears here,  
 9 especially the last sentence. I explained that I said,  
 10 what I said is the National Commissioner is probably  
 11 telling the Minister, or it was my belief that she is doing  
 12 so.  
 13 MS LE ROUX: Provincial Commissioner, I  
 14 understand your earlier evidence where you dispute the  
 15 contents of the minutes. You say it doesn't accurately  
 16 reflect what you said, but do you have any particular  
 17 comments as to why the minutes reflect you being present  
 18 all the way through to be able to make closing remarks?  
 19 MR SEMENYA SC: Chair, we dealt with this  
 20 subject as well and the witness explained in chief and also  
 21 in cross-examination these very points.  
 22 CHAIRPERSON: That is correct, Ms Le  
 23 Roux. This point was gone into in some depth while you  
 24 were not with us.  
 25 COMMISSIONER HEMRAJ: Before she moves

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1 on, Mr Semenya, can someone in your team assist me with  
 2 that part of the record that deals with Colonel Scott's  
 3 evidence about what was presented as regards the plan? I  
 4 don't have my transcript with me, but I do have it marked,  
 5 but can somebody in your team assist me with that just to  
 6 get some clarity, please?  
 7 MR SEMENYA SC: You mean at the 1:30  
 8 meeting?  
 9 COMMISSIONER HEMRAJ: Yes, at the 1:30  
 10 meeting, exactly what was presented, because I seem to  
 11 recall that more than just a slide was presented. But it  
 12 need not be done now. It can be done at a later stage.  
 13 MR SEMENYA SC: We will, Commissioner.  
 14 COMMISSIONER HEMRAJ: Thank you.  
 15 MS LE ROUX: Provincial Commissioner, I'd  
 16 like your comment on a submission that the Human Rights  
 17 Commission will make in due course, which is this; that  
 18 it's clear that there was no comprehensive written  
 19 operational plan as required by Standing Order 262  
 20 presented to the JOCCOM, and at best it received an oral  
 21 briefing with some visual aid. So we will submit that the  
 22 Marikana operation on 16 August, phase 3, had no  
 23 operational plan. Do you have a comment on that?  
 24 CHAIRPERSON: Sorry, you dropped your  
 25 voice. You will submit that the?

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1 MS LE ROUX: That the phase 3 of the  
 2 Marikana operation on the 16th of August had no written  
 3 operational plan, it only had a briefing.  
 4 GENERAL MBOMBO: As I'm saying, Mr Chair,  
 5 according to my knowledge I thought that there was a plan,  
 6 but as Colonel Scott testified and indicated that there was  
 7 no plan, I do not know what happened. It also shocks me.  
 8 MS LE ROUX: Provincial Commissioner,  
 9 could I ask you to return to your statement, your amplified  
 10 statement, LLL1, and paragraph 16, page 5 again. I want to  
 11 return to the statement where you say you didn't attempt to  
 12 examine the adequacy or otherwise of the plan, so we've  
 13 covered that you never saw a written operational plan and  
 14 we will submit that you were in a position to ask for the  
 15 written operational plan, but you didn't do that, correct?  
 16 GENERAL MBOMBO: There's nothing that was  
 17 compelling me to do that if I had appointed someone to be  
 18 in charge of that operation.  
 19 MS LE ROUX: But Provincial Commissioner,  
 20 we'll submit in due course that there had already been many  
 21 deaths by the time this 1:30 JOCCOM is held. We'll submit  
 22 that you accept that there was, it was foreseeable that  
 23 there would be injury and possibly death in the operation,  
 24 and we'll submit that in those circumstances it was all the  
 25 more important for you to demand to see a written

<p style="text-align: right;">Page 22620</p> <p>1 operational plan as required by Standing Order 262, that 2 you should not have merely said I assume the other members 3 of the JOCCOM know what they're doing. Do you have a 4 comment? 5 GENERAL MBOMBO: I will not agree with 6 you there. 7 CHAIRPERSON: Forgive me, Ms Le Roux, are 8 you now moving on to a new point? Because what we've been 9 doing lately for reasons that I don't have to explain, 10 we've been taking comfort breaks every hour for the benefit 11 of those who have difficulty sitting for long periods and 12 at a suitable stage in your cross-examination will you let 13 me know when it will be appropriate for a comfort break to 14 be taken? 15 MS LE ROUX: Chair, I think let's take it 16 now because to wrap this up will take a little bit longer. 17 CHAIRPERSON: We'll now take a comfort 18 break for 10 minutes. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [10:34] CHAIRPERSON: The Commission resumes. 21 Provincial Commissioner, you're still under oath. 22 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 23 CHAIRPERSON: Ms Le Roux. 24 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 25 Thank you, Chair, Provincial Commissioner. Chair, I tried</p>	<p style="text-align: right;">Page 22622</p> <p>1 outline of phase 3 as phase 2 was in essence also a pre- 2 positioning in case phase 3 was to be implemented." So 3 what we have there – and then if we can go to the 4 transcript – 5 CHAIRPERSON: Is there anything further 6 in 9.4, in any of the subparagraphs thereof which enlarges 7 on that introductory statement at the beginning? 8 MS LE ROUX: No, Chair, it doesn't 9 identify the two icons, but perhaps let's just stay in the 10 document and go to paragraph 12.4, which is where Colonel 11 Scott is detailing the 1:30 JOCCOM and Major General 12 Annandale had asked how they were going to execute phase 3 13 and then 12.4 Colonel Scott says, "I asked if I may suggest 14 a course of action, to which I was given the floor to brief 15 the JOCCOM. I explained on the Google Earth satellite 16 photo which I had printed out for the commanders that 17 morning for the phase 2 deployment where I felt the 18 dispersion should take place with the different units in 19 their different roles and areas of responsibility." So 20 what 9.4 and 12.4 show us is Colonel Scott saying he 21 printed out Google Earth images that related to phase 2 for 22 the 6AM JOC and then at the 1:30 JOCCOM he used those phase 23 2 Google Earth images to speak to phase 3. 24 Then if we can turn now to the transcript, day 25 134, and if we start at the bottom of page 14235, line 20,</p>
<p style="text-align: right;">Page 22621</p> <p>1 to use the tea adjournment to address Commissioner Hemraj's 2 question relating to establishing the documents that were 3 presented at the JOCCOM early in the day and then at 1:30, 4 so if I can just go through what we've managed to 5 establish. If we start, it's in the transcript, day 134, 6 which is where Mr Chaskalson was cross-examining Colonel 7 Scott, and then if we can at the same time have open HHH – 8 sorry, HH20 which is – no, HHH20, which is Colonel Scott's 9 statement. 10 CHAIRPERSON: Well, we can't look at both 11 together. So what should we – which – 12 MS LE ROUX: Let's start with HHH20. 13 CHAIRPERSON: So alright, we'll look at 14 that first. What paragraph? 15 MS LE ROUX: If we start page 74, 16 paragraph 9.4. So Chair, just to orientate you, we don't 17 need to go to – the previous page explains this is when 18 Colonel Scott starts explaining Thursday the 16th and he's 19 explaining the 6AM JOCCOM, and then Major General Annandale 20 speaks to the phase 2 and 3 deployment concepts briefly and 21 he, and then 9.4 Colonel Scott says, "When I was asked to 22 show the deployment I briefed the commanders by showing the 23 mission and the strategic guidelines and then speaking 24 directly to the Google Earth satellite photos with icons 25 arranged on it. In explaining phase 2 I mentioned the</p>	<p style="text-align: right;">Page 22623</p> <p>1 right, so if we go down to line 20, Mr Chaskalson then 2 starts, so he says, well line 22, "In terms of the 3 contemporaneous documents," he takes him to paragraph 9.4, 4 "where you mentioned the Google Earth satellite images." 5 Colonel Scott, "Yes." He then quotes from paragraph 9.4 6 and then speaks on, "Later on you mention that at the 1:30 7 JOC," which is now that paragraph 12.4 reference – 8 CHAIRPERSON: It's gone a bit, hasn't it? 9 Yes. 10 MS LE ROUX: So he nails down paragraph 11 9.4, then goes to paragraph 12.4. Then Mr Chaskalson says, 12 "Now we don't necessarily have the actual photo, but what 13 we do have is the photographs that Captain Van Heerden took 14 of the JOC on the 16th, which might depict that photo," 15 meaning the photos that had been printed out in the morning 16 for phase 2 and were used at 1:30 to speak to phase 3, and 17 then if we go – and he identifies those as exhibit JJJ107 18 in Van Heerden's photographs, and then top of page 14237 Mr 19 Chaskalson identifies the two particular photographs that 20 he wants, the 1020196 and 1020197. "Those are two 21 photographs taken at the JOC on the 16th, on the evening of 22 the 16th, round about 7:27PM, and my question to you is, are 23 these the gridded photographs to which you referred in your 24 statement, are these the photographs that were handed out 25 to the commanders on the morning of the 16th?" and</p>

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1 Lieutenant Colonel Scott confirms, "That's correct. They  
2 were given out to show the stage, or the phase 2 deployment  
3 to the commanders. That was given to commanders just after  
4 the JOCCOM of the 16th in the morning 6 o'clock," and then  
5 they left to brief meetings.

6 So if we then go to JJJ107, you'll recall those  
7 are the pictures taken in the JOC and on the wall are two  
8 gridded aerial photographs which Colonel Scott has  
9 confirmed at page 14237 as being the two images that he  
10 handed out –

11 CHAIRPERSON: No, it can't be JJJ107  
12 because that's –

13 MS LE ROUX: JJJ –

14 CHAIRPERSON: That's Brigadier Calitz's  
15 statement.

16 MS LE ROUX: No, sorry, it's JJJ07, so 7,  
17 apologies.

18 CHAIRPERSON: JJJ7? Yes, those are the  
19 Van Heerden photographs, yes.

20 MS LE ROUX: Yes, those, Chair. So these  
21 show the gridded – and then the next one is 1020197. So  
22 what we've established, Chair and Commissioners, these two  
23 Van Heerden photographs show you the two images that were  
24 printed out for the morning JOCCOM on the 16th that speak to  
25 phase 2 deployment, and that is what was used at the 1:30

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1 JOCCOM when Colonel Scott speaks to phase 3. Thank you,  
2 Chair. So in the absence of any further questions on  
3 that –

4 CHAIRPERSON: Sorry, it was Adv Hemraj's  
5 question, not mine, but if she has any follow-up questions  
6 she would ask them now.

7 COMMISSIONER HEMRAJ: That's actually not  
8 the part in the transcript that I remembered, but I'll get  
9 to that later on and I'll raise it with you, if necessary.  
10 Thank you, Ms Le Roux.

11 MS LE ROUX: Thank you. Provincial  
12 Commissioner, if we can then return to paragraph 16 of your  
13 statement, and you'll recall before the adjournment we were  
14 addressing that aspect of paragraph 16, page 5, where you  
15 say you didn't attempt to examine the adequacy or otherwise  
16 of the plan and so, and we've covered the first aspect of  
17 that, which is that you were certainly in a position to  
18 demand of your JOCCOM where is the written operational plan  
19 and we know that that hasn't happened, and you've testified  
20 this morning that now that you have become aware that there  
21 never was a written operational plan, you were, I think the  
22 word you used was "shocked."

23 So in light of that I'd like to return to  
24 something that was covered by Adv Bizos. We don't need to  
25 go to the transcript, but it was day 182, page 21993,

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1 because there Adv Bizos asked you whether you agree with  
2 the experts who have criticised the lack of a written  
3 operational plan for phase 3 and you said you didn't agree  
4 with that expert criticism. In light of the fact that  
5 we've established this morning that now you have become  
6 aware that there never was a written operational plan and  
7 you said that you were shocked that there was never a  
8 proper written operational plan, do you still disagree with  
9 the experts when they criticise the lack of an operational  
10 plan?

11 MR SEMENYA SC: No, the lack of a written  
12 operational plan, not –

13 CHAIRPERSON: Yes, yes, I think the  
14 word –

15 MS LE ROUX: Of a written operational  
16 plan.

17 CHAIRPERSON: I think the word "written"  
18 was intended by Ms Le Roux, but Mr Semanya is right, the  
19 question is the lack of a written operational plan.

20 MS LE ROUX: Correct, Chair.

21 GENERAL MBOMBO: Mr Chair, I would agree  
22 with this criticism if really there was no plan, written  
23 plan on the computer.

24 CHAIRPERSON: We saw what he showed the  
25 people at 2:30 was that slide that I showed you which is in

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1 exhibit L, and the writing on it in the white blocks wasn't  
2 there. So there wasn't even a written plan in the  
3 computer, as I understand it.

4 MS LE ROUX: Provincial Commissioner, do  
5 you accept the Chair's clarification of the evidence, that  
6 the evidence has established there was no written  
7 operational plan, there were only Google Earth images with  
8 some icons placed on them, there was never a written  
9 operational plan?

10 CHAIRPERSON: Even on the computer with  
11 electronic images on the computer there was nothing  
12 written. I mean "written" normally means writing on paper,  
13 but here even if you take the word in a wider sense,  
14 "written" in the sense of words written on a screen, if you  
15 look at the – I think it was 181, slide 181 of exhibit L,  
16 we looked at it before; his evidence was - I was surprised  
17 when he gave the evidence, but his evidence was that even  
18 that white writing in the white blocks wasn't there. So on  
19 that basis I would have thought even on a wider definition  
20 of "writing" there was no written plan.

21 GENERAL MBOMBO: If that is the case, Mr  
22 Chair, as you say, then I agree with the criticism.

23 MS LE ROUX: Thank you, Provincial  
24 Commissioner. Now you've accepted that injuries and/or  
25 deaths were foreseeable once stage 3 was implemented, and

<p style="text-align: right;">Page 22628</p> <p>1 Mr White criticises the SAPS because he says that he is not 2 satisfied on the evidence available that there was an 3 urgent need to launch stage 3 on the afternoon of 16 4 August. For the record, this is at page 74 of Mr White's 5 statement, and he raised a number of points there that 6 relate to how the SAPS members who were present on the day 7 accepted, or failed to challenge the move to actually go to 8 stage 3. So I need to just put these points to you for 9 comment.</p> <p>10 Now first of all we know that Lieutenant Colonel 11 Scott set his criteria for the move to stage 3 as saying 12 that that should only happen if all other options to 13 resolve the situation without force were exhausted. Now is 14 it your view that all other options to resolve the 15 situation without force had been exhausted?</p> <p>16 GENERAL MBOMBO: I think, Mr Chair, as 17 counsel is also saying, it was Mr Scott's view. My view 18 was that if negotiations fail we would then go to stage 3.</p> <p>19 MS LE ROUX: If I can ask you to open up 20 Mr White's final statement, and if you go to page 74, 21 paragraph 6.5.4, and then it follows through to 6.5.7, and 22 the conclusion is set out at 6.5.7, page 77. So if we can 23 go there.</p> <p>24 GENERAL MBOMBO: Page? 25 MS LE ROUX: 77.</p>	<p style="text-align: right;">Page 22630</p> <p>1 justification for ordering the commencement of stage 3, nor 2 is it consistent with the requirements of the SAPS policy 3 to avoid the use of force at all cost. So he says it's 4 insufficient to say negotiations have failed, therefore 5 stage 3, and one of the reasons he says that is because 6 stage 2 was working. There hadn't been further violence. 7 The show of force was having some effect at keeping the 8 peace, and therefore he says there's no – that the failure 9 of negotiations is an insufficient reason to move to stage 10 3, but that's the reason you give for why you wanted to 11 move to stage 3. So I'm asking you whether you have any 12 comment on his view that the failure of negotiations is not 13 a basis to move to stage 3, nor is it consistent with the 14 SAPS policy to avoid the use of force at all cost.</p> <p>15 GENERAL MBOMBO: Then I think, Mr Chair, 16 that is his view.</p> <p>17 MS LE ROUX: And you disagree with it?</p> <p>18 GENERAL MBOMBO: Definitely, Mr Chair.</p> <p>19 COMMISSIONER HEMRAJ: Are you putting 20 6.5.4 to her as well, Ms Le Roux, if you're going to follow 21 this line any further?</p> <p>22 MS LE ROUX: No, Commissioner, because 23 that relates to Colonel Scott's criteria. So I'm just 24 trying to tackle her own articulated reason to move, which 25 is the failure of negotiation. Provincial Commissioner,</p>
<p style="text-align: right;">Page 22629</p> <p>1 GENERAL MBOMBO: Okay. 2 MS LE ROUX: There Mr White directly 3 challenges your rationale for launching stage 3 as not 4 sufficient justification for ordering the commencement of 5 stage 3, and that it's inconsistent with the requirement of 6 the SAPS policy to avoid the use of force at all cost. Do 7 you have any comment on that criticism?</p> <p>8 GENERAL MBOMBO: Which one are you 9 talking about?</p> <p>10 MS LE ROUX: Provincial Commissioner, 11 paragraph 6.5.7 on page 77, Mr White there says that in his 12 opinion there was not sufficient justification to order the 13 commencement of stage 3 and neither is that order 14 consistent with the requirements of the SAPS policy to 15 avoid the use of force at all cost. Do you have a comment 16 on that criticism?</p> <p>17 GENERAL MBOMBO: I'm not sure what he's 18 trying to say here.</p> <p>19 MS LE ROUX: Provincial Commissioner, the 20 thrust of Mr White's criticism there is he takes your 21 statement where you say you thought it would be justified 22 to move to stage 3 if negotiation efforts fail, and he says 23 with respect to that position that you've taken that you 24 should only move to stage 3 if negotiation efforts have 25 failed and he says that in his view it is not sufficient</p>	<p style="text-align: right;">Page 22631</p> <p>1 the other criticism made by Mr White against your conduct 2 on the day, on the 16th, is set out at page 71, paragraph 3 6.4.10A. There Mr White begins detailing why the absence 4 of the written operational plan at the 1:30 JOCCOM and 5 before the implementation of stage 3 is problematic, and A 6 states, "What stage 3 planned that the Provincial 7 Commissioner and/or Major General Mpembe as overall 8 commander approve. It appears that the decision to proceed 9 to stage 3 was made prior to the 1:30 JOCCOM, but it was 10 only during that JOCCOM that Lieutenant Colonel Scott 11 outlined orally how stage 3 might work. Therefore whoever 12 actually made the decision to proceed to stage 3 did so 13 without a full appreciation of what stage 3 entailed. If 14 correct, that is a very serious issue."</p> <p>15 So Provincial Commissioner, let's take this in 16 steps. We know that before the 1:30 JOCCOM you didn't know 17 what stage 3 would entail. You didn't know how dispersal 18 and disarmament would occur, correct?</p> <p>19 GENERAL MBOMBO: Though I did not know 20 its details, I knew about it already on Tuesday afternoon 21 when I left.</p> <p>22 MS LE ROUX: And do you have any comment 23 on Mr White's criticism that it was inappropriate for you 24 to order the move to stage 3 without an appreciation of 25 what that actually entailed.</p>

