

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON

MR TOKOTA SC

MS HEMRAJ SC

HELD ON

DAY 206

25 MARCH 2014

TRANSCRIPT PAGES 25331 TO 25499

1 **[PROCEEDINGS ON 25 MARCH 2014]**

2 **[09:07] CHAIRPERSON:** The Commission resumes. I

3 hope that all those who have cell phones, please turn them

4 off as I have turned mine off. Luitenant-Colonel, you are still

5 binded by the affirmation you gave yesterday.

6 Adv. Pillay, before you resume your

7 examination-in-chief my colleague, Commissioner Hemraj,

8 want to ask a few questions about the 13th, the topic that

9 you have already – you are already busy with the 16th, are you

10 not?

11 **MS PILLAY:** Yes, I am, Chairperson.

12 **COLONEL VERMAAK:** (continue with affirmation)

13 **COMMISSIONER HEMRAJ:** Colonel, the

14 information that General Mpembe said that the members

15 should leave their weapons in the Nyala, where does that

16 information come from?

17 **COLONEL VERMAAK:** Mr Chairperson, it

18 came from the members that walked back with me,

19 and the threat was then made that

20 General Mpembe will lay next to those members,

21 due to the fact that he gave the order that they had to leave their weapons

22 in the Nyalas, in order not to provoke the

23 protestors.

24 **COMMISSIONER HEMRAJ:** And was this, did

25 you understand this to be prior to them walking behind them

1 in that line as they left the railway line?

2 **COLONEL VERMAAK:** It is correct

3 **COMMISSIONER HEMRAJ:** And the second

4 issue relates to prior to the 13th, the problems and the

5 inadequacies with regard to the training and the equipment,

6 did those exist during the stage when you were commander of

7 POPS up to 2005?

8 **COLONEL VERMAAK:** Chairperson, it was –

9 it was things that was identified at that stage, and the

10 courses we attended, were specifically on the

11 utilisation of your Public Order Policing equipment,

12 the standard kit for a Public Order

13 Police Officer, except for his weapon, is his shield, his gasmask

14 and his helmet. It is the three basic and most urgent

15 things he has to be equipped with, as well as his bludgeon, which

16 he will have on him and then also

17 a functional shotgun, which will be able to

18 shoot different ammunition.

19 **COMMISSIONER HEMRAJ:** So if there were

20 any inadequacies during your command you would have

21 addressed them and sought to remedy them?

22 **COLONEL VERMAAK:** It is correct.

23 **COMMISSIONER HEMRAJ:** Thank you.

24 **CHAIRPERSON:** I would like to ask you a

25 question on a similar matter. One of the points you made

1 in your evidence yesterday related to the, what you
2 effectively described as the inadequacies of the training
3 of the POP people. One of the points you made was that the
4 instructors themselves have book knowledge but they
5 do not have actual experience in the field of what they, of
6 the subject that they are teaching and giving instruction in
7 and what I want to know from you is, I take it that is not
8 something that was the case before 2005 when you were
9 involved directly in POP work, or am I wrong?

10 **COLONEL VERMAAK:** Mr Chairperson, it is
11 a matter that is being discussed now for
12 many years, many of the members that are trained,
13 are trained by instructors that were never in the situations
14 on which they have to give training –

15 **MS PILLAY:** Chairperson, I am sorry to interrupt
16 the answer. Apparently there is a problem with the
17 interpretation at the moment, it is not coming through.

18 **CHAIRPERSON:** Do you want me to adjourn?

19 The last time –

20 **MR NTSEBEZA SC:** Well, I just heard over
21 the thing, we have a problem with the microphone here from
22 Mr Mahlangu.

23 **CHAIRPERSON:** I am sorry, Mr Ntsebeza,
24 would you – I did not hear you. Would you speak, would you
25 repeat what you said slightly louder?

1 **MR NTSEBEZA SC:** No, Mr Chairperson, I just – I
2 heard over the earphones from Mr Mahlangu saying we now
3 have a problem with the earphone and then there was
4 silence.

5 **CHAIRPERSON:** Well, we would better adjourn
6 then and make sure that the problem is sorted out. What we
7 must do in future is we must remember to have a sort of
8 testing process before we start so that we do not have this
9 kind of problem again but –

10 **MR NTSEBEZA SC:** Well, it appeared to me
11 that he was indicating that we have a problem now with the
12 microphone.

13 **CHAIRPERSON:** No, I understand that. I
14 say if we tested it before we started then we would either
15 not have started or we would have, the problem would have
16 been sorted out before we started. We will take a short
17 adjournment, I hope it will be a short adjournment and we
18 will resume once we are informed that the system is
19 functioning correctly.

20 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

21 **[09:25] CHAIRPERSON:** The Commission resumes. I
22 understand that the equipment was tested before we began
23 and was found to be working and subsequently there was a
24 problem with a plug across the passage there, but that I
25 hope has now been sorted out. Mr Ntsebeza is nodding his

1 head, so it must have been sorted out, so we will now resume.

2 I asked you a question – you are still

3 binded –

4 **COLONEL VERMAAK:** It is correct.

5 **CHAIRPERSON:-** You gave an affirmation yesterday.

6 I asked you a question

7 about what your allegation was based that some of the POP

8 instructors did not have practical experience and you were

9 busy answering that when it was reported to us there is a

10 problem with the interpretation. I do not think you said

11 anything that was material that needs to be repeated and

12 re-translated, so I would suggest carry on from where you

13 were.

14 **COLONEL VERMAAK:** Thank you, Chairperson.

