TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 82  29 APRIL 2013  PAGES 8623 TO 8727

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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**29th April 2013**  
**Marikana Commission of Inquiry**  
**Rustenburg**

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<td><strong>[PROCEEDINGS ON 29 APRIL 2013]</strong></td>
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<td>[10:08] <strong>CHAIRPERSON:</strong> The Commission resumes. I see there's a document here which has been put on our desks. Mr -</td>
<td>you to hold your fire on this particular issue over until after the tea adjournment?</td>
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<td><strong>MR BUDLENDER SC:</strong> That's from us, Chair.</td>
<td><strong>MR BUDLENDER SC:</strong> Chair, it arises right at the beginning of the cross-examination and a great deal flows from it. So I would rather, if necessary, if the witness -</td>
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<td><strong>CHAIRPERSON:</strong> Yes, and what is it?</td>
<td><strong>CHAIRPERSON:</strong> - take for the witness to read the document, would you say?</td>
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<td><strong>MR BUDLENDER SC:</strong> It's going to be - it's a document discovered by Lonmin which is going to be used in cross-examination.</td>
<td><strong>MR BUDLENDER SC:</strong> I don't know, Chair. I can tell you which pages I'm interested in, is from page -</td>
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<td><strong>CHAIRPERSON:</strong> What is the document, or is it a secret you want to keep from the witness for the moment?</td>
<td><strong>CHAIRPERSON:</strong> It's only 20 pages. We'll adjourn for 10 minutes.</td>
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<td><strong>MR BUDLENDER SC:</strong> No, it's what it says.</td>
<td><strong>MR BUDLENDER SC:</strong> Chair, can I just say, it's that the -</td>
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<td>It's a transcript of the debriefing by General Mpembe on the 15th of August 2012, first with NUM and then with AMCU.</td>
<td><strong>CHAIRPERSON:</strong> Mr Budlender, it's a 20-page document. We'll adjourn for 10 minutes -</td>
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<td><strong>CHAIRPERSON:</strong> Oh, I see. So do we give an exhibit number yet?</td>
<td><strong>MR BUDLENDER SC:</strong> Chair, could I just explain, it consists of the transcripts of two minutes.</td>
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<td><strong>MS PILLAY:</strong> We haven't, Chair. It will be GGG4.</td>
<td><strong>CHAIRPERSON:</strong> Yes?</td>
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<td><strong>CHAIRPERSON:</strong> GGG4. If you're going to deal with it in cross-examination with the witness, was he present when this meeting took place?</td>
<td><strong>MR BUDLENDER SC:</strong> I'm interested only in the transcript of the first meeting -</td>
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<td><strong>MR BUDLENDER SC:</strong> Yes, he was, Chair.</td>
<td><strong>CHAIRPERSON:</strong> I see, so it's to page?</td>
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<td><strong>CHAIRPERSON:</strong> Has he had an opportunity to read the document?</td>
<td><strong>MR BUDLENDER SC:</strong> It ends at page 678.</td>
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<td><strong>CHAIRPERSON:</strong> I see. So it's only eight pages.</td>
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<td><strong>MR BUDLENDER SC:</strong> General, you explained</td>
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<td><strong>MR BUDLENDER SC:</strong> General, you explained</td>
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<td><strong>MR BUDLENDER SC:</strong> Yes.</td>
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<td><strong>CHAIRPERSON:</strong> So we'll still adjourn for 10 minutes.</td>
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<td><strong>[COMMISSION ADJOURNS COMMISSION RESUMES]</strong></td>
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<td><strong>MR BUDLENDER SC:</strong> Yes.</td>
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<td><strong>CHAIRPERSON:</strong> Yes?</td>
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<td><strong>CHAIRPERSON:</strong> I see, so it's to page?</td>
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**[10:08] CHAIRPERSON:** The Commission resumes. I see there's a document here which has been put on our desks. Mr -

**MR BUDLENDER SC:** That's from us, Chair.

**CHAIRPERSON:** Yes, and what is it?

**MR BUDLENDER SC:** It's going to be - it's a document discovered by Lonmin which is going to be used in cross-examination.

**CHAIRPERSON:** What is the document, or is it a secret you want to keep from the witness for the moment?

**MR BUDLENDER SC:** No, it's what it says.

It's a transcript of the debriefing by General Mpembe on the 15th of August 2012, first with NUM and then with AMCU.

**CHAIRPERSON:** Oh, I see. So do we give an exhibit number yet?

**MS PILLAY:** We haven't, Chair. It will be GGG4.

**CHAIRPERSON:** GGG4. If you're going to deal with it in cross-examination with the witness, was he present when this meeting took place?

**MR BUDLENDER SC:** Yes, he was, Chair.

**CHAIRPERSON:** Has he had an opportunity to read the document?

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**MR BUDLENDER SC:** I don't know, Chair.

It's a document discovered by Lonmin and the witness was present at the meeting, or so I understand. He'll no doubt confirm -

**CHAIRPERSON:** Are you going to deal with it before we take the tea adjournment?

**MR BUDLENDER SC:** I was planning to, Chair, but if necessary I won't -

**CHAIRPERSON:** I mean, we don't, you know I've said often here that I don't believe in litigation or commission by ambush, and so we want to be fair to everybody. Let's find out. Mr Semenya, have you any suggestions in regard to this document and its use in cross-examination of this witness?

**MR SEMENYA SC:** We have just been given the document now. I can confirm that we never consulted on the document with the witness at all. I don't know which aspects I've got -

**CHAIRPERSON:** He has spoken a bit about this meeting, but to be fair to him, if he's going to be questioned about it, I would have thought he should get a chance to read it first.

**MR SEMENYA SC:** Indeed, Chair.

**CHAIRPERSON:** So you go along with that. Would it greatly inconvenience you, Mr Budlender, if we ask

---

**[10:34] **CHAIRPERSON:** The Commission resumes.

Majoor-Generaal, ek neem aan u het kans gekry om die hele dokument deur te lees, of hoe?

**GENERaal-MajoOR ANNANDALE:** Ek het inderdaad, dankie Voorsitter.

**VOORSITTER:** Ek moet u daaraan herinner dat u nog steeds onder eed is.

**CHARL ANNANDALE:** s.o.e.

**CHAIRPERSON:** Mr Budlender?

**CROSS-EXAMINATION BY MR BUDLENDER SC:** Thank you, Chair. General Annandale, on Friday you received certain homework to look at, some minutes, to check that you were satisfied with them. Have you been able to do that?

**GENERaal-MAJOR ANNANDALE:** Voorsitter, vergun my net, voor ek dit antwoord, om net die agbare Voorsitter en die lede van die Kommissie te bedank vir die geleenheid wat ek gehad het om Vrydag die begrafnis by te woon. Dan in antwoord op u vraag, u het die huiswerk op Donderdag gekry en ek het inderdaad daarna gekyk.

**MR BUDLENDER SC:** General, you explained
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| 1 | on Thursday that these are not the minutes of an annual general meeting of an association or the minutes of the board of directors of a company, so they aren't formal and they aren't detailed. I can understand that they will not be comprehensive. |
| 2 | GENERAAL-MAJOR ANNANDALE: Dit is korrek. |
| 3 | MR BUDLENDER SC: But can we accept that what is stated in those minutes is correct? |
| 4 | GENERAAL-MAJOR ANNANDALE: Met die uitsondering van grammatica en spelfoute en dan die enkele ander aspekte, is dit oor die algemeen korrek. |
| 5 | MR BUDLENDER SC: Thank you. Now could I ask you just to have another brief look at your statement - |
| 6 | CHAIRPERSON: Before we move on, what is the enkele ander aspekte? What are the few other aspects apart from spelling and grammar? |
| 7 | GENERAAL-MAJOR ANNANDALE: Voorsitter, ek sal deur die notas moet werk om daarop, die Kommissie daarop te wys. Die - |
| 8 | MR BUDLENDER SC: General, I don't want to - well it is the Chair's question, so I don't want to interrupt the Chair's question. There are only a few things in those minutes to which I want to refer you, and I'm happy for you to - how many matters are there that are problematic in the minutes? |
| 9 | GENERAAL-MAJOR ANNANDALE: Ek kan hulle nou nie vinnig tel nie, maar 'n hele aantal. |
| 10 | MR BUDLENDER SC: Chair, I'm concerned we may spend a long time going through minutes which may not, an amendment which may not be material. I'm prepared to take my chances. |
| 11 | CHAIRPERSON: Okay, very well. |
| 12 | MR BUDLENDER SC: Then General, could we go to your statement which we dealt with last week, exhibit GGG1, and could we go back to the top of page 7, which we discussed last week. I just want to make sure that I understood your evidence correctly. You'll see it says, "It was agreed that a contingency must be in place if the overall commander of the operations, as you said in your evidence-in-chief, implementing stage 3 was a last resort."
| 13 | GENERAAL-MAJOR ANNANDALE: Dit is korrek. |
| 14 | MR BUDLENDER SC: Now can we go - or alright, I'm sorry. Now we know that General Mpembe was the overall commander of the operations. |
| 15 | GENERAAL-MAJOR ANNANDALE: Dit is korrek. |
| 16 | MR BUDLENDER SC: On the evening of |
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25 that. So General, what General Mpembe was saying to the
23 somebody with an axe and I have a firearm? It will never
21 have not, because I must disarm somebody. How do I de-arm
20 from the foot of the page, “I cannot go to the mountain.
19 duty to disarm.” Then at the foot of page 676, three lines
18 not prepared that our members should die, but we have a
17 know that you do not want us to shoot, shoot. Here it is
16 axe – or let me start the question again. Let’s presuppose
15 ons die groep kohesie wou breek, deur hulle uiteen te dryf
14 sodat hulle in klein groeperings is, wat dan hanteerbaar is
13 die beplanning vanaf die Dinsdagmiddag.
12 involve dispersal and then disarming?
11 Protesters on the koppie was likely to lead to bloodshed.
10 protesters on the koppie is of gegoepeer is nie, en dis juis hoekom
9 ons die groep kohesie wou breek, deur hulle uiteen te dryf
8 and a man with a rifle, there’s going to be bloodshed.
7 to lê en uiteraard sou hy nie die totale strategie van die
6 unies, dat hulle hul lede sover moet kry om die wapens neer
5 geweldige verantwoordelikheid is op die leierskap van die
4 and a man with an axe, there’s going to be bloodshed.
3 
2 psyched up as they are, and try to take their arms from
1 NUM leaders was if we confront these people on the koppie,
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1  CHAIRPERSON:   Tens of cases. Tientalle,
2 tens of cases like that.
3  MR MAHLANGU: Tens of cases like that,
4 yes. Tientalle.
5 GENERAAL-MAJOR ANNANDALE: Daar is die
gatalleverhouding van vaardige polisiebeamptes teenoor
6 sodanige persoon wat so 'n wapen dra –
7 MR MAHLANGU: In the case of quite an
8 experienced police officer against such a person –
9 MAJOR-GENERAL ANNANDALE: Sorry, no. Die
10 verhouding, the number –
11 CHAIRPERSON: It's the relationship,
12 isn't it? The ratio of police to protesters. The point
13 being made I think is that if the ratio of police to
14 protesters who are going to be disarmed is great with far
15 more policemen than protesters, then the situation is
16 different. I think that's what he's saying. Is it
17 correct, General?
18 GENERAAL-MAJOR ANNANDALE: Ja, dit is
19 reg. Dis die ratio tussen aantal polisiebeamptes en
20 sodanige bedreiging, dat so 'n persoon ontwapen kan word
21 sonder dat daar beersings is.
22 MR BUDLENDER SC: General, you said that,
23 as you said, implementing stage 3 was the last resort.
24 GENERAAL-MAJOR ANNANDALE: Laaste
25 was said at 6 o'clock on the morning of the 16th of August,