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1 [10:54] GENERAL MBOMBO: Because I had an overall  
 2 commander present there who was supposed to make those  
 3 decisions.  
 4 MS LE ROUX: Provincial Commissioner, I'd  
 5 now like to move on to another –  
 6 CHAIRPERSON: Sorry, before you move away  
 7 from this point, there's a question I'd like to ask about  
 8 this. You referred to Tuesday afternoon. Are you saying  
 9 that you effectively approved the decision to move  
 10 eventually to stage 3 on the Tuesday afternoon in the  
 11 absence of successful negotiations?  
 12 GENERAL MBOMBO: That is so, Mr Chair.  
 13 CHAIRPERSON: Now if Colonel Scott is  
 14 correct, the only plan on the table at the JOCCOM on the  
 15 Thursday morning was the encirclement plan. So if that's  
 16 correct, the only plan that you could have approved would  
 17 have been - on the Tuesday would have been the encirclement  
 18 plan, not the plan that was ultimately implemented. Now  
 19 what comment do you have to make about that?  
 20 GENERAL MBOMBO: Mr Chair, I did not know  
 21 anything about stage 3. I was briefed at the JOC when I  
 22 arrived on Tuesday in the afternoon. As I have already  
 23 said, Mr Chair, they spoke about the encirclement plan and  
 24 they indicated to me that it was again criticised. There  
 25 were some criticisms about it and as I was leaving on

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1 Tuesday going to a meeting, after I've heard about a body  
 2 that was found on the koppie I then said that I phoned  
 3 General Mpembe and Annandale and told them that, "That  
 4 stage 3 of yours, which is the disarmament and dispersion,  
 5 I think it should be carried out tomorrow."  
 6 CHAIRPERSON: Well, if some of the other  
 7 witnesses' evidence is correct, there wasn't a dispersal  
 8 and disarmament plan in existence at the time. Brigadier  
 9 Engelbrecht in his statement says that he was in the JOC on  
 10 the Wednesday afternoon and the plan that was still being  
 11 discussed was the encirclement plan. So either your  
 12 evidence on the point – well, if they are correct, it  
 13 obviously has to be put on that basis, if what Colonel  
 14 Scott said that the only plan on the table even on Thursday  
 15 morning was the encirclement plan, and what Brigadier  
 16 Engelbrecht said about the discussion in the JOCCOM on the  
 17 Wednesday is correct, then your evidence that you approved  
 18 a dispersal and disarmament plan already on the Tuesday  
 19 can't be correct. Is there any comment you wish to make  
 20 about that?  
 21 GENERAL MBOMBO: Mr Chair, even if it was  
 22 not present on paper at that time, but they spoke about it  
 23 to me because on Wednesday when I was in a meeting in  
 24 Midrand I was expecting that they would carry out their  
 25 disarmament. According to General Mpembe that did not

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1 happen because they got hold of Mr Mathunjwa and Mr  
 2 Zokwana.  
 3 CHAIRPERSON: I see. Now let me put  
 4 something else to you. The criticism which Mr White makes  
 5 in this paragraph which we have on the screen at the  
 6 moment, subparagraph (a) which was read says – let me just,  
 7 it was read before but let me read it again so that those  
 8 who read the record in due course will understand what I'm  
 9 asking you about. "What stage 3 plan did the Provincial  
 10 Commissioner and/or Major General Mpembe, overall  
 11 commander, approve? It appears that the decision to  
 12 proceed to stage 3 was made prior to the 13:30 JOCCOM. It  
 13 was only during that JOCCOM that Lieutenant Colonel Scott  
 14 outlined orally how stage 3 might work. Therefore whoever  
 15 actually made the decision to proceed to stage 3 did so  
 16 without a full appreciation of what stage 3 entailed. If  
 17 correct, that is a very serious issue." That's the end of  
 18 the quotation.  
 19 Now if you are correct in saying that the minutes  
 20 are wrong in reflecting that you were there at the end of  
 21 the meeting at the time the closing remarks were given, you  
 22 say, your evidence is that that was incorrect, that what  
 23 you said, which is reflected in that paragraph, was said at  
 24 the time you left, which was before Lieutenant Colonel  
 25 Scott outlined how stage 3 might work, then of course

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1 you'll have to deal with the criticism which presumably Mr  
 2 White would make that it's even worse if you approved stage  
 3 3 not because you did not have a full appreciation of what  
 4 stage 3 entailed, but because you couldn't have had any  
 5 appreciation at all because you weren't present when  
 6 Lieutenant Colonel Scott gave the oral outline to which  
 7 reference is made. Now how would you deal with such  
 8 criticism?  
 9 GENERAL MBOMBO: I agree with that  
 10 criticism, Mr Chair.  
 11 CHAIRPERSON: Thank you.  
 12 COMMISSIONER HEMRAJ: Can you just assist  
 13 me with something, please, General? On the 14th when you  
 14 talk about the dispersal plan, did you know about it or did  
 15 you actually approve it on the Tuesday?  
 16 GENERAL MBOMBO: Not to approve it, Mr  
 17 Chair, but it was explained to me. All the stages of this  
 18 plan, I think if I'm not mistaken up to stage 5, were  
 19 explained to me. They were also saying they were getting  
 20 input from other people, so I took it at that stage that  
 21 it's probably not on paper, but they have spoken about it.  
 22 COMMISSIONER HEMRAJ: So when did you  
 23 then in relation to the 14th actually approve the plan?  
 24 GENERAL MBOMBO: Mr Chair, I'm not the  
 25 one who was going to approve the plan, but General Mpembe

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1 would, and I then thought about what had happened and when  
 2 I was on the way and said because of what had happened,  
 3 let's continue with this plan tomorrow.  
 4 COMMISSIONER HEMRAJ: So on the 14th you  
 5 also did not know the mechanics of the plan?  
 6 GENERAL MBOMBO: That is so, yes.  
 7 COMMISSIONER HEMRAJ: And similarly on  
 8 the 16th?  
 9 GENERAL MBOMBO: That is correct.  
 10 COMMISSIONER HEMRAJ: Thank you.  
 11 MS LE ROUX: Provincial Commissioner, I'd  
 12 like to move on to my next topic. I'd ask you to turn to  
 13 page 45 of Mr White's statement. This is section 4.4,  
 14 which is titled, "Evidence for the criminal justice  
 15 process," and it covers, if we can just run through briefly  
 16 the three paragraphs that follow. So 4.4.1 Mr White says  
 17 that, "Related to the previous point is the apparent  
 18 absence of material before the Commission to support the  
 19 prosecution of offenders in the criminal justice process.  
 20 One of the objectives of stage 3 of the operational plan  
 21 for 16 August was to make arrests for those who refused to  
 22 disarm. I infer that those arrests were attended to lead  
 23 to prosecutions and convictions. However, I'm struck by  
 24 the absence of evidence before the Commission that would  
 25 support the prosecution of many of those arrested. When

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1 planning for a large-scale Public Order operation where it  
 2 is anticipated that arrests will be made, one would expect  
 3 to see video operators and photographers present to  
 4 document the operation to ensure that the police have  
 5 evidence of the commission of any criminal offences.  
 6 Moreover one would expect to see statements from all of the  
 7 officers who made arrests, with a detailed description of  
 8 those arrested, the circumstances of arrest, the suspected  
 9 offence for which the arrests were made." That approach is  
 10 supported by paragraph 5.2.7 of the POP policy document on  
 11 crowd management, but from the evidence Mr White has seen  
 12 it does not appear to have been implemented in the Marikana  
 13 operation.  
 14 Then he concludes, "There do not appear to be any  
 15 police videos or police photographs of the alleged violent  
 16 attacks at scene 1 or 2. Additionally there do not appear  
 17 to be statements from all of the members who made arrests,  
 18 detailing the identity of the person arrested and the  
 19 circumstances of arrest. I make this point to illustrate  
 20 that careful videoing and photographing of operations and  
 21 the provision of detailed statements after the event is  
 22 important not simply to account to the Commission of  
 23 Inquiry, but also in order to ensure there is sufficient  
 24 evidence for the criminal justice process. It does not  
 25 appear that the criminal justice element of the operation

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1 was given significant thought."  
 2 Provincial Commissioner, do you have a comment to  
 3 that criticism by Mr White that is set out in the three  
 4 paragraphs I've read into the record?  
 5 GENERAL MBOMBO: About the absence of  
 6 video material, I agree with him that was our problem.  
 7 About the statements of the officers I believe that the  
 8 police officers who made the arrests would explain that in  
 9 their statements, but I agree with him that video material  
 10 would have had to show the evidence.  
 11 MS LE ROUX: And just to take this in  
 12 stages; you agree with the criticism - Provincial  
 13 Commissioner, to break it down, you agree with the  
 14 criticism about the lack of video evidence. Do you also  
 15 agree with the criticism about the lack of photographic  
 16 evidence that could assist in the criminal justice process?  
 17 GENERAL MBOMBO: That is so, yes.  
 18 MS LE ROUX: Then if we can focus with  
 19 respect to the statements –  
 20 CHAIRPERSON: I'm sorry, I'm not sure  
 21 that that concession is necessarily rightly made. There's  
 22 apparently quite a lot of photographic material of people  
 23 on the koppie with weapons and so forth, and the evidence  
 24 is that during the run-up to the events on the Thursday  
 25 afternoon a number of Criminal Intelligence people were

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1 brought in from Gauteng and they spent many hours working  
 2 with Lonmin people trying to identify the people whose  
 3 faces could be seen on the photographs taken, which would  
 4 presumably have led to various things, inter alia cordon  
 5 and search of their homes to see if there were arms there,  
 6 but also could have been used as evidence in the criminal  
 7 prosecution of these people. So I'm not sure that the – I  
 8 understand the concession you make relating to the video  
 9 material, which is very, very unfortunate that there is a  
 10 lack of that kind of material, particularly in the light of  
 11 clear policy prescripts that applied, but as far as still  
 12 photographs were concerned, taken over the period from I  
 13 suppose the 10th of August, I'm not sure the concession you  
 14 made was correct.  
 15 MR SEMENYA SC: Chair, may we also add –  
 16 GENERAL MBOMBO: Thank you, you helped  
 17 me, Mr Chair.  
 18 MR SEMENYA SC: This witness is really  
 19 confronted about operational matters where she wasn't, but  
 20 there is also evidence of the, what I'd call the Calitz  
 21 arrests, which is videotaped. There is also the arrests at  
 22 koppie 3 which are videotaped.  
 23 CHAIRPERSON: Yes, but the point that I  
 24 think Ms Le Roux is making, based upon what Mr White said,  
 25 in this very document on crowd management it's said part of



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1 the process must be collecting evidence which can be used  
2 against people arrested. You can't just have an operation  
3 to arrest people because if you arrest people you're  
4 arresting them not just to stop them from doing what  
5 they're doing, but to bring them before the courts to be  
6 charged with something. So you've got to have evidence  
7 upon which a prosecution can be based and the complaint is  
8 that that doesn't appear to be attended to. Certainly the  
9 point would be true in the case of police videos to some  
10 extent at least – to what extent is a matter for debate  
11 later, and certainly in relation to police photographs of  
12 the alleged violent attacks at scenes 1 and 2, as you say  
13 there is some material. But I was concerned more with  
14 photographs being taken from the 10th of August onwards  
15 dealing with people with weapons who are seen on the koppie  
16 or in front of the koppie. But anyway, the point has been  
17 made. You obviously wish to say something further.

18 MR SEMENYA SC: I was going to say,  
19 Chair, that the criticism that there is no video material  
20 at all would be incorrect.

21 COMMISSIONER HEMRAJ: There's a further  
22 aspect, the criticism about the provision of detailed  
23 statements, we're not privy to the contents of those  
24 dockets so we don't know if there are indeed detailed  
25 statements as part of the investigations.

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1 CHAIRPERSON: At any rate, Ms Le Roux put  
2 her point to you and you made your comment on it, which is  
3 on record and we can proceed.

4 MS LE ROUX: And Chair, let me focus then  
5 on the detailed statements that would be useful statements  
6 that should be made by the members who made arrests on the  
7 16th of August. Now Provincial Commissioner, on 30 October  
8 2013 – and for the record it's day 140, page 15248, you  
9 don't need to go there, but Provincial Commissioner, I was  
10 cross-examining Major General Mpembe on that day and at  
11 that part of the transcript it's reflected where I asked  
12 Major General –

13 CHAIRPERSON: Sorry, could we perhaps  
14 have that on the screen? Would you repeat the day and the  
15 page and the line -

16 MS LE ROUX: Day 140 –

17 CHAIRPERSON: - to assist the operators  
18 to put it on the screen?

19 MS LE ROUX: Day 140, page 15248.

20 CHAIRPERSON: Now you can complete the  
21 process by giving us the line number.

22 MS LE ROUX: Well, Chair, if we could  
23 actually move up a little bit to 15247, then we'll get the  
24 context. Go down. Right, so – sorry, go further down.

25 CHAIRPERSON: This is line 13. Line 13

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1 on that page seems to be the point at which you begin with  
2 the point.

3 MS LE ROUX: So the question is, "There  
4 was no coherent plan to capture, deal with and retain the  
5 best evidence that will be available to assist the  
6 prosecution?" Sorry, Chair, I've made an error. It was  
7 obviously Colonel Scott, not Major General Mpembe. So if  
8 we proceed, I'm asking the same question of Colonel Scott  
9 and he then says from line 19, "What you're saying is a  
10 coherent plan comes down to the Standing Orders and I  
11 wouldn't need to explain to detective what he needs to do  
12 to process the person, wouldn't have to explain to a police  
13 official what they need to provide when arresting a person  
14 because they know they would need to provide an arresting  
15 statement, similarly with the evidence chain, physical  
16 evidence, the crime scene experts, so for me to dictate  
17 their action is out of place." Then I say, "Thank you,  
18 Chair, we'll follow up through the evidence leaders, but if  
19 the SAPS could confirm whether there are any such arresting  
20 statements or video evidence," and then if we keep going,  
21 Chair, you ask Mr Semenya and the rest of the team one  
22 question regarding whether there, "Are you aware of the  
23 fact as to any instructions."

24 Now we have followed up in this respect with the  
25 SAPS team relating to the provision of arresting statements

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1 and we haven't been provided with any. Provincial  
2 Commissioner, do you know whether there are any statements  
3 by members who made arrests that could be used in the  
4 criminal justice process? Because we haven't yet been able  
5 to obtain any.

6 GENERAL MBOMBO: I think there is a  
7 docket for the people who were arrested and in that docket  
8 I think there are statements of the members.

9 MR SEMENYA SC: For the record, Chair,  
10 the dockets are with the NDPP's office and I'm told there  
11 is an arrangement with the evidence leaders about access to  
12 those.

13 COMMISSIONER HEMRAJ: I think we were  
14 informed that there are certain sensitivities about the  
15 various stages of the investigations as well. Mr  
16 Budlender, was that not part of the discussion?

17 MR BUDLENDER SC: I haven't – we'll have  
18 to check. We haven't, or I haven't seen statements in  
19 relation to the arrests of the protesters for unlawful  
20 gathering or for possession of unlawful weapons. I seen  
21 material in relation to the deaths, but I haven't seen in  
22 relation to the general prosecution. But there may be  
23 some.

24 [11:14] I don't say there aren't any, I just haven't seen  
25 them.

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1 COMMISSIONER HEMRAJ: But that would have  
 2 been a while ago.  
 3 MR BUDLENDER SC: Probably. We'll have  
 4 to check that, Chair.  
 5 CHAIRPERSON: In every docket of someone  
 6 who's arrested for public violence or possession of  
 7 dangerous weapons, every docket should contain an arresting  
 8 statement. I mean that's elementary. So there must be  
 9 arresting statements, and generally speaking it's difficult  
 10 to see how an arresting statement could be sensitive  
 11 because the arrestor will say I arrested such-and-such a  
 12 person and will say what he observed or she observed which  
 13 led him or her to make the arrest.  
 14 Anyway, perhaps this is a matter which can be  
 15 explored later. We don't have to explore it further in the  
 16 chamber, and clearly to be fair to the Provincial  
 17 Commissioner, I don't think she has facts at her fingertips  
 18 to be able to deal with the questions put. These are  
 19 matters that I would hope could be dealt with by agreement  
 20 between the police, the Provincial Director of Public  
 21 Prosecution's office, and the Human Rights Commission, the  
 22 evidence leaders, and the result of such agreement or  
 23 negotiation can be put before us in due course without  
 24 troubling the Provincial Commissioner who, to be fair, I  
 25 think can't be expected to answer the questions with any

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1 degree of detail.  
 2 MS LE ROUX: Indeed, Chair, and we will  
 3 follow up with the SAPS, the relevant prosecution  
 4 authorities, and the evidence leaders to see if we can  
 5 establish anything about the arresting statements.  
 6 Provincial Commissioner, I must just ask you two further  
 7 follow-up questions relating to this. Mr White, as you've  
 8 seen in his statement, says that there appears to have been  
 9 little focus on the criminal justice aspect of the policing  
 10 operation, and so what I need to put to you is whether the  
 11 Marikana operation was a policing operation that was  
 12 targeted at being able to stop illegal activity and  
 13 ultimately assist with evidence for a prosecution for that  
 14 illegal activity, or was the main focus of the operation  
 15 merely to end the strike?  
 16 GENERAL MBOMBO: That is not so, Mr  
 17 Chair.  
 18 MS LE ROUX: What do you say the purpose  
 19 of the operation was?  
 20 GENERAL MBOMBO: You'll remember that  
 21 there was a criminal act that had taken place there earlier  
 22 on. Those people were illegally armed. Our aim was to  
 23 disarm them and arrest those that we could arrest. We did  
 24 not have the power to end the strike.  
 25 CHAIRPERSON: Sorry, Ms Le Roux, can I

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1 intervene at this stage and ask a question? My  
 2 understanding of the relevant provision of the Criminal  
 3 Procedure Act – I can't remember the number, but I'm sure  
 4 the people here will know – is basically a peace officer, I  
 5 think is the phrase used in the Criminal Procedure Act – is  
 6 entitled generally to make an arrest for two purposes. The  
 7 first is so that someone can eventually be brought before a  
 8 court and prosecuted, so that the arrested person can be  
 9 brought before the court and be prosecuted. Arrest is a  
 10 means of obtaining the attendance of an accused person  
 11 before the court, the criminal court. That's the main  
 12 purpose for which arrests are effected, but there's also a  
 13 section in the Criminal Procedure Act which provides, as  
 14 far as I remember, that a peace officer can arrest someone  
 15 who appears to be about to commit an offence, and that kind  
 16 of arrest is a preventative arrest. The person obviously  
 17 isn't charged. The person normally would be released  
 18 shortly thereafter without having been brought before a  
 19 court. There is a period which a person can be detained  
 20 without being brought before court. But generally speaking  
 21 probably 99%, if not higher percentage, of people arrested  
 22 are arrested with a view that they're being brought before  
 23 a court to face a charge, being guilty of some or other  
 24 criminal conduct.  
 25 Now what is your understanding, what was your

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1 intention as far as what was happening at Marikana was  
 2 concerned, what was your understanding; were the people who  
 3 were arrested, arrested to prevent them from committing  
 4 crimes, in other words in terms of that exceptional  
 5 provision of the Criminal Procedure Act to which I  
 6 referred, or were they arrested for the main reason for  
 7 which arrests are made, namely to bring them in due course  
 8 before a criminal court to face a charge?  
 9 GENERAL MBOMBO: Mr Chair, I think our  
 10 aim was to arrest and bring before court people who had  
 11 committed criminal acts or who appeared so.  
 12 CHAIRPERSON: And the murder charge was  
 13 added later in circumstances that may have given rise to  
 14 some controversy, but the original basis for the arrests,  
 15 bases for the arrests were that the persons arrested, as I  
 16 understand it – if I'm wrong you must correct me – they  
 17 were guilty of the crime of public violence and they were  
 18 guilty, or reasonably suspected of being guilty of the  
 19 crime of public violence and/or they were reasonably  
 20 suspected of being in possession of dangerous weapons in  
 21 circumstances where they weren't entitled to be in  
 22 possession of them. Is that correct?  
 23 GENERAL MBOMBO: That is so, Mr Chair.  
 24 MR GOIRANA: Mr Chair, the Commissioner  
 25 wants to say something.