15 It is a problem that has been identified over a long period of time,

16 by the members in the field,

17 some of the instructors that gives training have never

18 been exposed to the situations and subjects on which

19 they have to give theoretical training.

20 They just have theoretical knowledge and

21 absolutely no actual experience in the field.

22 **CHAIRPERSON:** Sorry, please carry on.

23 **COLONEL VERMAAK:** That is all, thank you

24 Chairperson.

25 **CHAIRPERSON:** My colleague just brought

1 something to my attention, by I still listened

2 to you.

3 **COLONEL VERMAAK:** It is correct. That is a in

4 short why that comment was made, Chairperson.

5 **CHAIRPERSON:** The point that interests me

6 is that insofar as it purports to be a statement relating

7 to the present situation – or perhaps I should phrase that

8 more carefully – the situation as existed in 2012, I take

9 it, it must have been based on hearsay. It must have been

10 based on information you got from those who'd been at the

11 courses. Is that correct?

12 **COLONEL VERMAAK:** Mr Chairperson, it is

13 out of my own experience on courses I attended.

14 After the courses many members had the

15 same concerns and discussed it with

16 me.

17 **CHAIRPERSON:** So what suggestions have you

18 made or do you make as to how that problem can be overcome?

19 **COLONEL VERMAAK:** I did not make any suggestion on that,

20 as there is a national procedures in place on the

21 training of police officers and the training they have

22 to attend. The proposal will be

23 that they will have to look at the experience of a

24 instructor, before appointing him as an instructor in a specific field,

25 especially with Public Order Policing, so that there is a basic

1 guideline of, let us say, five years
2 practical experience in the field on the aspects
3 in which he or she has to train other members.

4 **CHAIRPERSON:** Thank you.

5 **COMMISSIONER HEMRAJ:** Colonel, you said
6 yesterday that when one of the policemen were being
7 attacked you saw some policemen running away, that you
8 could not identify them. Approximately how many police officers
9 were there that you actually saw running away from that
10 situation?

11 **COLONEL VERMAAK:** It is very difficult
12 to give you an exact figure at this stage. We just
13 just saw the police line walking, the "protesters"
14 turning around, storming back in the direction of the police,
15 where they were attacked and we saw
16 some of the police officers running away.
17 The exact figure I will not be able to provide you with,
18 but we see that it was quite a number, because
19 all three of us in the helicopter immediately
20 saw that some of the
21 Police Officers were running away.

22 **COMMISSIONER HEMRAJ:** Relative to those
23 running away how many strikers were there that were part of
24 the attack?

25 **COLONEL VERMAAK:** It is difficult to

1 say, because they were jumbled. At that stage
2 it was quite chaotic, if I may put it
3 so harshly, because it was the Police Officers and the
4 protestors, or the attackers, all jumbled, but you could at
5 least recognise the Police Officers on their clothing,
6 so we could see it was Police Officers that moved away from the
7 attack.

8 **COMMISSIONER HEMRAJ:** Would you say there
9 were more strikers involved in the attack than there were
10 police officers running away.

11 **COLONEL VERMAAK:** Yes, definitely.

12 **COMMISSIONER HEMRAJ:** Thank you, Colonel.

13 **CHAIRPERSON:** Did any of the police
14 members not run away, stay there, and make efforts to
15 defend their colleagues who were being attacked?

16 **COLONEL VERMAAK:** Chairperson no, I will
17 not be able to answer that question.

18 **CHAIRPERSON:** Yes, Ms Pillay, you may now
19 proceed. We have asked the questions we wanted to ask
20 relating to the 13th that we thought we would deal with while
21 his evidence about the 13th was fresh in our minds.

22 **MS PILLAY:** Thank you, Chairperson.

23 **CHAIRPERSON:** But please proceed from
24 where you stopped off yesterday –

25 **MS PILLAY:** Thank you, Chairperson.

1 **CHAIRPERSON:** Or you may yourself wish to

2 revisit the 13th. I do not know.

3 **EXAMINATION BY MS PILLAY (CONTD.):** No, I

4 think we will stay with the 16th, Chairperson. Morning, Colonel.

5 **COLONEL VERMAAK:** Morning.

6 **MS PILLAY:** Colonel, yesterday we left

7 off with you describing how you observed members at the

8 small kraal, using water cannon, teargas, and stun grenades,

9 on the south-western corner of the kraal where Nyala 4

10 closed the gap. Do you recall that?

11 **COLONEL VERMAAK:** That is correct.

12 **MS PILLAY:** Now let us pick up from

13 paragraph 11 of LLL8. Can you tell us what you saw

14 immediately after the teargas, the stun grenades, and the

15 water cannon were used at the corner of the kraal?

16 **COLONEL VERMAAK:** Chairperson, directly

17 after we got word about the attack,

18 we saw the attackers moving back from the corner of the kraal,

19 and they then regrouped quite a distance from there

20 and then moved around to the other side of the kraal,

21 at the same time a large group of the people

22 moved away in the direction of the informal

23 settlement.

24 **MS PILLAY:** Colonel, it might be helpful

25 if we have evidence in relation to the picture. May I ask

1 that JJJ11.1516 be put up? Now just with reference to this

2 photograph can you just tell us again how the strikers

3 moved from the south-western corner of the kraal?

4 **COLONEL VERMAAK:** Chairperson, if I might

5 just indicate, there at the corner of the kraal

6 where Nyala 4, with the wire vehicle was deployed,

7 the group moved here,

8 and then moved around, almost in the shape of an

9 arrow, towards that corner, many of the

10 people moved to this side, away from where

11 the incident happened.

