TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 89  9 MAY 2013  PAGES 9405 TO 9499

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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<td>1  [PROCEEDINGS ON 9 MAY 2013]</td>
<td>1  that kind of assistance for which we are very grateful, to</td>
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<td>2  [09:40] CHAIRPERSON: The Commission resumes.</td>
<td>2  the general requests that were made of counselling, for two</td>
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<td>3  Before I remind the Major-General he's still under oath, I</td>
<td>3  reasons. One, the assistance that would have been given to</td>
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<td>4  understand there's something you wish to say, Mr Madlanga.</td>
<td>4  Magidiwana is obviously available to any other witness but</td>
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<td>5  MR MADLANGA SC: Thank you, Mr Chairman,</td>
<td>5  we were more talking about the victims as such, whether or</td>
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<td>6  commissioners. Mr Chairman will recall that when an</td>
<td>6  not they are witnesses, and we - so that's the first thing,</td>
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<td>7  announcement was made here in open Commission about the</td>
<td>7  that there should be some kind of generalised service</td>
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<td>8  suicide of Mr Lungani Mabotyana, the Chairman referred to</td>
<td>8  offered by the government, I think, for those counselling</td>
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<td>9  the need to establish from the evidence leaders whether</td>
<td>9  services to be made available.</td>
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<td>10  counselling services are available for people who need such</td>
<td>10  The second reason is, of course, that one should</td>
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<td>11  services. Mr Chairman, I just wish to announce for the</td>
<td>11  try and do this pre-emptively, as we understand it was done</td>
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<td>12  benefit of the families and victims that such services are</td>
<td>12  with the police. So you don't have to wait for a</td>
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<td>13  available and they have been available for quite a while.</td>
<td>13  Magidiwana to collapse or for someone to commit suicide</td>
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<td>14  I'll just give an example which I believe the commissioners</td>
<td>14  because by then it will be too late and that's exactly</td>
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<td>15  themselves are aware of and that is the example of Mr</td>
<td>15  really what we had said last year, that the services must</td>
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<td>16  Magidiwana. There was an occasion when we were just about</td>
<td>16  be made available but insofar as this ad hoc assistance is</td>
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<td>17  to adjourn, on a Friday I think it was, when he got</td>
<td>17  concerned I must say that Mr Madlanga took our request</td>
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<td>18  distressed. Mr Mpofu approached me after we had adjourned</td>
<td>18  seriously and it was acted upon very promptly.</td>
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<td>19  and he said Mr Magidiwana would require the services of a</td>
<td>19  CHAIRPERSON: Mr Madlanga, do you wish to</td>
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<td>20  counsellor and I arranged there and then with the</td>
<td>20  comment further in the light of the further remarks made by</td>
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<td>21  secretariat of the Commission and I advised Mr Mpofu</td>
<td>21  Mr Mpofu?</td>
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<td>22  accordingly and throughout the weekend I kept enquiring</td>
<td>22  MR MADLANGA SC: Mr Chairman, perhaps</td>
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<td>23  whether everything was in place, I was in contact both with</td>
<td>23  what's best is for Mr Mpofu, Mr Ntsebeza and perhaps any</td>
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<td>24  the secretary of the Commission, Mr Setati, and also with</td>
<td>24  other interested party and the evidence leaders to engage</td>
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<td>25  Mr Mpofu. So in short, the services are available and they</td>
<td>25  with the Commission secretariat and see what arrangements</td>
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<td>1  have been for quite a while. Thank you, Mr Chairman.</td>
<td>1  can be put in place on the far reaches of the service.</td>
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<td>2  CHAIRPERSON: Mr Madlanga. I also</td>
<td>2  Thank you.</td>
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<td>3  understand that we have representatives of the African</td>
<td>3  CHAIRPERSON: Yes, thank you very much.</td>
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<td>4  Commission of Human Rights here today. I've already had</td>
<td>4  I think that's an excellent suggestion. Mr Mpofu?</td>
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<td>5  the opportunity of meeting them and I want to welcome them</td>
<td>5  MR MPOFU: Thank you, Chairperson. Good</td>
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<td>6  there and say we hope that they find their visit with us a</td>
<td>6  morning, General.</td>
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<td>7  source of enlightenment and information. We are very</td>
<td>7  MAJOR-GENERAL ANNANDALE: Good morning,</td>
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<td>8  grateful for their presence because it emphasises once</td>
<td>8  sir.</td>
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<td>9  again that what we are doing here in this Commission is of</td>
<td>9  MR MPOFU: General, you remember that</td>
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<td>10  importance not only to South Africa but to the whole</td>
<td>10  when we broke off yesterday we were busy with the issue of</td>
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<td>11  African continent and indeed to, generally speaking,</td>
<td>11  numbers. I just want to round off that issue so that we</td>
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<td>12  internationally as well. And so the interest that they are</td>
<td>12  move on to something else. And you'll remember as well</td>
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<td>13  showing and their presence here today is a clear</td>
<td>13  that I had made an example. My assertion was that if the</td>
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<td>14  manifestation of that fact. Generaal-Majoor, u is nog</td>
<td>14  top leadership of the police chain of command had diagnosed</td>
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<td>15  steeds onder eed. Mr Mpofu, I take it you have further</td>
<td>15  the problem in respect of the numbers differently, as it</td>
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<td>16  questions for the witness.</td>
<td>16  seems, that it - that alone might have contributed to an</td>
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<td>17  MR MPOFU: I do.</td>
<td>17  almost predictably disastrous result. Remember the example</td>
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<td>18  GENERAAL-MAJOR OOR CHARL ANNANDALE: (s.o.e.)</td>
<td>18  I made about the dental operation. You remember that?</td>
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<td>19  MR MPOFU: Thank you, Chairperson. I do</td>
<td>19  GENERAAL-MAJOR ANNANDALE: Ek het dit</td>
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<td>20  have questions but if I may just first address the issue</td>
<td>20  onthou, Voorsitter, ek onthou dit.</td>
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<td>21  that Mr Madlanga spoke about. I do confirm everything that</td>
<td>21  MR MPOFU: Okay, now what I'm going to do</td>
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<td>22  Mr Madlanga said, particularly in respect of the Magidiwana</td>
<td>22  is, in the interests of time - because I'm still trying,</td>
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<td>23  incident after he showed some emotional distress on the</td>
<td>23  committed to trying to finish with you, insofar as it is</td>
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<td>24  witness chair. I do, however, Chair, want to distinguish</td>
<td>24  possible I'm going to try and finish the cross-examination.</td>
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<td>25  I just you need to work on, with me on trying to move this</td>
<td>25  I just you need to work on, with me on trying to move this</td>
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Rustenburg

25 korrek.
24           GENERAAL-MAJOOR ANNANDALE:          Dit is of them but that was our working number.  Accept that?
23           MR MPOFU:          And then you and I, with the
22 assistance of the Chairperson, reading from your evidence-
21 of Chief and I think also from your statement, I think you
20 accepted that on that evidence there would have been a
19 minimum of about 900 people, plus-minus, obviously not all
18 of them but that was our working number.  Accept that?
17           GENERAAL-MAJOOR ANNANDALE:          Dit is – ek
16 aanvaar dit so, Voorsitter.
15 you accept that, General?
14           GENERAAL-MAJOOR ANNANDALE:          Dit is – ek
13 you accept that, General?
12 GGG17 remarked about 4 500 – no, no, GGG17 paragraph 4, he
11 says there were 4 500 armed people or 4 500 people, the
10 majority of whom were armed.  Can you accept that?  Would
9 DD, that there were 3 000 men all armed with pangas and he
8 established, says at paragraph 4 of his statement which is
7 off from the record.  Brigadier Calitz, as we've already
6 read it wrongly, I'll be the first one to have it struck
5 definitely step in or if it's subsequently found that I
4 I'm misreading something I'm sure Mr Semenya will
3 specifically so that I don't mislead you – there were
2 statement that on the 14th – I want to distinguish this
1 issue.  You can accept that the parts that I'm going to
quote for you are in the documentation.  In other words,
I'm not going to go and read the statement and so on.  If
I'm misreading something I'm sure Mr Semenya will
definitely step in or if it's subsequently found that I
read it wrongly, I'll be the first one to have it struck
off the record.  Brigadier Calitz, as we've already
8 established, says at paragraph 4 of his statement which is
7 DD, that there were 3 000 men all armed with pangas and he
6 describes the weapons.  I think we've already covered that
5 one.  Lieutenant-Colonel, I think, Vermaak in his affidavit
4 Lieutenant-Colonel Scott says
3 on paragraph 6 of his statement that there was a
2 belligerent armed group numbering 3 000 and you say in your
1 statement that on the 14th – I want to distinguish this
specifically so that I don't mislead you – there were
between 3 000 to 4 000 armed men on the koppie and the
point I want to make is that there's no suggestion coming
from you elsewhere that this number suddenly shrank or that
the proportion of the armed people shrank by the 16th.  We
can also accept that that comes from your statement, it's
paragraph 9 of your statement, would you accept that?
16           GENERAAL-MAJOOR ANNANDALE:          Dit is – ek
15 aanvaar dit so, Voorsitter.
14           MR MPOFU:          Brigadier - General, I've an
13 obsession with brigadier - Colonel Scot, what is Scott's
12 rank?
11           GENERAAL-MAJOOR ANNANDALE:          Luitenant-
10 Kolonel.
9           MR MPOFU:          Lieutenant-Colonel Scott says
8 on paragraph 6 of his statement that there was a
7 belligerent armed group numbering 3 000 and you say in your
6 statement, I think it's paragraph 27, says that, "We never
5 anticipated we would have to disarm over 1 000 people." Do
4 you accept that as well?
3           GENERAAL-MAJOOR ANNANDALE:          Ek aanvaar u
2 haal dit so aan.
1           MR MPOFU:          And then General Mpembe in his
statement, I think it's paragraph 27, says that, "We never
anticipated we would have to disarm over 1 000 people." Do
you accept that as well?
5           GENERAAL-MAJOOR ANNANDALE:          Dit is – ek
4 aanvaar dit so, Voorsitter.
3           MR MPOFU:          Brigadier - General, I've an
2 obsession with brigadier - Colonel Scot, what is Scott's
1 rank?
22 disastrous consequences are known to all, I'm not going to
19 is the kind of confusion that was almost calculated to have
disastrous results.  Would you like to comment on that?
15           MR SEMENYA SC:          We'll have to wait until
16 Mr Mpofu tells us what those assumptions are and how they
15 were calculated –
14           MR MPOFU:          Okay.
13           MR SEMENYA SC:          - to result to what type
12 of disastrous consequences.
11           MR MPOFU:          Okay, thank you.  I think the
10 disastrous consequences are known to all, I'm not going to
9 repeat that but the assumptions that I'm busy dealing with
8 now are specifically related to this question of the size
7 of the armed group.
6           MR MAHLANGU:          Ek is jammer, die
5 ontleding?
4           GENERAAL-MAJOOR ANNANDALE:          Was
dieselfde.
3           MR MAHLANGU:          The -
2           MAJOR-GENERAL ANNANDALE:          Analysis.
1           MR MAHLANGU:          Approach was the same.
11 dieselfde.
10           MR MAHLANGU:          And the analysis also the
9 same.
8           GENERAAL-MAJOR ANNANDALE:          Voorsitter,
7 ek sal graag wil kommentaar lever.
6           MR MPOFU:          Thank you.
5           GENERAAL-MAJOR ANNANDALE:          Voorsitter,
4 daar was dieselfde probleem interpretasie deur die
3 bevelselement wat ontplooi was tydens Marikana.  Die
2 ontleding was dieselfde en die benadering was ooreengestem.
1           MR MAHLANGU:          EK is jammer, die
10 ontleding?
9           GENERAAL-MAJOR ANNANDALE:          Was
dieselfde.
8           MR MAHLANGU:          The -
7           MAJOR-GENERAL ANNANDALE:          Analysis.
6           MR MAHLANGU:          Approach was the same.
5           MAJOR-GENERAL ANNANDALE:          And the
4 analysis.
3           MR MAHLANGU:          And the analysis also the
2 same.
1           GENERAAL-MAJOR ANNANDALE:          Voorsitter,
2 dit was verwys in is elkeen van die persone wat Adv Mpofu
1 na verwys het, hulle sal kom getuig oor hulle waarnemings
2 tydens wat gebeur het tydens hierdie JOCOM vergaderings en
3 ook die besprekings tydens die JOC.  Voorsitter, ons almal
4 was dit eens dat ons moet fokus op die kleiner groep van 3
5 tot 400 en ons het 'n pertinentie bekommernis gehad oor
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Chairperson: And the cell space or the capacity where the arrested persons were going to be detained.