<p style="text-align: right;">Page 22648</p> <p>1 CHAIRPERSON: Sorry, yes. Yes, forgive  2 me, Provincial Commissioner, you want to make a comment?  3 Would you like a – you want to suggest that we take the tea  4 adjournment at this stage? I don't think there will be any  5 opposition to that and we will take the tea adjournment -  6 GENERAL MBOMBO: That is my request.  7 [COMMISSION ADJOURNS COMMISSION RESUMES]  8 [11:48] CHAIRPERSON: The Commission resumes.  9 Provincial Commissioner, you're still under oath.  10 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  11 CHAIRPERSON: Ms Le Roux.  12 MS LE ROUX: Thank you, Chair.  13 Provincial Commissioner, I just want to round out this –  14 CHAIRPERSON: I'm sorry, before you  15 [microphone off, inaudible] we've been given a document  16 which some kind person has caused to be placed before us.  17 It's headed "Key to training analysis documents."  18 MS LE ROUX: Yes, Chair, this is a  19 document that we should probably just mark as LLL18.1.  20 It's the key to the spreadsheets that summarise the  21 training records that I'll get to in due course.  22 CHAIRPERSON: Alright, well let me write  23 it in my book. 18.1, key to?  24 MS LE ROUX: Key to –  25 CHAIRPERSON: Analysis document –</p>	<p style="text-align: right;">Page 22650</p> <p>1 facts that the Human Rights Commission team has been able  2 to establish and then ask for your comment on this. So  3 we've analysed the statements before the Commission and  4 we've managed to establish the following, that of the  5 approximately 200 POP members present at Marikana on 16  6 August we have only 65 statements, that 32.5% of all POP  7 members have given statements that are before the  8 Commission. Oh, apologies, the percentage is the  9 percentage missing, not the percentage obtained. So 32.5%  10 have not given us statements.  11 CHAIRPERSON: You'll have to revise your  12 earlier figure then; of the 200 POP members how many have  13 provided statements, or in respect of how many have  14 statements been provided? If it's 33% it looks as if we're  15 looking at about –  16 MS LE ROUX: So 135 have provided –  17 CHAIRPERSON: Yes –  18 MS LE ROUX: Approximately 65 have not  19 provided.  20 CHAIRPERSON: I see, alright.  21 MS LE ROUX: With respect to the  22 approximately 165 TRT members we don't have statements from  23 more than 70 of those, so 42% of TRT members' statements  24 are outstanding. Of the 110 NIU members there are still  25 more than 30 outstanding, meaning 27% have still not</p>
<p style="text-align: right;">Page 22649</p> <p>1 MS LE ROUX: CALS analysis, training and  2 disciplinary record.  3 CHAIRPERSON: CALS analysis documents,  4 we'll just call them analysis documents because it's all –  5 MS LE ROUX: Yes, Chair –  6 CHAIRPERSON: Alright, hang on. Let's  7 get our housekeeping in order. So LLL18.1 –  8 MS LE ROUX: Yes.  9 CHAIRPERSON: - is a document which I've  10 described as key to CALS analysis documents.  11 MS LE ROUX: Yes.  12 CHAIRPERSON: Thank you.  13 MS LE ROUX: And just to explain,  14 obviously on the spreadsheet heading row it's impossible to  15 type all of the possible courses that are described in the  16 training records, so these headings are in bold but below  17 that are the courses that we've classified into those  18 categories.  19 CHAIRPERSON: Just to make it easier for  20 us to handle these documents. Alright, anyway you're not  21 there yet in your cross-examination, but you will be there  22 in due course.  23 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):  24 Thank you, Chair. Provincial Commissioner, I want to round  25 out the issue of statements and I want to explain five</p>	<p style="text-align: right;">Page 22651</p> <p>1 provided a statement. With respect to the 22 STF members,  2 11 have not yet provided, so 50% have provided, 50% we  3 still await, and of the 38 K9 members we still don't have  4 statements from four, which is 10.5%. So do you consider  5 that to be problematic? Do you consider it a problem that  6 32% of POP, 42% of TRT, 27% of NIU, 50% of STF, and 10% of  7 K9 have still not provided statements to this Commission?  8 Does that trouble you?  9 GENERAL MBOMBO: I am not sure, Mr  10 Chairperson, as to what has caused those statements not to  11 be available. As far as I know all the police who were  12 involved in this operation, the statements were sought  13 from.  14 COMMISSIONER HEMRAJ: Ms Le Roux, this  15 analysis has been done after a perusal of the SAPS hard  16 drive statements?  17 MS LE ROUX: That's correct,  18 Commissioner. We've looked at every single statement that  19 we have in any form and these are the stats that we come  20 out with, and this document has been provided to the SAPS  21 because we engaged with them in November last year and  22 still haven't received a response on that proceed.  23 CHAIRPERSON: Alright, well perhaps – I'm  24 not going to ask him to do it now because he'll presumably  25 need to take instructions, but at some stage Mr Semenya</p>

<p style="text-align: right;">Page 22652</p> <p>1 will get an opportunity to comment either directly from the 2 bar, as it were, or in re-examination of the witness on the 3 points that you've put. He may agree with your statistics, 4 he may disagree. He may make further statements in respect 5 of those statements that have not yet been provided, but I 6 won't ask him to do it now because he obviously needs time 7 to take instructions. Is that right, Mr Semenya?</p> <p>8 MR SEMENYA SC: That's correct, Chair.</p> <p>9 MS LE ROUX: And Chair, to assist my 10 learned friend, the correspondence is dated 19 November 11 2013 which sets out this analysis. Provincial 12 Commissioner, I'd like to turn to my penultimate topic, 13 which relates to training and disciplinary records, well 14 the training and discipline of SAPS members. Now as I 15 understand it from your statement – we don't need to go 16 there unless there's controversy with this; for the record, 17 it's page 4 of exhibit LLL1, paragraph 11.6 – I understand 18 that you are responsible for the implementation of HR 19 programmes and procedures. Am I correct that that would 20 include oversight with respect to training and discipline?</p> <p>21 GENERAL MBOMBO: It is correct.</p> <p>22 MS LE ROUX: Now I'd like us to look at 23 the training and discipline of the members that were on 24 duty at Marikana specifically on the 16th, but including the 25 commanders that were in charge during the course of the</p>	<p style="text-align: right;">Page 22654</p> <p>1 we can go to page 10, the two paragraphs that appear on 2 that page state, "Current international research supports 3 continuous police training in crowd control and management. 4 Education and training in crowd control depend on a 5 knowledge management systems available within the police 6 which capture operational reports on successes and 7 failures. The knowledge management system is an 8 organisation's ability to capture lessons learnt and best 9 and worst practices in the context of crowd control 10 operations," and it continues to describe "how there's a 11 need for clear and comprehensive police leadership to 12 ensure that such training actually occurs within all 13 appropriate police structures. In principle every law 14 enforcement agency is required to conduct and document 15 semi-annual training for all officers on the lawful and 16 appropriate or professional use of force and deadly force. 17 This training should be designed to reflect current 18 standards established by statutory and law" – I think they 19 mean statute and law – "as well as State-wide, country and 20 individual agency policy. It should include, but not be 21 limited to," and then it lists a series of substantive 22 topics that should be covered, and of interest here of 23 course is the use of force in general, the use of physical 24 and mechanical force, the use of deadly force, limitations 25 that govern the use of force, and deadly force. "The</p>
<p style="text-align: right;">Page 22653</p> <p>1 week, and I'd like to start at a policy level. So exhibit 2 R, if we can call that up, is SAPS policy and guidelines, 3 policing of public protests, gatherings and major events, 4 and this is a document that we understand to be dated 5 August 2012, but am I correct this document remains in 6 force? You don't know of any other policy document that 7 governs policing of public protests, gatherings, and major 8 events, a policy document rather than the Standing Order?</p> <p>9 GENERAL MBOMBO: It is this one, 10 Chairperson.</p> <p>11 MS LE ROUX: And if we could go to page 4 12 of this document, and specifically section 2, Objectives, 13 and if we scroll through to page 4, a final bullet point is 14 that, "One of the objectives of this policy is to 15 facilitate the introduction of appropriate training 16 initiatives which must, amongst others, address the 17 principle of first responder, guide SAPS operational 18 planning and response, resource deployment and physical 19 execution." So one of the objectives of the police 20 document for POP policing is to facilitate the introduction 21 of appropriate training initiatives, correct?</p> <p>22 GENERAL MBOMBO: That's correct, yes.</p> <p>23 MS LE ROUX: And then if we scroll 24 through to section 7, commencing page 9, this is a section 25 entitled "International perspective and comparison," and if</p>	<p style="text-align: right;">Page 22655</p> <p>1 international perspective on the broader aspects of police 2 training in crowd control and management highlight that 3 training should include review and reinforcement of the 4 applicable laws, State statutes, department policies, a 5 review of civil rights issues inherent in mass 6 demonstration events, a uniform understanding of rules of 7 engagement, use of force, policies, and mass arrest 8 procedures, clear instructions on the need for self- 9 control, teamwork, adherence to commands, stated 10 expectations for highly disciplined behaviour, self-control 11 and restraint, and a strong statement that any officer's 12 failure to comply could result not only in failed police 13 tactics, but also employee discipline."</p> <p>14 So what we take from all of this is that current 15 international research relied upon by the SAPS supports 16 continuous police training in crowd control and management. 17 You agree with that?</p> <p>18 GENERAL MBOMBO: It is correct, yes.</p> <p>19 MS LE ROUX: And Chair, we don't need to 20 go there unless it's necessary, but the final statement of 21 Hendrickx, which we have now marked as LLL12, at page 66, 22 paragraph 160 where Mr Hendrickx is setting out his final 23 recommendations to the Commission, page 66, para 160, one 24 of his recommendations is the implementation of a 25 continuous learning programme for all members of the SAPS</p>

<p style="text-align: right;">Page 22656</p> <p>1 involved in POP. So Mr Hendrickx as one of the experts in 2 this process confirms that this is something that he thinks 3 needs to be implemented.</p> <p>4 What we see from the policy document, and if we 5 can return to exhibit R, the policy document, the training 6 needs to cover a wide range of skills. It's use of force 7 and the judgments and law relating to when force is 8 appropriately used, civil rights, questions of self-control 9 and judgment, as well as teamwork, command and control of 10 those type of operations.</p> <p>11 So in the policy document, if we then move to 12 page 14, and the third paragraph on that page states, "It's 13 acknowledged that the recent past has exposed serious gaps 14 in the existing operational policies, strategies, and 15 approaches applied by the SAPS during the policing of 16 public protests. These gaps widen when SAPS responses to 17 unplanned protests is contextualised. It is thus 18 imperative that the SAPS must urgently align itself with 19 the following issues as crucial areas for intervention and 20 redress," and then if we scroll through the recommendations 21 there that need urgent implementation we get to page 16 22 where we see training of members attached to POP units, and 23 it highlights there, "Comparative research has shown that 24 the current level of training to SAPS members in crowd 25 management and control, Public Order Policing lacks</p>	<p style="text-align: right;">Page 22658</p> <p>1 that there are two different things there; POP operation 2 commanders should be experienced, but they also should be 3 trained. You accept that?</p> <p>4 GENERAL MBOMBO: I hear you.</p> <p>5 MS LE ROUX: So with that requirement in 6 mind, if we can then turn to the training records of your 7 senior commanders at Marikana, and these are the six 8 documents that are GGG27, GGG27.1 is the training history 9 of General Annandale, 27.2 that of yourself, 27.3 of 10 General Mpembe, 27.4, Brigadier Calitz, 27.5, General 11 Naidoo, 27.6 is Brigadier Fritz. Now Chair, we don't need 12 to display these because we've analysed them, unless 13 there's some dispute, but Provincial Commissioner, what 14 that training history demonstrates are the following 15 things, that neither you, General Mpembe, Brigadier Calitz, 16 General Naidoo, or Brigadier Fritz, none of you have any 17 POP training after 1994. That's correct in your case, 18 right? You haven't had any POP training after 1994.</p> <p>19 GENERAL MBOMBO: It is correct.</p> <p>20 MS LE ROUX: And do you have any 21 knowledge of whether Mpembe, Calitz, Naidoo, or Fritz have 22 had any POP training after 1994, different to what their 23 training records state?</p> <p>24 GENERAL MBOMBO: Except what I see here, 25 I have no other knowledge.</p>
<p style="text-align: right;">Page 22657</p> <p>1 content. Basic and refresher training for police and 2 others involved in law enforcement should include courses 3 not only on human and constitutional rights, but also 4 scientific techniques and other best practices for the 5 professional discharge of their functions with the public 6 protest environment."</p> <p>7 So what we take from this document is that POP 8 training must have both basic courses, as well as refresher 9 courses on the topics identified and that these include 10 human rights and constitutional obligations. We've read 11 the document correctly, that's the obligation described, 12 correct?</p> <p>13 GENERAL MBOMBO: That's correct, yes.</p> <p>14 MS LE ROUX: Right, now of course there's 15 much more that's interesting in the policy, but if we can 16 now turn to a different document, which is the POP policy 17 document on crowd management, exhibit FFF1 and page 8 of 18 that document, paragraph 4.3.2, if we look at the third 19 sentence there, "The planning and operational command of 20 Public Order operations must always be entrusted to 21 commanders of POP units in consultation with the Provincial 22 Commissioner as they are trained and usually experienced in 23 such matters." So I emphasise there that we want the 24 command of POP to be in the hands of POP commanders because 25 they are trained as well as experienced. So you'll accept</p>	<p style="text-align: right;">Page 22659</p> <p>1 MS LE ROUX: So we see from these records 2 that only General Annandale received POP training and that 3 was in 2000. You're not aware of General Annandale 4 receiving any other POP training post 2000, are you?</p> <p>5 GENERAL MBOMBO: As I have already 6 indicated, Chairperson, I have no idea.</p> <p>7 MS LE ROUX: So you don't have any other 8 knowledge that can help the Commission, because what 9 appears from the training records is that the planning and 10 operational command of the Marikana POP operation was 11 entrusted to people who do not have training in the 12 planning and operational command of Public Order 13 operations, that the training is – whatever training they 14 have received is outdated. You don't have any other 15 evidence relating to training, do you?</p> <p>16 GENERAL MBOMBO: I do not have, 17 Chairperson.</p> <p>18 MS LE ROUX: And obviously we know then 19 that the senior leadership of this operation, while they 20 may be experienced in POP operations, have not been going 21 through continuous police training in crowd control or 22 management as recommended by policy documents, as well as 23 international best practice and the expert Eddie Hendrickx?</p> <p>24 GENERAL MBOMBO: As you say, Chairperson, 25 I think it is right as you say.</p>

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1 MS LE ROUX: Provincial Commissioner,  
 2 could you then turn to page 106 of Mr White's statement?  
 3 That's JJJ178. JJJ178, final statement of Gary White, and  
 4 page 106, paragraph 7.3.19, there Mr White recites his  
 5 understandings that the senior leadership have no up-to-  
 6 date POP training, albeit that they are experienced, and Mr  
 7 White then says he disagrees that experience is sufficient.  
 8 He says, "Experience is undoubtedly useful and necessary in  
 9 order to command a major POP operation. However, it is not  
 10 sufficient. Unless you're properly trained in what is  
 11 considered as best practice, you can never be sure if your  
 12 experience is still relevant. Over time  
 13 [12:07] laws change, tactics change and equipment  
 14 changes. Professional police officers, even highly  
 15 experienced officers, need to refresh their training to  
 16 ensure they remain fit for purpose and contemporary in  
 17 their knowledge. In the UK context commanders of Public  
 18 Order operations must be both occupationally and  
 19 operationally competent. Occupational competence requires  
 20 the completion of a set of specific training modules,  
 21 continuing professional training and development, and  
 22 yearly reaccreditation. Operational competence requires  
 23 not only experience in the role, but confirmation by other  
 24 commanders that the officer's performance in the role was  
 25 and is in accordance with the national standards."