12 **CHAIRPERSON:** Alright, let me try to put

13 that on record. What you showed us was that the people to

14 whom you referred were originally on what one can describe

15 loosely as the right-hand side of the small kraal on the

16 picture. They then moved down towards the bottom of the

17 page. They crossed the, there is a path that runs right

18 across the photograph from left to right, round about

19 halfway down the page. They crossed that and then came to

20 a position below that path, more or less in line with the

21 point from which they had moved downwards. They then moved

22 towards the left of the photograph more or less to where

23 one can see a group of people on the photograph, moved

24 forward to a position to the left, at the top left corner,

25 if one can call it that, of the small kraal as one sees it

1 on the photograph. Some of the people who are lower down
2 the photograph on the lower portion below that path that
3 crosses from left to right on the photograph, halfway down
4 the photograph, some of those people moved to the left and
5 I take it –

6 **COLONEL VERMAAK:** It is correct.

7 **CHAIRPERSON:** - to a point that is not
8 covered by the photograph.

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** Yes, thank you.

11 **MS PILLAY:** Now you say in line 2 of
12 paragraph 11 that the strikers attacked the police at
13 around 15:55. Can you just tell us with reference to
14 JJJ11.1516 exactly where this attack occurred?

15 **COLONEL VERMAAK:** Chairperson, as we saw.

16 the left, top corner of the
17 kraal, that is where I indicated and from where they
18 stormed towards the Police Officers.

19 **MS PILLAY:** Alright, now you say that the
20 so-called attack was visible, clearly visible from the air.

21 **COLONEL VERMAAK:** It is correct.

22 **MS PILLAY:** And can you just describe to
23 us from the air exactly what it is that you saw?

24 **COLONEL VERMAAK:** At the top of the
25 photo you can see, behind these Nyalas, you can see

1 a line of police officers standing there.

2 **MS PILLAY:** Alright, and in terms of

3 the –

4 **COMMISSIONER HEMRAJ:** Sorry, can you just

5 show us that point again, please?

6 **COLONEL VERMAAK:** Chairperson, there,

7 here, were Nyalas. This grouped moved

8 through here and the Police Officers was there at

9 the back. You will see they formed a point, but some of them

10 also formed a line.

11 **CHAIRPERSON:** What you are showing us –

12 sorry, can I have the main picture again because I have

13 to describe what is on the main picture. As we look at the

14 photograph and one looks at the small kraal, one sees a

15 number of Nyalas there, some of them on the right-hand side

16 of the kraal and some of them on the left. One also sees

17 above the Nyalas to the right, at the top of the kraal on

18 the photograph and near the top right-hand corner one sees

19 a dark line which is, I understand, part of the TRT line

20 and that was the point which the witness indicated, and

21 then he indicated also that that line continued beyond the

22 top of the photograph towards the left, and in fact, I think

23 you said you can actually see the end of it on the, to the

24 left of the left-hand corner of the kraal. It was

25 effectively positioned, part of the arc of a circle –

1 **COLONEL VERMAAK:** It is correct.

2 **CHAIRPERSON:** - beginning on the right-

3 hand side, the part that you indicated, and ending -

4 **COLONEL VERMAAK:** On the left -

5 **CHAIRPERSON:** - on the other side of the

6 kraal, on the left-hand side of the kraal as we look at the

7 photograph.

8 **COLONEL VERMAAK:** It is correct., Chairperson.

9 **CHAIRPERSON:** I think that is what you

10 showed us here.

11 **MS PILLAY:** Thank you, Chairperson. Now just

12 for identification purposes, Colonel, and just to be clear,

13 we know that the little line that we see behind the line of

14 Nyalas, which is the TRT basic line, and the members forming

15 up on the left of the kraal would be the POP line. Now the

16 attack that you are describing at 15:55, with reference to

17 those two lines can you tell us what it is that you saw

18 from the air?

19 **COLONEL VERMAAK:** It was difficult for us to

20 distinguish between TRT, NIU, and POP members,

21 but we, Brigadier Calitz instructed the members to

22 "engage" and I then again got the impression that there

23 is a possibility that the members could not hear him on the radio,

24 and based on what we saw that Monday, I realised

25 that the group is going to move towards the Police Officers

1 again, and I repeated his instruction to

2 "engage."

3 **MS PILLAY:** Okay, Colonel, just to be

4 clear, in terms of your statement you refer to an attack at

5 15:55 and then you refer to Brigadier Calitz issuing the

6 instruction "to lodge action" and you are repeating

7 that instruction.

8 **COLONEL VERMAAK:** It is correct.

9 **MS PILLAY:** So in that sequence what I am

10 asking you to describe is what occurred at 15:55, what you

11 saw at 15:55. That is before Brigadier Calitz issued the

12 instruction that the members "must lodge an action."

13 **COLONEL VERMAAK:** What we saw was the

14 group moving in front, they moved

15 around the kraal, and the Police Officers were much

16 closer at the stage that it happened.

17 This photo was taken just for the incident happened,

18 because at that stage I used the BlackBerry

19 and the Pentax and simultaneously

20 operated the police radio.

21 **MS PILLAY:** So on your evidence this

22 picture was taken immediately before the first attack that

23 you describe?

24 **COLONEL VERMAAK:** It is correct.