Mr Mahlangu: That's correct, Chair.

Mr Mpofu: Okay. Well, thank you for.

That response took a long time but I understand I had put a lot of propositions to you, so let's just deal with it, let me just deal with the statement just for reference. I referred to paragraph 4 of Vermaak and that's because I was reading from his supplementary statement. You are correct, it's paragraph 6 on GGG17 but while we are there, do you agree that below the part that you read, Lieutenant-Colonel Vermaak refers to "ongeveer 3 000 aanvallers," in other words approximately 3 000 attackers that the police had to deal with?

Generaal-Majoor Annandale: Voorsitter, ek merk dit so op. Ek het probeer in konteks verduidelik die besprekings wat ons gehad het in die JOC en tydens JOCOM rondom ons benadering.

Mr Mpofu: General, just so that there's no confusion between us, I - the issue that, the simple issue I'm putting to you is the following. It's more, it's a planning issue maybe. Well, firstly let me put certain propositions or assumptions of my own to you. You must accept that there is evidence from one of my witnesses that people were free and did move from the so-called larger group which is really many other groups, but that's another debate, to the smaller group, in your parlance. Two, you must work on the assumption that you and I agreed yesterday that the size of the targeted group is important, it's not irrelevant. And the third proposition I want to put to you is just something I'm making up but I'm sure you'll understand. Let's assume that you were - the so-called smaller groups that you were going to have after the teargas and all that, would be groups of 50, a manageable group. Sorry, let me just round it up, I know it's a long question. The only issue really I'm putting to you is that it is one thing, if there were 300 people then you would be dealing with six such groups of 50. If you are going for 3 000 people you are dealing with 60, six zero, of such smaller groups. In other words, you are planning for the one scenario and for the, and for the other is completely different and obviously you'll make the necessary variations if it's 1 000 and so on. That's the only simple point I'm making and you can agree with it or not and then we'll just move on, that that is a significant factor on the part of those who are planning the operation.

Chairperson: Before that question is interpreted, Mr Semenya has his light on. Do you want to say something, Mr Semenya?

Mr Semenya SC: Chairperson, directly to
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<td>1 the question you raised many days ago, the manageable group was a group of 10 or less, it’s not numbers like Mr Mpofu is asking the witness to assume.</td>
<td>1 CHAIRPERSON: Stage 6 is the cordoning, cordoning off really and searching of the hostels.</td>
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<td>3 GENERAAL-MAJOR ANNANDALE: Voorsitter,</td>
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<td>5</td>
<td>5 MR MPOFU: Oh, sorry.</td>
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<td>6</td>
<td>6 GENERAAL-MAJOR ANNANDALE: Ekskuus, as</td>
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<td>7 CHAIRPERSON: I think he said cordoning.</td>
<td>7 ek net – amper klaar. Sou dit in praktyk beteken het dat</td>
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<td>8</td>
<td>8 daar ander groeperings was en ons het nie die kapasiteit gehad het om hulle dan te omsingel in kleiner groepe nie,</td>
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<td>9</td>
<td>9 sou openbare orde polisiëring net eenvoudig voortgegaan het om hulle te bly opbreek en uiteen te dryf.</td>
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<td>10</td>
<td>10 MR MPOFU: Okay, well, before we move on to something else I would like you to accept that I – the</td>
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<td>11 issue I’m raising with you has got nothing to do with the issue of arrest. I accept what you say, that you did not intend to arrest 3 000 people and in fact you didn’t. The issue I’m talking to you about regards the resources that you would have had to deploy, not in the business of arrest but in the business of encircling into the so-called smaller groups of 10 or whatever, and disarming. It’s that, that I am talking about. So if you accept that, we’ll move on but I just want you to know that there is that distinction.</td>
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<td>13 MR MPOFU: Okay, well, before we move on to something else I would like you to accept that I – the</td>
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<td>1 waarneming van die situasie. Ons fokus was gewees op</td>
<td>1 ons genoegsame hulpbronne ontplooí het om pertinent dan</td>
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<td>2 pertinent die kleiner groep. Ons het nooit verwag om sulke</td>
<td>2 daardie aksies uit te voer, gewege die fokus.</td>
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<td>3 groot getalle te arrester nie en ons sou nie daarmee</td>
<td>3 MR MPOFU: Maybe I should be more</td>
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<td>4 gedeel het sou dit so uitgedraai het nie. Dit was vir ons duidelik gewees dat die leierskapelement was vervat in</td>
<td>4 specific. The point that I’m going to argue is that had</td>
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<td>5 hierdie kleiner groep en sou dan slaag om ‘n groot persentasie in die groep te arrester, selfs soveel as 170 maar dit kan selfs baie minder wees, dan sou ons die kern en kohesie van hierdie groep opgebreek het.</td>
<td>5 you, had everybody been of the same mind that the targeted group was 300, it might not have been necessary for you - you specifically - for example to feel the need to deploy</td>
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<td>6</td>
<td>6 the paramilitary forces. I know our differences on that, but to bring as many machine guns, to bring as many dogs and as many specialised units as if it was the smaller group. That’s the kind of argument that I’m going to advance. In other words, you would have been probably over-deployed, if there’s such a term, for the operation, if it’s the one type or the other.</td>
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<td>16 GENERAAL-MAJOR ANNANDALE: Voorsitter, ek gaan nie kommentaar lewer op die paramilitêre nie, ek</td>
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Marikana Commission of Inquiry
Rustenburg

MR MAHLANGU: Yes.

Mr Chairperson, the relationship between the deployment of the members and the situation with which we were faced –

CHAIRPERSON: I think he means the threat that we faced, the bedreiging.

MR MAHLANGU: The threat, the threat that we –

CHAIRPERSON: I think he means the threat that we faced, the bedreiging.

MR MAHLANGU: Yes.

GENERALE-MAJOR ANNANDALE: So die verhouding tussen die deployement van die lede en dan die prescripts, as the National Commissioner...
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MR MPOFU: Brigadier I think, yes.

CHAIRPERSON: What role Adv Moolman was playing at the JOCOM, that might help us.

MR MPOFU: That’s fine.

CHAIRPERSON: I don’t know if that can be objected to.

MR MPOFU: I’m happy -

CHAIRPERSON: Let’s not take it too far but let’s at least get the answer to that point.

MR MPOFU: I’m happy with that, Chair. I won’t repeat the preface but am I correct that the presence of Adv Moolman in the meetings, particularly the JOCOM meetings, was specifically to ensure that in carrying out the operation, the constitutional, legislative and regulatory prescripts would be followed? Sorry, let me just - to once again try and save time, make an example. For example the Police Act prescribes that when cordonning off activities are going to take place, the Provincial Commissioner has to issue a particular certificate and in one of the minutes I think Adv Moolman reported that she was attending to that matter. I’m just - it’s part of that question.

GENERALE-MAJOR ANNANDALE: Voorsitter, ja, ek kan net teruggaan. Adv Moolman was reeds betrokke met my aankoms op die 13de. Sorry Chairperson, she’s not a woman with whom General Mpembe was conferring and I always assumed it was Brigadier Pretorius but now it’s clear that it must have been Adv Moolman. Thank you, right. And while we are there, do you know, do you know from your attendance of the meetings whether Brigadier Pretorius now supported the plan or not?