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1 aktiwiteit of aksie stap in, maar gesien in die konteks van
2 wat ek reeds voer oor in my getuenis verduidelik het,
3 pertinente onderhandelings wat faal, maar pertinente die
4 verhoogde risiko –
5 CHAIRPERSON: “Verhoogde” is increased
6 risk.
7 MR MAHLANGU: Pertinently the increased
8 risk, yes.
9 GENERAAL-MAJOR ANNANDALE: - wat hand
10 aan hand sal gaan met so'n gewapende groep wat in die
11 gemeenskap inbeweeg.
12 MR BUDLENDER SC: General, I want to
13 suggest to you that it's quite logical that it was a last
14 resort precisely because of the high risk to which General
15 Mpmembe referred.
16 GENERAAL-MAJOR ANNANDALE: Maar dis
17 beide risiko's, Voorsitter, die risiko waarna Generaal
18 Mpmembe verwys het dat ons nie wil onnodige konfrontasie hê
19 nie, maar ook die risiko in termie van so'n groep wat in die
20 gemeenskap ingaan.
21 MR BUDLENDER SC: Yes, I'll come back to
22 that other risk a bit later. Now the JOCOM met on the 16th,
23 the Thursday, the 16th of August at 06:00 and decided to
24 continue with the previous day’s monitoring and
25 negotiation.

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1 GENERAAL-MAJOR ANNANDALE: Monitering,
2 dis korrek, ja.
3 MR BUDLENDER SC: And the JOCOM had in
4 front of it that morning a crime intelligence report which
5 said that the strikers would not lay down their arms. Now
6 could you have a look at TT5? If you look - do you have
7 TT5?
8 MR MAHLANGU: Not yet.
9 GENERAAL-MAJOR ANNANDALE: Ek het TT5.
10 MR BUDLENDER SC: Then you'll see this is
11 the crime intelligence information provided to us by the
12 South African Police Service. Would you go to paragraph 9
13 on the second page, and I'll read what paragraph 9 says.
14 “On 2012-08-15 at the PROVJOC meeting a discussion took
15 place with regard to the disarming and dispersion of the
16 striking mineworkers. Brigadier Engelbrecht held a view in
17 favour of negotiations with the group who always gather at
18 the koppie and disperse during the evenings. The view was
19 further based on an analysis of the striking workers’
20 behaviour during the incident of 13 August 2012 where the
21 police officials were killed. They were all armed with
22 different kinds of dangerous weapons. They became agitated
23 when their comfort zones were threatened and made it clear
24 that they will never surrender their weapons as they needed
25 the weapons to protect themselves against NUM members.”

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1 Then on the next page, the third page, which is some sort
2 of annexure, that's a crime intelligence input at the JOC
3 at 12 o'clock on the 16th of August. You see that?
4 CHAIRPERSON: I'm sorry, Mr Budlender,
5 before you move on to that, shouldn't you put para 10 on
6 the foot of page 2 to the witness, or are you going to do
7 that later?
8 MR BUDLENDER SC: Well, I'm just not sure
9 of the time here, but let me put it, yes.
10 CHAIRPERSON: It looks as if it’s part of
11 the 6 o'clock report.
12 MR BUDLENDER SC: It could be. Paragraph
13 10 says, General, “On 2012-08-16 during a PROVJOC meeting
14 where the disarming and dispersing of the group at the
15 koppie was discussed, Colonel Isaacs (CI),” that's Criminal
16 Intelligence, “representative at the PROVJOC for the day
17 advised that many strikers had dangerous weapons with them,
18 and informers reported they would not hand their weapons to
19 the police and that the situation was tense.” You see
20 that?
21 CHAIRPERSON: Exhibit L, slide 130
22 [inaudible].
23 MR BUDLENDER SC: As the Chair has
24 pointed out, that according to the police presentation L,
25 was said at 6 o'clock on the morning of the 16th of August,
29th April 2013

and then finally a further report is the annexure, which is
the report at 12 o'clock on the 16th of August, and there
paragraph 3 says the following. “According to information
received the group will decline to surrender these
dangerous weapons to the police.”. The dangerous weapons is
referring to spears, assegais and pangas in the previous
paragraph. “Information also indicates that the
mineworkers will not leave the koppie and are prepared to
fight if their demands are not met, which includes
resisting the police.” You see that? I take it you
confirm that the JOCOM received those reports from crime
intelligence?

GENERaal-MaJoOR AnnAndAle: Slegs ‘n
regstelling, Voorsitter. Daar was nie ‘n JOCOM 12 uur op
die 16de nie. Dit wat in hierdie aanhangsel na verwys word
was na verwys tydens die 6 uur vergadering wat ons gehad
het op die 16de, met die verskil dat Kolonel Isaacs, om 6
uur het hy gemeld dat daar 300 mense reeds op die koppie
was, maar tydens ‘n spesiale JOCOM vergadering om 13:30 is
die informatie bevestig en daar was verwys dat daar 3 000
mense nou op die koppie is.

CHAIRPERSON: General, does that mean
that this report set out in the annexure headed “Crime
Intelligence input at JOC” pertaining to a decision to
disarm the people 2012-08-16 12:00, was before the JOC at
1:30, 13:30?

GENERaal-MaJoOR AnnAndAle: Ja.
CHAIRPERSON: And did he also state the
rest of what’s in this document, i.e. paras 2, 3 and 4?

GENERaal-MaJoOR AnnAndAle: Dit is
korrek. CHAIRPERSON: And did he also state the
koppie. Is that right?

GENERaal-MaJoOR AnnAndAle: Voorsitter,
soos ek dit verstaan het hy dit opgedateer om 12 uur.
CHAIRPERSON: Yes, yes, I understand. He
made this report at 12 o’clock. The JOC wasn’t, was it in
session at 12 o’clock?

GENERaal-MaJoOR AnnAndAle: Dis hy.
CHAIRPERSON: But you say that at 13:30
het certainly confirmed there were now 3 000 people?

GENERaal-MaJoOR AnnAndAle: Dit is
korrek.

CHAIRPERSON: And did he also state the
rest of what’s in this document, i.e. paras 2, 3 and 4?

GENERaal-MaJoOR AnnAndAle: Voorsitter,
ek weet nie of hy dit in presiese detail weer herhaal het
nie. Ek dink daar was meer ‘n verwysing dat die situasie
nog steeds is soos wat dit die oggend was tydens die 6 uur
vergadering.

CHAIRPERSON: You see there’s a
difference, because the 6, obviously the reference to 6
o’clock is at para 10 on the previous page. That says the
situation is tense. This now says, “The situation is
currently very tense.” So if you received this information
from Crime Intelligence you would have been told that the
situation is now more tense then it was at 6 o’clock. I
take it you received the information. Is that not so?

CHAIRPERSON: Yes, yes, I understand
that, but if – I mean are you saying that this information,
which was obviously recorded I take it at noon on the 16th
by Colonel Isaacs, all of this was not conveyed to the JOC
at 1:30?

GENERaal-MaJoOR AnnAndAle: Voorsitter,
my waarneming was dat niks verander het van die oggend 6
uur nie, behalwe dat die aantal persone op die koppie nou
van 300 na 3 000 vermeerder het, sodat dit meer “tense”
was, “very tense” was. Daar was, ek kan dit net nie,
eenvoudig net nie so waar – of ek het dit net nie so
waargeneem nie.

CHAIRPERSON: Yes, and you see in the
occurrence book, which is FFF25, at 11:20 it’s already
said, “Situation report, Papa1 reported,” that’s obviously
a different person, not Colonel Isaacs, but “Papa1 reported
the group were moving towards the Nyala. Group leaders
asked the police officials to remove their wires, he said
he’s not going to ask them again as he’s also aggressive,
about 3 500 people gathered.” That’s what that report
says. So already it would seem round about 11:30 you knew
that there were now between 3 and 3 500 people at the
koppie. Is that right?

GENERaal-MaJoOR AnnAndAle: Dit is
korrek, Voorsitter.

CHAIRPERSON: And the intelligence report
that you’d received at 6 o’clock in the morning was still
valid. Is that right?

GENERaal-MaJoOR AnnAndAle: Dit is
korrek, Voorsitter.

MR BUDLENDEr SC: Now just to repeat
myself, General Annandale, at the JOCOM meeting at 6
o’clock that morning it was decided to continue with the
previous day’s monitoring.

GENERaal-MaJoOR AnnAndAle: Onder andere,
ja.

MR BUDLENDEr SC: The JOCOM didn’t decide
to implement stage 3.

GENERaal-MaJoOR AnnAndAle: Nee.

MR BUDLENDEr SC: But what the JOCOM
didn’t know, General, at the time of that meeting, was that
the previous night a decision had already been made to
implement stage 3 if the strikers did not lay down their
weapons. Are you aware of that?

[11:14] GENERaal-MaJoOR AnnAndAle: Nee, ek is
ie bewus daarvan dat daar ‘n besluit was nie. Daar was
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1. Mr Budlender SC: And could we again go to page 7 of that statement, paragraph 18? Do you have it? I will read it. "On Wednesday the 15th of August 2012 while I was attending the National SAPS Management Forum meeting in Midrand, Johannesburg, I received telephonic feedback from Major-General Mpembe to the extent that there has been an agreement between AMCU and SAPS that the following day at 09:00 the protesters shall lay down their arms and disperse, stage 3 will be implemented."

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1. weapons and disperse peacefully. I took the opportunity to apprise the National Commissioner of the situation in Marikana, and that if negotiation efforts fail I shall instruct members to disperse, disarm, and possibly arrest the protesters."
2. Mr Budlender SC: General, I - chairperson: Mr Budlender, it’s now going on for quarter past 11, so when we reach a convenient stage – I didn’t mean to interrupt you. When we reach a suitable stage we will take the adjournment, but you’ll tell me when it’s a suitable stage.

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1. Chair: Thank you, Chair. Just this one and then we can adjourn. Could you have a look at General Mbombo’s statement, which will be given to you?
2. Chair: We’ll take the adjournment. This would be a convenient time, Chair.

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1. benefit? 2. Mr Budlender SC: And could we again go to the beginning, right at the beginning of that clip, please?
3. Chair: Well let’s say if you go a bit forward, there is a summary of what she said at slide 154 of exhibit L.
4. [Video Recording Played]
5. Mr Budlender SC: Chair, I’m going to ask for a short extract from AAA13 to be played to the Commission.
6. Chair: I did ask for – before we look at the video clip, we did ask for a transcript of this to be prepared. Has it been prepared? 7. Mr Budlender SC: We have asked the police and they’re in the process of doing it, Chair.
8. Chair: When is it going to be available, Mr Semenya? Do you know?
9. Mr Semenya SC: I’ll enquire, but make all effort to have the transcript available.
10. Chair: Yes, thank you.