25 **CHAIRPERSON:** I am not sure that I am

1 following you correctly. Do I understand you to be telling
2 us that what one can describe as the first attack – because
3 you talk in your, in the second line of paragraph 11 you
4 say, “The group attacked the Police Officers again.” So
5 that is a second attack, right? “It was again”?

6 **COLONEL VERMAAK:** Yes.

7 **CHAIRPERSON:** A second attack. Now, so
8 the first attack, which I take it is the one that you are
9 referring to towards the end of paragraph 10 of your
10 statement.

11 **COLONEL VERMAAK:** It is correct.

12 **CHAIRPERSON:** And do I understand you to
13 be saying that that took place at what one can call the
14 right-hand side of the small kraal –

15 **COLONEL VERMAAK:** It is correct.

16 **CHAIRPERSON:** - on the photograph.

17 **COLONEL VERMAAK:** It is correct.

18 **CHAIRPERSON:** Right, and that was
19 repelled in the sense that the group then left that spot
20 and went around the kraal, I think around the kraal on the
21 lower side of the kraal as we see it on the photograph –

22 **COLONEL VERMAAK:** It is correct.

23 **CHAIRPERSON:** - to the position on the
24 other side, the left-hand side of the kraal.

25 **COLONEL VERMAAK:** It is correct.

1 **CHAIRPERSON:** Now, so in that sense the
2 attack was repelled. Now what interests me is what exactly
3 caused that repelling of the attack? You mention that stun
4 grenades were fired. You mention that teargas was used,
5 but I think there is also some evidence that the Nyala with
6 the wire trailer had succeeded in bringing the wire barrier
7 more or less up to the fence of the kraal, in other words
8 on the right-hand side of the photograph as we see it. Is
9 that correct?

10 **COLONEL VERMAAK:** It is correct.

11 **CHAIRPERSON:** So the position was that
12 presumably – I know this is a leading question, if it is
13 incorrect what I am putting to you, please correct me. The
14 impression I get is that the kraal, the group were not able
15 to proceed further on the right-hand side of the kraal
16 because of the wire.

17 **COLONEL VERMAAK:** It is correct.

18 **CHAIRPERSON:** And what in any event
19 encouraged them to go elsewhere was the stun grenades and
20 the teargas. Is that –

21 **COLONEL VERMAAK:** It is correct, and the
22 water cannons.

23 **CHAIRPERSON:** And the water cannon.

24 **COLONEL VERMAAK:** It is correct.

25 **CHAIRPERSON:** So is it those three

1 things? There are the water cannon, the stun grenades –

2 **COLONEL VERMAAK:** Stun grenades –

3 **CHAIRPERSON:** - and the teargas.

4 **COLONEL VERMAAK:** And teargas.

5 **CHAIRPERSON:** Yes, thank you.

6 **MS PILLAY:** Thank you, Chairperson. Colonel,

7 just to pick up from that question and maybe just to go

8 back to the incident at the south-western corner of the

9 kraal, or the right-hand side of the corner of the kraal,

10 you have described the action that you see from the air that

11 you see SAPS taking. Can you describe to us what you see

12 from the air in terms of the conduct of the strikers?

13 **COLONEL VERMAAK:** All we could really

14 see was that the people were crouching,

15 which indicated that they were not walking in a normal way toward

16 the corning, but in a crouching position,

17 and after there were acted and the group moved away, they

18 then came forward again, which

19 referred to the second attack, which

20 we observed.

21 **[09:45]** It corresponded with what happened on the Monday,

22 when the group turned around and stormed toward the Police Officers,

23 it was the same position they took in on that

24 specific day.

25 **MS PILLAY:** Just to be clear and going

1 back to the south-western corner of the small kraal, you
2 say that you saw the strikers bent over, walking while they
3 were bent over and then you said, "Admitted there."
4 That was on the part of SAPS, that was action on the part
5 of SAPS. Apart from the strikers being bent over as they
6 walked, anything else that you saw in relation to the
7 action of the strikers?

8 **COLONEL VERMAAK:** We could see from the air
9 that the people had sticks and kieries, but
10 a lot of them were wrapped in blankets,
11 which made it impossible to see from the air,
12 there were people that had – I almost want to say, had
13 long objects on them, which looked like sticks and kieries
14 in their hands.

15 **MS PILLAY:** Alright –

16 **COMMISSIONER HEMRAJ:** Ms Pillay, the
17 witness earlier on used his pointer to show the movement of
18 the strikers further down on this, on the photograph but
19 further down towards the Nyalas and that has not actually
20 been placed on record. Perhaps you would just like to do that.

21 **MS PILLAY:** I am sorry, Commissioner,
22 which point of the picture?

23 **COMMISSIONER HEMRAJ:** Colonel Vermaak was
24 using his pointer to show on the photograph the movement of
25 the strikers from where the very front persons are,

1 further, further towards the Nyalas, so on the photograph
2 further up towards the right. Now that has not been placed
3 on record. Perhaps we can just ask him to repeat that and
4 –

5 **MS PILLAY:** Okay. Colonel, if I can then
6 ask you to pick up from when the strikers move away from
7 the right-hand corner of the small kraal and you testified
8 that they moved further inwards and turned around.

9 **COLONEL VERMAAK:** It is correct,
10 Chairperson. As you can see on the photo,
11 I indicated that they could not move through at the right-hand corner,
12 which I presumed was because of the action lodged by the
13 Police Officers. They retreated,
14 regrouped, approximately, where I indicate now,
15 and then moved forward. That is where
16 I took the last photo of the group, because I was on the
17 radio and simultaneously tried to take pictures with the camera,
18 as well. The movement of the
19 helicopter, as you can see on this photograph, was
20 anti-clockwise.