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1 Now Provincial Commissioner, do you agree that  
 2 there is a distinction between occupational competence of a  
 3 police officer, which is based on the training that they  
 4 have received, and their operational competence, which is  
 5 based on their experience? Do you accept that distinction?  
 6 GENERAL MBOMBO: I accept as it is  
 7 written, I accept that it is so.  
 8 MS LE ROUX: And you accept in light of  
 9 the analysis of the training records that the leadership of  
 10 this POP operation in Marikana was not occupationally  
 11 competent for the role, meaning they had not been properly  
 12 trained in Public Order Policing?  
 13 GENERAL MBOMBO: I am not sure who you're  
 14 referring to here.  
 15 MS LE ROUX: Provincial Commissioner, I'm  
 16 referring to General Annandale, yourself, General Mpembe,  
 17 Brigadier Calitz, General Naidoo, and Brigadier Fritz. As  
 18 we understand it, they are the commanders of the Marikana  
 19 POP operation on the 16th of August and we see from their  
 20 training records that, with the exception of General  
 21 Annandale, none of you had received POP training after 1994  
 22 and General Annandale had last been trained in 2000. So  
 23 with respect to Mr White's criticism that commanders must  
 24 be continuously occupationally competent, they must have  
 25 ongoing training, the commanders of Marikana POP operation

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1 did not have that occupational competence; they were not  
 2 properly trained. Do you accept that?  
 3 GENERAL MBOMBO: According to what he  
 4 says, yes, but all these people normally work in POP  
 5 operations. General Annandale, he is at head office,  
 6 working in the Public Order division of head office.  
 7 According to records he might not be trained, but in  
 8 practice he is always involved with such matters.  
 9 General Mpembe might not have had recent  
 10 training, as you say, but according to his job he is always  
 11 involved in such operations.  
 12 Brigadier Calitz, since I've known him from my  
 13 arrival in this province he is in charge of the Public  
 14 Order Police, working together with Public Order people in  
 15 his job.  
 16 I am not disputing that training should be  
 17 continuous, but I think if a person is continuously  
 18 involved in this job you get the necessary experience in  
 19 order to be competent in the job.  
 20 MS LE ROUX: But Provincial Commissioner,  
 21 this is precisely the Human Rights Commission's point, that  
 22 your senior commanders of the Marikana operation, while  
 23 they may be very experienced, have not been properly  
 24 trained and it's the SAPS' own document, own policy  
 25 document which says they should be continuously trained and

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1 as the Provincial Commissioner it would be your  
 2 responsibility for your province to make sure that they  
 3 were getting properly trained, and that hasn't happened.  
 4 GENERAL MBOMBO: Remembering,  
 5 Chairperson, that particularly when it comes to Public  
 6 Order Policing their training interventions are conducted  
 7 by head office. In agreeing with you I admit that it is my  
 8 responsibility that my people get the training, but it's  
 9 not for me to know when that training intervention is going  
 10 to be held and it's also not for me to know how many of the  
 11 members in my division would receive that training if it is  
 12 being conducted.  
 13 MS LE ROUX: Provincial Commissioner,  
 14 what system have you put in place to then monitor that the  
 15 SAPS policy document that requires ongoing training is  
 16 being done with respect to your area of responsibility?  
 17 GENERAL MBOMBO: As I say, Chairperson,  
 18 it is not my part, that of the training of members of the  
 19 Public Order. However, I know that at head office where it  
 20 is based that there are endeavours that are being made in  
 21 order to comply with the policy. But it's not for me,  
 22 Chairperson, to make the decision I want 50 of my members  
 23 to be trained there.  
 24 MS LE ROUX: But Provincial Commissioner,  
 25 I must take you back to where we started with this line of

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1 questioning, which was in your statement where you say  
 2 you're responsible for the implementation of HR programmes  
 3 and procedures and you confirm that that includes an  
 4 oversight role for training and discipline of members in  
 5 your province. So what have you done in your province, or  
 6 what systems have you put in place in your province to  
 7 ensure that your members are getting trained the way the  
 8 SAPS policy document require them to be trained?  
 9 GENERAL MBOMBO: The powers that I have,  
 10 Mr Chairperson, in connection with the Public Order is that  
 11 members of the POP once in a week should, to go for  
 12 refresher courses. To correct that, it's not a once-a-week  
 13 refresher course, Chairperson. It is in-service training.  
 14 I'm not quite certain here, but in a month they have to go  
 15 for a refresher course. That is the only thing in the  
 16 province that I have the right to do. When it comes to  
 17 formal training interventions, Chairperson, that is the  
 18 responsibility of the Public Order at national level.  
 19 MS LE ROUX: But Provincial Commissioner,  
 20 I go back to my question. What system do you have to  
 21 establish that your POP members in your province are going  
 22 for the training they should be going for? I understand  
 23 your answer to be it's the head office responsibility to  
 24 organise. My question is in your role as having oversight  
 25 over training of members in your province, what have you

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1 done to establish that they are being trained regularly as  
 2 they are supposed to be trained?  
 3 GENERAL MBOMBO: I don't know whether you  
 4 want me to explain that. In the province we do have  
 5 training division, or a section which has what I've already  
 6 explained.  
 7 MS LE ROUX: Does that training unit  
 8 undertake courses in Public Order Policing?  
 9 GENERAL MBOMBO: As I've already said, it  
 10 can only record this service training and refresher courses  
 11 because for us in the province we do not have qualified  
 12 people that can formally train Public Order Police.  
 13 MS LE ROUX: Provincial Commissioner,  
 14 I'll follow up with some other questions on your answer,  
 15 but I must just get an answer to my question, which what  
 16 system is there in your province to establish that ongoing  
 17 training is being provided to POP members? And I mean if  
 18 there is no system then that would be the answer, that  
 19 there is no specific system to monitor and ensure that POP  
 20 members are receiving ongoing training. So the question  
 21 is, what is the system to ensure ongoing POP training in  
 22 your province?  
 23 GENERAL MBOMBO: Systems that we have,  
 24 the systems that allows us to monitor the training the  
 25 police have received and to be able to see what kind of

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1 training they have not received which they still need to  
 2 have. We do have that system, but I must say again even if  
 3 I have that and I see that my members of my police need  
 4 training, it does not depend on me as to when they receive  
 5 their training, except those that I have explained the  
 6 courses.  
 7 CHAIRPERSON: Sorry, I don't quite  
 8 understand. Is there a computer program that you have  
 9 somewhere that keeps track of the various POP members and  
 10 the training that they have received, or is it just  
 11 recorded on paper somewhere in records that are kept in  
 12 your office? How does it work?  
 13 GENERAL MBOMBO: Chairperson, each and  
 14 every member of the police appears on computer, indicating  
 15 training and what that person has been trained.  
 16 CHAIRPERSON: Now let's take by way of  
 17 example, let's look at this schedule that's been prepared  
 18 for us, LLL18, that gives POP shooters training records.  
 19 Now let's take the first name there, Sergeant Baloyi, top  
 20 of the list, Sergeant Baloyi. He apparently hasn't done a  
 21 course in human rights at all, but he doesn't appear to  
 22 have done basic training either as a matter of fact. Well,  
 23 I don't know how he got in there if he hasn't got basic  
 24 training, unless this schedule is wrong. But anyway, let's  
 25 not concentrate on the details; let's take him as an

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1 example. Now do your records tell you, are you able to say  
 2 at any given time that what training Sergeant Baloyi has  
 3 received, what courses he received, and when last he  
 4 received them?  
 5 GENERAL MBOMBO: It is correct,  
 6 Chairperson, yes. That system, if the person has undergone  
 7 that training, that system is being updated correctly.  
 8 CHAIRPERSON: Now presumably if you  
 9 looked at your records you would have seen that Sergeant  
 10 Baloyi hasn't had a course in human rights. That's right,  
 11 isn't it? That appears from LLL18.  
 12 GENERAL MBOMBO: Mmmm.  
 13 CHAIRPERSON: Now would the course in  
 14 human rights have been provided provincially in the  
 15 province, or is it something that would have been provided  
 16 by some head office or some national training institution?  
 17 GENERAL MBOMBO: Pertaining to human  
 18 rights we conduct this in the province, Chairperson.  
 19 CHAIRPERSON: So we don't know why  
 20 Sergeant Baloyi didn't have a course in human rights.  
 21 Certainly we can't blame head office for that. Is that  
 22 correct?  
 23 GENERAL MBOMBO: It is so, Chairperson.  
 24 CHAIRPERSON: Alright, now what courses  
 25 are provided by head office, or nationally?

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1 GENERAL MBOMBO: Mostly the formal  
 2 interventions in the Public Order.  
 3 CHAIRPERSON: Now do you have a number of  
 4 places – I take it they have courses from time to time. Do  
 5 they allocate a number of places to your province in  
 6 respect of the courses that they are organising?  
 7 GENERAL MBOMBO: It is correct,  
 8 Chairperson. They make it a national course, but each and  
 9 every province receives a number of seats there.  
 10 CHAIRPERSON: And how many of these  
 11 courses are there every year?  
 12 GENERAL MBOMBO: I'm not certain. No,  
 13 I'm not sure, Chairperson.  
 14 CHAIRPERSON: One a month or one a year  
 15 or how frequently are they – roughly, I understand you  
 16 can't, you haven't got the exact facts at your fingertips.  
 17 I don't expect that.  
 18 GENERAL MBOMBO: Though I'm not quite  
 19 certain of the number, Chairperson, but I remember that  
 20 last year we sent our people to two different courses.  
 21 CHAIRPERSON: Alright, so let's take two  
 22 as a provisional number. How many persons did you send to  
 23 each course? How many positions on the courses were made  
 24 available to your province?  
 25 GENERAL MBOMBO: I don't remember, but I

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1 can get these figures for the Chair.  
 2 CHAIRPERSON: What I'm trying to  
 3 ascertain is were enough places being made available during  
 4 the course of each year to your province so that you could  
 5 ensure that your POP members were properly trained and  
 6 their training was being kept up to date?  
 7 GENERAL MBOMBO: During last year,  
 8 Chairperson, I can say that quite a number of our POP  
 9 members were trained in different courses, as I have  
 10 stated.  
 11 CHAIRPERSON: What percentage of them  
 12 would you say are – if I were to ask you, you may not be  
 13 able to give me the answer, but if I were to ask you what  
 14 percentage of your POP members do you think have been  
 15 trained recently at the national level in the national  
 16 courses, would you be able to give me an approximate  
 17 figure?  
 18 GENERAL MBOMBO: Chairperson, I have 348  
 19 members of the POP. If I remember well the figures of the  
 20 people that were sent to different interventions, though  
 21 I'm not quite certain, but there is over a hundred.  
 22 CHAIRPERSON: Now would you say that the  
 23 number of positions available to your province every year  
 24 in these courses is not adequate to train all your people  
 25 properly?

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1 [12:27] GENERAL MBOMBO: I wouldn't say certainly  
 2 so, Chairperson, particularly now, Chairperson, that the  
 3 training of Public Order is being prioritised.  
 4 CHAIRPERSON: If you say now, is this  
 5 post August 2012 or was that the case even before August  
 6 2012?  
 7 GENERAL MBOMBO: From the beginning of  
 8 last year, Chairperson.  
 9 CHAIRPERSON: Would it be fair to say  
 10 that since the events at Marikana, since the beginning of  
 11 last year the number of places available to your province  
 12 at these various training courses has risen substantially?  
 13 GENERAL MBOMBO: I'd agree with you, Sir.  
 14 I'd agree with you there, Chairperson.  
 15 CHAIRPERSON: I didn't hear the answer.  
 16 GENERAL MBOMBO: I agree with you there,  
 17 Chairperson.  
 18 CHAIRPERSON: You agree with that, thank  
 19 you. Ms Le Roux, I've tried to open up some of the – cut  
 20 some of the bush away for you so you can proceed with your  
 21 cross-examination. I don't know how successful I was, but  
 22 I tried.  
 23 MS LE ROUX: Thank you, Chair.  
 24 Provincial Commissioner, following up on the Chair's line  
 25 of questioning, I understand that the system you've

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1 described records when training is done. When you're  
 2 selecting which members to send to the national training  
 3 interventions for POP does your system tell you who's most  
 4 in need of training either because they've never been  
 5 trained, or because their training is out of date?  
 6 GENERAL MBOMBO: Can you please repeat  
 7 the question?  
 8 MS LE ROUX: As I understand your  
 9 evidence the system that you've got in your province  
 10 captures when someone is trained and then you're able to  
 11 access POP training provided at a national level by head  
 12 office and last year you sent approximately a hundred POP  
 13 members to that training. That's your evidence, correct?  
 14 GENERAL MBOMBO: That is so, yes.  
 15 MS LE ROUX: Okay, so my question is,  
 16 does your system enable you to identify who needs training  
 17 most urgently? Does it tell you for example who's never  
 18 been trained or whose POP training is most out of date  
 19 because it's the oldest? Does your system tell you that?  
 20 GENERAL MBOMBO: Every year we do some  
 21 planning about the interventions that are needed for our  
 22 members. We do that based on the needs of our workers.  
 23 Others would for instance say I want training in such and  
 24 such a course. Some would look as to the training needs of  
 25 their units; we would then compare those with the 96s of



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1 the members that are there, trying to identify gaps that  
 2 are there in each unit concerning the training. Those gaps  
 3 will then be put into what we call workplace skills plan.  
 4 That is what we then submit to the national office so that  
 5 the interventions done by the national office will be seen  
 6 and identified where we lack. We also assist them  
 7 according to the budgeting in terms of those interventions.  
 8 We then use that workplace skills plan to budget as a  
 9 province in order to make provision for the people that we  
 10 can train as a province and budget for them.  
 11 MS LE ROUX: Provincial Commissioner, I  
 12 understand your evidence to be that since Marikana  
 13 happened, so for 2013 at least there was more POP training  
 14 provided in your province. That's your evidence, correct?  
 15 GENERAL MBOMBO: That is so, Mr Chair.  
 16 MS LE ROUX: So do you accept that before  
 17 2013 there was insufficient POP training in your province?  
 18 GENERAL MBOMBO: I would not say I don't  
 19 agree with you, though I would not be in – I don't totally  
 20 agree, fully agree with you.  
 21 CHAIRPERSON: Let's just concentrate on  
 22 human rights. Human rights is quite an important course  
 23 for people involved in Public Order Policing. Is that  
 24 correct?  
 25 GENERAL MBOMBO: Correct, Chairperson.

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1 CHAIRPERSON: Now according to exhibit  
 2 LLL18 there are 55 people mentioned here, that's to say, I  
 3 take it these are the members of the POP who fired shots.  
 4 I'm not sure whether they're all in your province, but  
 5 let's not worry about that for the moment. There are 55 on  
 6 the list. Now on this basis –  
 7 MS LE ROUX: Chair, if I can for the  
 8 record just clarify, LLL18 is – you're correct it's  
 9 everyone who fired shots on the 16th, but it only includes  
 10 training records up to and including 16 August 2012.  
 11 CHAIRPERSON: Yes, yes. No, I –  
 12 MS LE ROUX: So 2013 unfortunately  
 13 aren't –  
 14 CHAIRPERSON: No, no, I understand that.  
 15 Now what we see from LLL18 is that 55 POP people mentioned  
 16 here, ranging from constables to warrant officers – oh no,  
 17 I see there's some lieutenants as well, at least one  
 18 lieutenant. Now in the period from 2007 to 2012 up to the  
 19 date of the shootings at Marikana on the 16th of August only  
 20 four of the 55 had attended a human rights course, and if  
 21 you look at the position prior to 2007 there's only one  
 22 person who attended a human rights course in the period  
 23 before 2007. Now it is rather an extraordinary omission,  
 24 isn't it? 55 people, four of them in the period from 2007  
 25 to the shootings at Marikana attended human rights course.

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1 Now what's the reason for that?  
 2 GENERAL MBOMBO: Chairperson, I wouldn't  
 3 be sure of the reasons.  
 4 CHAIRPERSON: It does look, does it not,  
 5 as if human rights was not given a very high priority when  
 6 it came to deciding what courses to be made available to  
 7 the POP people. Is that correct?  
 8 GENERAL MBOMBO: It looks as though that  
 9 was the position, Chairperson, but I wouldn't be sure of  
 10 what the problems were, Chairperson. Those would then be  
 11 known by the people at training.  
 12 CHAIRPERSON: Isn't some oversight  
 13 exercised by your office, or wasn't it exercised – we're  
 14 talking about the period ending in on August 25th, wasn't  
 15 some oversight being exercised by your office in seeing to  
 16 it that the various POP members received adequate training  
 17 in all important aspects of Public Order Policing,  
 18 including human rights?  
 19 GENERAL MBOMBO: I agree there,  
 20 Chairperson, with you. It could possible by so that we  
 21 also did not look at it thoroughly, but I'm not quite  
 22 certain as to what the problems encountered are.  
 23 CHAIRPERSON: But if you were keeping  
 24 oversight of this matter yourself you would have picked it  
 25 up over the period, wouldn't you? When did you arrive in

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1 the North West province, take over as Provincial  
 2 Commissioner?  
 3 GENERAL MBOMBO: August of 2010,  
 4 Chairperson.  
 5 CHAIRPERSON: So for two years from  
 6 August 2010 to August 2012 you were in charge and you  
 7 didn't pick up that – I don't know how many of these  
 8 courses that are referred to, the four courses referred to  
 9 in this list were before you arrived, but let's assume in  
 10 your favour they're all after you got there. Doesn't it  
 11 indicate that you, those who were assisting you in this  
 12 regard missed what appears to be a significant omission in  
 13 the training of the POP members under your command?  
 14 GENERAL MBOMBO: I wouldn't deny that,  
 15 Chairperson, but let me also say that the members of the  
 16 police that appear on this list, Chairperson, it's possible  
 17 that quite a big number of them, of these people do not  
 18 come from the province where I am.  
 19 COMMISSIONER HEMRAJ: General, can we  
 20 just clear something about basic training? As I understand  
 21 it, every member of the force would have to go for basic  
 22 training. It's pretty much an entrance requirement, isn't  
 23 it?  
 24 GENERAL MBOMBO: It is correct,  
 25 Chairperson, correct, Commissioner. I can also not say

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1 what happened on this issue.

2 MS LE ROUX: Provincial Commissioner, if

3 you could then stay with the POP shooters spreadsheet. It

4 also indicates that POP members are trained far more often

5 in shooting practice and firearms training than they are in

6 crowd management or human rights. So if we look at the

7 column headed "Shooting practice or firearms training," we

8 see that these members are trained in those 183 and

9 83 times respectively in the last five years. So what that

10 means is POP members are getting trained in shooting

11 practice and firearms training about four times as often as

12 they are in human rights and crowd management. Now of

13 course we accept that it's important that members are

14 properly trained in firearms handling and that they're

15 regularly tested in their competence at doing that, but why

16 is it prioritised to this degree over POP and human rights

17 training?

18 GENERAL MBOMBO: I wouldn't be very

19 certain to know what exactly the reason is for that, but I

20 can see as you're indicating it now.

21 MS LE ROUX: And when you engage with

22 your system that monitors training in your province or you

23 set out your workplace skills plan, do those prioritise

24 shooting and firearms handling over Public Order Policing

25 and human rights?

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1 GENERAL MBOMBO: If you'd just repeat

2 that question?

3 MS LE ROUX: With respect to the system

4 you've described that monitors training in your province,

5 and you've also described the workplace skills plan that

6 you put together, do those prioritise firearm training and

7 shooting practice over human rights and crowd management

8 training for POP members?

9 GENERAL MBOMBO: I'm not quite sure if

10 that is the position.

11 CHAIRPERSON: Ms Le Roux, it occurs to

12 me, I'm not sure that the point you're busy with now is a

13 good point. If you attended a human rights course, I know

14 there weren't many who had, but if you attended a human

15 rights course presumably the knowledge you acquired will be

16 with you for some time. It doesn't need refreshing every

17 three months, whereas I would imagine that in the area of

18 firearms training and shooting practice the members have to

19 regularly practice, they've got to go to shooting practice

20 regularly because these are skills that fall away, you

21 become less skilled in managing a firearm if you don't

22 practice regularly. So I would imagine there might well be

23 an important distinction between the frequency of shooting

24 practice compared with attending a course on human rights.

25 So I think that's probably – but anyway, let's hear what

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1 the witness says. What do you say about that, Provincial

2 Commissioner? Is that a good point or a bad point?

3 MS LE ROUX: Chair, I must just first

4 clarify; we would accept that obviously we want police

5 officers trained in firearms handling and have regular

6 shooting practice, of course, and it may well be true that

7 human rights training needs to happen less frequently, but

8 we would not accept that proposition with respect to crowd

9 management training, and indeed the policy documents that

10 we started with contemplate refresher courses, regular

11 crowd management courses. Those, you know, we don't know

12 exactly what that frequency should be. Mr White does

13 indicate that in his experience there's at least an annual

14 revisiting around crowd management techniques, so I think

15 we would say with respect to crowd management it certainly

16 can't be a once-off.