MR MPOFU: Okay. Okay, thank you. No, I’m happy with that. Now can we move on to something else completely different and just in terms of what the National Commissioner would say, walking together, so that we walk together, I’m just going to give you a context of where I’m going just so that we can walk together. In addition to the opening statement that I asked you to read when we started, one of the broad trust issues that we’re going to argue at the end of the case is that there were at least three significant turning points or milestones leading up to the disaster of the 16th and they are signified, they are signified by events which occurred on the odd numbered days, those odd numbered days being the 11th, the 13th and the 15th and that the disaster which occurred on the 16th was a mere culmination or almost inevitable culmination of those milestones. Now, I’m telling you this because I’m going to talk to you about one of those. The other two do not concern you but for the sake of completion, what
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<td>happened on the 11th was a shootout between the NUM and some</td>
<td>call the frenzy and so on and you said what you have to say</td>
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<td>of the protesters and it's a matter that we have dealt -</td>
<td>about that and I'm just situating it so that I can lead to</td>
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<td>CHAIRPERSON: No - no, Mr Mpofu, I don't</td>
<td>the next bit, remember that.</td>
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<td>think you mean that. The evidence doesn't indicate a</td>
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<td>shootout.</td>
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<td>MR MPFU: Yes.</td>
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<td>CHAIRPERSON: That implies shots were</td>
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<td>fired from both sides.</td>
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<td>MR MPFU: From both - yes.</td>
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<td>CHAIRPERSON: That's not the evidence.</td>
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<td>The evidence is that there were shots fired from the NUM</td>
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<td>side, there's no evidence of shots being fired from the</td>
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<td>side of the strikers.</td>
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<td>MR MPFU: Yes.</td>
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<td>CHAIRPERSON: Unless of course I missed</td>
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<td>it or unless you now make an admission that we didn't have</td>
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<td>before, but I doubt that. Let's get it straight -</td>
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<td>MR MPFU: Thank you -</td>
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<td>CHAIRPERSON: - there was an engagement</td>
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<td>between the NUM people, some NUM people who were standing</td>
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<td>near their office -</td>
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<td>MR MPFU: Offices, yes.</td>
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<td>CHAIRPERSON: - and about 3 000 strikers</td>
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<td>who were marching to the NUM office for reasons which will</td>
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<td>be, is one of the matter we'll have to decide at the end of</td>
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<tr>
<td>it all.</td>
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<td>MR MPFU: Thank you.</td>
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<td>CHAIRPERSON: But there were only shots</td>
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<td>fired from the NUM side.</td>
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<td>MR MPFU: Yes.</td>
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<td>CHAIRPERSON: There were weapons</td>
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<td>apparently in the possession of some of the strikers but</td>
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<td>they weren't firearms. If they were, they certainly</td>
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<td>weren't used.</td>
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<td>MR MPFU: Yes.</td>
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<td>CHAIRPERSON: Is that right?</td>
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<td>MR MPFU: That's right, Chairperson.</td>
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<td>CHAIRPERSON: So let's get it clear.</td>
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<td>MR MPFU: Thank you, Chair, and as the</td>
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<td>Chairperson would say that since that's a point in my</td>
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<td>favour I will not contest it. Yes, there -</td>
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<td>CHAIRPERSON: [Inaudible] point you will</td>
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<td>contest it, even if it's in your favour.</td>
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<td>MR MPFU: Thank you, of course. But in</td>
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<td>any event, the point I was making is that I'm just defining</td>
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<td>the three milestones. That's one of the milestones and</td>
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<td>it's exactly as the Chairperson has amplified it and it has</td>
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<td>nothing to do with you, it's been dealt with. The</td>
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<td>milestone of the 13th, which is what I'm going to talk to</td>
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<td>you about, is what we touched on yesterday, which was the</td>
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<td>killing of the policemen in particular.</td>
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<td>CHAIRPERSON: The witness wasn't present.</td>
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<td>The witness heard about it later -</td>
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<td>MR MPFU: I know.</td>
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<td>CHAIRPERSON: So I hope when you deal</td>
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<td>with it we'll hear, or deal so very lightly -</td>
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<td>MR MPFU: Oh yes, ja, no, not who shot</td>
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<td>who and all that, ja.</td>
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<td>CHAIRPERSON: Well, he doesn't know any</td>
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<td>of that.</td>
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<td>MR MPFU: Yes, I accept that.</td>
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<td>CHAIRPERSON: Alright, and the third</td>
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<td>milestone?</td>
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<td>MR MPFU: The third milestone, as I said</td>
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<td>it's the odd numbered days - 11, 13, 15. The third</td>
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<td>milestone is what happened on the 15th of August which we</td>
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<td>will submit was considerable political pressure put to bear</td>
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<td>which resulted in the so-called D-day pronouncement but</td>
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<td>once again that third milestone is not something you</td>
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<td>yourself need to be concerned with. We'll deal with that</td>
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<td>with other witnesses. I just wanted to put it in context.</td>
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<td>Now, let's come to the 13th. Fortunately we've already</td>
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<td>dealt with the first part of - do you remember the debate</td>
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<td>you and I had about the fact that the killing of the police</td>
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<td>is what triggered your presence and other people and what I</td>
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25 time, frankly, to elicit his views on it. I think I know... 

24 General to tell us that and I think it would be a waste of... 

23 inappropriate, an illegal action. We don't need the... 

22 doesn't have the right to do so, then that would be totally... 

21 threatening to shoot people in circumstances where he... 

19 I should, would allow that question because it's for us to... 

18 behaviour of particular policemen was appropriate, I don't... 

16 whether we should allow him to go any further on this... 

15           CHAIRPERSON:          Well, I want to know... 

14           MR MPOFU:          He has. 

13 CHAIRPERSON:          Well, I want to know... 

12 CHAIRPERSON:          It's only particular... 

11 MR MPOFU:          Yes, it's the second one, Chairperson. 

10 CHAIRPERSON:          Okay. 

9 MR MPOFU:          Most definitely, thank you, Chairperson. If I put it too widely, more widely or wider than that, then it was not my intention. 

8 CHAIRPERSON:          Okay, no, you've made that clear - are you going to tell us who these individuals are? 

7 MR MPOFU:          I will proceed to do so. 

6 Well, firstly I don't know their names but I'm going to tell you that the support for what I've just said will be based on some of the actions that were taken and particularly the nature in which they were taken. Are you aware that some of the policemen, or at least one - I don't know if it's one or two, I think it's one, let's say one to be safe - that there was somebody after the shooting who could be heard saying, "We'll shoot you." Would you accept that that is something that we observed from the videos and if that is correct, would you agree with me that that is not the way a policeman should behave if, even if they were... 

5           MR MPOFU:          No, Chairperson. 

4 and (b) that irre - that are inadmissible. 

3 understand, to exclude answers (a) that are self-evident and (b) that irre - that are inadmissible. 

2 expert, as I understand it, on proper police behaviour and particular not to answer to self-evident propositions like... 

1 where you're going to but this witness is not here as an expert, as I understand it, on proper police behaviour and particular not to answer to self-evident propositions like...
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1. to General Mpembe by other policemen in your statement?
2. GENERAAL-MAJOOR ANNANDALE: Voorsitter,
3. dit was nie aspekte wat ek self waargeneem het nie. Dit
4. was oorgedra deur een persoon aan my sonder identifikasie
5. van spesifieke individue en ook dat dit reeds oorgedra was
6. aan die spesifieke gesag in die provinsie, die Provinsiale
8. MR MAHLANGU: And that this had been
9. carried over to the specific authority, the –
10. CHAIRPERSON: Specific authority in the
11. province, namely the Provincial Commissioner.
12. MR MAHLANGU: Namely the Provincial
13. Commissioner.
14. GENERAAL-MAJOOR ANNANDALE: Voorsitter,
15. en net so het ek nie gaan die ander detail soos oorgedra
16. aan my – want dit is net eenvoudig oorgedra deur Kolonel
17. Vermaak, hoe dit gebeur het dat stun grenades gegooi, wie
18. het gas gegooi, wat was die teenreaksie van die polisie.
19. Ek het ook nie daarop in my verklaring uitgebrei nie.
20. MR MPOFU: Okay. Now, just one question
21. in relation to the revenge issue that we just spoke about
22. and I’ll confine that to something that you, that concerns
23. you. I’ll leave out the other examples. You basically
24. ordered that the briefings that we spoke about the other
25. day should occur at both levels, at the levels of

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1. commanders and at the levels of the operational staff, for
2. lack of a better word.
3. GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4. daar is ook in General Mpembe se verklaring daarna verwys
5. dat dit ‘n bespreking was. Dit was die verantwoordelikheid
6. van die oorhoofse bevelvoerder om toe te sien dat die
7. vlakke van toeligting plaasvind.
8. MR MAHLANGU: It’s also mentioned, Mr
9. Chairperson, also in General Mpembe’s statement that these
10. are steps –
11. CHAIRPERSON: No, he said there was a
12. discussion –
13. MR MAHLANGU: A discussion between –
14. CHAIRPERSON: Well, so that the levels of
15. authority would know what they had to do, I think is what
16. he said.
17. MR MAHLANGU: The special JOCOM –
18. CHAIRPERSON: Repeat it again if I got it
19. wrong.
20. GENERAAL-MAJOOR ANNANDALE: En die redes
21. vir die taking van Kolonel Scott om deur te gaan persoonlik
22. was bespreek en dit was so voorgestel en so geedgekeur.
23. [10:59] CHAIRPERSON: I think the point is – I
24. think we’re going to take the adjournment in a moment but I
25. think the point was, just to get it clear, the reason that