21 **MS PILLAY:** So the first attack on the
22 left-hand side of the kraal, where did that take place?

23 **COLONEL VERMAAK:** It must be
24 approximately at that corner. That is where
25 we –

1 **CHAIRPERSON:** The top left-hand, which is
2 the top left-hand corner of the small kraal as we see it on
3 the photograph.

4 **COLONEL VERMAAK:** It is correct. Chairperson.

5 That is what we observed from the air.

6 **MS PILLAY:** Alright and just to cover

7 again exactly what you saw in terms of the attack, from the

8 air what did you see?

9 **COLONEL VERMAAK:** From the air

10 we saw the group moving forward, we could see things

11 happening. We could not exactly see what is happening due

12 to all the dust and smoke. So from the air

13 it was difficult for us at that stage, as I explained,

14 the helicopter moves at quite a speed,

15 if I can indicate with the light here,

16 at this stage the helicopter would have been in this

17 facility.

18 **CHAIRPERSON:** That is the bottom of the

19 photograph –

20 **COLONEL VERMAAK:** It is correct. Chairperson,

21 he moved in a circle. We were approximately

22 on the far right toward the

23 power station, when we saw the action happening,

24 you can see the smoke and dust there.

25 **MS PILLAY:** Alright, so once the

1 strikers, after the strikers had passed the left, top left-
2 hand corner of the small kraal, can you tell us what did
3 you hear and what did you see then?

4 **CHAIRPERSON:** I just want to make sure

5 I have it right. You have explained to us how they were
6 repelled at the top right-hand corner of the small kraal we
7 see in the photograph. A combination of the wire, the
8 vehicle was presumably blocking the way, water cannon,
9 teargas, stun grenade, right? They then left that
10 position, went round the kraal – you have indicated how they
11 did – and then they came back as you described in this
12 arrow formation to the top left-hand corner. Now while all
13 this was happening you were going around the area in a
14 clockwise direction in your helicopter.

15 **COLONEL VERMAAK:** Anti-clock, that is correct.

16 **CHAIRPERSON:** Sorry, I beg your pardon,
17 anti-clockwise.

18 **COLONEL VERMAAK:** It is correct, Chairperson.

19 **CHAIRPERSON:** Now what Adv. Pillay wants
20 to know from you is what exactly did you see happening at
21 the left, at the top left-hand corner of the kraal as we
22 see it on the photograph? Now you have explained to us, as I
23 understand, there was a lot of dust, there was smoke, I
24 take it there was – yes, the smoke would have been teargas
25 smoke, I take it?

1 **COLONEL VERMAAK:** It is correct, Chairperson.

2 **CHAIRPERSON:** And there was dust. That

3 presumably would have made it difficult for you from your

4 helicopter to see precisely what was happening down below,

5 is that fair?

6 **COLONEL VERMAAK:** It is correct. At that stage

7 we did not realise nor knew what was happening. We

8 did not receive any radio communication from anyone

9 on the scene or nearby,

10 we did not get any sitrap on what was happening.

11 **CHAIRPERSON:** How high was the helicopter

12 at that stage, what was its altitude?

13 **COLONEL VERMAAK:** On 300 feet.

14 **CHAIRPERSON:** 300 feet, I see. So would

15 it be fair to say that when you talk about the group

16 attacking the police again, that is to some extent an

17 interpretation based upon what you saw?

18 **COLONEL VERMAAK:** It is correct.

19 **CHAIRPERSON:** Subject to the difficulties

20 and the limitations and the qualifications which flow from

21 what you told us, that you were 300 feet up, there was a

22 lot of smoke and dust and so on.

23 **COLONEL VERMAAK:** It is correct.

24 **CHAIRPERSON:** That was your impression,

25 that was your interpretation?

1 **COLONEL VERMAAK:** It is correct.

2 **CHAIRPERSON:** Is that fair?

3 **COLONEL VERMAAK:** It is correct.

4 **CHAIRPERSON:** I do not know whether I have

5 made things better or worse, Ms Pillay, but I tried to sort

6 out what you were trying to get –

7 **MS PILLAY:** I think better, Chairperson.

8 **CHAIRPERSON:** I hope I succeeded.

9 **MS PILLAY:** I think better, Chairperson, if I

10 can just pick up from there. Colonel, in line 3 you say

11 that after what I call the first attack on the left-hand

12 side of the kraal happened, “Brigadier Calitz, again gave the

13 members the instruction to lodge action.” How did you

14 hear that instruction?

15 **COLONEL VERMAAK:** It was on the radio.

16 I repeated his instruction, because I

17 saw the reaction coming from the side of the Police Officers

18 on the ground and that is why I repeated his instruction,

19 because I realised there could be a possibility that they

20 did not hear his instruction on the radio,

21 those officers with hand radios did not hear him.

22 **MS PILLAY:** And so you repeated the

23 instruction to –

24 **COLONEL VERMAAK:** Engage.

25 **MS PILLAY:** - lodge action.

1 **COLONEL VERMAAK:** It is correct.

2 **MS PILLAY:** And what happens immediately
3 after you repeat that instruction?

4 **COLONEL VERMAAK:** We were busy

5 circling where the incident occurred,

6 and we saw the dust, smoke, and everything. I will say it is,

7 according to my observation, where the two groups,

8 the Police Officers and protestors,

9 came together.