MR MAHLANGU: I am not aware of that.
4. The decision was that if the position escalates, that there would be?
5. General Mbombo’s statement, which will be given to you?
6. [Video Recording Played]
7. Chair: Maybe everybody else can hear, but I can’t. Would you turn the volume up for my
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<td>1. gewees tussen Luitenant-Generaal Mbombo en Generaal Mpembe, maar ook daar was gesprek tussen Generaal Mbombo en myself.</td>
<td>1. specific answer what next will happen because I believe that tomorrow will be a day of joy for everyone, so I have not point in that direction of negativity of saying no, people will say no violence or whatever, and again when we say weapon, what do we mean. Yes, pangas, and what exactly,&quot; and then there was a response, “And firearms.”</td>
<td>1. en veral in Openbare Orde Polisiëring, en ons het pertinent ‘n rede gehad om te glo dat mnr Mathunjwa beheer het oor die situasie in terme van dat hy sy lede sou oortuig om wapens neer te lê, en as u my sal toelaat, mnr die</td>
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1. plan in terms of that so the people will be in a position
to then in that demarcated area put down the pangas and the
spears and whatever.” Kan ek net laastens, dieselfde
bladsy, lyn 15 waar mnr Mathunjwa praat, “I mean from
tomorrow when we engage them, maybe some, the way forward,
maybe we will be saying wherever, just leave whatever and
then police come and collect it. Maybe sometimes if I come
and bring it to you there will be that sort of” –

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1. says, “So that is our belief this thing will be over by
tomorrow.” So he talked of the impression, belief. He
obviously seemed confident, but you can't put it higher
than that.
2. GENERAAL-MAJOR ANNANDALE: Voorsitter,
soos ek gesê het, hy het nie 'n belofte gemaak nie, maar hy
het regtig oortuig oorgekom.
3. [12:04] MR BUDLENDER SC: General, the question
I'm interested in is what was going to happen in the view
of the Provincial Commissioner if the weapons were not laid
down. Can I ask you, should have in front of you two
internet press cuttings. Do you have one which, a single
page called “Lonmin death toll at 34, 78 injured?”
4. CHAIRPERSON: Do you want this to be
GGG6?
5. MR BUDLENDER SC: 6. Would you make that
6.1, Chair, and the next one will be 6.2.

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1. the first page. Three paragraphs up from the end of the
2. first section there's a passage which reads, “Before
3. gunfire was opened.” Do you have that? Do you have that,
4. General?
5. GENERAAL-MAJOR ANNANDALE: EK het dit.
7. MR BUDLENDER SC: Right, I’ll read it.
8. “Before gunfire was opened on Thursday, SAPS Captain Dennis
9. Adria told Moneyweb, ‘We have tried over a number of days
to negotiate with the leaders and with the gathering here
10. at the mine. Our objective is to get the people to
to surrender their weapons and to disperse peacefully. Today
11. is D-day in terms of if they don't comply then we will have
to act; we will have to take steps,’” he said. Do you see
12. that? And I suggest to you that that's consistent with
13. what was discussed between the Provincial Commissioner and
14. the National Commissioner on the night of the 15th and what
15. the Provincial Commissioner said at the media briefing on
16. the morning of the 16th, that if they didn't hand over the
17. weapons, they would be dispersed and disarmed on the
18. koppie.
20. GENERAAL-MAJOR ANNANDALE: Voorsitter,
21. ek was nie teenwoordig toe Kaptein Dennis Adria hierdie
22. oordrag gemaak het, of na bewering gemaak het nie, en ook
23. waarna verwys word, ek was nie teenwoordig in die

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1. vergadering, nasionale – wat het u gesê? National
3. van die polisie. Fase 3 was besluit voor 13:30 op die 16de
4. Augustus, nadat daar oordrag gemaak is deur deur-Geraal-Majoor
5. Mpembe aan Luitenant-Geraal Mbombo. Fase 3 was egter
6. altyd 'n opsie gewees.
7. MR BUDLENDER SC: Then General, would you
go to GGG6.2, which is a report from The Sowetan newspaper
9. – from Reuters, I beg your pardon, a Sowetan newspaper
carrying a Reuters report. If you look at the top of the
11. second page where it says the following, “Police officers
12. said talks with leaders of the radical association of
mineworkers and construction union, AMCU, had broken down,
leaving no option but to disperse them by force. Today is
unfortunately D-day, spokesman Dennis Adria said.” You
see that?
17. GENERAAL-MAJOR ANNANDALE: Voorsitter,
18. my reaksie is dieselfde as my reaksies teenoor GGG6.1. Ek
19. weet werklik nie wie hierdie polisie-offisier is waarna
verwys word nie en onderhandelinge was sover ek betref was,
was uitsers posifit met pertinent AMCU na gelang van 'n
konstruktiewe gesprek die vorige aand, die aand van die
15de Augustus.
20. MR BUDLENDER SC: Yes, we’ll pursue that
21. with Captain Adria if we have the pleasure of his company.
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1 I just want to put this to you, General, and we will discuss it with Captain Adriaan and Lieutenant-General Mbombo, but at the time when these announcements were made –

5 CHAIRPERSON: Before you proceed, Mr Semeny, is Captain Adriaan on your list of witnesses?

6 MR SEMENYA SC: Not on the provisional list of witnesses, no Chair.

9 CHAIRPERSON: Well, if you don't have him on your list we'll have to subpoena him.

11 MR BUDLENDER SC: We'll come out with a subpoena, Chair.

13 MR SEMENYA SC: It might not be necessary to subpoena Captain Adriaan. If wanted, he'll be here.

15 CHAIRPERSON: I'm pleased to hear that. Please proceed, Mr Budlender.

17 MR BUDLENDER SC: General, just one thing. At the time that the Provincial Commissioner conducted her media briefing, half past 9 Thursday morning, life and property were not in any imminent danger. I understand there's always the risk of danger, but at that time there was no imminent danger and there had been no violence since the Tuesday afternoon.

19 GENERAAL-MAJOR ANNAANDALE: Voorsitter, die dreigement was nie dreigend op daardie stadium nie, dit is korrek.

23 statement, exhibit GGG5. Do you have it?

25 L174, the police presentation to the Commission.

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1 is korrek.

3 CHAIRPERSON: Well, if you don't have him betrokke bladsy voor my.

5 MR BUDLENDER SC: That's headed, “A detailed sequence of events.” You see that?

7 GENERAAL-MAJOR ANNAANDALE: Dis korrek.

9 MR BUDLENDER SC: It says, “The chairperson, Major-General Annandale, called a special JOCOM meeting to evaluate the current strategy and the possible implementation of stage 3. The Provincial Commissioner, Lieutenant-General Mbombo, informed the JOCOM that she had been involved in a meeting the whole morning with the president of AMCU, Mr Joseph Mathunjwa, to resolve the current situation. Mr Mathunjwa was supposed to indicate at 09:00 whether or not the protesters on the koppie were prepared to put their weapons down. Mr Mathunjwa failed to provide feedback as he agreed to do,” and then, “After evaluating the situation from reports on the ground the Provincial Commissioner instructed Major-General Annandale to proceed with the implementation of stage 3 of the operational plan, dispersion into smaller groups, encirclement, and disarming.” Then can I take you to General Mbombo’s statement, exhibit GGG5. Do you have it?

13 MR BUDLENDER SC: Then could you go to FFF9.

15 GENERAAL-MAJOR ANNAANDALE: Dit is korrek, ek het dit.

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1 police document that says or suggests that the decision to implement stage 3 was made because matters had escalated and life or property was in danger. Let me show you why I say that. Could you have a look at the opening statement of the police? Do you have that available?

6 GENERAAL-MAJOR ANNAANDALE: Het u die bewysstuknommer?


9 GENERAAL-MAJOR ANNAANDALE: Ek het dit voor my, FFF9.

11 MR BUDLENDER SC: Could you go to page 12? There it says, paragraph 44.6, “By 09:30 on Thursday 16 August 2012 Mr Mathunjwa had not reported back to the Provincial Commissioner North West on the disarmament by protesters. The Provincial Commissioner North West criticised him for not being a man of his word in this regard.” 44.7, “It was reported later that the protesters would not disarm. The JSOC then took a decision at 13:30 to disperse the protesters, disarm them and where necessary, effect arrests at 15:30.” That doesn't say anything about escalation. Is that correct?

14 GENERAAL-MAJOR ANNAANDALE: Ek sê nie die woord “eskalasie” nie, nee.

16 Mrs Mbombo, but at the time when these announcements were made –

18 decision was very important. I'm sure you'll agree with that.

19 GENERAAL-MAJOR ANNAANDALE: Gedeeltes van die dreigement was nie dreigend op daardie stadium nie, dit is korrek. 20 the police presentation to the Commission.

21 anything about escalation. Is that correct?

22 GENERAAL-MAJOR ANNAANDALE: Ek sê nie die woord “eskalasie” nie, nee.

24 MR BUDLENDER SC: Then could you go to FFF9.

25 L174, the police presentation to the Commission.
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Tel: 011 440 3647  Fax: 011 440 9119  Email: realtime@mweb.co.za

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25 bewysstuk L, slide 174, derde paragraaf, “After evaluating

The corresponding evidence of
what reports those are we’ll find at exhibit FFF25, running
from approximately 9:45, that will be on page, ending 535

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the situation and from reports on the ground.“

1 MR BUDLENDER SC: Could you go to page 8,
paragraph 19.4? I will read what it says. Do you have it?

2 GENERAAL-MAJoor ANNANDALE: Ek het dit
voor my, 19.4.

3 MR BUDLENDER SC: It says, “During the
JOC meeting at 13:30 I received a briefing that the
protesters at the koppie have not laid down their dangerous
weapons. In the light thereof I then gave the instruction
that the protesters must be dispersed and disarmed, and
arrest be effected on those who might offer resistance
thereto. This is commonly referred to as stage 3 in the
plan.” You see that? Now what all of those documents have
in common is that they suggest that what triggered stage 3
was the failure to hand over the weapons, and not one of
them suggests that it had anything to do with any
escalation of the threat of violence. Do you agree with my
summary of what the documents say?

4 GENERAAL-MAJoor ANNANDALE: Voorsitter,
née.

5 MR BUDLENDER SC: Well, which of them
gives any reason other than the failure to hand over
weapons? Which of them says there was an escalation which
was the cause?

6 GENERAAL-MAJoor ANNANDALE: Voorsitter,
bewysstuk L, slide 174, derde paragraaf, “After evaluating
25 there, I know, so you can’t really comment, but it does

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1 CHAIRPERSON: Yes, that’s noted. May I
ask a question, Mr Budlender, or would you prefer to finish
this part of the cross-examination before I ask a question?