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1. Colonel Scott was sent to the forward holding areas to give
2. the instructions was because – I think we’ve heard this
3. evidence before – a police radio had been seized by the
4. strikers on the 13th and if the radio had been used it was
5. feared, I don’t know with what justification in fact, but
6. it was feared that that might, that message might have been
7. intercepted by the strikers using the radio they’d taken.
8. Have I got it right?
9. GENERAAL-MAJOOR ANNANDALE: Voorsitter,
10. dis reg, ook na aanleiding van ‘n voorvalleboekskrywing
11. wat ek dink gemaak is op die 13de –
12. MR MAHLANGU: Yes, Mr Chairperson, also
13. as a result of an entry that was made in a pocket book.
14. GENERAAL-MAJOOR ANNANDALE: Nie ‘n pocket
16. MR MAHLANGU: In the occurrence book, Mr
17. Chairperson.
18. GENERAAL-MAJOOR ANNANDALE: Waar daar, ek
19. dink dit was ‘n sersant, gesê het dat hy het ‘n persoon wat
20. hy vermoed ‘n siviele persoon is, het hy gehoor op die
21. radio praat en dit was duidelik dit is nie ‘n
22. polisiebeampte nie in terme van die taalgebruik.
23. CHAIRPERSON: And he assumed it was one
24. of the strikers who had got hold of a police radio, I think
25. that’s what you said.
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1 MR MPOFU: It’s going to come, Chair.
2 CHAIRPERSON: I see, alright.
3 MR MPOFU: And General, sorry, I don’t want to waste more time, if you are not aware I suppose that’s an answer because what I was asking you was whether that was a message that was filtering down but by saying you’re not aware of it, are you suggesting that you – you yourself did not send such a message, apart from the fact that you don’t know who I’m talking about?
4 MAJOR-GENERAL ANNANDALE: The message as in be careful, these people are dangerous or –
5 MR MPOFU: They’ve killed policemen and so on, that didn’t come from you? In other words, it is not a message that came from the top, it’s a message that, if I’m correct in what I’m saying, it’s a message that was at the initiative of that particular commander and not from you. That’s all I’m referring to.
6 GENERAAL-MAJOR ANNANDALE: In terme van die betrokke bewoording -
7 CHAIRPERSON: Was it part of your instructions, it was to go down that the persons concerned were to be reminded that the strikers, or some of them, had killed policemen on the 13th? I think that’s basically the point that Mr Mpofu is putting.
8 GENERAAL-MAJOR ANNANDALE: Voorsitter, nee, nie my instruksies soos u nou na verwys het nie, maar dit was altyd deel van die strategie van die polisie en ek dink die woord wat daar na verwys was, the members must also be vigilant or they must either be vigilant or circumspect in terms of approaching suspects. So did was, dit is vermeld in die beplanning lewers.
9 MR MAHLANGU: That was mentioned in the plan, some of the words that were used in the plan.
10 CHAIRPERSON: [Indistinct] vigilance in approaching the suspects -
11 MR MPOFU: That’s correct.
12 CHAIRPERSON: - was part of the general strategy.
13 MR MPOFU: Thank you, Chairperson.
14 CHAIRPERSON: Can we –
15 MR MPOFU: Can we take the break, Chairperson?
16 CHAIRPERSON: Yes, thank you for giving us your – we’ll now take the tea adjournment.
17 [COMMISSION ADJOURS COMMISSION RESUMES]
19 Generaal-Majoor, u is nog steeds onder eed. Mr Mpofu?
20 GENERAAL-MAJOR CHARL ANNANDALE: (s.o.e.)
21 CROSS-EXAMINATION BY MR MPOFU (CONTD):

Page 9442
1 both.
2 CHAIRPERSON: I take it that the point is that it’s a disqualification -
3 MR MPOFU: Yes.
4 CHAIRPERSON: - even to go forward for training with a view to be appointed to the NIU -
5 MR MPOFU: Absolutely, yes.
6 CHAIRPERSON: - if you’ve got a pending, either a criminal case or a disciplinary case too, I think.
7 MR MPOFU: That’s correct.
8 CHAIRPERSON: That’s what you’re putting.
9 MR MPOFU: Yes.
10 CHAIRPERSON: Let’s see if your information is correct.
11 MR MPOFU: Thank you, Chair.
12 CHAIRPERSON: Is that so, Major-General?
13 GENERAAL-MAJOR ANNANDALE: Voorsitter, ek probeer nou kyk, ek is nie seker of dit insluit “pending” en of dit net is, ‘n reeds kriminele saak nie.
14 MR MPOFU: Okay, now you’ve got me because I don’t have it in front of me. I notice the head
15 -
16 CHAIRPERSON: The document I think is exhibit Q. Unfortunately our copy is out of reach but they’ll go and fetch it.

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1 Thank you. Thank you, Chairperson. General, just so that we - and for the benefit of my colleagues - the identity of the specific person I was talking about is not a secret, it’s Captain Kidd, K-I-D-D, but you’ve already answered my question. I just wanted to round off that and the contents of his particular briefing are contained in the IPID statement of his troops, as it were.
2 CHAIRPERSON: He doesn’t agree that these were paramilitary units, so he won’t agree they were troops.
3 MR MPOFU: Yes. I mean it in the nicest possible way. Now, just one little aspect before we move to the next topic. Is it correct that one of the criteria for membership of the NIU in particular is that one should not have a criminal, a pending criminal case? You know that there are differences, in some instances you must not have a criminal record and in other cases you mustn’t have a criminal case, in others you mustn’t have even a departmental inquiry. Is it correct that in the case of the NIU you’re not allowed to enter that unit if you have even a pending disciplinary inquiry or a criminal case pending?
4 MR SEMENYA SC: Chair, is it eligibility or membership?
5 MR MPOFU: Eligibility. Well, both,

Page 9444
1 both.
2 CHAIRPERSON: I take it that the point is that it’s a disqualification -
3 MR MPOFU: Yes.
4 CHAIRPERSON: - even to go forward for training with a view to be appointed to the NIU -
5 MR MPOFU: Absolutely, yes.
6 CHAIRPERSON: - if you’ve got a pending, either a criminal case or a disciplinary case too, I think.
7 MR MPOFU: That’s correct.
8 CHAIRPERSON: That’s what you’re putting.
9 MR MPOFU: Yes.
10 CHAIRPERSON: Let’s see if your information is correct.
11 MR MPOFU: Thank you, Chair.
12 CHAIRPERSON: Is that so, Major-General?
13 GENERAAL-MAJOR ANNANDALE: Voorsitter, ek probeer nou kyk, ek is nie seker of dit insluit “pending” en of dit net is, ‘n reeds kriminele saak nie.
14 MR MPOFU: Okay, now you’ve got me because I don’t have it in front of me. I notice the head
15 -
16 CHAIRPERSON: The document I think is exhibit Q. Unfortunately our copy is out of reach but they’ll go and fetch it.
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GENERALE-MAJOR ANNANDALE: Voorsitter,

ek het dit beskikbaar, ek kan dit voorhou. Voorsitter, dit
is op ‘n blad wat sê “Draft directive, recruitment and
selection.”

CHAIRPERSON: Yes, it is actually. Draft
directive, recruitment and selection, prerequisite for
applicant. Have you got it in front of you, Mr Mpofu?

MR MPOFU: No, I’ve got – no, Chair.

CHAIRPERSON: One of the things is not
being found guilty during a departmental/criminal hearing.

Another one no criminal record, another one no pending
cases, departmental and/or criminal. So the point you put
is correct, borne out by the documents which we’ve referred
to.

GENERALE-MAJOR ANNANDALE: Voorsitter,
behalwe as ek net kan meld, dit het “draft,” dis ‘n konsep
direktief en ek is nie seker wat die bestaande beginjies is
en of dit presies dieselfde is en of dit anders is nie.

MR MPOFU: Okay, I accept that. Assuming
that it applies now as we speak, would it make you
uncomfortable to know that there is somebody now in the
NIU, or at least one of two people who has been fingered,
although there’s no conclusion, of having executed somebody
allegedly or having said that these people, they have to
die or words to that effect? Isn’t that –

CHAIRPERSON: Sorry, is the suggestion
that this happened before the 16th of August or is it -

MR MPOFU: On the 16th, on the 16th.

CHAIRPERSON: No – no –

MR MPOFU: But the threats is happening
now.

CHAIRPERSON: Yes, no. No, we’re busy
with the question whether there is a pending case, either
criminal or departmental, against someone who is in the NIU
and you say there is at least one person and you’ve
described the circumstances.

MR MPOFU: Yes.

CHAIRPERSON: Now I want to know from
you, is that something that arose after or possibly even in
consequence of what happened on the 16th? In other words,
the person concerned wasn’t disqualified –

MR MPOFU: Oh, yes.

CHAIRPERSON: - if the directive is
still, was already in force, that person wasn’t
disqualified from being there on the 16th. The pending
charge, if it is indeed pending because it’s an interesting
question as to what that is but if it was pending, if it’s
pending did that only arise after the 16th –

MR MPOFU: Yes, no –

CHAIRPERSON: - in which case I’m not

CHAIRPERSON: I don’t want to waste too
much time on what may be a bit of a red herring.

MR MPOFU: Ja, well, if it was – that’s
the only point I’m making, Chairperson. If it is a red
herring it won’t start being a red herring today, it would
have been a red herring when it was canvassed by Mr
Madlanga with the National Commissioner, which was the
point that, what’s his name, Myburgh or whatever, you know
the person I’m talking about. This is exactly the same
point so if it was a red herring, it was a red herring last
month. It won’t start –

CHAIRPERSON: I don’t remember the point
being put quite in the question whether the person should
be in NIU but I seem to remember the point was made from
another angle.

MR MPOFU: That steps had been taken.

CHAIRPERSON: Ja.
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25 qualified to be a member of the NIU because of something,
24           CHAIRPERSON:          But if Mr Madlanga got away
23           MR TIP SC:          Well, it would suggest -
22 portion that has been read out deals with applicants who
21 evaporated but the basis of it needs to be cleared. The
20           MR MPOFU:          J a, well, it would suggest -
19 your next relevant point, Mr Mpofu.
18           CHAIRPERSON:          Alright.
17           MR MPOFU:          Okay.
16           CHAIRPERSON:          What's the point you want
15 to make, quickly? Let's get that over with.
14           MR MPOFU:          Yes, thank you Chairperson.
13 The point I want to make, General, is this, that the – and
12 we'll take it step by step - it's either as the Chairperson
11 correctly points out, there is a departmental investigation
10 in which case that person should not be in the unit, or
9 there is not departmental investigation when there should
8 be one, in which case that person should still not be in
7 the unit because it's a disqualifying factor.
6           MR BURGER SC:          No, I object to this.
5 be repeated, is it?
4 with some irrelevancy, that's no reason why mistakes should
3           CHAIRPERSON:          But if Mr Madlanga got away
2 I'm arguing the exact opposite, that if he was allowed to
1 go with it, it must have been relevant.

This is really debating an irrelevant question from the
wrong side. It doesn't advance one thing we're doing
today, this question. I object to it, Chair.