17 CHAIRPERSON: I understand that, but

18 let's accept a year is desirable, an annual course is

19 desirable for crowd management. You'll probably find that

20 as far as shooting practice is concerned you should do it

21 far more frequently than that, and if you do it once a

22 quarter versus once a year then you've got times more

23 courses, which is probably the way things should be done.

24 Anyway, I don't know whether the witness can help us.

25 Maybe it's a matter that Mr White will be able to help us

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1 on when he comes, but anyway, we must make sure the points

2 that are being made are realistic points.

3 COMMISSIONER HEMRAJ: General, the

4 shooting practice, I seem to recall that there's some

5 protocol that's set down for how often shooting practice

6 needs to take place.

7 GENERAL MBOMBO: That's correct, yes, but

8 I have just said I have just forgotten how often we have to

9 conduct shooting practice.

10 COMMISSIONER HEMRAJ: And where exactly

11 does the shooting practice take place in relation to the

12 police station or the unit where the member is stationed?

13 GENERAL MBOMBO: It's being done at their

14 units.

15 COMMISSIONER HEMRAJ: And the crowd

16 management courses, are those the ones that are run

17 nationally?

18 GENERAL MBOMBO: Correct, Chairperson.

19 COMMISSIONER HEMRAJ: So would it be

20 easier for members to have access to the shooting practice

21 than to the crowd management courses?

22 GENERAL MBOMBO: That is correct.

23 MS LE ROUX: Provincial Commissioner, I'd

24 like you to turn now to the spreadsheet that analyses the

25 training records of the TRT shooters on the 16th of August,

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1 that is LLL19, and there we see of the 56, there we –  
 2 CHAIRPERSON: Sorry, Ms Le Roux, we are  
 3 now concentrating on your question.  
 4 MS LE ROUX: Thank you, Chair.  
 5 Provincial Commissioner, in the analysis LLL19 that sets  
 6 out the TRT shooters' training records, there we see we  
 7 have 56 TRT members. Of those we have two completed  
 8 courses in human rights in the past five years, zero in the  
 9 period preceding that, and then 189 and 42 respectively  
 10 with respect to shooting practice and firearms training,  
 11 and 161 courses in what we've called the specialist TRT  
 12 category completed. Now my question with respect to TRT  
 13 training is that it's not exceptional that TRT members will  
 14 be called in to support POP, is it? It often happens?  
 15 GENERAL MBOMBO: It is so.  
 16 MS LE ROUX: So why are TRT members not  
 17 given crowd management or POP-related training?  
 18 GENERAL MBOMBO: Just repeat the question  
 19 again.  
 20 MS LE ROUX: Sure. We see from the  
 21 training records the TRT members have done barely any crowd  
 22 management training, yet you expect that TRT are often  
 23 called in to support POP in a Public Order Policing  
 24 operation. So my question is why aren't TRT members given  
 25 regular POP training, or in fact any POP training with

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1 respect to most of them? Because surely it would be  
 2 important that your TRT members understand crowd management  
 3 principles and POP principles?  
 4 MR SEMENYA SC: Chair, my recollection of  
 5 the evidence is that the TRT do not do crowd management  
 6 operations themselves. Even on the 16th the contemplation  
 7 was POP would do that element of the operation and the  
 8 others would come for different reasons completely.  
 9 CHAIRPERSON: Yes, yes, I think there is  
 10 evidence that on occasions, I think there was an incident  
 11 that Colonel Vermaak wrote a letter about that on occasions  
 12 in crowd management situations the TRT people were being  
 13 called in to help as well. So you're correct, the basic  
 14 idea is the POP people will do the crowd management.  
 15 [12:47] The TRT people are there as a backup or they do  
 16 sweeping and cleaning and all sorts of things, but  
 17 certainly as this Marikana itself illustrates, there are  
 18 occasions when the TRT people have to play a role and I  
 19 think the other instances, like the ones that Colonel  
 20 Vermaak referred, or one Colonel Vermaak referred to are  
 21 also instances where the TRT had to play a role. But of  
 22 course the real question is how frequently did that happen,  
 23 and that's something we don't know about.  
 24 MR SEMENYA SC: No Chair, I'm referring  
 25 to crowd management elements of the operation. You

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1 remember we had the evidence of Brigadier Calitz who said,  
 2 "Even when I was giving instructions, I was giving  
 3 instructions in relation to koppie 3 to POP members, never  
 4 gave crowd dispersal instructions to the other units."  
 5 That's the correct evidence as I know it.  
 6 MS LE ROUX: Chair, we'll make  
 7 submissions in due course. Obviously Provincial  
 8 Commissioner, the only point I want you to deal with is  
 9 given the TRT are often deployed in the same operation as  
 10 POP, and we see from the training records that most of them  
 11 don't even have one course in crowd management, in  
 12 understanding what the POP members would be doing, the  
 13 point is why wouldn't they be given even just one course in  
 14 POP so that when they are deployed together with POP  
 15 members they understand the crowd management principles  
 16 that are being used? Wouldn't it help the TRT members when  
 17 they are deployed together to know what the crowd  
 18 management principles are that the POP are busy using?  
 19 GENERAL MBOMBO: I think what you should  
 20 first understand, Chairperson, is if these people are  
 21 deployed, what are they really deployed to do. We do not  
 22 deploy the TRT for crowd management in the frontline. As  
 23 the Chairperson has said that in the one incident it did  
 24 happen, but that was not the purpose of their deployment.  
 25 MS LE ROUX: Provincial Commissioner, for

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1 the record, we don't have to go there now but in Mr White's  
 2 statement, page 122, section 8, he deals with the first aid  
 3 that was provided or not provided to the wounded on the 16th  
 4 and we're obviously dealing with respect to scene 1, and  
 5 these are obviously the TRT members that he's criticising  
 6 at that point. Could I ask you to look at the TRT shooters  
 7 training analysis, because there we've added in a column  
 8 that looks at when they received first aid training and  
 9 what we see is from the 56 members of the TRT only three  
 10 have received any first aid training. One of those was in  
 11 2000. There is one member who completed two first aid  
 12 courses during 2012, and then a third member who completed  
 13 a first aid course in 2008. Do you accept that it would be  
 14 necessary for TRT members to be trained in first aid, and  
 15 can you explain why they haven't been?  
 16 CHAIRPERSON: No, that's two questions.  
 17 Let her answer one at a time.  
 18 MS LE ROUX: Do you accept that it's  
 19 important for TRT members to be trained in first aid?  
 20 GENERAL MBOMBO: I think it should be so  
 21 if there is a chance, if there's chance for them to undergo  
 22 such training.  
 23 COMMISSIONER HEMRAJ: Well, are you  
 24 saying that it's necessary for them to undergo first aid  
 25 training to be able to do whatever it is they're required

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1 to do in the execution of their task? Is that what you're  
2 saying?

3 GENERAL MBOMBO: No, no, that's not what  
4 I'm saying, Commissioner. That is why I'm saying if there  
5 is a chance to do so.

6 MS LE ROUX: Provincial Commissioner, let  
7 me take you to Mr White's statement. That will be the  
8 fairest and easiest way to do this. So Mr White's final  
9 statement JJJ178, page 122 and paragraph 8.1.3, there Mr  
10 White explains why it's important that the equivalent of  
11 TRT members in the Marikana operation receive firearms  
12 training. He says, "Specialist firearms officers," which  
13 is the TRT here, "receive additional training in  
14 administering first aid for those with bullet wounds. This  
15 is done on the principle that if you provide an officer  
16 with a firearm, you increase the likelihood that gunshot  
17 injuries might arise, therefore to mitigate this the police  
18 should provide those officers with the basic first aid  
19 skills to assist any person that they have been forced to  
20 shoot with that firearm." He goes on to then say that,  
21 "Footage from the recent high-profile murder of a soldier  
22 in Woolwich, London, is instructive. Firearms officers are  
23 seen shooting both suspects, but within a matter of seconds  
24 the same officers provide urgent first aid attention to  
25 those suspects and by doing so may have saved both of their

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1 apparently providing immediate first aid to what I'm told  
2 is body C near scene 2. However," he says, "there's no  
3 evidence of such immediate first aid being provided at  
4 scene 1."

5 Now the reason I'm asking you the question is I'm  
6 looking ahead; one of the things we have to do in this  
7 Commission is make recommendations for the future and  
8 clearly we're going to be asked by the Human Rights  
9 Commission who presented us with Mr White's report, clearly  
10 they're going to ask us to recommend that officers who are  
11 provided with firearms, particularly people like the TRT,  
12 should be given first aid training so that they can do the  
13 kind of things that are described in this paragraph and  
14 what Lieutenant Colonel McIntosh very properly did at, near  
15 scene 2.

16 So when you answer my question, don't necessarily  
17 look backwards at what didn't happen because a question may  
18 arise about that, but you know, hindsight they say is  
19 20/20. We're busy now looking ahead. So looking ahead  
20 into the future, would you support a recommendation that  
21 TRT members, generally speaking officers equipped with  
22 firearms, particularly firearms of the nature we're dealing  
23 with here, should receive basic first aid training so they  
24 can act in the manner in which Colonel McIntosh acted at  
25 scene 2?

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1 lives." So the point of Mr White's criticism here is that  
2 the TRT members present at Marikana, precisely because they  
3 are specialist firearms officers, should have received  
4 first aid training. Do you have a comment on that  
5 criticism?

6 GENERAL MBOMBO: I say, Chairperson, if  
7 there is a chance of doing so, that could be done. There  
8 could be possibly some problems that our training possibly  
9 have, which I have no knowledge of as of now.

10 MS LE ROUX: Provincial Commissioner, I  
11 understand you may not be able to explain why only three  
12 TRT members received first aid training, but do you accept  
13 that they should receive that first aid training?

14 GENERAL MBOMBO: If it is possible for  
15 them to get the training I see no problem with that.

16 CHAIRPERSON: No, no, but possible is one  
17 thing. Desirable is another. You see, if you read what Mr  
18 White says here, he explains how if an officer has a  
19 firearm it's likely, as he puts it, that gunshot injuries  
20 may arise. He then goes on to say that to mitigate this  
21 the police should provide those officers with the basic  
22 first aid skills to assist any person that they'd been  
23 forced to shoot with that firearm, and then in an  
24 interesting footnote he says, 350, the following, "Footage  
25 taken by Captain Ryland shows Lieutenant Colonel McIntosh

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1 GENERAL MBOMBO: I think, Chairperson, if  
2 something like that has got to be designed, there would be  
3 no problem with it.

4 CHAIRPERSON: You would support it?

5 GENERAL MBOMBO: I would support it,  
6 Chairperson.

7 CHAIRPERSON: Alright. Well, that seems  
8 a suitable note, Ms Le Roux, for us to take the lunch  
9 adjournment.

10 MS LE ROUX: Thank you, Chair.

11 CHAIRPERSON: I would like people to try  
12 to be back here by quarter to 2. I know these things  
13 aren't always easy to arrange, but we've got to try to be  
14 punctual to save time and use the time we have profitably.  
15 We now take the lunch adjournment.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [14:00] CHAIRPERSON: The Commission resumes.  
18 I've been asked by the authorities here to say that if  
19 there's a further outage and the light goes out people are  
20 asked to please not rush out of the chamber but to go out  
21 slowly because it's feared that there might be problems if  
22 people don't do as I've asked them to do. If the lights go  
23 out don't all rush for the door, wait, go through slowly.  
24 I hope that won't happen but one cannot be too sure.  
25 Provincial Commissioner, you're still under oath. Ms Le

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1 Roux.

2 MS LE ROUX: Thank you, Chair.

3 Provincial Commissioner, I'd now like to explore the

4 consequences of failing particular courses and I want to

5 start with shooting practise. Now am I correct that

6 shooting practise faces two different skills. The first is

7 the ability to accurately hit a target and the second is

8 the ability to distinguish between threats, so to

9 distinguish when to shoot. Whether there's a lethal threat

10 or non-lethal threat it's an element of judgment. Am I

11 correct that those are the two skills that shooting

12 practise tests, accuracy of hitting a target and judgment

13 as to when to shoot?

14 GENERAL MBOMBO: Mr Chair, I'm not sure

15 about that. Yes I know that one of them – I know one

16 objective is to aim at the target, but I'm not sure about

17 all the objectives that you put.

18 MS LE ROUX: Other than shooting practise

19 are you aware of any other way in which the SAPS tests or

20 trains members on that second element, the judgment element

21 as to when to shoot or not to shoot?

22 GENERAL MBOMBO: Can you repeat the

23 question please?

24 MS LE ROUX: Sure. As I understand your

25 answer you accept that the SAPS shooting practise, that you

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1 know of, tests accuracy, tests the ability to hit the

2 target. You don't know if shooting practise tests the

3 judgment element. So I'm asking you whether there's some

4 other way other shooting practise that you know of that

5 SAPS test the judgment element of when to shoot.

6 GENERAL MBOMBO: What you've put before

7 the Commission could be the case, but as I said I'm not

8 sure. I do not have the full knowledge about the shooting

9 aspect.

10 MS LE ROUX: Thank you, Provincial

11 Commissioner, we will follow up with the facts to establish

12 whether shooting practise tests both accuracy and judgment.

13 But if we can assume for the purposes of my questioning

14 that it does test both, that shooting practise is both

15 accuracy and judgment. That would then mean that if a

16 member fails shooting practise that means that either the

17 member can't hit the target accurately and or it means that

18 they can't reliably judge and distinguish between different

19 types of threats and establish when to shoot, you'd accept

20 that.

21 MR SEMENYA SC: No, Chair, there's no

22 basis to make that assumption. In the first place I see

23 we're exploring this subject at length, but exhibit Q will

24 tell us what basic training entails.

25 MS LE ROUX: Chair, this isn't basic

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1 training, this is shooting practise that members continue

2 to go through.

3 COMMISSIONER HEMRAJ: Well let's ask the

4 General. Shooting practise, when you speak of shooting

5 practise is that what you envisage takes place at the

6 police station level?

7 GENERAL MBOMBO: That is so, Mr Chair.

8 COMMISSIONER HEMRAJ: And at that stage

9 what are they practising, the actual shooting of the

10 targets and accuracy?

11 GENERAL MBOMBO: That is why I'm saying

12 I'm not sure whether accuracy is part of this exercise, but

13 aiming at the target is one.

14 COMMISSIONER HEMRAJ: And this is

15 conducted on the shooting range, this practise, this

16 shooting practise?

17 GENERAL MBOMBO: That is correct.

18 MS LE ROUX: Thank you, Provincial

19 Commissioner, so let's just focus on the accuracy. So

20 shooting practise is being able to hit the target. If a

21 member fails shooting practise what are the consequences?

22 Does it mean they can't carry a firearm when they're on

23 duty?

24 GENERAL MBOMBO: There's a difference, Mr

25 Chair, I don't know whether this shooting practise is

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1 connected to the maintenance, shooting practise, the

2 shooting practise that is done at station or unit level. I

3 do not think that is counted in our system, registered in

4 our system. And the maintenance shooting practise, if you

5 are referring to that, if one fails that practise he or she

6 will then be given another opportunity to try again every

7 quarter. The person can redo the exercise over a period of

8 12 months.

9 MS LE ROUX: And, Provincial

10 Commissioner, I understand you're saying that if I fail the

11 maintenance shooting practise I can try again in the next

12 quarter, that's correct?

13 GENERAL MBOMBO: That is so, yes.

14 MS LE ROUX: And for the period of time

15 where I've failed the maintenance shooting practise and

16 before I try again in the next quarter can I carry a

17 firearm in that period?

18 GENERAL MBOMBO: You must remember, Mr

19 Chair, the maintenance shooting practise does not determine

20 whether you are fit or unfit to carry a firearm. When they

21 do that practise it is already known that they can carry a

22 firearm of a particular calibre or nature. That is why you

23 are given the chances so that you eventually pass that

24 exercise.

25 CHAIRPERSON: Does that mean you go on

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1 carrying your firearm during this year period when you've  
2 been given the chance to pass the test, is that correct?  
3 GENERAL MBOMBO: Yes, the firearms that  
4 you are proficient in, yes.  
5 COMMISSIONER HEMRAJ: What is the import  
6 of failing this test, that you're a bad shot?  
7 GENERAL MBOMBO: I did not get the  
8 question.  
9 COMMISSIONER HEMRAJ: Yes what is the  
10 import, what does it mean when you fail this test, that you  
11 cannot shoot accurately at a target?  
12 GENERAL MBOMBO: I think that is the  
13 case, Mr Chair, but I do not know what exactly they look at  
14 during those exercises.  
15 COMMISSIONER HEMRAJ: That does not  
16 include that you're a danger to anyone that you are  
17 carrying that firearm?  
18 GENERAL MBOMBO: I do not think so, Mr  
19 Chair, because the people who attend that exercise had  
20 already been tested, they are able to carry firearm, they  
21 know how to fire. They are just attending in order to  
22 keeping up practise of the shooting.  
23 CHAIRPERSON: Now you're talking about  
24 maintenance shooting practise. Now there's another course  
25 just called shooting practise. What does that involve,

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1 does that mean the ability to hit the target?  
2 GENERAL MBOMBO: I did not get the  
3 question, Chair.  
4 CHAIRPERSON: It appears that there's  
5 another course simply called shooting practise. There are  
6 some courses called maintenance shooting practise and there  
7 are courses simply called shooting practise. Now you've  
8 told us you don't know what exactly maintenance shooting  
9 practise involves. So we can't ask you any further  
10 questions about that, but in the case of a course called  
11 shooting practise what does that involve?  
12 GENERAL MBOMBO: That is the practise  
13 that is done at station or unit level, Mr Chair.  
14 CHAIRPERSON: Does that involve aiming at  
15 the target?  
16 GENERAL MBOMBO: That is part of it, Mr  
17 Chair, but as I said I am not sure. I am sure that it  
18 enables people to continue carrying the firearm.  
19 CHAIRPERSON: You see the reason that  
20 these questions are being asked to you is that when we look  
21 at LLL22 we see details of shooters who had failed most  
22 recent shooting practise or firearms training and the  
23 second person on the list is Constable Mabasa or the TRT  
24 who according to this schedule fired six bullets from an R5  
25 at scene 2. And we see that, again according to the

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1 schedule, I take it if it was incorrect our attention would  
2 have been drawn to it, on the 1st of February 2011 and again  
3 on the 24th of August 2012 Constable Mabasa? failed  
4 shooting practise. Now what does that mean? And I see, if  
5 one looks at the list, at the actual founding document or  
6 underlying document upon which this entry was – on which  
7 the schedule was based, I see the shooting practise that he  
8 failed appears to have been a course called, it looks like  
9 shooting practise medium risk group. Now do you know what  
10 that involved?  
11 GENERAL MBOMBO: Where are you reading,  
12 Mr Chair?  
13 CHAIRPERSON: Well I'm referring you  
14 firstly to LLL22 and then we haven't actually numbered the  
15 documents, they're all part of the sequence from LLL25 1 to  
16 22. They arrange alphabetically. One of the documents  
17 relates to Constable Mabasa of the TRT and it is in respect  
18 of him that we have these entries here on LLL22 and  
19 according to the schedule LLL22 he failed shooting practise  
20 twice as I've said, once in February and once in August  
21 2011. Now if one looks at the founding document it looks  
22 as if they're talking about a course called shooting  
23 practise medium risk group. Am I correct, Ms Le Roux?  
24 MS LE ROUX: That's correct, Chair.  
25 CHAIRPERSON: Now do you know what