2 MR BUDLENDER SC: I’m happy for the Chair
to go ahead.

3 CHAIRPERSON: Well, you see the
difficulty with what you’ve told us is that it appears that
the Provincial Commissioner had already decided the night
before that if the weapons weren’t laid down, the crowd
would be dispersed. That’s what she says in paragraph 22,
a paragraph she never denies, on various copies of page 7
of her statement, FFF2A and FFF3. So she already,
according to what she told the National Commissioner the
night before, said that if the undertaking to lay down
their arms is not, and to leave the koppie is not honoured,
which she regarded as an undertaking – a matter we’ll
investigate later – but if that didn’t happen the police
would have to disperse the crowd. No question would have

4 to disperse the crowd if the situation escalates or if all
these things that are set out in the occurrence book the
next day happened; simple statement, if the above
undertaking fails to materialise the police will have to
disperse the crowd. That’s what she told the National
Commissioner on the evening of the 15th. Now you weren’t

5 there, I know, so you can’t really comment, but it does

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throw light upon the point that’s being made.

6 GENERAAL-MAJoor ANNANDALE: Voorsitter,
ek hoor totaal wat u sê. Ek kan slegs getuig oor wat my
ervaring was, my interaksie met Generaal Mmbombo.

7 Voorsitter, en sy het dit nooit aan my oorgedra en vir my
gesê irrelevant wat vandag gebeur, ons gaan sodanig of
sodanig optree nie.

8 CHAIRPERSON: Would it be a fair comment
to say that in the light of what you told us, what I’ve
read to you from the National Commissioner’s statement as

9 to what the Provincial Commissioner told her the night
before, comes as a surprise to you?

10 GENERAAL-MAJoor ANNANDALE: Vra u of ek
verras sal wees as u dit aan my voorhou?

11 CHAIRPERSON: Well, it’s been put to you.

12 I’ve read to you what the National Commissioner said the
Provincial Commissioner told her the night before, so
obviously you didn’t know about it, you’ve told us. So now
that you’ve heard it been read to you, do you find it – are

13 you surprised?

14 GENERAAL-MAJoor ANNANDALE: Voorsitter,
ek is seker verras want dit was nooit so oorgedra.

15 Generaal Mmbombo het daardie oggend daar vir my gesê

16 [onhoorbaar] –

17 CHAIRPERSON: That was my question, thank
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21. Mr Bulender SC: So the decision to implement stage 3, or to execute stage 3, had already been made before the JOCOM meeting of 13:30 because the Provincial Commissioner indicated that she had already communicated with the National Commissioner, informing her of the current situation, and that a deadlock was reached with the National Commissioner, indicating that she will inform the Minister of Police on the current situation and actions that will be taken. Now that’s what the Provincial Commissioner said at that meeting.

22. Mr Mahlangu: I did not get what you were saying. Could you rephrase the question. This information that was conveyed to the JOC to another room where the – is that right? Or this information that you got that stage 3 was about to be implemented?

23. Chairperson: Brigadier Pretorius was to arrange for the General.

24. Chairperson: To get all the role-players together. So in other words you left, would it be correct to say you left General Mbombo and General Mpembe in this open area in front of the JOC when you went ahead, as it were, to the JOC to get Brigadier Pretorius to invite all the role-players – in other words you convened the meeting at the JOC at that point?

25. Chairperson: Yes.

26. Mr Mahlangu: I did not get what you were saying. Could you rephrase the question. This information that was conveyed to the Provincial Commissioner, that was before you went to the JOC. Is that right?

27. Chairperson: You told us you went from the JOC to another room where the – is that right? Or this information that you’re receiving – I’m sorry, let me rephrase the question. This information that was conveyed to the Provincial Commissioner, that was before you went to the JOC. Is that right?

28. Chairperson: Dit is korrek, Voorsitter.

29. Chairperson: Where was it relayed to her?

30. Chairperson: Dit is korrek, Voorsitter.

31. Mr Mahlangu: I did not get what you were saying. Could you rephrase the question. This information that was conveyed to the Provincial Commissioner, that was before you went to the JOC. Is that right?
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25 perhaps I should ask you now. Mr Mathunjwa gave
24 there was escalation.
23 the plan, which was that stage 3 would be implemented if
22 on the Wednesday evening, that was a fundamental change to
21 this way, General, that if such a decision was indeed made
20 I want to put it to you this way, General, that if such a decision was indeed made
19 surprised when that passage was put to him.
18 testify about things he knows himself. He said he was
17 so he doesn't know what was said. He says he can only
16 Mbombo oorgedra het, wie sou dan bevestig het dat ons
15 dit is nadat die oorhoofse bevelvoerder dit aan Generaal
14 ek kan oor mien eie feite getuig.
13 as ek kan voortgaan?
12 CHAIRPERSON: That's what should have happened.
11 GENERAAL-MAJ OOR ANNANDALE: Voorsitter,
10 declined to talk to Mr Mathunjwa, but I take it that's
9 Provincial Commissioner and the National Commissioner the
8 clarified. I'm referring to the meeting between the
7 met General Mbombo and General Mpembe at the JOC meeting on
6 Mr Mathunjwa is giving evidence about what happened when he
5 everyone, it's page 2340, lines 1 to 10, and this is where
4 of you. I'll read you what he said. For the benefit of
3 spoke to General Mpembe and General Mpembe said “Don't talk
2 off on the matter which the Chair has raised, the passage
1 evidence, which was not challenged in cross-examination as
12 CHAIRPERSON: - challenged in cross-
11 examination by counsel for the police.
10 GENERAAL-MAJ OOR ANNANDALE: Voorsitter,
9 for AMCU says to him, he says, “There were introductions,”
8 the morning of the 16th of August. Mr Brinders as counsel
7 correct it would mean that General Mbombo had taken over as
6 given and it wasn't challenged, as far as I can recall.
5 Obviously you're not aware of that, but that evidence was
4 to me; I am not in charge anymore, General Mbombo is.”
3 spoke to General Mpembe and General Mpembe said “Don't talk
2 far as I can recall, that at some point in the morning he
1 [12:44] MR BUDLENDER SC: General, just to finish

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1 [12:44] MR BUDLENDER SC: General, just to finish
2 off on the matter which the Chair has raised, the passage
3 in the record is at page 2340. You don't have it in front
4 of you. I'll read you what he said. For the benefit of
5 everyone, it's page 2340, lines 1 to 10, and this is where
6 Mr Mathunjwa is giving evidence about what happened when he
7 met General Mbombo and General Mpembe at the JOC meeting on
8 the morning of the 16th of August. Mr Brinders as counsel
9 for AMCU says to him, he says, “There were introductions,”
10 and then Mr Brinders SC, “So after the introductions, who
11 spoke?” Mr Mathunjwa, “Mr, or General Mpembe, he spoke
12 first, but Provincial Commissioner Mbombo, she's the one
13 that's taking over the operation here, so therefore he's no
14 longer a person in charge of the operation. The person who
15 is no longer in charge is General Mpembe.” That's the
16 evidence which he gave.
17 CHAIRPERSON: - challenged in cross-
16 examination by counsel for the police.
15 GENERAAL-MAJ OOR ANNANDALE: Voorsitter,
14 ek was teenwoordig gewees met die vergadering en Generaal
13 Mpembe het haar nie so voorgestel nie. Hy het haar
12 voorgestel as synde die Provinsiale Kommissaris vir
11 Norndwes provinsie te wees. Voorsitter, en hy het gesê sy
10 is in beheer van die provinsie. Hy het nie gesê sy is in
9 beheer van die operasie nie.
8 die verandering op die plan word nie geneem deur die
7 Nasionale Kommissaris of die Provinsiale Kommissaris nie.
6 Die plan is opgestel, soos ek verduidelik het, deur deur
5 van 'n verskeidenheid van rolspelers, en die finale besluit
4 word geneem na advies van die JOCOM deur die oorhoofse
3 beheer van die operasie nie.
2 reflekteer, dis korrek, Voorsitter.
1 nee, dit kan nie 'n verandering op die plan wees nie want
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1 MR BUDLENDER SC: Well, the difficulty is that that's what Mr Mathunjwa says she said and that was not challenged in cross-examination.
2 GENERAAL-MAJOR ANNANDALE: Voorsitter, ek hoor dit totaal. Ek kan net sê wat ek waargeneem het en ek was teenwoordig gewees.
3 MR BUDLENDER SC: What we know in any event is that the Provincial Commissioner made the decision that stage 3 will be implemented. Is that correct?
4 GENERAAL-MAJOR ANNANDALE: Voorsitter, dit gesien word in die konteks nadat sy toegelig was en dat die protokol verstaan word in terme van die Suid-Afrikaanse Polisiediens.
5 CHAIRPERSON: Mr Budlender – document now attached what looks like a typewritten version of the same document. Yes, I think so. It's headed Lieutenant-

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1 as 'n provinsiale kommissaris sê ek stem saam dat ons voortgaan, dan is dit niks anders as 'n instruksie nie, maar dit was gebaseer op dit wat ons aan haar oorgedra het en die konteks is belangrik; as sy sou gekom het, en ek dink dis belangrik dat die besluit was reeds geneem deur die oorhoofse bevelvoerder en sy het dan gesê gaan voort met die operasie.
2 MR BUDLENDER SC: General, she made the decision to proceed with stage 3 of the operation. Is that not correct?
3 GENERAAL-MAJOR ANNANDALE: Voorsitter, die besluit was reeds geneem deur die oorhoofse bevelvoerder en sy het dit beaam, en ek dink dis belangrik dat dit gesien word in die konteks nadat sy toegelig was en dat sy die redes geluister het en ons sou dit gedebatteer het.
4 MR BUDLENDER SC: Now just to round off this point, the decision of the JOC at 6 o'clock on the Thursday morning was that stage 3 would be implemented if matters escalated.
5 GENERAAL-MAJOR ANNANDALE: Soos voortgaan. Dit is reg, maar dit was gebaseer op dit wat ons aan haar oorgedra het, dit is nie in lyn met ons beplanning nie, en dit word nie daaroor saamgestem nie, dan sou ons dit nie gedoen het nie, maar terselfdertyd as die Provinsiale Kommissaris gesê het, nadat sy toegelig was, dat julle nie voortgaan mag nie, en hierdie optrede nie, dan sou ons ook nie. Dan sal ons na die redes geluister het en ons sou dit gedebatteer het.

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1 instructed Major-General Annandale to proceed with the implementation of stage 3 of the operational plan, dispersion into smaller groups, encirclement, and disarming.” So she decided that you would be the implementer.
2 MR BUDLENDER SC: It's also reflected in these minutes, EE.
3 CHAIRPERSON: The Commission resumes. U is no longer under eed, Major-General.
4 CHARL ANNANDALE: s.o.e.
5 CHAIRPERSON: Mr Budlender – document now being put before us. It's a handwritten document to which we refer.

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1 waarskynlik.
2 MR BUDLENDER SC: Chair, I'm now going on to a new subject. I'm happy to start now, but perhaps we could stop a bit early and restart a bit early?
3 CHAIRPERSON: [Inaudible]
4 MR BUDLENDER SC: 25 past 1, Chair.
5 CHAIRPERSON: Sorry, I must – yes, Mr Msimang? This is a day when we start at 10, so that's why we take a short luncheon adjournment. We would have stopped now at 5 to 1 we'll try to start at 25 past 1, and tomorrow we'll do it as well because I've been asked to adjourn at 3:30 so that people who want to travel thereafter can get to the airport in time, so we'll take half an hour lunch break tomorrow as well, and we'll adjourn at 3:30, take half an hour lunch now and we'll adjourn now until 26 minutes past 1.