There's something in that. If there had been something
before the 16th then it could be raised pertinently but it
seems a little bit, tangential collateral that doesn't
justify the time that's spent on it.

I'm already - sorry, I have
to give you a chance to reply but that's my prima facie
view.

I'll leave it, subject to say that if the matter has
suddenly lost its relevance then I'll leave it at that,
Chair.

Alright.

Okay.

I suggest you move on to
your next relevant point, Mr Mpofu.

Well, the point seems to have
evaporated but the basis of it needs to be cleared. The
portion that has been read out deals with applicants who
wish to become members of the NIU.

But if a person isn’t
qualified to be a member of the NIU because of something,
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<tr>
<td>1</td>
<td>pertinent gebaseer op die beginself van respek. Die waardes</td>
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<td>klaar, Voorsitter. Om dit direk terug te bring na</td>
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<td>2</td>
<td>het my gelee om binne enige sisteem te funksioneer.</td>
<td>2</td>
<td>Marikana, daar is geen so 'n benadering deur enige persoon</td>
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<td>3</td>
<td>Voorsitter, en dit was een van die redes hoekom ek by die</td>
<td>3</td>
<td>wat ek interaksie gehad het, was dit te bespeur nie,</td>
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<td>Suid-Afrikaanse Polisie destyds aangesluit het.</td>
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<td>geensins nie.</td>
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<td>5</td>
<td>MR MAHLANGU: Chairperson, that was the</td>
<td>5</td>
<td>MR MAHLANGU: It wasn't seen from any</td>
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<td>reason, firstly, why I joined the police in -</td>
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<td>part, person with whom I had anything to do that this was -</td>
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<td>7</td>
<td>CHAIRPERSON: One of the reasons why I</td>
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<td>CHAIRPERSON: No such approach was</td>
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<td>8</td>
<td>joined the police then.</td>
<td>8</td>
<td>detected on the part of anybody with whom I came into</td>
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<td>9</td>
<td>MR MAHLANGU: Then, yes.</td>
<td>9</td>
<td>contact at Marikana, I think that's -</td>
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<td>10</td>
<td>GENERAAL-MAJOR ANNANDALE: Om agter die</td>
<td>10</td>
<td>MR MAHLANGU: Yes, that is correct,</td>
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<td>11</td>
<td>skerm my rol te speel in terme van regverdigheid.</td>
<td>11</td>
<td>Chair.</td>
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<td>12</td>
<td>CHAIRPERSON: My role in terms of justice</td>
<td>12</td>
<td>GENERAAL-MAJOR ANNANDALE: So</td>
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<td>13</td>
<td>behind the scenes, justice and fairness behind the scenes,</td>
<td>13</td>
<td>Voorsitter, nee, daar was nie 'n benadering van skop, skiet</td>
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<td>14</td>
<td>I think it is.</td>
<td>14</td>
<td>en - ek weet nie of ek die woord kan gebruik nie.</td>
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<td>15</td>
<td>MR MAHLANGU: Thank you, Chair.</td>
<td>15</td>
<td>MR MPOFU: Thank you, General. If you've</td>
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<td>16</td>
<td>GENERAAL-MAJOR ANNANDALE: Sommige persone het hulle regverdigheid uitgespeel op die openbare</td>
<td>16</td>
<td>finished, thanks. The reason I'm asking you this, General,</td>
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<td>17</td>
<td>verhoog.</td>
<td>17</td>
<td>and it's relevant to what we are about here, is that the</td>
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<td>18</td>
<td>MR MAHLANGU: Some people have played on</td>
<td>18</td>
<td>feeling as it manifests in the people I represent - and</td>
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<td>19</td>
<td>the open stage, their values.</td>
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<td>this is my own suspicion - among other things, comes from</td>
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<td>CHAIRPERSON: Their role of fairness, I</td>
<td>20</td>
<td>the statement that was made by Mr Mathunjwa on his second</td>
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<td>suppose, and justice.</td>
<td>21</td>
<td>visit to the koppie where he said those people must leave</td>
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<td>22</td>
<td>MR MAHLANGU: Their role of?</td>
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<td>that place, they're going to be killed because the life of</td>
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<td>CHAIRPERSON: Fairness and justice.</td>
<td>23</td>
<td>a black person is cheap. And what I'm saying to you is</td>
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<td>24</td>
<td>MR MAHLANGU: Fairness on an open stage.</td>
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<td>that kind of mentality, whether Mr Mathunjwa was right or</td>
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<td>wrong – he was right because the people were killed but</td>
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<td>that kind of statement that he made would have been in</td>
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<td>conformity with the thinking, not just of the police but</td>
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<td>with the pre-'94 thinking. Would you at least, we agree on</td>
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<td>that?</td>
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<td>CHAIRPERSON: I don't know that we can</td>
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<td>expect this witness to give an answer on behalf of the</td>
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<td>whole country, it's -</td>
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<td>MR MPOFU: Then he can give it on behalf</td>
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<td>of himself.</td>
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<td>CHAIRPERSON: Sorry?</td>
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<td>MR MPOFU: Then he can give it on behalf</td>
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<td>of himself, Chairperson.</td>
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<td>CHAIRPERSON: Well, I understood him</td>
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<td>already to have said something along those lines, that that</td>
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<td>wasn't his approach at all but anyway, let him, let's just</td>
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<td>give him the chance to answer that question -</td>
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<td>MR BURGER SC: Then I object to the</td>
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<td>question on the basis of relevancy. This witness has now</td>
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<td>taken time to take us carefully through his state of mind,</td>
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<td>to explain to us in his own mother tongue why the phrase</td>
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<td>used by my learned friend, who doesn't speak that language,</td>
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<td>was ill-chosen and inappropriate. To ask this witness now</td>
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<td>to again pontificate on what is a suspicion by my learned</td>
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<td>friend, is wasting time. I object to it.</td>
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<td>CHAIRPERSON: I think it's now on his own</td>
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attitude and I think I know what he's going to say and I
think I should give him the opportunity, the witness the
opportunity to state unequivocally for Mr Mpofu's benefit,
and his clients', where he stands.
MR MPOFU: Thank you, Chairperson.

GENERALEL-MAJOOR ANNANDALE: Voorsitter,
ek weet nie waarop het Mr Mathunjwa daardie waarneming
gemaak nie. Dit was vir seker nie my mentaliteit nie en ek
het ook nie sodanige mentaliteit bespeur by enige van my
kollegas nie.
MR MPOFU: Yes. Now, thank you, General,
and I accept that as far as you are concerned but would you
be in a position to enlighten the Commission as to whether
that mentality of old, whether there are remnants of it
which may have contributed to the massacre?
CHAIRPERSON: I understood he's answered
that already. He said that he did not detect any traces of
that mentality on the part of -
MR MPOFU: On the day. I'm talking
generally.
CHAIRPERSON: No - no, I'm not -
MR MPOFU: Sorry.
CHAIRPERSON: - on the part of any of his
colleagues at Marikana. So let's assume for the sake of
argument where you're getting at, that he knows some of his
colleagues who weren't at Marikana who may have, at some
stage, have had that attitude, it wouldn't be relevant to
what we're busy with because we're busy with what happened
at Marikana. So I don't propose we should have a wide-
ranging discussion as to the mentality of some or other
members of the South African Police force who are not in
any way connected with the events with which we are
concerned. So I'm not prepared to allow that question.
MR MPOFU: Are you able or not able to
say whether or not the attitude articulated by Mr Mathunjwa
that black life is cheap, contributed in any way to the
massacre on the 16th of August?
MR SEMENYA SC: Chair, the witness has in
many ways disavowed that completely and said, I don't know
where Mr Mathunjwa's perceptions stem from and he can't
talk about it.
CHAIRPERSON: Mr Mpofu? The point made
is that the witness has, in effect, answered it already.
MR MPOFU: Ja -
CHAIRPERSON: You may wish to take it up
possibly with other people and then the -
MR MPOFU: I will, Chairperson.
CHAIRPERSON: - applicability of the
question to that particular witness can be discussed, but I
think in the light of what this witness has said already,
MR MPOFU: That's exactly what I'm talking about.

CHAIRPERSON: Where it says, "Where a person" – sorry. Please turn those cell phones off. I've spoken about that before. If a cell phone goes off again I'll ask the person who has it to leave the room. Section 13(3)(b) of the Act –

MR MPOFU: (b).

CHAIRPERSON: 13(3)(b) -

MR MPOFU: Yes.

CHAIRPERSON: - of the Police Service Act states, "Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances."

That's the section that the witness –

MR MPOFU: That's the section that I'm on about, Chairperson. You've heard what the Chairperson read out, section 13(3)(b) of the Police Act. Now, what I want or what I'm saying to you and it's a subtle distinction between what you have just said, is that that section effectively prescribes that only minimum force can be used and by implication it outlaws the use of maximum force by the South African Police post-apartheid.

[12:06] CHAIRPERSON: I'm not sure that the statement, the question is correct in suggesting that minimum force necessarily excludes maximum force. You - can I just finish?

MR MPOFU: Okay.

CHAIRPERSON: There can be a situation, for example, in a cash in transit heist situation where you have the robbers armed with automatic rifles, assault rifles, where it's necessary for the STF or whoever deals with the situation to fire, to shoot back and shoot to kill to prevent the deaths of part of, the victims of the cash in heist robbery.

MR MPOFU: Sure.

CHAIRPERSON: That would be a case where there's, where minimum force happens to coincide with maximum force.

MR MPOFU: Ja.

CHAIRPERSON: Not because it's maximum force but because the minimum, even the minimum takes you right up to the ceiling.

MR MPOFU: Thank you -

CHAIRPERSON: That's why it's not correct to say that minimum force necessarily excludes maximum force because one can consider, conceive of rare situations where the minimum force is the same as maximum force, but the general proposition is that minimum force -
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1 CHAIRPERSON: And we'll be here for longer than the Saville Commission was in Northern Ireland and I don't want to allow that.