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1 shooting practise medium risk group means or involves?  
2 GENERAL MBOMBO: No I do not know it, Mr  
3 Chair, I do not even have the document here.  
4 CHAIRPERSON: The course of 1st of  
5 February 2011 it appears, according to the list, as being  
6 maintenance shooting practise risk group high. You don't  
7 know what that means. And the other one, the one in August  
8 2011 that's maintenance shooting practise medium risk  
9 group, that's the way it's described. You don't know what  
10 those involve.  
11 GENERAL MBOMBO: I do not have the  
12 document before me, Mr Chair, I also do not have any  
13 knowledge about those details mentioned in that document.  
14 COMMISSIONER HEMRAJ: Mr Semanya, aren't  
15 these protocols all set out in writing as to what each of  
16 these courses are?  
17 MR SEMENYA SC: They are and I was going  
18 to propose that perhaps we give you a witness on the  
19 various meanings of this failure to –  
20 CHAIRPERSON: I take it an affidavit  
21 should be enough, we don't [inaudible]. An affidavit with  
22 the protocols attached. You see but what concerns me is  
23 that here you have this Constable Mabasa who's not  
24 completed maintenance shooting practise in November 2009 or  
25 in December and then has failed, according to the schedule

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1 of shooting practise in February 2011 and August 2011 and  
 2 failed in service firearms training in September 2011, yet  
 3 he is sent off to scene 2. He is a member of TRT and he's  
 4 sent off to scene 2, armed with an R5 rifle and he fires it  
 5 six times. Now unless we know the significance of his  
 6 consistent failures of these various courses it does tend  
 7 to cause alarm bells to ring. Now can you help us on that?  
 8 MR SEMENYA SC: That's the type of  
 9 evidence I propose to make available to the Commission.  
 10 For instance maintenance shooting entails the proficiency  
 11 of the use of three types of firearms. You fail one  
 12 because you have failed the course but all this evidence  
 13 I'll put on affidavit for the benefit of the –  
 14 CHAIRPERSON: Ms Le Roux, it does sound  
 15 from what we've heard as if the present witness isn't going  
 16 to be able to help us, but it may be that in the light of  
 17 the extra information which Mr Semenya proposes to put  
 18 before us that we'll be able to deal constructively with  
 19 this point. Would you agree with that?  
 20 MS LE ROUX: Yes, Chair, and we'll  
 21 certainly engage with the police legal team about getting  
 22 that explanation of what is entailed in the different  
 23 courses. The next question, I just have one more question  
 24 on this which is do you have any system or process whereby  
 25 you receive the results of these shooting practise

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1 exercises? So do you get told when a member has failed a  
 2 shooting practise and do you – that's the first question.  
 3 Do you get told that a member has failed the shooting  
 4 practise?  
 5 GENERAL MBOMBO: We get reports of the  
 6 TRT courses members. We were supposed to be getting  
 7 reports for the Public Order members but we don't. There  
 8 are certain problems which are being attended to. And all  
 9 the other police officials who attend training  
 10 interventions in the province I get reports for them.  
 11 MS LE ROUX: And, Provincial  
 12 Commissioner, when your office receives that information to  
 13 the extent you do, you receive information saying these  
 14 members have failed their most recent shooting practise or  
 15 maintenance shooting practise, does that information affect  
 16 how they are deployed in any way?  
 17 GENERAL MBOMBO: If the information has  
 18 got a problem with the way in which they are deployed, yes  
 19 it might affect it.  
 20 MS LE ROUX: Let me ask the question a  
 21 different way. If a member fails a maintenance shooting  
 22 practise does it have any consequences for them carrying a  
 23 firearm when they are deployed on duty?  
 24 GENERAL MBOMBO: Let me explain it by way  
 25 of an example.

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1 [14:20] Maintenance shooting is done by someone who is  
 2 already proficient in carrying and using of a firearm. As  
 3 counsel explained, it is done by means of three firearms,  
 4 an R5, shotgun, and a 9mm. Initially when you were tested  
 5 in those three different firearms and you fail one, you  
 6 were regarded as having failed the course, the shooting  
 7 course. That was then changed to say if you pass one or  
 8 two of those tests or different firearms, then you are  
 9 regarded as having passed that particular calibre. You are  
 10 then given a chance, a remedial chance for the firearms  
 11 that you have not passed. So I can say that there is no  
 12 way that we will deploy an officer with a firearm that he  
 13 is not able to use as he's supposed to be, or a firearm  
 14 that he is not permitted to use.  
 15 MS LE ROUX: Provincial Commissioner, I  
 16 understand you saying that you are tested as being  
 17 proficient and then this maintenance shooting practise  
 18 tests you on the three weapons. Does there ever come a  
 19 point though where repeatedly failing maintenance shooting  
 20 practise means you're no longer proficient, or once you've  
 21 been declared proficient once to carry a firearm, is that  
 22 good forever? Is there any consequence to repeatedly  
 23 failing shooting practise?  
 24 GENERAL MBOMBO: At the moment we don't  
 25 have anything in place as to what should be done with such

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1 a person, except when there are signs that he is not able  
 2 to use that particular firearm. The police officials are  
 3 looked at every quarter to ensure that they are still fit  
 4 to carry that firearm, even if that officer had failed the  
 5 maintenance shooting.  
 6 MS LE ROUX: Provincial Commissioner, one  
 7 more question on this and then I'm moving on to the next  
 8 point. From LLL22 we see 20 members who failed their most  
 9 recent shooting practise that were in possession of and  
 10 fired firearms at Marikana and 18 of them fired live  
 11 ammunition despite some of them having failed their  
 12 firearms training. Now –  
 13 MR SEMENYA SC: Chair, wouldn't this be  
 14 better spent with a witness who's able to give us  
 15 meaningful answers?  
 16 CHAIRPERSON: Yes, that's right, and –  
 17 well, you said better spent with a witness. I mean I would  
 18 hope we'd simply get an affidavit giving the information  
 19 and attaching the protocols and we will then see how  
 20 serious the deficiency in the person's abilities is, then  
 21 form a judgment as to whether the person should have been  
 22 allowed out into the field, as it were, with a firearm.  
 23 Anyway, but the point taken is we don't know, and as the  
 24 witness has explained she can't tell us what the  
 25 consequence of failing these tests is and even what the

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1 degree of deficiency in a person's ability is. So the  
2 point Mr Semenya makes, as you've heard, he's not  
3 suggesting that the point should be dismissed out of hand,  
4 but we should only revert to it once we have information as  
5 to what exactly these things mean.

6 MS LE ROUX: I understand the point,  
7 Chair, but the difficulty is my learned friend objected  
8 before the question came. So all I'd said is that we have  
9 20 members who failed their most recent shooting practice  
10 with firearms at Marikana, 18 of them shoot live  
11 ammunition. The question to the Provincial Commissioner is  
12 whether she has any comment on whether the fact that they  
13 had failed has any relevance to what they did at Marikana,  
14 in your opinion. Is there anything relevant to how they  
15 conducted themselves on the 16th that we should draw from  
16 the fact that they had failed shooting practice?

17 COMMISSIONER HEMRAJ: But Ms Le Roux,  
18 aren't we going back to the same question if we don't quite  
19 know what it is that they were tested for and in what  
20 aspect they failed? Isn't that a basic problem with this  
21 approach?

22 CHAIRPERSON: Well, she was just asking  
23 the Provincial Commissioner – if the Provincial  
24 Commissioner says she doesn't know, well then that's where  
25 it ends, but the Provincial Commissioner may say something

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1 else. Provincial Commissioner, what do you say about –  
2 you've heard the question; are you able to comment on the  
3 point or is it a matter which you have to leave unanswered  
4 because you don't know what these things mean?

5 GENERAL MBOMBO: Mr Chair, I think I  
6 tried to explain what I know and I also said I do not have  
7 the knowledge about how the training is done, the details  
8 of the training.

9 MS LE ROUX: Provincial Commissioner, let  
10 me move on then. If you could turn to LLL23, this is a  
11 summary with respect to Warrant Officer Motlabane. Now in  
12 line with the point that has been taken, I understand your  
13 answer may be that you simply don't know, but here we have  
14 Warrant Officer Motlabane who fails his most recent POP  
15 course, but on the 16th of August he's on duty in a POP  
16 operation with a shotgun and he shoots rubber at scene 1.  
17 Do you have any knowledge or comment on that that can  
18 assist the Commission?

19 GENERAL MBOMBO: This information I see  
20 here surprises me because according to me what I know most  
21 of the Public Order officers were trained in crowd  
22 management and they passed it. Since I do not know what  
23 happened in this particular individual's case I would ask  
24 for a chance to investigate that.

25 MR SEMENYA SC: Chair, do we know whether

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1 that failure at section level relates to POP management or  
2 to the section leader of a particular POP unit? Because  
3 the conclusions we are likely to draw from this evidence  
4 may be unhelpful unless we understand what it entails –

5 MS LE ROUX: Chair, all I –

6 CHAIRPERSON: The witness has said that  
7 she wants to find out what it involves and she will then be  
8 able to express an opinion on that. Isn't that right?  
9 Prima facie it doesn't look good, but it may be that the  
10 important words are "on section level" and it may be the  
11 inability to pass, or the failure to pass the test at  
12 section level may not disable someone, or disqualify  
13 someone from acting as an ordinary foot soldier, as it  
14 were, carrying a shotgun and firing rubber balls, but that  
15 person might not be able to exercise any kind of command  
16 over a section, but we don't know. It's something we're  
17 going to find out.

18 MS LE ROUX: Yes, Chair, and obviously we  
19 only have the evidence that SAPS has disclosed to us, but  
20 we'll follow up to establish what that means. But  
21 Provincial Commissioner, one more question then on this; do  
22 you know of any consequences for failing a POP course?  
23 Does it affect your – can that member still be deployed in  
24 a POP operation if they failed a POP course? Do you know?

25 GENERAL MBOMBO: What I know is that when

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1 police officers have failed a course that is core in their  
2 duties, an important course, they are given what is called  
3 a remedial opportunity and if they fail all those  
4 opportunities they will then be stationed in functions that  
5 are alternative places that are not the core functions of  
6 their training.

7 MS LE ROUX: Thank you, Provincial  
8 Commissioner. If we can then move on to LLL24, which  
9 relates to –

10 COMMISSIONER HEMRAJ: Ms Le Roux, before  
11 you do that, this warrant officer failed the course on 22  
12 June 2012, then in your analysis on page 2 you've got him  
13 attending two crowd management courses between the period  
14 2007 and 2012, on the second page of your analysis.

15 MS LE ROUX: Commissioner, the first is  
16 on the 30th of January 2009 –

17 COMMISSIONER HEMRAJ: Where does that  
18 appear?

19 MS LE ROUX: In his training record,  
20 which falls in the LLL25-series.

21 CHAIRPERSON: If one looks at that  
22 document, I don't know what it – we haven't done the  
23 exercise yet, we should have done it while the power was  
24 off to see where it fits in, in the LLL25-series, but he's  
25 passed quite a lot of courses. He's passed shooting



<p style="text-align: right;">Page 22704</p> <p>1 practice and the use of firearm and so on. It's the crowd  2 – POP course described as "Crowd management on section  3 level," and then on the next page it goes on, "Institution  4 divisional training, in-service training PSS," whatever  5 that stands for. There it says, "Completed, failed." Then  6 he's passed, he's completed other tests, shooting practice  7 for example he's completed and so forth, so it may be that  8 it isn't a problem in giving him a shotgun and letting him  9 shoot rubber balls, but he shot, passed the shooting  10 practice. It would depend therefore what exactly the  11 course that he failed involved, but again that's something  12 we'd have to find out in due course, isn't it?</p> <p>13 MS LE ROUX: Yes, and of course, Chair,  14 all we were highlighting is his failure of the most recent  15 crowd management course that he took when he was on POP,  16 deployed –</p> <p>17 CHAIRPERSON: Yes, yes, I understand  18 that, but I mean you know, if he was a mere foot soldier,  19 as it were, in a crowd management operation under the  20 command of someone who'd passed and all he had to do really  21 was fire rubber balls from a shotgun, then maybe there  22 isn't a problem, but if he had to exercise some kind of  23 judgment, as it were, in the management of a crowd then the  24 point you make may have some substance. But we don't know  25 the answer to that yet, do we?</p>	<p style="text-align: right;">Page 22706</p> <p>1 did something on the 26th of April 2012 which endangered the  2 lives of others, by disregarding safety rules and it looks  3 to me as if he was then before a disciplinary tribunal  4 which found him guilty and declared him unfit to handle a  5 firearm for five years from the 8th of October 2017 – sorry,  6 the 8th of October 2012 to the 8th of October 2017. So the  7 point appears to be that he was the subject of a  8 disciplinary inquiry which had this result, but in respect  9 of something that had happened on the 26th of April 2012,  10 and the question would be was it appropriate to send  11 someone who was facing a charge of that kind to take part  12 in the activities at, police operations at Marikana where  13 he was called upon to fire an R5 and did so five times at  14 scene 1.</p> <p>15 MS LE ROUX: Yes, Chair –</p> <p>16 CHAIRPERSON: Sorry to interrupt you, but  17 I think that's right. He's a TRT member. I don't know  18 where – do you know where he came from?</p> <p>19 GENERAL MBOMBO: Soweto.</p> <p>20 MS LE ROUX: Soweto.</p> <p>21 CHAIRPERSON: Yes, I'm sorry, I'm wrong.  22 I'm shown the document which relates to him and the offence  23 is recorded – I don't quite understand this – oh, the  24 offence is recorded as having happened on the 23rd of April  25 2012. He was fined on the 26th, so he'd already been</p>
<p style="text-align: right;">Page 22705</p> <p>1 MS LE ROUX: Correct, Chair. We'll need  2 to get clarity on what section level means. So Provincial  3 Commissioner, if we can turn then to LLL24, which are  4 documents that relate to Constable Pakati. Now he's a  5 member of TRT Soweto and perhaps it's easiest to start not  6 with the CALS summary but with the actual disciplinary  7 record that we were provided by the SAPS. That sets out an  8 offence, it's recorded as 23 April 2012, offence SAPS Reg  9 20(e). Now if we go to regulation 20, which we've now  10 marked as LLL17, if we can show that, regulation 20(e)  11 states that – if we can get there, regulation 20(e) states  12 that, "An employee will be guilty of misconduct if he or  13 she among other things," and then (e) is, "endangers the  14 lives of others by disregarding safety rules or  15 regulations." So on the 26th of April 2012 Constable Pakati  16 seems to have been found guilty of the offence of  17 endangering the lives of others by disregarding safety  18 rules or regulations –</p> <p>19 CHAIRPERSON: Ms Le Roux, I'm sorry to  20 interrupt you. I think you may be misreading it because  21 it's the offence dated 26 April 2012. If you look at the  22 sentence imposed it involved the declaration that he was  23 unfit to handle a firearm for five years until 8/10/2017.  24 So it looks as if – again perhaps the witness can tell us  25 or we can find out from SAPS, but it looks to me as if he</p>	<p style="text-align: right;">Page 22707</p> <p>1 convicted in April 2012 and then what stood over was the  2 inquiry as to his fitness to handle a firearm and that  3 appears to have been dealt with on the 8th of October 2012,  4 but the fact is a man who'd been really convicted of this  5 offence – I assume it's a man – and fined for it, was still  6 entrusted with an R5 while this inquiry as to his fitness  7 to handle a firearm was still pending, and put into the  8 field, as it were, at Marikana in August 2012. That's your  9 point, is it? No, he hadn't yet been declared unfit, but  10 he'd been convicted of the offence and –</p> <p>11 MS LE ROUX: And already fined.</p> <p>12 CHAIRPERSON: And fined, and the inquiry  13 as to his fitness was still pending, it would seem.</p> <p>14 MS LE ROUX: Well, I wanted to establish  15 with the Provincial Commissioner if that is the way in  16 which we should read this disciplinary record. Do you – I  17 mean you've obviously seen these far more frequently than I  18 have. Is that what the different dates mean, that he  19 commits the offence 23 April 2012, a verdict is imposed 26  20 April 2012, and then unfit to handle a firearm is imposed  21 on the 8th of October 2012. Is that what the record – is  22 that how to read that record?</p> <p>23 MR SEMENYA SC: Chair, may we again give  24 this information? We're talking about a constable in  25 Soweto. The witness is in North West. We can give</p>

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1 accurate information relating to this rather than solicit  
2 an answer from the Provincial Commissioner.

3 MS LE ROUX: Chair, I'd welcome accurate  
4 information about this particular member, but to the extent  
5 that this is the way SAPS records disciplinary incidents in  
6 a member's employment history, if the Provincial  
7 Commissioner could assist us to explain how to read this  
8 record, I would be grateful to her.

9 [14:40] CHAIRPERSON: Yes, I'm sorry, Ms Le Roux,  
10 please proceed. My colleague is drawing something to my  
11 attention.

12 MS LE ROUX: Thanks, Chair. Provincial  
13 Commissioner, can you assist the Commission in  
14 understanding Constable Pakati's disciplinary record? Are  
15 we reading it correctly that the offence is committed on 23  
16 April, there's a verdict imposed three days later and then  
17 later in October is when his fitness to carry a firearm is,  
18 that he's declared unfit to carry a firearm? Is that how  
19 we should read that statement? Can you help us?

20 GENERAL MBOMBO: Mr Chair, I think  
21 Counsel Semenya was correct, was telling the truth that we  
22 would, the person who could be able to give us a correct  
23 answer is someone from Gauteng.

24 MS LE ROUX: Provincial Commissioner,  
25 sorry to interrupt you, but I understand that may be true

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1 with respect to this particular member, but is this a  
2 format of a disciplinary record that you are familiar with?  
3 Have you seen a SAPS disciplinary record that looks like  
4 this and can you help us in understanding the different  
5 dates that are entered?

6 GENERAL MBOMBO: According to me I've  
7 never seen such a situation. A person commits an offence  
8 on the 23rd, sentenced on the 26th, it looks like the time  
9 is too short, taking into account the investigations that  
10 should be done.

11 COMMISSIONER HEMRAJ: Madam, do you know  
12 whether the inquiry as to being able to carry a firearm is  
13 a separate inquiry, like in the criminal courts it's a  
14 separate inquiry from the actual incident of guilt. Do you  
15 know that from disciplinary proceedings?

16 GENERAL MBOMBO: That is so, Mr Chair.

17 MS LE ROUX: Provincial Commissioner,  
18 does it usually take six months for that fitness exercise  
19 to be completed?

20 GENERAL MBOMBO: It is not normally like  
21 that.

22 MS LE ROUX: What is the normal situation  
23 to investigate and establish whether a member is fit to  
24 carry a firearm?