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1 instructed Major-General Annandale to proceed with the implementation of stage 3 of the operational plan, dispersion into smaller groups, encirclement, and disarming.” So she decided that you would be the implementer.
2 MR BUDLENDER SC: It's also reflected in these minutes, EE.
3 CHAIRPERSON: The Commission resumes. U is no longer under eed, Major-General.
4 CHARL ANNANDALE: s.o.e.
5 CHAIRPERSON: Mr Budlender – document now being put before us. It's a handwritten document to which we refer.
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<td>General Mbombo. Now is this going to be an exhibit? What exactly is it?</td>
<td>MR BUDLENDER SC: General, do you have Brigadier Fritz's statement? Not yet, sorry. Perhaps before we get there, there's just one preliminary matter I can deal with which is relevant to that and other matters.</td>
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<td>MR SEMENYA SC: Chair, the Chair requested to have a transcript of General Mbombo's media briefing. We don't have the media statement. What do we have, and that is before you, would be notes taken by Captain Adario as the media briefing was presented, and we have made a translation warts and all; there are typographical errors that appear in the original notes -</td>
<td>CHAIRPERSON: You made a transcription, you mean.</td>
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<td>MR BUDLENDER SC: Now what I would just like you to do is to indicate who was responsible for ensuring that all of these things, each of these things was in place. Let's take the first one. Who was responsible for ensuring adequate batteries for radio and video cameras?</td>
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<td>MAJOR-GENERAL ANNANDALE: I do have it, yes, Chairperson.</td>
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<td>MR BUDLENDER SC: So this was in effect an instruction to the commanders, ensure that there are adequate batteries for the radios and the video cameras?</td>
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<td>GENERAAL-MAJOR ANNANDALE: Voorsitter, dit sal tipies die bevelvoerders wees van die onderskeie groepe.</td>
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<td>MR BUDLENDER SC: I'm sorry to interrupt you, but who did you think would ensure that there were adequate batteries for radios and video cameras?</td>
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<td>GENERAAL-MAJOR ANNANDALE: Weet u, Voorsitter, baie van die punte sou reeds gedeel wees deur die normale verantwoordelikheid van 'n bevelvoerder tydens parade. So dis 'n herinnering en 'n ou sou verwag dat dit oor die, deur die JOC oorgedra word aan bevelvoerders.</td>
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<td>MR BUDLENDER SC: Just to interrupt you, or maybe I'm not interrupting you, when you had on your</td>
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<td>9</td>
<td>GENERAAL-MAJOR ANNANDALE: Voorsitter, dit sal tipies die bevelvoerders wees van die onderskeie groepe.</td>
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<td>10</td>
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<td>MR BUDLENDER SC: Now what I would just like you to do is to indicate who was responsible for ensuring that all of these things, each of these things was in place. Let's take the first one. Who was responsible for ensuring adequate batteries for radio and video cameras?</td>
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<td>11</td>
<td>MAJOR-GENERAL ANNANDALE: I do have it, yes, Chairperson.</td>
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<td>12</td>
<td>12</td>
<td>MR BUDLENDER SC: So this was in effect an instruction to the commanders, ensure that there are adequate batteries for the radios and the video cameras?</td>
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<td>13</td>
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<td>GENERAAL-MAJOR ANNANDALE: Weet u, Voorsitter, baie van die punte sou reeds gedeel wees deur die normale verantwoordelikheid van 'n bevelvoerder tydens parade. So dis 'n herinnering en 'n ou sou verwag dat dit oor die, deur die JOC oorgedra word aan bevelvoerders.</td>
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<td>14</td>
<td>14</td>
<td>MR BUDLENDER SC: Just to interrupt you, or maybe I'm not interrupting you, when you had on your</td>
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25 operators? In other words, who was their commander?

MR BUDLENDER SC: And who was the commander who was meant to check this with the video cameras? Because not every unit had video cameras.

GENERAL-MAJOR ANNANDALE: Elke camera van sodanige videokamera, Voorsitter.

MR BUDLENDER SC: And can you just remind us who were the commanders who were responsible for ensuring this? Who would they have been?

GENERAL-MAJOR ANNANDALE: Elke bevelvoerder wie ontplooi is, Voorsitter.

MR BUDLENDER SC: And who was responsible for making sure that there were batteries for the video cameras? Because not every unit had video cameras.

GENERAL-MAJOR ANNANDALE: Elke operator van sodanige videokamera, Voorsitter.

MR BUDLENDER SC: And who was the commander who was meant to check this with the video operators? In other words, who was their commander?

CHAIRPERSON: I think in relation to the commanders at their meetings with the commanders. Is that correct?

MR HANABE: Brigadier Pretorius.

MR MAHLANGU: Oh, I'm sorry, Pretorius.

GENERAL-MAJOR ANNANDALE: - was dit ook verwag dat dit wat relevant is oorgedra sou word tydens hulle persoonlike toeligting –

CHAIRPERSON: He says it was expected that they would communicate what was relevant. I think that's what the witness said.

MR BUDLENDER SC: I understood your evidence last week, General, that Brigadier Pretorius and Colonel Scott were going to go around to the different units, so you expected that they would say to the units, have you made sure about this, and have you made sure about that. Is that correct?

GENERAL-MAJOR ANNANDALE: Voorsitter, nee, Brigadier Pretorius en Colonel Scott het nie rondgegaan tussen eenhede nie. Huile het na een pertinente punt gegaan, te wete “forward holding area” 1, en huile het die toeligting aaldaar gedoen.

MR MAHLANGU: And they did the following.

CHAIRPERSON: “Communication” is probably the word you’re looking for.

MR BUDLENDER SC: I’m sorry, yes, I was mistaken. But I really don’t want to spend a long time on it. I just want to understand how it was going to happen, or how you thought it was going to happen. As far as the first item is concerned, you expected that Brigadier Pretorius and Lieutenant-Colonel Scott would relay this to the commanders at their meetings with the commanders. Is that correct?

GENERAL-MAJOR ANNANDALE: Voorsitter, nee, ek het probeer verduidelik dat dit is ‘n algemene verwagting dat elke bevelvoerder in elk geval sal seker
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25 dat van dit is net, dis amper 'n onnodige herhaling. Dis
24 onderhandelaars. So Voorsitter, dit is wat ek probeer sê,
23 ek aangaan - die observasiepunt en die reservespanne en die
21 orbiter - Brigadier Van Zyl bevestig, "Dit is reeds sodanig
deur Brigadier Seboloke, "Generaal, dit is reeds gereël.
20 and prisoners transported," daar is vir my daar en dan gesê
done toe die mense vertrek het." Volgende punt, "trucks
gedoen toe die mense vertrek het." Volgende punt, "trucks
done," is daar aan my bevestig, "Dit is reeds vanoggend
15 byvoorbeeld "call signs to be verified and radio test to be
14 as ek kan voorbeelde noem, soos ek deur die lys gaan van wat -
13 en dat aspekte wat relevant geag sou word deur Brigadier
12 verwagting was dat die JOC radio-operateurs dit sou oordra,
en dat aspekte wat relevant geag sou word deur Brigadier
11 Voorsitter, en ek het ook verder gegaan en gesê dat daar 'n
10 verwagting was dat die JOC radio-operateurs dit sou oordra,
en dat aspekte wat relevant geag sou word deur Brigadier
9 of in the manner you discussed, and then it goes on –
8 specifically mentioned, but which had not yet been disposed
7 with postings and call signs as it was essential for
effective functioning of the JOC." That's what happened.
6 the generators.
5 of the closing remarks on page 3, "Major-General Annandale
4 instructed Lieutenant-Colonel Scott to ensure that all the
3 instructed Lieutenant-Colonel Scott to ensure that all the
2 of the closing remarks on page 3, "Major-General Annandale
1 bevestig, dis gesê en die bevelvoerders het bevestig dat
2 dit reeds in plek is.
3 CHAIRPERSON: Major-General, I've looked
4 through these minutes; I see that there are 17 bullet
5 points on pages 2 and 3 and the minutes reads, "Major-
6 General Annandale went through the following checklist to
7 ensure everything was in place." You then dealt with 17
8 topics. I can understand that in the case of a number of
9 them you were then told there and then, as it were, that
10 they'd been attended to. So certain others were left over,
to which, in respect of which you did not receive such an
11 assurance. Is that correct?
12 CHAIRPERSON: The generators.
13 MR BUDLENDER SC: So in other words what
14 happened was there were 17 items you mentioned. In respect
15 of a number of them you were assured then and there that
16 they'd either been attended to, or Brigadier Calitz or
17 somebody said, "I'll do that."
18 CHAIRPERSON: So in other words what
19 happened there were 17 items you mentioned. In respect
20 of a number of them you were assured then and there that
21 they'd either been attended to, or Brigadier Calitz or
22 somebody said, "I'll do that."
23 MR BUDLENDER SC: But for which of these
24 did you rely on the JOC radio operators?

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2 dit reeds in plek is.
3 CHAIRPERSON: Major-General, I've looked
4 through these minutes; I see that there are 17 bullet
5 points on pages 2 and 3 and the minutes reads, "Major-
6 General Annandale went through the following checklist to
7 ensure everything was in place." You then dealt with 17
8 topics. I can understand that in the case of a number of
9 them you were then told there and then, as it were, that
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17 somebody said, "I'll do that."
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19 happened there were 17 items you mentioned. In respect
20 of a number of them you were assured then and there that
21 they'd either been attended to, or Brigadier Calitz or
22 somebody said, "I'll do that."
23 MR BUDLENDER SC: But for which of these
24 did you rely on the JOC radio operators?

1 maak dat dit die geval is, en dat dit amper 'n onnodige
2 herhaling is tydens die vergadering, en ek het dit gedoen,
en ek het die illustrasie gebruik in terme van hoe ek
3 parades toespreek en ek het verder gegaan om te sê -
4 CHAIRPERSON: What he says is I gave as
5 an illustration the address at a parade. That's what he
6 said.
7 MR MAHLANGU: Oh yes, not at the command,
at the parade.
8 GENERAAL-MAJOR ANNANDALE: Thank you,
9 for a moment, General. I'm sorry to interrupt you. What's
10 the point of a checklist if it's directed at people who are
11 supposed to check this, then what's the point of announcing
12 and Brigadier Pretorius was instructed to join Lieutenant-
13 and Brigadier Pretorius was instructed to join Lieutenant-
14 and Brigadier Pretorius was instructed to join Lieutenant-
15 as ek kan as ek kan voorootgaan kan ek dit verduidelik. Soos
16 batterye was verwagting dat elke lid sal seker maak dat sy
17 batterye gelaai is.
18 MR BUDLENDER SC: Can you just stop there
19 for a moment, General. I'm sorry to interrupt you. What's
20 the point of this if it's directed at people who are
21 not at the meeting? If the individual operators are
22 supposed to check this, then what's the point of announcing
23 at a meeting of about 10 or 12 people that this must be
24 checked?
25 GENERAAL-MAJOR ANNANDALE: Voorsitter,
as ek kan voortgaan kan ek dit verduidelik. Soos
byvoorbeeld "call signs to be verified and radio test to be
done," is daar aan my bevestig, "Dit is reeds vanoggend
gedoen toe die mense vertrek het." Volgende punt, "trucks
to be available at holding area, one for arrest if needed
and prisoners transported," daar is vir my daar en dan gesê
deur Brigadier Seboloke, "Generaal, dit is reeds gereël."
"Investigation team to be in place at forward holding area
1," Brigadier Van Zyl het bevestig, "Dit is reeds sodanig
gereël; my mense is reeds ontplooi." Voorsitter, en so kan
ek aangaan - die observasiepunt en die reservespanne en die
onderhandelaars. So Voorsitter, dit is wat ek probeer sê,
dat van dit is net, dis amper 'n onnodige herhaling. Dis
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MR BUDLENDER SC: Alright, then if you can just identify in respect of a few of these items, General, so we're clear what happened. The fifth bullet is water cannons to be tested. Who was responsible for ensuring, or who did you expect would ensure that that was done?