2 MR MPOFU: No, Chairperson, with the greatest respect. Actually I was going to leave the subject, now I'm going to pursue it. The reason why I'm asking this witness about that is because he, General Annandale, according to the National Commissioner is one of the people who briefed her about the happenings in Marikana and he, among others or in his presence, told the National Commissioner that maximum force was used. So this has got nothing to do with the entire police force. I'm talking about someone –

3 CHAIRPERSON: Where - I know what the National Commissioner said, it's been put before us.

4 MR MPOFU: Yes, but –

5 CHAIRPERSON: I'm not aware of any evidence - if it is, you must draw it to my attention - I'm not aware of any evidence where she said that those actual words, the verba ipsissima as we say, were used by this witness in briefing her.

6 MR MPOFU: No, no, nobody is suggesting that. All I'm saying is that she has given evidence that the contents of her statement to brief the President and the statement she made on the 17th was as a result of the information she got from the commanders who briefed her, of which this witness was one and that - of course the witness might say it was not me, it was Calitz or whatever, I don't, that's not where I am. All I'm saying is that as a result of a briefing that he, among other people, gave which the National Commissioner says informed her statement, it was said that maximum force had been used on the 16th of August, which is against the law.

7 CHAIRPERSON: Well -

8 MR SEMENYA SC: Chair -

9 CHAIRPERSON: It's a further question that arises and that is a point made by the author of the book which is FFF14 that the phrase “maximum force” may also be ambiguous and that “by maximum force” may simply have been meant lethal force, but when the National Commissioner comes back and you proceed with your cross-examination of her, you can ask her about it but -

10 MR MPOFU: Chairperson, I’m sorry, I know Mr Semenya wants to say something – just so that he responds to everything, that's exactly the problem I'm pre-empting, Chairperson, because if I do that with the National Commissioner, she's going to ask the commanders. The commander is here now and he'll be gone, so I have to ask him and then I will ask her. You can be sure that I will ask her as well but I don't want her to say, you

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1 CHAIRPERSON: The transcript tells us in what respect, can I respond to what Mr Semenya has just said?

2 MR MPOFU: No, Chairperson, with the greatest respect, can I respond.

3 CHAIRPERSON: Yes, you can respond.

4 MR MPOFU: Thank you. What Mr Semenya has just said makes it even worse, Chairperson. If indeed the National Commissioner used that phrase in contrast to minimum force, then it means she did so consciously.

5 CHAIRPERSON: Mr Mpofu, I’m not sure that, with respect to Mr Semenya, his quotation is exactly correct but in any event what the National Commissioner said and what she meant is a matter to take up with her.

6 It's no good taking it up with this witness but what I've said is I'll allow you to ask her whether she got the phrase from you, i.e. from General Annandale. You can ask that question. Let's hear what his answer is.

7 MR MPOFU: No, I’ll leave it, Chairperson. I’ll move to something else.

8 CHAIRPERSON: Mr Mpofu, you say when she gives her evidence –

9 MR MPOFU: No, it's okay.

10 CHAIRPERSON: - the Major-General will have gone and you can't ask him, so if you won't ask him, I will. Did you give that expression to, did you use that expression “maximum force” in the briefing you gave or that you were involved in giving to the National Commissioner?

11 GENERAAL-MAJOR ANNANDALE: Nee, Voorsitter.

12 CHAIRPERSON: Right.
MR MPOFU: Do you accept that the 34 people who were killed in, rather on the 16th of August, were killed by the police, correct?

GENERaal-MAJoOR ANNANDALE: Voorsitter, ek het geen rede om te glo dat dit 'n ander rede is nie. Ek dink daar is 30 persone, dink ek, op die dag en ek weet daar is vier na die tyd in die hospitaal is, maar ek het geen rede om dit nie te glo nie.

MR MPOFU: And of course you are aware that the version of the police is that those people were killed in self-defence. The question is -

CHAIRPERSON: Self or private defence, yes, to be technical. The question I want to ask you is whether you'd agree with the proposition that for someone to be able to justify or testify about whether a particular situation amounted to self-defence or not, that person would either have had to be present or involved in the fight, as it were – in or during the fight.

MR MPOFU: Mr Semenya, you’ve got your microphone turned on?

MR SEMENYA SC: Chair, that’s completely incorrect. I’ve read the judgments of judges on self-defence, whether it was or was not present, who were not themselves involved.

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MR MPOFU: Do you accept that the 34 command of the police on the question of self-defence would be third-hand in the sense that they would have been told by the shooters to their commanders who then told you about them, and so they are third-hand and not first-hand as the Commissioner has correctly indicated. Would you accept that as a fact?

GENERaal-MAJoOR ANNANDALE: Voorsitter, dis reg. Ek het getuig dat dit, soos oorgedra deur die bevelvoerders.

MR MPOFU: Sorry, I can’t find the particular slide now but I’m sure you’ll remember. In the presentation of the plan and in the prescripts as such it is said that the killing of another person would only be justified if it is done on command or in self-defence. Are we together on that?

COMMISSIONER HEMRAJ: Are you referring to the slide in exhibit L, Mr Mpofu?

MR MPOFU: It’s SS2, I think. I’m not sure which slide. I was hoping the witness would just, as a matter of experience, answer that but I’ll find it.

CHAIRPERSON: SS2 is the standing order and the standing order in 3(d) – well, in 3 he talks about minimum force and so force –

MR MPOFU: Chairperson, I might – it probably is SS3, I don’t want to lead you through the

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CHAIRPERSON: Judges don’t testify, the judges make findings based on the testimony before them given by people who were present, saw what happened. So I don’t know, with respect, if your objection helps us but Mr Mpofu –

MR MPOFU: Yes, Chairperson, I don’t think –

CHAIRPERSON: I don’t know where you’re going to, so I’m reluctant to stop you at this stage -

MR MPOFU: Well, Chairperson, I’m glad you are reluctant because self-defence is an important aspect of this case. Once I mention it, I think the – ja.

CHAIRPERSON: Of course, of course it is but you were asking about who can testify about it and so –

MR MPOFU: Ja.

CHAIRPERSON: And this witness – anyway, but carry on.

MR MPOFU: Thank you, Chairperson.

COMMISSIONER HEMRAJ: Mr Mpofu, are you referring to someone who testifies first-hand or someone to whom a report has been made?

MR MPOFU: No, I’ll ask the question again. Thank you, I think that’s a useful qualification, Commissioner. Would you – okay, let me start by saying this, your assertion, your assertions or those of the high garden path. It’s –

CHAIRPERSON: You don’t want to lead me up the garden path?

MR MPOFU: Up the garden path.

CHAIRPERSON: No, I’m sure you don’t.

SS3, is it?

MR MPOFU: Okay.

CHAIRPERSON: SS3 has got three separate plans but what we have in the top right hand corner is the overall page number of the police hard drive, so that might be a helpful way to find it.

MR MADLANGA SC: Is Mr Mpofu perhaps looking for point 7 of SS3?

MR MPOFU: Point 7 on the front?

MR MADLANGA SC: 1878.

MR MPOFU: Mine is not –

GENERaal-MAJoOR ANNANDALE: Voorsitter, as ek kan help, dit is in – it’s contained in the contingency planning I think, both the one on the 10th -

MR MPOFU: Yes.

MAJOR-GENERAL ANNANDALE: As well as the one on the 13th. Mr Madlanga referred to the one, on the other one it’s also on page 1668, also paragraph 7.

MR MPOFU: Ja. Sorry, I’m sorry to do this, Chairperson, it appears about five times but let’s
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1 use the one that Mr Madlanga – it appears about five times
2 on SS3. It's on the page, the pages are not very clear,
3 it's 1867, 8, ja. In other words, it's the document at the
4 front and it's point 7. At the top it says
5 "Implementation." It's the second document, it's called
6 "South African Police Service, Rustenburg POP Amended
7 Contingency Plan, Strike by employees of Lonmin" and so on.
8 Are we together, General?
9 GENERAAL-MAJOR ANNANDALE: Ek is. I am.
10 MR MPOFU: Okay.
11 CHAIRPERSON: The place that we found is
12 1726, which is the contingency plan, I think, of the 16th,
13 isn't it?
14 MR MPOFU: Yes.
15 CHAIRPERSON: But the operative one that
16 was applicable on the 16th and there paragraph 7 says, "Use
17 of force: only on command or self-defence," is that what
18 you're referring to?
19 MR MPOFU: That's it, correct. Thank
20 you, Chair.
21 CHAIRPERSON: Alright, we've now found
22 it, now what are we going to do with it now that we've
23 found it?
24 MR MPOFU: Well, we'll just repeat the
25 question which I'm sure has been forgotten now, which is,

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1 the use of – that section postulates a situation where,
2 like the current one where people were killed, doesn't it,
3 among other things? It might postulate other things as
4 well.
5 GENERAAL-MAJOR ANNANDALE: Verskoon tog,
6 Voorsitter, ek is nie duidelik, die vraag nie?
7 MR MPOFU: Okay. No, I'm saying that the
8 portion that we have read would have been applicable in the
9 Marikana situation.
10 [12:25] CHAIRPERSON: The plan referred to is the
11 plan that was drawn up for the Marikana operation. It went
12 through various editions culminating in the one of the 16th,
13 so it was clearly applicable to Marikana and as you said,
14 envisages the use of force which could either lead to death
15 on the part of the victim or injury of some sort. Okay,
16 now where do we go from there? What's the next question,
17 in other words?
18 MR MPOFU: Right. The next question is,
19 would you agree with me that that section postulates
20 mutually exclusive routes through which the use of force
21 postulated therein can be employed? In other words, it can
22 either be on command from somebody or in self-defence.
23 MR BURGER SC: Then I don't understand
24 the question because that's what the clause says, so it's a
25 meaningless question.