25 GENERAL MBOMBO: If someone has been

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1 convicted in connection with that firearm or an act  
2 concerning that firearm, it would normally take us a month  
3 or maybe at the longest two months to finalise the fitness  
4 process. Maybe they might have their own reasons which are  
5 unknown to me.

6 MS LE ROUX: And in that period where  
7 you're evaluating their fitness to carry a firearm, are  
8 they nevertheless permitted to carry a firearm?

9 GENERAL MBOMBO: According to the law  
10 we're supposed to suspend that person in using a firearm if  
11 they have been convicted.

12 MS LE ROUX: So if Constable Pakati's  
13 disciplinary record reflects that in April 2012 he was  
14 found guilty of the offence of endangering the lives of  
15 others by disregarding safety rules or regulations, and he  
16 was then in a period where his fitness to carry a firearm  
17 was being assessed, he should have been suspended?

18 GENERAL MBOMBO: Not being suspended from  
19 duty, but the use of firearm is suspended. He cannot use a  
20 firearm.

21 MS LE ROUX: And so your understanding of  
22 how that suspension would work, he certainly wouldn't be  
23 deployed with an R5 rifle?

24 GENERAL MBOMBO: I think so, Mr Chair.

25 MS LE ROUX: Thank you, Provincial

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1 Commissioner. Provincial Commissioner, one more question  
2 on Constable Pakati; assuming he was in the phase of having  
3 his fitness evaluated and that he should have been  
4 suspended from using a firearm, yet we know that he was in  
5 Marikana with an R5 rifle and he fired five rounds, who  
6 would be responsible for him being deployed with a firearm  
7 on the 16th of August? Who would have been able to make  
8 that deployment decision?

9 GENERAL MBOMBO: When we get members we  
10 get them when they come with their commanders, if they come  
11 and assist in an operation. It would then be that  
12 commander that is commanding them who will be able to know  
13 all those details about all the members that are with him.

14 MS LE ROUX: Provincial Commissioner, I'm  
15 sure you'll be pleased to know I'm on to my final topic of  
16 cross-examination, and this –

17 GENERAL MBOMBO: Chairperson, can I  
18 correct something before counsel moves to the next topic?  
19 When we were talking about the training of the POP I was  
20 asked how frequent this training is done, especially the  
21 refresher course I was talking about. I then said I was  
22 not sure, it could be a month or maybe a quarter, but I was  
23 not sure, and I further said we do it in our province. I  
24 discovered that even the refresher course is done on our  
25 behalf by the trainers from national office. What we do is

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1 just provide the figures, or numbers of members who we need  
2 trained in the refresher course.

3 I further said, Mr Chair, last year we had better  
4 figures of members who were sent for the training. I said  
5 I was not sure about the exact number, but I said around  
6 hundred. I then verified that information and it is 130  
7 people who were trained, but again they were trained in  
8 refresher course, because I'm told that the formal crowd  
9 management course, as far as that is concerned they are  
10 still finalising the enhancement of the curriculum. There  
11 are plans to train a significant number of police officers  
12 as soon as that curriculum is finalised. I wish to  
13 apologise to the Commission for misleading it first, the  
14 first time.

15 MS LE ROUX: Provincial Commissioner, let  
16 me record that we obviously appreciate that you've  
17 clarified the position and been able to place the  
18 additional information before the Commission, but I must  
19 ask you who you consulted with. Where did you get this  
20 information during the course of your cross-examination  
21 today that you're able to now provide it to the Commission?

22 GENERAL MBOMBO: I got that information  
23 from the documents that I have, but what I really wanted  
24 from Brigadier Pretorius was the numbers, the figures that  
25 I was asked about.

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1 MS LE ROUX: So you discussed these  
2 questions with Brigadier Pretorius. Did you do that over  
3 the lunch adjournment?

4 GENERAL MBOMBO: I asked them for the  
5 numbers of the people who were trained in the Public Order  
6 only.

7 MS LE ROUX: Did you discuss anything  
8 else with Brigadier Pretorius about your cross-examination?

9 GENERAL MBOMBO: No, I did not discuss  
10 anything else.

11 MS LE ROUX: Right, so then let's move on  
12 to my final topic, which your statement deals with – so  
13 LLL1, page 17, paragraphs 50 to 52, these are the  
14 allegations relating to Warrant Officer Myburgh. Do you  
15 have it, Provincial Commissioner? Page 17, paragraph 50 to  
16 52 of your statement.

17 GENERAL MBOMBO: Paragraph?

18 MS LE ROUX: Commencing at paragraph 50,  
19 top of the page, page 17.

20 GENERAL MBOMBO: I see it, Mr Chair.

21 MS LE ROUX: Now, Provincial  
22 Commissioner, when you had the meeting with Warrant Officer  
23 Myburgh on the 1st of October 2012 were you aware at that  
24 time that the account that he gave you was broadly  
25 consistent with the allegations made by some of the

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1 strikers who were arrested at scene 2? Did you know that  
2 at that time?

3 GENERAL MBOMBO: No, I did not know at  
4 that time, Mr Chair.

5 MS LE ROUX: And were you aware that some  
6 of the strikers who were arrested had alleged that SAPS  
7 members had shot some of the strikers dead while they were  
8 surrendering? Were you aware of that?

9 GENERAL MBOMBO: At that time no, I did  
10 not.

11 MS LE ROUX: Now, Provincial  
12 Commissioner, you know that those allegations were widely  
13 reported in the media at the time. Did you not become  
14 aware of them through the media at least?

15 GENERAL MBOMBO: I'm not sure if I met,  
16 or became aware of that even in the media.

17 MS LE ROUX: But are you aware as you sit  
18 here today that allegations have been made that SAPS  
19 members shot strikers while they'd surrendered and they  
20 were being arrested? Are you aware of those allegations as  
21 you sit here today?

22 GENERAL MBOMBO: I hear about those now.

23 MS LE ROUX: But only in the Commission  
24 process, correct?

25 GENERAL MBOMBO: That is correct, yes.

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1 MS LE ROUX: Now we understand from your  
2 statement and from your earlier evidence that with respect  
3 to Warrant Officer Myburgh you referred the matter to IPID  
4 and you hoped that they would take a statement from him,  
5 but were you interested to establish whether anyone else in  
6 the SAPS could corroborate what Warrant Officer Myburgh had  
7 said?

8 GENERAL MBOMBO: I did not say IPID  
9 should take a statement. I'm the one who sent someone to  
10 take the statement.

11 MS LE ROUX: Right, thank you for that  
12 clarification. So you direct him to IPID to take the  
13 statement. Did you make any enquiries from anyone else  
14 within the SAPS to corroborate what Warrant Officer Myburgh  
15 had told you?

16 GENERAL MBOMBO: When he told me he came  
17 to me with General Naidoo, or was brought by General Naidoo  
18 and I was with the National Commissioner at that time.

19 MS LE ROUX: Right, I understand that,  
20 but once he'd made his report to you and you told him to  
21 make a statement to IPID, did you do anything else to  
22 enquire of any other SAPS members whether they could  
23 corroborate what Warrant Officer Myburgh reported to you?

24 GENERAL MBOMBO: I personally did not do  
25 that. I regarded that as a duty of IPID to investigate

<p style="text-align: right;">Page 22716</p> <p>1 what he was saying.</p> <p>2 MS LE ROUX: But Provincial Commissioner,</p> <p>3 why didn't you make further enquiries? Because I</p> <p>4 understand you would expect IPID to do its investigation,</p> <p>5 but by then we knew there was going to be a commission of</p> <p>6 inquiry and we'd covered this morning, more than 250</p> <p>7 members of the police that were at Marikana still haven't</p> <p>8 given any sort of statement. So –</p> <p>9 MR SEMENYA SC: Chair –</p> <p>10 MS LE ROUX: Why didn't you pursue</p> <p>11 whether anyone could corroborate what Warrant Officer</p> <p>12 Myburgh had told you?</p> <p>13 MR SEMENYA SC: Chair, we dealt with this</p> <p>14 subject at length and you even told Mr Mpofo that IPID is</p> <p>15 an independent institution, the police are not supposed to</p> <p>16 interfere in that type of investigation. We're going back</p> <p>17 to the same subject.</p> <p>18 MS LE ROUX: Chair, I'm not enquiring as</p> <p>19 to whether the Provincial Commissioner interfered with IPID</p> <p>20 or pursued anything through the IPID process. I'm asking</p> <p>21 whether she made any other enquiries, knowing there would</p> <p>22 be a commission of inquiry, to corroborate what Warrant</p> <p>23 Officer Myburgh had told her.</p> <p>24 CHAIRPERSON: I think, Mr Semenya, it</p> <p>25 sounds as if the question can be asked, provided it's</p>	<p style="text-align: right;">Page 22718</p> <p>1 GENERAL MBOMBO: Mr Chair, when a police</p> <p>2 officer has done something or reporting an act that</p> <p>3 involved the police, especially if one carefully looks at</p> <p>4 Myburgh's statement, we do not go into that matter again.</p> <p>5 We hand it over to IPID.</p> <p>6 MS LE ROUX: And Provincial Commissioner,</p> <p>7 where you knew there would be a commission of inquiry and</p> <p>8 what Warrant Officer Myburgh had told you would clearly be</p> <p>9 important to the Commission's work, did you make any</p> <p>10 efforts internally to see if anyone could corroborate what</p> <p>11 Warrant Officer Myburgh had told you for the Commission?</p> <p>12 [15:00] GENERAL MBOMBO: I did not do that</p> <p>13 because I knew the Commission had discovered Myburgh's</p> <p>14 statement.</p> <p>15 MS LE ROUX: Let me move on. Provincial</p> <p>16 Commissioner, at the end of paragraph 51 in your statement</p> <p>17 Myburgh told you that in September he'd referred the matter</p> <p>18 to "a white man working at the Air Wing." Do you know who</p> <p>19 that white man working at the Air Wing was?</p> <p>20 GENERAL MBOMBO: At the moment I think he</p> <p>21 had told Colonel Vermaak about it because we asked him if</p> <p>22 he can point out this white man.</p> <p>23 MS LE ROUX: You asked him when you met</p> <p>24 with him on the 1st of October if he could point out the</p> <p>25 white man?</p>
<p style="text-align: right;">Page 22717</p> <p>1 limited in the way that Adv Le Roux has now indicated and</p> <p>2 it doesn't involve any suggestion of interference with</p> <p>3 IPID, which is the point you made.</p> <p>4 MR SEMENYA SC: Well, I understand the</p> <p>5 question to say have you now, you're doing the</p> <p>6 investigation, are you talking to other people about</p> <p>7 whether there's corroboration. Obviously when you do that,</p> <p>8 if I'm IPID I'll get cross. I'll say what are you talking</p> <p>9 to my potential witnesses about?</p> <p>10 CHAIRPERSON: Yes, no, well anyway she's</p> <p>11 asked the question. Let's see what answer she gets and</p> <p>12 depending on the answer, the points may fall away. So</p> <p>13 let's – I don't want to stifle this cross-examination on</p> <p>14 this point. Carry on with the question.</p> <p>15 MS LE ROUX: Thank you, Chair.</p> <p>16 Provincial Commissioner, let me restate the question. I</p> <p>17 understand that you referred Warrant Officer Myburgh to</p> <p>18 IPID and you respect the independence of IPID and its</p> <p>19 investigation of that information that it would have</p> <p>20 received. My question is whether you've done anything else</p> <p>21 to corroborate what Warrant Officer Myburgh told you,</p> <p>22 including something like seeing whether any of the other</p> <p>23 members who could provide statements to the Commission had</p> <p>24 been, were engaged with, with respect to corroborating what</p> <p>25 Warrant Officer Myburgh told you?</p>	<p style="text-align: right;">Page 22719</p> <p>1 GENERAL MBOMBO: That is so, yes.</p> <p>2 MS LE ROUX: And did he then point out</p> <p>3 Colonel Vermaak?</p> <p>4 GENERAL MBOMBO: He described him, did</p> <p>5 not point him out, but he described him.</p> <p>6 MS LE ROUX: Have you spoken to Colonel</p> <p>7 Vermaak about what Warrant Officer Myburgh told you?</p> <p>8 GENERAL MBOMBO: General Naidoo spoke to</p> <p>9 Colonel Vermaak and asked him about those details and</p> <p>10 discovered that even Myburgh was brought by Vermaak to</p> <p>11 General Naidoo.</p> <p>12 MS LE ROUX: Right, but Provincial</p> <p>13 Commissioner, my question was have you discussed with</p> <p>14 Colonel Vermaak what Warrant Officer Myburgh told you?</p> <p>15 GENERAL MBOMBO: Not me personally, but</p> <p>16 General Naidoo.</p> <p>17 MS LE ROUX: Thank you. Now you'll agree</p> <p>18 with me that assuming what Warrant Officer Myburgh reported</p> <p>19 to you, that it was a very brave thing for him to come and</p> <p>20 tell you that he had seen a SAPS member shooting a</p> <p>21 protester? You'll agree with me that it will be a brave</p> <p>22 thing for Warrant Officer Myburgh to have done?</p> <p>23 MR SEMENYA SC: I think an inference can</p> <p>24 be drawn that the person was shot, but Warrant Officer</p> <p>25 Myburgh is not saying "I saw a policeman shoot a striker."</p>

<p style="text-align: right;">Page 22720</p> <p>1 CHAIRPERSON: Well, I don't think the 2 question is in any way wrong. The witness is being asked 3 for her opinion as to Myburgh's conduct in doing what he 4 did. There are a number of inferences which can actually 5 be drawn, but I'll allow the question, but you heard the 6 question? Would you agree with counsel it was a brave 7 thing for Warrant Officer Myburgh to come forward with the 8 allegation that he made? Do you agree with that, or don't 9 you agree?</p> <p>10 GENERAL MBOMBO: Mr Chair, it is not easy 11 for me to say whether it is brave or not because I take it, 12 it was the duty of the police officers to tell us 13 everything that happened there and we've been trying for 14 some time to get information as to what had happened there.</p> <p>15 MS LE ROUX: Provincial Commissioner, as 16 we understand what Warrant Officer Myburgh did, he was 17 acting in the role of what we know as a whistleblower. Are 18 you familiar with the term whistleblower?</p> <p>19 GENERAL MBOMBO: That is correct, Mr 20 Chair.</p> <p>21 MS LE ROUX: And I'm correct that SAPS 22 has no whistleblower policy, am I not?</p> <p>23 GENERAL MBOMBO: We use a public service 24 policy.</p> <p>25 MR SEMENYA SC: Chair, I must confess my</p>	<p style="text-align: right;">Page 22722</p> <p>1 employee who has reason to believe that the information 2 concerned shows or tends to show one or more of the 3 following," and one of those is that "Criminal offences 4 being committed, has been committed, is being committed, or 5 is likely to be committed; (b), that the person has failed, 6 is failing, or is likely to fail to comply with any legal 7 obligation to which that person is subject; that a 8 miscarriage of justice has occurred, is occurring, or is 9 likely to occur; that the health or safety of an individual 10 has been, is being, or is likely to be endangered, or any 11 other matter that has been, is being, or is likely to be 12 deliberately concealed."</p> <p>13 So taking Warrant Officer Myburgh's account of 14 him seeing another SAPS member on his version as set out in 15 your statement, that he sees an injured - he passes an 16 injured striker leaning against a rock. One he passed him 17 he heard a gunshot behind him. When he turned to look he 18 saw an NIU member put his firearm in the holster, asked the 19 member what he was doing and the member answered to the 20 effect that "These people deserve to die."</p> <p>21 The Human Rights Commission submits that that 22 would qualify as the type of disclosure covered by the 23 Protected Disclosures Act and therefore that it is a 24 whistle-blowing incident -</p> <p>25 CHAIRPERSON: Yes, but if you -</p>
<p style="text-align: right;">Page 22721</p> <p>1 confusion. A police officer who witnesses a crime can't be 2 a whistleblower. Maybe I'll have a look at the statute.</p> <p>3 COMMISSIONER HEMRAJ: Isn't he under a 4 legal duty, Mr Semanya, to report any such act?</p> <p>5 CHAIRPERSON: Anyway, I could understand 6 if a junior police officer sees a general doing something 7 wrong and reports that, you argue he's got duties and so 8 on, but nevertheless he might be subject to all kind of de 9 facto sanctions for blowing the whistle, as it were, on the 10 general, but where he's making a report about another 11 member who may even be his junior I think, I don't 12 understand the scope for it being suggested that he's a 13 whistleblower, but in any event, you've referred us to the 14 Protected Disclosures Act. Would that not bind the police? 15 It's LLL16. It talks about employers and employees. "An 16 employee means any person, excluding an independent 17 contractor, who works for another person or for the State," 18 so prima facie it would cover a member of the police 19 service and the definition of the employer doesn't exclude 20 the State.</p> <p>21 MS LE ROUX: Yes, and Chair, then the 22 definition of disclosure, which is why we consider Warrant 23 Officer Myburgh to be a whistleblower, is that it means, 24 "The disclosure of any information regarding any conduct of 25 an employer or an employee of that employer, made by any</p>	<p style="text-align: right;">Page 22723</p> <p>1 MS LE ROUX: But of course I don't need 2 to convince the Provincial Commissioner of that fact or 3 version -</p> <p>4 CHAIRPERSON: Is it suggested that the 5 warrant officer suffered any occupational detriment in 6 consequence of this disclosure? You see, the whistle- 7 blowing act says if you blow the whistle, in other words 8 you make a disclosure and it's a protected disclosure, and 9 your employer then subjects you to an occupational 10 detriment, then there's, consequences follow. There are 11 remedies available to the employee who's being subjected to 12 the occupational detriment, which are set out in section 4 13 of the act. Now -</p> <p>14 MS LE ROUX: Chair, if I am permitted to 15 continue with my cross-examination, we're going to get to 16 the statement of another member which -</p> <p>17 CHAIRPERSON: Yes, I know. I'm -</p> <p>18 MS LE ROUX: - the Human Rights 19 Commission submits that it appears as if what's happening 20 with respect to that other member potentially when it's 21 addressed to Warrant Officer Myburgh amounts to precisely 22 this type of harassment, intimidation, or other adverse 23 treatment that whistleblowers should be protected from.</p> <p>24 CHAIRPERSON: Well, you can carry on with 25 the line of questioning, but you must answer my question</p>

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1 though at some stage. If in fact it's not suggested that  
2 there's occupational detriment suffered by Myburgh, then I  
3 don't see that there's a problem under the act. You'll  
4 notice the statement of Warrant Officer Swartz, according  
5 to paragraph 13 thereof was provided to the evidence  
6 leaders at their request. But anyway, carry on with the  
7 questioning in the meanwhile. I don't want to stifle the  
8 point because I'm not quite sure what it is, but I have  
9 indicated to you that I have certain problems which I'd be  
10 grateful if they were explained to me in due course. But  
11 carry on for the time being.