COMMISSIONER HEMRAJ: How did you expect that to be conveyed?

MR BUDLENDER SC: Alright, then if you can just identify in respect of a few of these items, who is the commander who was supposed to be briefed accordingly and to whom that instruction would be conveyed?

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

GENERAL-MAJOR ANNANDALE: Voorsitter, is there, if it's not directed at anybody?

MR BUDLENDER SC: Alright, sorry that that was not directed at anybody?

GENERAL-MAJOR ANNANDALE: Voorsitter, die waterkanon operators.

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

CHAIRPERSON: I can understand that, but who did you expect would ensure that that was conveyed?

GENERAL-MAJOR ANNANDALE: Voorsitter, dit sou waarskynlik direk onder die beheer van die operasionele bevelvoerder Brigadier Calitz geval het.

COMMISSIONER HEMRAJ: How did you expect that to be conveyed as well?

MR BUDLENDER SC: Alright, sorry that that took longer than I had hoped. Now can we come to the problems with implementation. The first problem, or firstly there was a problem with the radio communication system and I referred you to the statement of Brigadier Fritz, which you now have, I think. In all the excitement about water cannons I've lost my copy. Could you go to paragraph 5, and you'll see that this is Brigadier Fritz talking about the time that they were up in the air in the chopper, and then he says, the sixth line – or let's start with the fifth line, he says, “At that stage we were not aware that people had been killed, or how many had been killed. We tried to make radio contact with the people on the ground and the JOC to give a sit-rep from what we were witnessing, but we could not because Lieutenant-Colonel Vermaak in another chopper and Brigadier Calitz on the ground were busy giving instructions from their radios. They effectively occupied the communication channel, which made it impossible for me to communicate on that channel.
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1. with anyone. The operation on that day was run on that single channel.” Then could we go to paragraph 8, and I’ll read that. “The purpose of my deployment in the chopper was not achieved because I could not make radio communication with either the JOC or the people on the ground. Every time the radio went quiet I tried to communicate, but was unable to do so because someone else was occupying the channel.” Now General, you explained last week how that problem had arisen, what the problem was with the system.

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1. JOC gepraat het nie, maar ek was nie bewus daarvan dat hy sodanige probleme ervaar nie.
2. MR BUDLENDER SC: I think what you’re saying is at the time you were not aware that he was encountering those difficulties?
3. GENERAL-MAJoor ANNANDALE: Dit is korrek.
4. [14:11] MR BUDLENDER SC: Well, I have to put it to you, General, that what that means is that the communication system was so bad that you didn’t even know there was something wrong with it.
5. GENERAL-MAJoor ANNANDALE: Dit is ongewenst.

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1. ‘n uitdaging gestel geword het aan daai kanaal soos wat nou die geval is wat ons nou weet nie.
2. MR BUDLENDER SC: Right, now the police have –
3. CHAIRPERSON: Are you moving on to a different topic?
4. MR BUDLENDER SC: A different aspect of this topic, Chair.
5. CHAIRPERSON: Look at paragraph 4 of Brigadier Fritz’s statement. The pages aren’t numbered, but it’s paragraph 4. I think it’s on the second page. He says, “While he was at the JOC, General Annandale informed me that a shooting had taken place at the kopjie. I was instructed by General Annandale to climb into a chopper and fly to the area and give a situational report (sit-rep).” There he describes how he did that and there’s the passage that was put to you by Mr Budlender, and so in para 8 he says, “The purpose of my deployment in the chopper was to go and give a situation report. The purpose of my deployment in the chopper was not achieved because I couldn’t make radio communication with either the JOC or the people on the ground.” Now what it means then is you asked him to get into a chopper, to fly over the area and give a situational report. You never got the situational report. He never reported back to you at all during the whole time, and I think he says somewhere that he’s in the air for – I’m not quite sure how long it is, but he was in the air for quite some time – 40 minutes, and at no stage during that time did he give you the situation report.
6. Didn’t you wonder what had happened? He’s flown to the area - it couldn’t take him very long to get there - being specifically instructed to give a situation report, and you didn’t get any report.
7. GENERAL-MAJoor ANNANDALE: Voorsitter, ons moet teruggaan. Die beplanning was altyd dat die tweege “chopper” ook in die lug sou wees. Die doel van die “chopper” wat Brigadier Fritz op sou wees was pertinent om die operasionele omgewing van Brigadier Calitz plaasvind, maar hy sou ook vir Luitenant-Kolonel Botha aan boord gehad om die uiteendryf-aksie te verfilm. Daar was aan my oorgegaan dat die betrokke Squirrel helikopter slegs twee en ‘n half ure vlugtyd tot sy beskikking het vir die dag. Met die wat die operasie nie om 15:30 begin het nie, was daar nou eers gewag vir die uiltol van die defensiewe maatreëls en daarna, en voor offensiewe maatreëls implementeer sou word ons bewus daarvan dat daar nog steeds ’n waarskuwing gegee sou word wat waarskynlik 20 minute, of selfs langer sou wees, en dit was die rede hoekom Brigadier Fritz nie reeds in die lug was om 15:30 nie. Toe ons op
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25 scene 1? How did you hear it?
24 when did you first hear that there had been shootings at
23 up on that before I come back to the theme I was busy with,
22 MR BUDLENDER SC: General, just to follow
21 korrek, Voorsitter.
20 GENERAAL-MAJOR ANNANDALE: Dit is
19 and Vermaak was in another helicopter. Is that correct?
18 CHAIRPERSON: The POP members had used
17 rubber, stun grenades, and teargas.
16 GENERAAL-MAJOR ANNANDALE: het ek vir
15 Brigadier Fritz gesê hulle moet nou onmiddellik in die lug
14 kom, en ook vir hom gesê om terugvoer te gee. Voorsitter,
13 voan die operasionele bevelvoerder, Pappa1, en dit is
12 hoofsaaklik die twee roepseine wat die radio wel geokkupeer
11 het. Voorsitter, daar was seuls en stadium dat dit seker
10 omtrent vir meer as drie minute waar daar geen
9 radiokommunikasie geplaasgevind het nie, en dit is tipies
8 wat gebeur wanneer iemand sy knoppie sal inhou, dan word
7 radiokommunikasie in totaliteit uitgesny.
6 CHAIRPERSON: I understand all that, but
5 dit stell't does'n detract from the fact that you instructed
4 him to climb into the chopper after a shooting had taken
3 place at the kopjie, he says. You instructed him to fly to
2 the area and give a situational report. He got in the
1 chopper, he went away. You didn't see him for 40 minutes,
0 and during that time you received no situational report
- from him at all.

1 GENERAAL-MAJOR ANNANDALE: Voorsitter,
2 dit is wel so, en ek het ook verstaan hoekom dit so is,
1 omdat die radio kanaal so besig was. Net soos hy nie
0 geleentheid gehad het, het ek of die volgende persoon ook
- nie 'n geleentheid gehad nie, en wat ek nie sou doen op
- daardie stadium nie, Voorsitter, is om te probeer inbreek
0 op die radio want as hulle besig is met kommunikasie dan
- gaan presies gebeur die oomblik as ek my knoppie druk, dan
- sny ek daai kommunikasie ook uit.

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

10 GENERAAL-MAJOR ANNANDALE: Voorsitter,
9 ek kan nie die presiese tyd onthou nie. Dit moes
8 waarskynlik in die omgewing van half 5 of selfs later
7 gewees het.
6 COMMISSIE HEMRAJ: Lack of report, the
5 situation report from Brigadier Fritz from the chopper, did
4 that hamper your operation in any way? Did it have an
3 effect on it?
2 GENERAAL-MAJOR ANNANDALE: Kommissaris,
1 nee, nie werklik nie want Brigadier Fritz sou in dieselfde
0 lugruim gewees het as wat Luitenant-Kolonel Vermaak was. So, Kommissaris, hulle sou basies
- gesirkel het, net op verskillende hoogtes, maar daardeur
- wil ek nie sê dat as jy aan die een kant is en iets gebeur
- aan die ander kant dat jy "obviously" iets kan waarneem wat
- die ander persoon nie waargeneem het nie.
22 CHAIRPERSON: What your own statement
23 says is, at page 11, para 25, "It was from 15:45 Brigadier
24 Calitz and Lieutenant-Colonel Vermaak started with
25 continuous feedback over the police radio as to
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<td>1 last week. That's correct, isn't it?</td>
<td>1 MR BUDLENDER SC: I understand, and what happened on this day was that it wasn't anticipated that 2 as you explained, the capacity of the radio system, the 3 police case has been put quite strongly that what happened on the 16th of August was, or the situation on the 16th of August was an unprecedented event and the parameters of the event included the follows; there were between 3 000 and 4 000 protesters; they were in an area which is not easily surrounded and isolated; a significant number of them were armed, including some of them with firearms. Some members of the group had apparently been emboldened through rituals and some members of the group had already carried out some killings. Is that a fair description of the broad parameters of the problem you faced, or the situation you faced? 4 GENERAAL-MAJOR ANNANDALE: Het u dit aangehaal uit die openingsverklaring? 5 MR BUDLENDER SC: No, no, it's not a quotation; it's my description of how I understand the parameters. 6 GENERAAL-MAJOR ANNANDALE: Ja, ek aanvaar dis soek 'n wyd omr kywing, behalwe dat daar 'n pertinente kleiner groepie was van sowat 400. 7 MR BUDLENDER SC: Right, thank you, and as you explained to the Commission last week, the problem of radio capacity can be avoided if in advance you put the necessary infrastructure in place, but that infrastructure was not obtained for this operation. 8 GENERAAL-MAJOR ANNANDALE: Voorsitter, my beperkte tegniese kennis van die radioinstelsels verstaan ek dat daar pertinente versterkers moet geplaas wees en dat sodanige versterkers op hoë grond moet geplaas wees. 9 CHAIRPERSON: I understand the English word is “boosters.” 10 MR MAHLANGU: Boosters, that's the correct term, yes, that is boosters would be placed at a high altitude. 11 MAJOR-GENERAL ANNANDALE: High ground. 12 MR BUDLENDER SC: I understand that, General, but you also explained what I understood would be a different system or mechanism that where you had some very large events, you've had to create systems where there can be communication on more than one channel, but special infrastructure is necessary for that. 13 GENERAAL-MAJOR ANNANDALE: Ja, Voorsitter, dit is so. Dit het ook baie te doen met die infrastruktuur wat beskikbaar is. So in 'n stedelike gebied sal sodanige infrastruktuur meer geredelik beskikbaar wees. In 'n landelike gebied is dit dan nou gewoonlik minder beskikbaar. 14 MR MAHLANGU: Relied on the available – 15 technical expert. I think that's what – 16 CHAIRPERSON: We relied upon a radio technical expert. 17 MR MAHLANGU: Replied on the available – 18 CHAIRPERSON: We relied on a radio technical expert, kundige. 19 MR MAHLANGU: Yes, that's correct, Chair. 20 GENERAAL-MAJOR ANNANDALE: En die kolonel het vir ons gesê dit is die twee kanale wat julle tot julle beskikking het. Maar gegeue die uitrol van die operasie wat ek reeds verduidelik het soos ons dit voorsien het, was ons gemaklik om die operasie te doen op daardie betrokke kanale. 21 CHAIRPERSON: - “happy” is a good translation. 22 We were comfortable about proceeding with the equipment available to us - 23 MR MAHLANGU: Operate on the equipment 24 that we had available. 25</td>
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1    MR BULDENDER SC:    General, with the
2 benefit of hindsight again, and I stress that because I’m,
3 as I said at the outset, what I’m particularly interested
4 in is what can be done to avoid problems of this kind in
5 future, so with the benefit of hindsight one of the lessons
6 learned from this episode is that inadequate radio
7 communication systems were a major problem.
8    GENERAAL-MAJOR ANNANDALE:    Voorsitter,
9 ek het verduidelik dat die Tetra sisteem, of die digitale
10 sisteem is ‘n baie, baie bietjie sisteem, en wat die
11 voordele bied bo die analog sisteem, maar met die voordeel
12 van nabetraging, benefit of hindsight, en dat ons weet in
13 ‘n situasie soos wat hom afgespeel het in Marikana –
14 MNR MAHLANGU:    As u kan herhaal,
15 asseblief.
16    GENERAAL-MAJOR ANNANDALE:    Met dit wat
17 ons nou weet, besef ons maar terdeë die beperkinge wat die
18 analoog sisteem met een kanaal vir ons ingehou het.
19    MR BULDENDER SC:    I understand that,
20 General. What puzzles me is why that is not mentioned in
21 exhibit L as a problem and a lesson learned.
22    GENERAAL-MAJOR ANNANDALE:    Dit was
23 waarskynlik ‘n oorsigfout, Voorsitter.
24    MR BULDENDER SC:    I’m sure Mr Semenya
25 will correct me if I’m wrong, but I don’t recall exhibit L