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1 MR MPOFU: No, Mr Burger must hold his
2 horses. The question, there are so many postulate – when
3 we say this thing is this or that, you could mean, it can –
4 it's and/or, or that both situations can be postulated.
5 I'm asking a specific question. If he listens he'll
6 understand, that does it postulate mutually exclusive
7 situations. It's not necessarily so from a reading from
8 the sentence semantically. It's something very serious
9 that I'm asking, so I would appreciate if my cross-
10 examination is not unnecessarily interrupted.
11 CHAIRPERSON: Mr Mpofu, let's – to use a
12 phrase that Mr Madlanga likes us to use – let's cut to the
13 chase.
14 MR MPOFU: Yes, thank you, Chairperson.
15 CHAIRPERSON: Major-General, in that plan
16 for the 16th it is said that force can be used only on
17 command or in self-defence, which means self-defence or
18 private defence. I take it that it's one or the other,
19 although you could have a situation presumably where you
20 are ordered to defend yourself, so you do use force on
21 command, you're also defending yourself but if it's not a
22 self or private defence situation per se then you can only
23 use force if you have a command. Is that what it means?
24 GENERAAL-MAJOR ANNANDALE: Voorsitter,
25 in die konteks van openbare orde beplanning verwys die

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1 “only on command” –
2 MR MAHLANGU: In the context of public
3 order, Mr Chairperson, it refers to command or on command
4 or in self-defence.
5 GENERAAL-MAJOR ANNANDALE: Nee, nee –
6 MR MAHLANGU: I'm sorry.
7 CHAIRPERSON: I don't think – I think he
8 used the word, the English words "only on command."
9 MR MAHLANGU: Only on command in terms of
10 public order policing.
11 GENERAAL-MAJOR ANNANDALE: Voorsitter,
12 en dan die frase is verwysend na die gebruik van offensiewe
13 aksies, so ekleen van die offensiewe aksies, hetsy dit die
14 gebruik is van waterkannonne of skokgranate of CS-gas. As
15 ek reg is, het dit sy oorsprong in die Wet op die Reëling
16 van Byeekenkomste, ek dink artikel 9 waarskynlik wat dan
17 verwys na die gebruik van geweld.
18 CHAIRPERSON: It also obviously refers to
19 standing order 262, paragraph 11.5 and 7, 11.5 being,
20 “Force may only be used on the command or instruction of
21 the C-JOC or operational commander, if appointed. Members
22 may never act individually without receiving a command from
23 their commander.” And 7 says, “Common law principles of
24 self-defence or private defence are not affected by this
25 order.” So it looks to me, if I may say so, as if this
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25 then, Chairperson, if it's not.

24           MR MPOFU:          Well, I'm making it an issue

23 officer or a superior –

22 anybody was killed as a result of a command by a superior

21 inquiry because it's not relevant to this

20 you, Mr Mpofu, is that the question isn't relevant to this

19 Mr Mpofu, I'm sorry – Mr

18 Semenya?

17 MR SEMENYA SC:          As far as the version of

16 the South African Police Service is concerned, nobody was

15 killed on command.

14 MR MPOFU:          Ja –

13 CHAIRPERSON:          What he's really saying to

12 you, Mr Mpofu, is that the question isn't relevant to this

11 inquiry because it's not relevant to this

10 that there are a number of points in paragraph 9 and you

9 say that it's clear or on a proper analysis it should be

8 clear that your case is that people died, were killed as a

7 result of commands.  If that's your case, then fine.

6 We're now here for very many months.  I would be greatly

5 surprised if that's part of his case and we didn't know it

4 but if it is, were they to know that.

3 MR MPOFU:          Well, I think if we listen

2 we'll know it sooner than if we just dabble into my cross-

1 examination.

1 let's, as the Chairperson would like to say, cut to the

2 chase.

3 MR BURGER SC:          Sorry Chair, I'm lost

2 here.  Can I just follow the debate?  Is it part of my

1 learned friend's case that people were killed on command?

11 I'm happy to take on board – unless it's part of your case that

10 people were killed as a result of commands, in which case

9 clearly it becomes relevant.

8 with, one way or the other.

7 CHAIRPERSON:          Unless of course it's part

6 of your case, the point she makes is this – which I'm happy

5 to agree, people that formed the basic line and also – I

4 before the shots were fired.

3 the videos didn't, there was no audible command given

2 before the shots were fired.

1 CHAIRPERSON:          Commissioner Hemraj –

18 MR MPOFU:          After two we're going to deal

17 will come, don't worry Chairperson –

16 will agree, people that formed the basic line and also – I

15 we'll know it sooner than if we just dabble into my cross-

14 examination.

13 an orderly fashion –

12 MR MPOFU:          I said we'll cut to the chase, Chairperson.

11 CHAIRPERSON:          Mr Mpofu, let's do this in

10 CHAIRPERSON:          Commissioner Hemraj –

9 Mr MPOFU:          Commissioner, Commissioner.

8 CHAIRPERSON:          I think that's the basis –

7 MR MAHLANGU:          Part.

6 the public order part.

5 of the standing order where it refers to public or private

4 the common law principles

3 of self or private defence.

2 private and self-defence,

1 yes.

10 the –

9 “self-defence” is verwysend na die openbare orde gedeelte.

8 belowe ek maak nou klaar, Voorsitter, so die “command”

7 beperk tot oorhoofse of operasionele nie, dit is – en ek

6 die rang van adjudant-offisier of hoër, so dis nie net

5 die Wet sê dit daarso pertinent dit moet iemand wees met

4 ja, wat sy oorsprong uit die staande orde uit die Wet, in

3 to you, would I be entitled to assume that a situation

2 we're not relying on commands by our people, so the

1 that there are a number of points in paragraph 9 and you

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CHAIRPERSON: The suggestion is it’s a new thing that we just heard now, but what do you say about that?

MR MPOFU: Chairperson, two things. One, if you look at 9.4 of my opening statement we say one of the 10 things that we’re going to show in this case is that the claims of self-defence are baseless. That’s what I’m busy with now. If that is not enough, then go to paragraph 8 where we say, “Due, inter alia, to ongoing consultations, lack of resources and other impediments, these broad themes are not at this stage exhaustive and will, in all probability, be augmented in due course. So if 9.4 needs to be amplified, I would think that what I’m busy with is sufficiently covered in 9.4 but if Mr Burger wants to –

CHAIRPERSON: No, no, Mr Mpofu, I think we’re talking at cross-purposes. The question at the moment, as I understand it, is it your case that people were killed in circumstances where there was a command –

MR MPOFU: Yes.

CHAIRPERSON: - to be killed. You see whether – self-defence could be baseless simply because the person who shot wasn’t acting in self-defence or wasn’t reasonable in the circumstances to shoot.

MR MPOFU: It could be.

CHAIRPERSON: That would be a basis why self-defence is baseless, but it’s a different situation where someone shoots because they – he was ordered to shoot, there was a command. And what is being put is, is it your case that there was such a command?

MR MPOFU: Yes.

CHAIRPERSON: Do I understand you to say yes?

MR MPOFU: Yes, Chairperson, on – I’m saying more than yes. I’m saying yes and it is subsumed in what is stated in 9.4. Yes, I agree, it doesn’t necessarily fall – none of these points have been elaborated upon. All I’m saying is that that part of my case is not, or rather is consonant with what is stated in 9.4.

CHAIRPERSON: Now the next question would be, are you able to tell us who gave the commands which we should investigate which form the causae causante, as it were, of the killings.

MR MPOFU: Yes, that’s what I was busy with before I was rudely interrupted.

CHAIRPERSON: No, no, you haven’t told us who gave the command.

MR MPOFU: Well, I was – that’s my next question, Chairperson.

CHAIRPERSON: Alright –

MR MPOFU: If I’m allowed to speak.

CHAIRPERSON: Alright. And is this covered at all by the affidavits that have been filed in respect of the evidence that’s going to be led?

MR MPOFU: Yes, Chairperson.

CHAIRPERSON: Can you refer us to it?

MR MPOFU: Yes, Chairperson.

CHAIRPERSON: Well, do so please.

MR MPOFU: General Annandale, can you go to GGG17?

CHAIRPERSON: GGG17 being the statement of Lieutenant-Colonel Vermaak.

MR MPOFU: Okay, I’m going to deal with this in two sections. We’ll start with the 13th, the 13th.

Sorry, paragraph 7 Chairperson, sorry. Maybe you’ll help us with the translation, I’ll read it in Afrikaans. This is the statement of -

CHAIRPERSON: Lieutenant-Colonel Vermaak.

MR MPOFU: Lieutenant-Colonel Vermaak, ja. It says – sorry Chairperson, just give me one second.

He’s dealing with the 16th, I made a mistake. That refers to the 13th, ja, it’s dealing with the 16th. “Die groep het terugbeweeg en weer hergroepeer aan die anderkant van die kraal en die polisiemanne weer om ongeveer” -

CHAIRPERSON: Mr Mpofu, forgive my being difficult. May I suggest you just tell me which paragraphs you want and I’ll translate them into English, or try to?

MR MPOFU: I’ll be indebted to the Chairperson. It’s paragraph 7, it starts with “Die groep.”

CHAIRPERSON: Alright, do you want me to start reading and you tell me when to stop? The group moved back, moved back and then regrouped on the other side of the kraal, photograph 1516, and the police – and attacked the policemen again at about 15:55. It was clear out of the air, it was clearly observed out of the air that the group would not surrender. Brigadier Calitz again gave the members the order to mount an operation. It almost appeared as if the members did not hear. Because of the incident on the Monday, the 13th of August, where the two police members were chopped – well, I say that, that’s correct – were chopped to death under the helicopter, I realised that the members would have to act to defend themselves. I again repeat Brigadier Calitz’s order from the helicopter, on which I saw that the members were acting.

MR MPOFU: Ja.