10 **MS PILLAY:** I just want to be clear,

11 Colonel. We know that you saw dust and smoke the first

12 time at the top left-hand corner of the kraal. Now that

13 you are testifying to seeing dust and smoke, is that the

14 second time that you see dust and smoke?

15 **COLONEL VERMAAK:** It is correct.

16 **CHAIRPERSON:** - it was continuous, is

17 that right? The dust and smoke was there, there was not a

18 bit of - it was not dust and smoke that stops -

19 **COLONEL VERMAAK:** No, no.

20 **CHAIRPERSON:** - then clarity and then

21 dust and smoke again?

22 **COLONEL VERMAAK:** Yes.

23 **CHAIRPERSON:** It was dust and smoke the

24 whole time?

25 **COLONEL VERMAAK:** That is correct. If one can

1 explain, after the first incident there
2 at Nyala 4, there were teargas and dust,
3 while they were in the process of turning around,
4 but we could see that it became more,
5 after the groups came together.

6 **MS PILLAY:** Now you say, Colonel, in your
7 statement at paragraph, sorry, line 3 of paragraph 11 you
8 say, "I repeated the order out of the helicopter and saw the
9 members reacting."

10 **COLONEL VERMAAK:** It is correct.

11 **MS PILLAY:** Just describe to us in a fair
12 amount of detail, you repeat the instruction, what exactly
13 do you see at that stage?

14 **COLONEL VERMAAK:** The engaging was my assumption,
15 after I saw teargas – sorry, after I could see from the air
16 that there were teargas and stun grenades going off, which
17 gave me the indication that the Police Officers
18 acted.

19 **MS PILLAY:** So when you say that "I saw the
20 members reacting," are you then referring to the
21 teargas and the stun grenades?

22 **COLONEL VERMAAK:** It is correct.

23 **COMMISSIONER HEMRAJ:** You were able to
24 say exactly in which area you saw the stun grenades and the
25 teargas?

1 **COLONEL VERMAAK:** Commissioner, it is
2 basically, at that corner, how can I say,
3 the left-hand corner and the top, where all the smoke and dust
4 were observed.

5 **CHAIRPERSON:** Now, did you at any stage –
6 I do not know whether you would have heard it directly from
7 below over the radio – did you hear gunfire?

8 **COLONEL VERMAAK:** No, not at all.
9 Unfortunately you cannot hear it from the helicopter.

10 **CHAIRPERSON:** So you would not have heard
11 the gunfire from below, the sound waves coming up from
12 below the helicopter?

13 **COLONEL VERMAAK:** No.

14 **CHAIRPERSON:** Did you hear anything over
15 the radio?

16 **COLONEL VERMAAK:** Not at all.

17 **CHAIRPERSON:** Now you were flying around
18 in an anti-clockwise direction as you have told us, and you
19 took some photographs which we have seen – you saw the
20 photographs, bodies lying on the ground – that, according
21 to the time of your camera were 15:58. We have had it
22 adjusted, Mr Chaskalson told us yesterday how that
23 translates into ETV time but – 15:56, but what I am
24 interested in is this, where you were you flew, did you fly
25 over what one can call the top side, top right-hand corner

1 and the top left-hand corner of the small kraal in your

2 anti-clockwise movement –

3 **COLONEL VERMAAK:** It is correct.

4 **CHAIRPERSON:** - around the area.

5 **COLONEL VERMAAK:** It is correct.

6 **CHAIRPERSON:** In the circle which we did.

7 **COLONEL VERMAAK:** It is correct.

8 **CHAIRPERSON:** And you must then, I take

9 it, have gone around again more or less towards the bottom

10 of the photograph.

11 **COLONEL VERMAAK:** It is correct.

12 **CHAIRPERSON:** Or even further, further

13 off the photograph.

14 **COLONEL VERMAAK:** If we can maybe

15 look at that photo, if they can just put it up, then

16 I would be able to indicate the approximate position of

17 the helicopter.

18 **CHAIRPERSON:** Alright, will you do that

19 in a moment? Let me get my question – so you flew in an

20 anti-clockwise circle around the area?

21 **COLONEL VERMAAK:** It is correct.

22 **CHAIRPERSON:** And then did you take your,

23 the photograph which you describe as at 15:58 –

24 **COLONEL VERMAAK:** It is correct.

25 **CHAIRPERSON:** - of the bodies lying

1 there, did you take that more or less from a position above

2 the small kraal?

3 **COLONEL VERMAAK:** It is correct, it is correct,

4 yes.

5 **CHAIRPERSON:** So there was a gap, there

6 was a period of time when you were flying your circle?

7 **COLONEL VERMAAK:** It is correct.

8 **CHAIRPERSON:** Now at the beginning, when

9 you were at the top end of the circle initially when you

10 saw this smoke, dust and so forth and you did not hear

11 gunfire over the radio and you could not hear any gunfire

12 from below but that was because of the problems –

13 **COLONEL VERMAAK:** Yes.

14 **CHAIRPERSON:** - inherent in trying to

15 hear things on the ground if you are 300 feet above in a

16 helicopter but you then, as I say, went in a circle, flew

17 around in a circle and we know that by the time you came

18 back to that spot the shooting had taken place because

19 there dead bodies on the ground.

20 **COLONEL VERMAAK:** It is correct.

21 **CHAIRPERSON:** And what I would be interested

22 in knowing where were Brigadier Calitz's Nyala? Did you

23 see, were you able at any stage – you told us that you

24 heard him give the command "Engage," which you repeated?

25 **COLONEL VERMAAK:** It is correct.

1 **CHAIRPERSON:** Are you able to tell us

2 where his Nyala was at that stage?