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1 mentioning any shortcomings or problems that were
2 discovered during this operation. I can’t recall any. Can
3 you recall any?
4    GENERAAL-MAJOR ANNANDALE:    Ek kan nie
5 nou skielik dink in L dat daar pertinente vermelding gemaak
6 is soos ek dit uiteengestel het nie, nee.
7    MR BULDENDER SC:    You see, the problem I
8 have, General, is that the purpose of exhibit L is to
9 explain to the Commission what happened so that it can make
10 findings and we can avoid these events in future. Surely
11 for that purpose it should have included problems that were
12 discovered.
13    GENERAAL-MAJOR ANNANDALE:    Van polisie
14 se kant af, Voorsitter, was dit nooit die intensie gewees
15 dat daar net eenvoudig moet staatsgemaak word op bewysstuk
16 L nie. Dit was altyd ons intensie dat dit ook deur
17 verklarings en ook die getuinenis [onhoorbaar].
18    CHAIRPERSON:    It wasn’t included in the
19 opening statement either, was it?
20    MR BULDENDER SC:    I don’t think so,
21 Chair. I’m not sure, but I don’t think so. Chair, I don’t
22 know at what time you wish to take the tea adjournment.
23 I’m happy to proceed, or to – I’m about to start a new
24 aspect.
25    CHAIRPERSON:    We’ll take the tea

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1 they were not able to record it or to tell you what was
2 happening. Now you’ve explained this afternoon why that
3 was. You say that the intention was that they should go up
4 once stage 3 proper was about to commence. Is that
5 correct?
6    GENERAAL-MAJOR ANNANDALE:    Ek het
7 verduidelik wanneer die offensiewe aksies begin plaasvind,
8 dis korrek.
10    CHAIRPERSON:    I’m not sure I understood
11 you correctly. The answer is of course your case is the
12 offensive action as such never started. They were only
13 intended to be in the air, is that right, when the
14 offensive action started, or when – well yes, that’s right,
15 isn’t it?
16    GENERAAL-MAJOR ANNANDALE:    Wanneer die
17 uiteendryf aksies begin, dis reg, Voorsitter.
18    CHAIRPERSON:    Yes, they were intended to
19 be in the air at the beginning of the dispersal actions,
20 but before the dispersal actions could begin, there was
21 what the National Commissioner called the disruption,
22 namely the attempt by some of the protesters to breach the
23 line, as it were, before all the wire was deployed. Is
24 that correct?
25    GENERAAL-MAJOR ANNANDALE:    Dis korrek,
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1 Voorsitter.
2 MR BUDLENDER SC: And the problem was that you didn't anticipate what happened immediately after the barbed wire, or immediately once the barbed wire started being rolled out. You hadn't thought that there would be difficulties at that point.
3 GENERAAL-MAJOR ANNANDALE: Voorsitter, die handeling van die groepie was nie geantisipeer nie, dis korrek.
4 MR BUDLENDER SC: Yes, you thought it would be rolled out without any untoward incident which would require anyone in the air to observe it or to issue instructions.
5 GENERAAL-MAJOR ANNANDALE: Die taking van Luitenant-Kolonel Botha was om die uiteendryf aksie waar te neem.
6 MR BUDLENDER SC: Now General, I'd like to explore with you a bit the prepositioning and the rollout of the barbed wire. You have explained that this is not an offensive measure, it's a defensive measure, and so on warning is required by the Standing Orders.
7 GENERAAL-MAJOR ANNANDALE: Dit is korrek, Voorsitter.
8 MR BUDLENDER SC: I want to explore with you the two questions which that leaves, namely first whether despite that a warning should have been given, and secondly, whether a warning was in fact given. Now you said at one stage in your evidence that the reason for the barbed wire was explained to the leadership group of the 400 at the front.
9 GENERAAL-MAJOR ANNANDALE: Voorsitter, ja, ek het verduidelik dat die terugvoer na die JOC toe was sodanig dat toe daar navraag gedoen is deur die leier van die klein leierskapsgroep –
10 MNR BOOI: Was sodanig dat?
11 GENERAAL-MAJOR ANNANDALE: Voorsitter, ek skuus tog, dit is vir my baie moeilik as ek besig is met 'n sinskonskie en ek moet elke keer teruggaan, so ek skuus, die talk vra vir my om terug te gaan en dan probeer ek eers dink nou net die woorde wat ek gebruik het.
12 CHAIRPERSON: You must understand the interpreter has just taken over, so he's got to get accustomed to the rhythm of the –
13 GENERAAL-MAJOR ANNANDALE: Ja ja.
14 CHAIRPERSON: And you were talking, I think about the leader of the small group, that's the small group of protestors.
15 GENERAAL-MAJOR ANNANDALE: Reg.
16 CHAIRPERSON: You were going to make your point about that when you stopped and the interpreter jumped in. But perhaps you can go back to the beginning of that sentence and start again.
17 GENERAAL-MAJOR ANNANDALE: Nadat die leier van die, kom ons sé nou maar mnr Noki, nadat hy navraag gedoen het oor die doel van die draad, was daar toe oorgedra aan hom wat die doel van die draad is.
18 MR BUDLENDER SC: Yes, and if I understood you correctly, you said that this was also explained over the public address system. Is that correct?
19 Did I understand correctly?
20 GENERAAL-MAJOR ANNANDALE: Voorsitter, dit is hoe ek dit verstaan het, synde dat die onderhandeling tussen die polisie krisisonderhandelaars –
21 MNR BOOI: That the task –
22 CHAIRPERSON: - were dealing with, the police crisis negotiators.
23 MR BUDLENDER SC: And the problem was – were about the crisis that were –
24 CHAIRPERSON: The police crisis negotiators, I think, or I think that's what the witness is talking about. The police crisis negotiators –
25 MR BOOI: The discussion –
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<td>1 people on the koppie would think that they were being surrounded or encircled, and I'll show you why I say that and you can then comment on it. First I want to refer to Colonel Makhubela. He has 32 years experience of Public Order Policing and he was in charge of the deployment of the Nylas with the barbed wire. Is that correct?</td>
<td>1 account given by that witness in relation to the use of the barbed wire.</td>
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<td>7 MR BUDLENDER SC:</td>
<td>3 MR BUDLENDER SC:</td>
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<tr>
<td>GENERAAL-MAJOR ANNANDALE:</td>
<td>Dit is korrek, Voorsitter.</td>
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<td>MR BUDLENDER SC:</td>
<td>I'm going to ask that you be given a copy of his statement, which we've been given by the police. You'll see that there is a handwritten version, which is signed, which is behind, and in front is a typed version, which is unsigned.</td>
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<td>CHAIRPERSON:</td>
<td>I take it this will be exhibit GGG9.</td>
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<td>MR BUDLENDER SC:</td>
<td>Do you have it, General?</td>
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<td>MR BUDLENDER SC:</td>
<td>I'm sorry, do you not have Thebeetsile? My apologies.</td>
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<td>MR BUDLENDER SC:</td>
<td>We'll find another one, Chair.</td>
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<td>1 employees with barbed wire at the place they had gathered at a small hill near Wonderkop Village. The next paragraph he says, I also state that I was in command of the armoured vehicles, six in number, which were to spread out barbed wire. There were about five members, SAPS, per each armoured vehicle, and then over the page, paragraph 6, I also state that the aim to use barbed wire was to control the said employees to be searched as only one entrance or exit was to be made for the weapons they were having. That's what Colonel Makhubela thought the purpose was of the rolling out of the barbed wire. Then I want to show you - I'm sorry this is such a long question, but I think it's better if I put the different statements to you at the same time -</td>
<td>5 where he says - Chair, may I proceed? Constable Mooketsti, paragraph 5, says, &quot;A command has been issued by Brigadier Calitz for the Nyla drivers to drop the barbed wire on the ground to encircle those gathered crowd with the intention to disarm and disperse them.&quot; Do you see that? And then could you go to Constable Thebeetsile's statement, GGG11, paragraph 3, &quot;Some of them were -</td>
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<td>15 MR BUDLENDER SC:</td>
<td>Then the next one is a statement - I'm sorry.</td>
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<td>MR SEMENYA SC:</td>
<td>Chair -</td>
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<td>MR BUDLENDER SC:</td>
<td>Then the next one is a statement - I'm sorry.</td>
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<td>MR SEMENYA SC:</td>
<td>Chair, just for the record, there is also a supplementary statement of the witness where a different reason is offered by the same witness for the use of the barbed wire.</td>
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<td>MR BUDLENDER SC:</td>
<td>Perhaps we can ask that witness when he comes, but he's made - yes.</td>
</tr>
<tr>
<td>MR SEMENYA SC:</td>
<td>No, but for fairness to the witness, he ought to know that there is a different account of what he said -</td>
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and it was alleged that some of them having guns. The main aim for us was to encircle them with barbed wire and disarm them peacefully.” Paragraph 4, “As soon as Nyalas put barbed wire and we tried to encircle them, they started to move towards the western of the hill. When we tried to block them with Nyla, they started to move further towards our top vehicle,” and I want to suggest to you that if the person in charge of the operation and some of the people carrying it out thought that the purpose was encircling, it’s not surprising that some of the people on the koppie also thought that it was an encircling operation. Would you like to comment on that?