12 COMMISSIONER HEMRAJ: Before we go there,  
13 can we have some assistance with that part of the Police  
14 Act which refers to the obligation of a policeman to report  
15 any criminal act, Mr Semenya? I think that makes it clear  
16 beyond any doubt what he's obliged to do legally.

17 MR SEMENYA SC: We'll get to it.

18 COMMISSIONER HEMRAJ: You're shaking your  
19 head, Mr Budlender. Do you have something –

20 MR BUDLENDER SC: Well, Chair, a person  
21 who is under an obligation to make a disclosure may  
22 nevertheless be a whistleblower, whether or not persecuted  
23 for it, and if persecuted is entitled to protection, but  
24 the fact that somebody is under an obligation to make a  
25 disclosure doesn't mean that that person may not also be a

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1 whistleblower whether or not you're prejudiced. You're a  
2 whistleblower by making a protected disclosure.

3 CHAIRPERSON: There are a number of  
4 questions. The first one, was he a whistleblower.

5 MR BUDLENDER SC: Yes.

6 CHAIRPERSON: In other words did the act  
7 apply to the disclosure that he made. Right, the second  
8 question is was he – clearly if he was, if he is a  
9 whistleblower covered by the act, he's entitled to the  
10 protection which the act affords and it applies clearly to  
11 the police service as well, even though they may – we're  
12 told they haven't got a policy, but it applies to employees  
13 in the private and the public sector. So the presumption  
14 that the act doesn't apply to the State is rebutted by  
15 that.

16 The next question is, once you accept he's a  
17 whistleblower he's entitled to protection. The next  
18 question is, does he need the protection in the sense that  
19 has he been exposed to any occupational detriment? That's  
20 the question we're going to get to in due course, but Ms Le  
21 Roux is going to carry on for the time being and eventually  
22 all these matters will be clear to us.

23 MS LE ROUX: Thanks, Chair, and I'm  
24 indebted to my learned friend for his intervention.

25 Provincial Commissioner, have you provided any particular

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1 person who falls under the Protected Disclosures Act. So  
2 the Protected Disclosures Act deals with people who  
3 disclose information, as Ms Le Roux has described, and what  
4 this act does is protect them from any harassment, and it  
5 may be that they're wrong in what they did – there's a  
6 whole series of things dealt with in the Protected  
7 Disclosures Act, but with great respect, I can't see that  
8 the fact that you're under a duty to disclose something  
9 excludes you from the protection which you're given by the  
10 Protected Disclosures Act.

11 CHAIRPERSON: That seems to be right, but  
12 my problem was I don't know whether Warrant Officer Myburgh  
13 is being subjected to an occupational detriment, but that's  
14 a matter which –

15 MR BUDLENDER SC: Chair, with respect,  
16 that also, with great respect, is not yet the question.

17 The first question is whether the disclosure was a  
18 protected disclosure.

19 CHAIRPERSON: Yes.

20 MR BUDLENDER SC: If it was then he was  
21 entitled to the protection under the Protected Disclosures  
22 Act. Second question, did he receive the protection to  
23 which he was entitled –

24 CHAIRPERSON: Well, did he –

25 MR BUDLENDER SC: But you're a

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1 support to Warrant Officer Myburgh to prevent him being  
2 intimidated or harassed in any way? Have you, are you  
3 aware of any steps taken to protect Warrant Officer  
4 Myburgh?

5 GENERAL MBOMBO: After he had reported  
6 this we found out through the commander, his commander,  
7 that he has a tendency of not being at work. We then sent  
8 our psychologist. Captain Boshoff, who is our  
9 psychologist, was working with him. After his resignation  
10 the file was taken over by Colonel Mills and his commander  
11 also tried to assist where he could. He even removed him  
12 from the duties that he was doing in order to assist him.

13 MS LE ROUX: And Provincial Commissioner,  
14 in light of that answer are you aware of any steps that  
15 have been taken to monitor Warrant Officer Myburgh until  
16 today? I understand the interventions you've described.  
17 Has anything further been done to monitor or protect  
18 Warrant Officer Myburgh?

19 GENERAL MBOMBO: From what I know, yes,  
20 they are still working with him. But remember, Mr Chair,  
21 it is still his responsibility to report to his commander  
22 if he does not feel happy or he feels harassed in any way.

23 MS LE ROUX: Provincial Commissioner, I  
24 now want to move on to the topic of the statements that  
25 have been provided by Warrant Officer Swartz to the extent

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1 they relate to what Warrant Officer Myburgh has reported to  
 2 you. So if we can start in LLL14, which is the new  
 3 statement by Warrant Officer Swartz, and in particular if  
 4 we look at paragraphs 30 to 36, commencing on page 6, and  
 5 then 39 to 43, do you have that, Provincial Commissioner?  
 6 GENERAL MBOMBO: Not yet. LLL?  
 7 MS LE ROUX: LLL14, which is the new  
 8 statement submitted by Warrant Officer Swartz –  
 9 GENERAL MBOMBO: I have it.  
 10 MS LE ROUX: - and commencing on page 6  
 11 of that document, paragraph 30, if we just read through  
 12 briefly, 30, "The police member with the K9 badge told me  
 13 there is another striker in the bushy area at koppie 3 and  
 14 that he shot him. He further on told me he thought that  
 15 the striker was dead. I asked him where the man that he  
 16 shot is and he showed me in the direction of the big rocks  
 17 and the bushy area of koppie 3. When the paramedics and  
 18 other personnel come to me I told them they must go and  
 19 look for the other striker that was shot by the unknown K9  
 20 member. The paramedic that came to me was from the mine  
 21 medics. After a short while they brought a wounded man  
 22 that was shot in his pelvic. They applied first aid. They  
 23 searched the man, could not find any other weapons. After  
 24 a short time had lapsed Captain Kidd came to me from the  
 25 left-hand side and I told him what had happened and I

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1 specifically told him what the sergeant of K9 had told me.  
 2 He made some notes thereof and walked away."  
 3 And then he leaves the scene, then goes to the  
 4 JOC on the 18th and 19th of August and then from paragraph  
 5 39 he states, "While we were waiting for the lawyers to  
 6 take our warning statements some of us were smoking and  
 7 chatting with other police members. I saw the sergeant of  
 8 K9 and immediately recognised him as the man who told me  
 9 he'd shot the striker. I made a joke and told him that he  
 10 said he killed one of the strikers, but it seemed to me  
 11 that he can't shoot very well. The sergeant of K9, who was  
 12 unknown to me, only grinned and walked away.  
 13 Later the year we were called up to Siesta Impala  
 14 Mine to consult with the legal team of SAPS in Rustenburg.  
 15 I was asked by Captain Aucamp if I knew who Sergeant  
 16 Myburgh is. I told him that I don't know him. He then  
 17 showed us a photo of where we were on the 16th of August  
 18 2012 and we had to point out where we were standing on that  
 19 day. I was sitting with Constable Mabe and Constable  
 20 Sebayane and other members. I asked them whether they knew  
 21 Sergeant Myburgh. They then showed me who he is and then I  
 22 immediately recognised him as the sergeant of K9 who was  
 23 talking to me at the scene and told me that he had killed  
 24 somebody inside the bushy area of koppie 3. I remember  
 25 very well that I went to the scene with the police expert,

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1 Mr De Rover, at scene 2 and I was present when Warrant  
 2 Officer Breedt of K9 showed Mr De Rover where he saw  
 3 Sergeant Myburgh turned into the rocks at scene 2."  
 4 So Provincial Commissioner, what this new by  
 5 Warrant Officer Swartz says is that Myburgh admitted to him  
 6 that Myburgh had shot the person at scene 2, and laughed  
 7 about it. Now of course that's a very serious allegation.  
 8 Can I ask you to turn though to LLL13, which is  
 9 the initial statement that we received in the Commission  
 10 from Warrant Officer Swartz. This is the manuscript  
 11 statement. Now Chair, it runs to four pages, but  
 12 Provincial Commissioner, nowhere in the initially statement  
 13 does Warrant Officer Swartz say anything at all about the  
 14 allegations he makes against Warrant Officer Myburgh.  
 15 There's simply no reference to anything even like that.  
 16 I then need you to turn to exhibit LLL15, which  
 17 is the pocketbook completed by Warrant Officer Swartz, and  
 18 if we turn to the page marked 68 –  
 19 CHAIRPERSON: There's a passage there  
 20 that's been highlighted so completely that we can't read  
 21 it. Do you know what the highlighted words are?  
 22 [15:20] MS LE ROUX: In the pocketbook, Chair,  
 23 no, we don't know. That's how we received it.  
 24 CHAIRPERSON: The trouble is if you  
 25 photostat a document that's been highlighted sometimes the

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1 highlighted portions don't come out. I wonder whether that  
 2 can be looked into – it is time to take the tea adjournment  
 3 and I know there are people who have problems with sitting  
 4 for a long time and suffer discomfort if we go on sitting  
 5 for too long. So we'll take the tea adjournment now and I  
 6 hope that attempts can be made to obtain the original of  
 7 the diary because I – I mean the pocketbook, because  
 8 presumably the highlighted words will then be visible, or  
 9 readable on the original. But we'll take the tea  
 10 adjournment now.  
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 12 [15:40] CHAIRPERSON: The Commission resumes.  
 13 Provincial Commissioner, you're still under oath.  
 14 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.  
 15 MR BUDLENDER SC: Chair, may I just  
 16 clarify, during the adjournment I just checked up what the  
 17 history is of these statements that were made. What  
 18 happened is the following – excuse me, I'm out of breath,  
 19 I've run from the other end. Our investigators, in fact Mr  
 20 Van Tonder interviewed a number of police members who were  
 21 at scene 2. One of those he interviewed was Mr Swartz –  
 22 CHAIRPERSON: Warrant Officer Swartz.  
 23 MR BUDLENDER SC: Warrant Officer Swartz.  
 24 During the course of that interview Warrant Officer Swartz  
 25 said that Warrant Officer Myburgh had come out and said

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1 "I've just shot somebody." What we then did was, he  
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?

11 MR BUDLENDER SC: Mr Pretorius informs me  
12 that they have requested Brigadier Pretorius to make the  
13 original available and we're waiting for that.

14 CHAIRPERSON: It doesn't appear to be  
15 blocked out. My understanding is over many years battling  
16 with these things, that people highlight documents,  
17 highlight things on documents and then photostat the  
18 document, the highlighted section can't be read. But it  
19 doesn't mean that you can't read it if you have the  
20 original because it will be highlighted on the original.  
21 So that problem is in the process of being solved. Where  
22 is Brigadier Pretorius? Is she –

23 MR SEMENYA SC: She's at our JOC. There  
24 are whole hundreds of pocketbooks that are in a box, so we  
25 will attempt to get the box to – if we cannot find it

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1 legible, then we'll probably go to Swartz for him to help  
2 us reconstruct the document.

3 CHAIRPERSON: Alright. Well, I don't  
4 know whether Ms Le Roux needs the highlighted illegible  
5 section for purposes of her cross-examination.

6 MS LE ROUX: Fortunately not, Chair.

7 CHAIRPERSON: Now I understand, Adv  
8 Hemraj tells me that these pocketbooks were put onto – was  
9 this the police hard drive? - were somehow put onto some  
10 hard drive and if this was done before the highlighting was  
11 done then we will be able to retrieve it from the hard  
12 drive. But anyway, that's a matter which apparently  
13 doesn't concern Ms Le Roux. She's got other fish to fry at  
14 this stage, so we'll leave it to her to do what she wants  
15 to do.

16 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):  
17 Thank you, Chair. Provincial Commissioner, in LLL15, this  
18 is the pocketbook of Warrant Officer Swartz, and this  
19 pocketbook does not have any mention of a member identified  
20 as being part of K9 and there's no mention that this  
21 sergeant from K9 said to him that he had shot a man and  
22 thought that the man was dead. All that we see in the  
23 pocketbook that seems to come close to dealing with these  
24 issues appears at page 68 through page 69 where Warrant  
25 Officer Swartz refers to "seeing a sergeant emerge from the

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1 rocks and noting that the sergeant said there was a wounded  
2 man in the rocks." So just to recap where we are, because  
3 I know we've had the adjournment in between, is the latest  
4 statement by Warrant Officer Swartz has the full detail, or  
5 fuller detail, and he says that it's Warrant Officer  
6 Myburgh who he identifies as doing, alleged to have done  
7 the shooting. Initial statement of Warrant Officer Swartz,  
8 there's no mention of any of this at all, and then we have  
9 this pocketbook where there seems to be some important  
10 aspects missing from the account, would be the way I would  
11 describe it. So he doesn't mention anything about the  
12 sergeant reporting that he had shot the man or thought that  
13 the man was dead.

14 Now of course there are two possibilities here,  
15 and the Human Rights Commission can't establish which of  
16 these is true, but you'll agree with me that there are at  
17 least two possibilities here. So the one possibility is  
18 that Warrant Officer Swartz's account in his second  
19 statement is true and he failed to give a full and truthful  
20 account in his first statement, because he omitted it  
21 completely, and then a deficient account in his pocketbook.  
22 So you'll accept that that's one possibility as to what  
23 could have happened here, that Warrant Officer Swartz  
24 merely failed to put it into his first statement or record  
25 it with all its material details in his pocketbook? You

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1 accept that's one possibility?

2 GENERAL MBOMBO: I hear you, Chairperson,  
3 as you are putting it.

4 MS LE ROUX: And Provincial Commissioner,  
5 would you agree with me that if that were true, if it's  
6 true that Warrant Officer Swartz simply failed to put this  
7 into his first statement at all and only recorded the  
8 deficient account in his pocketbook, so it's only 16 months  
9 later that we get a full account of what he claims he knows  
10 about what happened, that would be very serious? You  
11 accept that?

12 GENERAL MBOMBO: I think so, Chairperson.

13 MS LE ROUX: So you would be concerned  
14 that a member was aware of wrongdoing at Marikana but for  
15 16 months didn't bring it to anyone's attention, didn't  
16 disclose it? You'd agree that that is very concerning?

17 GENERAL MBOMBO: It is correct, yes.

18 MS LE ROUX: But Provincial Commissioner,  
19 of course there's another possibility here, which is that  
20 what Warrant Officer Swartz says in his second statement is  
21 not true. Would you accept that possibility?

22 GENERAL MBOMBO: I wouldn't know,  
23 Chairperson.

24 MS LE ROUX: I understand you don't know  
25 whether the second statement is true or not. I'm merely



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1 asking you whether you would accept that there's a  
2 possibility that what Warrant Officer Swartz says in his  
3 second statement is not true.

4 GENERAL MBOMBO: It could happen. It  
5 could be so.

6 MS LE ROUX: So given that the  
7 allegations made in the second statement come more than 16  
8 months after what he saw, and given that it is inconsistent  
9 in material respects with the statements and the  
10 pocketbooks that are more contemporaneous, and given that  
11 what he says in the second statement are allegations that  
12 are made against the only individual who is a member of the  
13 SAPS who has given evidence about unlawful acts by SAPS at  
14 Marikana, do you accept the possibility that this second  
15 statement by Warrant Officer Swartz could amount to  
16 precisely the type of harassment, intimidation or other  
17 adverse treatment that the Protected Disclosures Act –

18 MR SEMENYA SC: No, no, no, no –

19 CHAIRPERSON: No, I'm sorry, Ms Le Roux –

20 MS LE ROUX: - is designed to protect  
21 whistleblowers –

22 CHAIRPERSON: I don't understand the  
23 basis on which this question can be asked. What you're  
24 asking really is the witness's opinion as to whether  
25 certain hypothetical facts constitute occupational

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1 detriment under the act. Now I've ruled over and over  
2 again in this Commission that whoever asks the question, I  
3 don't allow it. If you ask a question of a witness to draw  
4 an inference which this Commission is in a position to draw  
5 equally as the witness is, I don't allow the question. If  
6 you ask the witness for the witness's opinion as to the  
7 law, I disallow the question. Now that's what's happening  
8 here.

9 MS LE ROUX: Chair, let me –

10 CHAIRPERSON: I understand you can –

11 MS LE ROUX: Let me then ask the  
12 question –

13 CHAIRPERSON: I understand you can argue  
14 points later, if necessary, but I don't think I should  
15 allow you to ask the witness for her views, because we  
16 won't be bound by her views anyway. They may be right,  
17 they may be wrong, but we are obliged, I think, to form our  
18 own opinion on this matter. So anyway –

19 MS LE ROUX: Chair, let me rephrase the  
20 question then –

21 CHAIRPERSON: Ja, maybe –

22 MS LE ROUX: - not asking the Provincial  
23 Commissioner as to whether she believes this falls foul of  
24 the Protected Disclosures Act or not. But Provincial  
25 Commissioner, do you accept the possibility that Warrant

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1 Officer Swartz's second statement which names Warrant  
2 Officer Myburgh as the very member who shoots and kills one  
3 of the strikers, do you accept the possibility that Warrant  
4 Officer Swartz may be saying that about Warrant Officer  
5 Myburgh because Warrant Officer Myburgh is the only SAPS  
6 member who's alleged anything unlawful? Do you accept that  
7 possibility exists?

8 GENERAL MBOMBO: I'm not sure,  
9 Chairperson, whether Warrant Officer Swartz was aware of  
10 Warrant Officer Myburgh's disclosure, and that for me makes  
11 it difficult to believe what you are putting to me.

12 MS LE ROUX: Provincial Commissioner,  
13 you've met Warrant Officer Myburgh, but have you met  
14 Warrant Officer Swartz?

15 GENERAL MBOMBO: No, I don't even know  
16 him.

17 MS LE ROUX: When you met Warrant Officer  
18 Myburgh and you had the interaction where he reported to  
19 you what he saw, did you believe him to be telling you the  
20 truth?

21 GENERAL MBOMBO: What was important for  
22 me, Chairperson, was that I should accept what he was  
23 telling me at the time as being the truth.

24 CHAIRPERSON: I wasn't going to allow you  
25 actually to ask the question whether she believed it, but

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1 she gave the answer which would have been an answer to the  
2 question if you'd phrased it correctly, that she took it  
3 sufficiently seriously to attach importance to it.

4 Alright, you can carry on.

5 MS LE ROUX: Chair, I could carry on, but  
6 I have no further questions for the Provincial  
7 Commissioner. Thank you very much, Provincial  
8 Commissioner.

9 GENERAL MBOMBO: Thank you, Counsel.

10 CHAIRPERSON: Alright, Mr Semanya, it's  
11 now 7 minutes to 4. I take it you would like to – I mean  
12 you can start your re-examination now if you wish, but if  
13 you want me to postpone until 9 o'clock on Thursday so  
14 maybe you can collect your thoughts, I will do so, but I'm  
15 in your hands.

16 MR SEMENYA SC: My untrained background  
17 tells me that the Provincial Commissioner must be fatigued  
18 now. She did intimate at one point that she's really  
19 tired.

20 CHAIRPERSON: No, I understand. I can  
21 understand her being tired and I sympathise with her  
22 entirely, but I would have thought that your questions are  
23 likely to cause her less distress than perhaps questions  
24 asked in cross-examination. But you will be in a better  
25 position than I to judge about that. But we'll adjourn

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