3 **COLONEL VERMAAK:** Chairperson, no. I,

4 at that stage my concentration was not on the numbers on the roofs of

5 the Nyalas, it concentrated

6 on the group and what was occurring there,

7 after we saw the dust and tear gas.

8 We did hear him, but I cannot indicate on the photo,

9 where he was situated at that stage.

10 **CHAIRPERSON:** As you flew to the lower

11 part of the circle were you looking in the direction of the

12 small kraal at that stage or not?

13 **COLONEL VERMAAK:** We attempted to,

14 how can I say, we tried to make the circle a little smaller,

15 as I realised something happened and I therefore

16 instructed the pilot to fly closer to the

17 centre. That is where I –

18 **CHAIRPERSON:** In a smaller circle, in

19 effect?

20 **COLONEL VERMAAK:** It is correct yes, it is correct.

21 **CHAIRPERSON:** And then? Then you came

22 back to the top of the circle?

23 **COLONEL VERMAAK:** It is correct.

24 **CHAIRPERSON:** As we see it on the

25 photograph.

1 **COLONEL VERMAAK:** It is correct.

2 **CHAIRPERSON:** And by this time the

3 shooting had already happened. The shooting only was a few

4 seconds, it was not –

5 **COLONEL VERMAAK:** Yes, it was

6 over. As I said, it was quick and then we saw

7 the bodies lying on the ground.

8 **CHAIRPERSON:** I see. And did you see

9 Brigadier Calitz's Nyala at that stage?

10 **COLONEL VERMAAK:** No, I do not

11 know where he was.

12 **CHAIRPERSON:** Thank you.

13 **MS PILLAY:** Thank you, Chairperson. Colonel,

14 maybe if we look at JJJ11.1518 you will be able to orientate

15 us and let us know where the helicopter was at this stage.

16 Sorry, Chairperson, I am not sure if it is necessary to issue a

17 warning before we –

18 **CHAIRPERSON:** Yes, I think we would better.

19 We are now – it is the associations with the picture that

20 might cause trouble. There is a photograph being shown at

21 the moment of dead bodies lying on the ground taken from

22 300 feet but it is the people who were killed at scene 1,

23 they are laying on the ground. Any, those who were near and

24 dear to them, related to them, friends of theirs who feel

25 that looking at the photographs will cause them emotional

1 distress, I suggest that you leave the room now. We will not
2 ask any more questions or do anything further, we will give
3 you an opportunity to leave. It does not look as if anyone
4 want to move, so I take it we can carry on.

5 **MS PILLAY:** Thank you, Chairperson. So if we
6 can have JJJ11.1518? Colonel, if you can tell us where the
7 helicopter was at this stage?

8 **COLONEL VERMAAK:** Chairperson, yes. We were,
9 if you look at the photo, we were
10 way down at the bottom. There we notice a line of Police Officers.
11 There were a line of Police Officers. At one stage, I cannot
12 recall the exact time, Brigadier Calitz asked
13 about the whereabouts of the members and I reported back to him,
14 they are where the bodies are.

15 I then started to count, but you could not get the exact figure
16 at once, because we moved faster with
17 the helicopter, due to the smaller circle we were flying in.

18 but we were here at the bottom of the photograph.

19 It is on the top from our sight. The way we talk to

20 the people on the ground, if you want them to go

21 to an area, you always use the point of the

22 helicopter as your 12 o'clock and the tail as 6 o'clock,

23 the left-hand side is 9 o'clock and the right-hand side is 3 o'clock.

24 If we then look at the photo the helicopter would be

25 in – sorry, in that direction,

1 I was sitting at the left and took the photos from my
2 side. So the helicopter moved anti-clockwise in
3 that direction.

4 **CHAIRPERSON:** This photograph of course
5 shows the scene exactly the opposite direction from the
6 previous photograph we saw.

7 **COLONEL VERMAAK:** It is correct.

8 **CHAIRPERSON:** So you are now north on the
9 Nkaneng side, the informal settlement side of the – isn't
10 that right? Am I right? Anyway, the point is – okay, let
11 me get it right. The previous photograph you showed us was
12 taken from the other side, as it were.

13 **COLONEL VERMAAK:** It is correct.

14 **CHAIRPERSON:** So we saw the position
15 where the strikers were below the position where the line
16 of TRT people is to be seen. Now we are seeing it from the
17 other direction.

18 **COLONEL VERMAAK:** It is correct.

19 **CHAIRPERSON:** We are seeing round about
20 the middle of the photograph, across the photograph, two-
21 thirds of the photograph I suppose, we see the TRT line and
22 we see the dead bodies of the strikers above them towards
23 the top of the photograph. So it is exactly the other way
24 round from the previous photograph.

25 **COLONEL VERMAAK:** Yes.

- 1 **CHAIRPERSON:** So you were now, that is
- 2 because you would flown this circle.
- 3 **COLONEL VERMAAK:** It is correct.
- 4 **CHAIRPERSON:** Anti-clockwise circle.
- 5 **COLONEL VERMAAK:** It is correct.
- 6 **CHAIRPERSON:** And you would come out in a
- 7 position effectively above, using the language of the
- 8 previous photograph –
- 9 **COLONEL VERMAAK:** Yes, Chairperson.
- 10 **CHAIRPERSON:** - the group of TRT people
- 11 you see –
- 12 **COLONEL VERMAAK:** It is correct.
- 13 **CHAIRPERSON:** Now, I always get my points
- 14 of the compass wrong. Can anyone tell me, the bottom of
- 15 this photograph in the middle, is that north or west or
- 16 what is it?
- 17 **[10:05] MR CHASKALSON SC:** It is sort of south,
- 18 south-east.
- 19 **CHAIRPERSON:** South, south-east.
- 20 Alright, thank you. So I am saved from the error there.
- 21 Thank you very much.
- 22 **COLONEL VERMAAK:** If maybe we can just,
- 23 Mr Chairperson, in the previous photo we explained,
- 24 on the left-hand top corner of the kraal, if we now
- 25 look at this photo, it is the corner, the closest one. So

1 it is the corner we explained in the previous photo,

2 but just from the other side.