**Generaal-Majoor Annandale:** Ek sal graag wil. Voorsitter, ek kan net sé wat die plan bedoel het. Ek sal graag wil weet wat hierdie twee betrokke lede verstaan onder die term “encircle.” Ek het ook vroëër in my getuienis verduidelik dat dit ’n opsie was wat ons waarskynlik op die Dinsdag of dien Woensdagoggend bespreek het. Weens die praktiese uitvoerbaarheid daarvan het ons dit verwerp.

**MR Booij:** Because of the practical implementation thereof we discarded it.

**Chairperson:** I’m sure we will remember the record.

**MR Budlender SC:** I’m sure you will, Chair. Now this is the evidence given by the National Commissioner of Police. You see bottom right-hand section of the first page is page 7252. Do you have that? And you see in the middle of the page it says, line 10, Mr Bizos SC, “I’m sorry, yes, I’m sorry, a separate group of 2 to 300, would the tactics have been different? What do you say?” and he goes on, and then General, line 15, General Phiyega, “There would be consistency in the tactics. The tactics would be to encircle, to disarm, and to disperse the people.” Then could you go to the next sheet. The page you have in front of you is page 7447. (To MR Booij) You’re talking about the plan. It’s the record –

**MR Booij:** Thank you.

**Generaal-Majoor Annandale:** Voorsitter, ek het verduidelik dat ons meer as 1.3 kilometer van lemmetjiesdraad sou nodig gehad het. Ek het ook verduidelik dat dit gelyktydig dan sou moes ontplou word. Voorsitter, en as jy gaan kyk na die voorligging en die spesifieke Google kaart wat Kolonel Scott gebruik het, en ook die praktiese ontplouing van die ses Nyalas op die betrokke dag van die 16de, dan sal u kan sien dat dit net eenvoudig nie prakties moontlik was om die groep te omsirkel nie, synde dat vyf van die Nyalas in ’n reguit lyn was, ongeveer 80 meter uitmekaar uit, en die sesde Nyla was terugwaarts in ’n oostelike rigting geposisioneer. So die totale afstand wat gedeel was deur die Nyalas was waarskynlik 400 meter, dat daar waarskynlik sowat 270 grade totale oogpelaat was. Voorsitter, maar uiteraard was ek nie teenwoordig gewees Toe Brigadier Calitz, of toe hulle die toeliking ontvang het nie, en my aanvaarding is dat dit sodanig oorgedra was tydens die toeliting en dat Luitenant-Kolonel Scott en Brigadier Calitz kan getuig oor die besonderhede wat hulle dan verder oorgedra het aan hulle onderskeie bevelvoerders.

**MR Budlender SC:** General, I understand that and I understand it was not in fact the intention to encircle. What I’m exploring is whether it’s surprising that some of the people affected thought that they were being encircled, and can I show you one other person who apparently also thought there was an encircling operation. Would you look at the – it’s evidence given at the Commission. You’ve got in front of you a small pack of five or six pages of record of the Commission. Can you see that? It’s headed Marikana Commission of Inquiry. I’m sorry, Chair, it seems we only have two for the Commissioners, if you don’t mind. It’s the record –

**Chairperson:** - given already. Read it out, we will –

**MR Budlender SC:** It’s the record.

**Chairperson:** I’m sure we will remember it.

**MR Budlender SC:** I’m sure you will, Chair. Now this is the evidence given by the National Commissioner of Police. You see bottom right-hand section of the first page is page 7252. Do you have that? And you see in the middle of the page it says, line 10, Mr Bizos SC, “I’m sorry, yes, I’m sorry, a separate group of 2 to 300, would the tactics have been different? What do you say?” and he goes on, and then General, line 15, General Phiyega, “There would be consistency in the tactics. The tactics would be to encircle, to disarm, and to disperse the people.” Then could you go to the next sheet. The top right-hand block, page 7303, line 10, General Phiyega, “Advocate, those details my commanders will deal with, but the plan was to encircle, disarm, and disperse those who were there.” Do you see that?

**Generaal-Majoor Annandale:** Ek neem dit waar, dankie, Voorsitter.

**MR Budlender SC:** Then the next sheet, the top right-hand block, page 7319, line 20, this is General Phiyega speaking, “There was an illegal protest. There were people who were armed in that protest and ours really was just to encircle them, to disarm them, and to disperse them. That’s what we were here to do.” Then the next sheet, top right-hand block, page 7447, line 9, General Phiyega, “Yes, I was aware because I said on our morning of the 15th I did say we endorsed her plan to go out, to encircle, disperse, and ensure that those protesters are disarmed.” Then the next sheet, bottom left-hand block, line 1, General Phiyega, “It is a fact that I did not relay this matter to the Minister and I have said to you that it is not necessary for me or even General Mbombo or any other person to say to the Minister, now we are going to encircle, disarm, arrest, and disperse the crowd.” So it seems that the National Commissioner had a view that what the operation was in sequence was to encircle, disperse, disarm, arrest. In any event, the one,
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<td>1 the action that always comes first in her account of it is encircling.</td>
<td>1 about the rolling out of the barbed wire - was there any thought given to the likely or possible response of the strikers to the rolling out of the barbed wire?</td>
<td>1 VOORSITTER: Ja, u het gesê meter.</td>
<td>1 Voorsitter, Nee,</td>
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<td>2 MR SEMENYA SC: Chair, in fairness to the witness, who may not have been here while the General was giving the evidence, the plan to encircle, disarm, and do that, was not through the use of barbed wire. My learned colleague came to this on the premise that it was not surprising that people would think the deployment of barbed wire was with an intention to encircle and disarm them. The evidence now being referred to was not with reference to the deployment of the barbed wire at all.</td>
<td>2 thought given to the likely or possible response of the strikers to the rolling out of the barbed wire?</td>
<td>2 GENERAAL-MAJOR ANNANDALE: Voorsitter, korrek.</td>
<td>2 GENERAAL-MAJOR ANNANDALE: Nee, Voorsitter.</td>
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<td>3 CHAIRPERSON: You're referring to what is in slide 178 of phase 3. Is that what you're referring to, Mr Semenya?</td>
<td>3 MR BULDENDER SC: On the timeline which we have constructed from the SAPS photographs and video, the rollout of the barbed wire took more than nine minutes.</td>
<td>3 MR BULDENDER SC: On the timeline which we have constructed from the SAPS photographs and video, the rollout of the barbed wire took more than nine minutes.</td>
<td>3 CHAIRPERSON: Nege minute. Nege minute.</td>
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<td>4 MR SEMENYA SC: That was the phase 3, Madam Commissioner.</td>
<td>4 MR BULDENDER SC: General, did anyone say if we do this, some of the strikers might think they're being surrounded or encircled and run forward to escape before the rolling out is completed?</td>
<td>4 MR BULDENDER SC: General, did anyone say if we do this, some of the strikers might think they're being surrounded or encircled and run forward to escape before the rolling out is completed?</td>
<td>4 MR BULDENDER SC: Nee, Voorsitter.</td>
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1 the police.
2 MR BOOI: Thank you.
3 GENERAAL-MAJOR ANNANDALE: Agbare
4 Voorsitter, ek sien dat die tolk ook versperring verstaan
5 as "encirclement."
6 MR BOOI: Maybe I should have used the
7 word "demarcation."
8 MR BUDLENDER SC: Ja, I’ll settle for
9 "encirclement."
10 CHAIRPERSON: We won’t agree to that
11 settlement. Carry on.
12 MR BUDLENDER SC: General, I understand
13 why the barbed wire wasn’t strung out simultaneously from
14 the four, the Nyalaas, as you’ve explained, that could
15 give rise to its own problems, as you’ve explained, but
16 doing it one by one was the cause of another problem, which
17 was a long delay which gave people the opportunity to go
18 around the front into the safe area, or to try to do so.
19 GENERAAL-MAJOR ANNANDALE: Voorsitter,
20 nou met die voordeel van nabetragting weet ons dit.
21 MNR BOOI: Voordeel van die
22 MAJOR-GENERAL ANNANDALE: Benefit of
23 hindsight.
24 CHAIRPERSON: We know this now with the
25 benefit of hindsight, is what the witness said.

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1 MR BOOI: Thank you.
2 MR BUDLENDER SC: I understand that, and
3 all I put to you is that one of the problems now looking
4 back is that this response of the strikers, or some of the
5 strikers, was not anticipated and the result was that no
6 contingency plan was made to deal with that if it happened.
7 GENERAAL-MAJOR ANNANDALE: Voorsitter,
8 ja, soos ons verwag het, het waarskynlik 90% plus van die
9 mense het dan juis wegbeweeg van die draad af.
10 MR BOOI: Yes, Mr Chair, as we had
11 expected, as we started, many people were moving away -
12 MAJOR-GENERAL ANNANDALE: From the
13 obstruction.
14 MR BOOI: - away from -
15 CHAIRPERSON: What he says is that 90% of
16 the people moved away. It was only about 10% who moved
17 forward, which of course, 10% of 4 000 is about 400, and
18 10% of 3 000 is 300, which was of course the bad group, but
19 anyway, perhaps that’s another matter we’ll get on to
20 later. [Inaudible] when you say 90%, you mean 90% of the
21 3 000. Is that right?
22 GENERAAL-MAJOR ANNANDALE: Voorsitter,
23 nee, 90% van die kollektiewe getal.
24 CHAIRPERSON: Ja, well that was 3 000
25 roughly.
wire encirclement around the police.

GENERAAL-MAJ OOR ANNANDALE: Voorsitter,
dan met 'n beheerde toegang en uitgang uit die gebied uit.

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

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

GENERAAL-MAJ OOR ANNANDALE: Dit is al wat
ek daarop wil sê.

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

[COMMISSION ADJOURNED]
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A detailed and accurate transcription of the document's content is as follows:

“On the afternoon of 30th March 2013, the Commission of Inquiry into the Marikana Massacre held a hearing in Rustenburg. The hearing was attended by Mr. Mabuza, who represented the Government of South Africa. Mr. Panayi, who represents the families of the deceased, was also present. The purpose of the hearing was to discuss the events leading to the violence that occurred on 16th August 2012.

Mr. Mabuza stated that the Government was committed to ensuring that justice was served. He emphasized the importance of the Commission in shedding light on the events that occurred and highlighted the significance of the inquiry in addressing the needs of the families affected.

Mr. Panayi expressed his concern about the lack of progress in the investigation and the need for a thorough and impartial inquiry. He emphasized the role of the inquiry in providing justice for the victims and their families.

The hearing concluded with the agreement to continue the discussion on the morning of the next day. The Commission is committed to ensuring that the inquiry proceeds in a timely manner and that justice is served for all involved.”

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“On the afternoon of 31st March 2013, the Commission of Inquiry into the Marikana Massacre held a hearing in Rustenburg. The hearing was attended by Mr. Mabuza, who represented the Government of South Africa. Mr. Panayi, who represents the families of the deceased, was also present. The purpose of the hearing was to discuss the events leading to the violence that occurred on 16th August 2012.

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