CHAIRPERSON: Groups, brackets (attackers), photograph 1517, ran away in the direction of these, the shacks or squatters’ houses neighbouring on the scene at 15:56. Must I go on? Must I go on, Mr Mpofu?
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<td>1 Important questions must obviously be dealt with</td>
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<td>2 just fascinated by that, Chairperson. No, that’s enough,</td>
<td>thoroughly. No-one, I will not allow anyone to stop you</td>
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<td>3 Chair.</td>
<td>3 from doing that. The difficulty that we had was put to</td>
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<td>4 CHAIRPERSON: It was a rough translation,</td>
<td>4 you, about whether this was an issue and what your case</td>
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<td>5 I’m sure Mr Madlanga and the professional interpreters can</td>
<td>5 was, but if it’s somehow covered by the passages I read</td>
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<td>6 do better but anyway, I did my best.</td>
<td>6 then please ask the question you want to ask.</td>
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<td>7 MR MPOFU: I agree with the</td>
<td>7 MR MPOFU: General, before we come to the</td>
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<td>8 interpretation. I wouldn’t have done better.</td>
<td>8 questions that arise from the passage that was generously</td>
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<td>9 MR MAHLANGU: Thanks for assisting,</td>
<td>9 translated by the Chairperson, I just want to ask you one</td>
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<td>10 Chairperson.</td>
<td>10 more thing. Is it correct that in police parlance or</td>
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<td>11 MR MPOFU: Now –</td>
<td>11 police language an order or an instruction to engage would</td>
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<td>12 MR BURGER SC: No, but I still don’t know</td>
<td>12 also involve shooting at people? That’s the kind of</td>
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<td>13 the answer to the question –</td>
<td>13 language – since I’m not a policeman I just wanted you to</td>
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<td>14 CHAIRPERSON: Mr Booi has now got to</td>
<td>14 assist us.</td>
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<td>15 translate it into isiXhosa.</td>
<td>15 MR MPOFU: I take the strongest possible</td>
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<td>16 MR MPOFU: Yes.</td>
<td>16 exception to being interrupted in this way on such a</td>
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<td>17 CHAIRPERSON: Mr Burger?</td>
<td>17 crucial issue of when the people were killed in self-</td>
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<td>18 MR BURGER SC: No, I still don’t know the</td>
<td>18 defence, so-called.</td>
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<td>19 question to my answer, whether –</td>
<td>19 CHAIRPERSON: Alright.</td>
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<td>20 CHAIRPERSON: You don’t know the question</td>
<td>20 MR MPOFU: I take the strongest possible</td>
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<td>21 to your answer? One doesn’t normally get questions to</td>
<td>21 exception to being interrupted in this way on such a</td>
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<td>22 one’s answers.</td>
<td>22 crucial issue of when the people were killed in self-</td>
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<td>23 MR BURGER SC: Even I’m getting muddled</td>
<td>23 defence, so-called.</td>
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<td>24 with this. Chair, no, the serious question is whether it’s</td>
<td>24 CHAIRPERSON: MrMpofu, MrMpofu, please.</td>
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<td>25 part of my learned friend’s case that there was an</td>
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<td>1 important questions must obviously be dealt with</td>
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<td>2 was where do you get that from? Is that in one of your</td>
<td>thoroughly. No-one, I will not allow anyone to stop you</td>
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<td>3 statements? You say it is in statements. Obviously you’re</td>
<td>3 from doing that. The difficulty that we had was put to</td>
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<td>4 entitled to rely on statements filed by other parties,</td>
<td>4 you, about whether this was an issue and what your case</td>
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<td>5 you’re entitled to do that. So you say you’ll find it in</td>
<td>5 was, but if it’s somehow covered by the passages I read</td>
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<td>6 GG17. So you were asked where, you said para 7. I read</td>
<td>6 then please ask the question you want to ask.</td>
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<td>7 the first half of the thing in English to save time. I</td>
<td>7 MR MPOFU: General, before we come to the</td>
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<td>8 didn’t see and you yourself conceded that my translation</td>
<td>8 questions that arise from the passage that was generously</td>
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<td>9 was correct – I didn’t see anyone giving any orders to</td>
<td>9 translated by the Chairperson, I just want to ask you one</td>
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<td>10 anybody to shoot.</td>
<td>10 more thing. Is it correct that in police parlance or</td>
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<td>11 MR MPOFU: Chairperson –</td>
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<td>12 CHAIRPERSON: No –</td>
<td>12 also involve shooting at people? That’s the kind of</td>
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<td>13 MR MPOFU: Let’s stop this. If we’re</td>
<td>13 language – since I’m not a policeman I just wanted you to</td>
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<td>14 going to tell the witness the answers then let’s stop this.</td>
<td>14 assist us.</td>
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<td>15 I’ve not asked a single question. All I have done is to</td>
<td>15 GENERAAL-MAJOR ANNANDALE: Nee,</td>
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<td>16 read the paragraph. Let me ask the witness questions and</td>
<td>16 Voorsitter.</td>
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<td>17 extract what I can in cross-examination before anybody</td>
<td>17 MR MPOFU: Okay. So if, or rather if</td>
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<td>18 suggests the answers of what they saw or did not see. This</td>
<td>18 somebody comes here and says that in police language in a</td>
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<td>19 is a very crucial aspect of the case, Chairperson –</td>
<td>19 situation – I mean let’s not make it too theoretical – in a</td>
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<td>20 CHAIRPERSON: Alright.</td>
<td>20 situation that we had on the 16th just before the shootout –</td>
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<td>21 MR MPOFU: I take the strongest possible</td>
<td>21 no, sorry, there I go again, before the shooting occurred</td>
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<td>22 exception to being interrupted in this way on such a</td>
<td>22 they heard somebody saying, “engage, engage” in the</td>
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<td>23 crucial issue of when the people were killed in self-</td>
<td>23 context of this, you wouldn’t agree with that person that</td>
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<td>24 defence, so-called.</td>
<td>24 that might amount to an order to shoot?</td>
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<td>25 CHAIRPERSON: MrMpofu, MrMpofu, please.</td>
<td>25 COMMISSIONER HEMRAJ: MrMpofu, is this a</td>
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**Chairperson:** Well, Chairperson –

**Mr Mpfu:** There will be.

**Mr Burger SC:** Then I object to it, we don't have a statement to that effect. I seriously object to this line of questioning, this is kite flying. My learned friend doesn't have a version on this and he's testing a non-existent version by calling it hypothetical. He is not, in month 8, entitled to do that, sir. I object to this line.

**Chairperson:** Please don't make personal comments. I won't allow him to make personal comments about you and I won't allow you to make personal comments about him.

**Mr Mpfu:** Well then –

**Chairperson:** Concentrate on the merits.

**Mr Mpfu:** Well then I'll rely on you to correct him. He says I said it's a hypothetical question.

**Chairperson:** Commissioner Hemraj just asked me, Mr Mpfu is this a hypothetical question or is there another basis and I said the exact opposite of what Mr Burger is saying. So I don't understand what he's doing.

---

**Chairperson:** Let's take it slowly. You said it wasn't a hypothetical question –

**Mr Mpfu:** And –

**Chairperson:** No - no. That then raised a point that it's not covered by any statements that you've filed. Your answer, as I understood so far, is to say that it is covered by statements filed by other parties and that's why you referred to this statement. If I'm not understanding you correctly, please tell me.

**Mr Mpfu:** No, you are understanding me correctly, Chairperson.

**Chairperson:** Alright, well, I'm pleased about that. Now, then the point Mr Burger's point is that this statement does bear out what you say because it's not a statement which reveals that anyone says that an order was given to shoot.

**Mr Mpfu:** To engage.

**Chairperson:** To engage.

**Mr Mpfu:** Yes. Thank you, Chairperson.

**Chairperson:** That's the objection, you see.

**Mr Mpfu:** Yes. No, it's fine.

---

**Chairperson:** So what's your answer to that?

**Mr Mpfu:** My answer is that the statement I'm referring to was filed by none other than Mr Burger. It is the statement, which I'm sure is an exhibit yet, of - what's his name - Dirk Cornelius Botes, which is filed by Lonmin or by Mr Burger where he says that he heard, I think it was Brigadier Calitz saying three times, "engage, engage, engage." And I'll check with Ms Pillay, if that statement is not an exhibit then I'll ask for your indulgence, Chairperson, and forgiveness because -

**Chairperson:** Okay, okay, I don't remember that statement and I know what I said about statements must be filed the day before they are relied on but in this particular instance I won't enforce that against you.

**Mr Mpfu:** Oh.

**Chairperson:** The witness has said - sorry – the witness has said that the order “engage” doesn't mean what you say it means but anyway, let's just get clarity on it. What does the order “engage” mean in a context such as that to which Mr Mpfu has referred?

**Generaal-Majoors Annandale:** Voorsitter,

as Brigadier Calitz dit gebruik het sal hy sekerlik moet verwys in watter konteks. Ek het verwys in my getuienis.
1. CHAIRPERSON: Is that a satisfactory approach?

2. MR MPOFU: 100% Chairperson, subject – I just want to say two things. One is my apology to Brigadier Calitz, just so that it’s not suggested that I’m directly saying, it may or may not have been him. What the statement says is, “From my observation this group was heading from the koppen in the direction of the kràal where a group of police officers, including members of the task team, had moved to. I just heard the words on the SAPS radio communications system, ‘engage, engage, engage.’” So insofar as I suggested that it was Calitz, it may or may not be him. I just didn’t want his name to be used in vain.

3. CHAIRPERSON: We’ll get the statements, they’ll be distributed to those who haven’t got them, including the commissioners, and you will then continue with that point.

4. MR MPOFU: Yes.

5. CHAIRPERSON: Next week, Monday morning 10 o’clock.

6. MR MPOFU: I will, Chairperson. If the Chairperson can just allow me one question so that on Monday we start at a logical point. One, I promise.

7. COMMISSIONER HEMRAJ: Can I just seek clarity on one thing, Mr Mpofu? I don’t know if I recorded this question of yours correctly which says, if a policeman comes and says that he heard the words “engage, engage, engage.” Was that incorrect?

8. MR MPOFU: No, I said if a person. 9. COMMISSIONER HEMRAJ: If any person.

10. MR MPOFU: Any person yes, thank you.

11. CHAIRPERSON: [Inaudible] at 1 o’clock because people have told me that they have to leave at one in order to catch aeroplanes and so on, so provided your question and answer doesn’t take us beyond 1 o’clock I’ll allow it, but not otherwise.

12. MR MPOFU: Thank you, Chairperson. I promise. Well, I am only promising – in the quotation, as it were, that you remember, you said you didn’t know about this and for obvious reasons you didn’t but in the one that you say you knew about which said, “If the target – don’t engage unless the target engages you,” what do you think that means, that meant, the word “engage?”

13. GENERAAL-MAJ OOR ANNANDALE: Voorsitter ja, dis suiwre my eie opinie en my eie interpretasie die tyd, ek was bewus dat Brigadier Calitz besig was met uiteendryfaksie, synde dat hy in die voorste linie van openbare orde lede was. Dit was my waarneming dat dit waarskynlik een van die stappe was van uiteen dryf, hetsy
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