3 **CHAIRPERSON:** That puts it rather well.

4 What we described previously as the left-hand, the top

5 left-hand corner of the kraal, of the small kraal, is now

6 the bottom right-hand corner.

7 **COLONEL VERMAAK:** It is correct.

8 **CHAIRPERSON:** That explains it clearly.

9 **MS PILLAY:** Chairperson, if I may just

10 indicate, I do not think that is necessarily the case. I

11 think the corner of the kraal which we do not see on the

12 right-hand side is that particular corner which we were

13 describing as the top left-hand corner of the kraal.

14 **MR CHASKALSON SC:** Chairperson, if I can

15 add my five cents' worth? It may be best to orient

16 ourselves with reference to the mouth of the kraal because

17 that is visible on both photographs.

18 **CHAIRPERSON:** If you look at, if you take

19 the mouth of the kraal and you regard the top, on the

20 previous photograph the top left-hand corner of the kraal

21 as being in line with the mouth of the kraal, now we look

22 at it, that same corner is now the bottom right as we see

23 this photograph and the mouth of the kraal is once again

24 visible. So – but we are using approximate language to try

25 to express concepts that are not easy to express in words.

1 **MS PILLAY:** Chairperson, if we go back to
2 JJJ1516, JJJ11.1516, the mouth – I do not have – Chairperson, the
3 mouth of the kraal is, no, it is towards the right. No,
4 it is more to the right, there we go.

5 **CHAIRPERSON:** Yes, I think you are right,
6 Ms Pillay. What we were describing on this photograph as
7 the top – what we were describing as the section of the
8 kraal, the corner of the kraal nearest the gap between the
9 kraal and the corrugated iron house on the other side,
10 that is actually the top right-hand corner of this
11 photograph, you are correct. And so when we then look at
12 the other photograph and I think that is 1518, can we see
13 that? That is what we see, that is surely the bottom right-
14 hand corner of the kraal as seen on this photograph.

15 **MS PILLAY:** That is the opening of the
16 kraal.

17 **CHAIRPERSON:** You are not the witness but
18 you agree. Let us see if the witness agrees. Colonel, do
19 you agree?

20 **COLONEL VERMAAK:** It is correct, Chairperson.

21 **CHAIRPERSON:** Alright, so we have finally
22 got it right. I am sorry to have caused trouble –

23 **COLONEL VERMAAK:** No, no.

24 **CHAIRPERSON:** - by my obtuseness but I
25 think it is now been sorted out.

1 **COLONEL VERMAAK:** Thank you, Chairperson.

2 **MS PILLAY:** Colonel, can we now look at

3 FFF25 which is the occurrence book and specifically page

4 25? It is the JOC occurrence book and if we can look at

5 page 25 of this document.

6 **CHAIRPERSON:** Sorry, the entry number?

7 **MS PILLAY:** If we can pick up from entry

8 number 1016. Now, we see there, Colonel, that there is a

9 situation report from chopper 1 who reports that the people

10 are moving from the hill. Do you confirm that this is a

11 situation report from your, from you?

12 **COLONEL VERMAAK:** Yes, it is correct.

13 **MS PILLAY:** And if we go through down to

14 1017, it is a report at 15:55 that the group are moving to

15 TRT members and they tried to attack them. Now do you know

16 whether this report –

17 **COLONEL VERMAAK:** No.

18 **MS PILLAY:** - is one from you or one from

19 somebody –

20 **COLONEL VERMAAK:** It did not come from

21 me, as I explained, we could not distinguish between

22 the TRT, the POP and the NIU,

23 from the air.

24 **MS PILLAY:** So this report – and we take

25 it sentence by sentence – the report that the group are

1 moving to TRT members and they tried to attack them, that

2 is not a report from your chopper?

3 **COLONEL VERMAAK:** No. Pappa1 is Brigadier

4 Calitz's vehicle.

5 **MS PILLAY:** No, I am aware of that but

6 Brigadier Calitz testified that that is an error in the

7 occurrence book and that it should actually refer to

8 chopper 1 and not Pappa1.

9 **COLONEL VERMAAK:** No.

10 **MS PILLAY:** What is your response to that?

11 **COLONEL VERMAAK:** No. As far as I can

12 remember, I never said that the TRT was under

13 attack.

14 **MS PILLAY:** Did you hear Pappa1 issuing a

15 report over the radio at that stage?

16 **COLONEL VERMAAK:** No, I did not

17 hear any report.

18 **MS PILLAY:** Did you hear any report

19 around, to the effect that the group are trying to, are

20 moving to TRT members and trying to attack?

21 **COLONEL VERMAAK:** No, we did not

22 hear any report in the helicopter.

23 **MS PILLAY:** Alright, let us go to the

24 second line, Pappa1 reporting that the people are moving

25 around and some are down, also at more or less 15:55. Do

1 you remember if that is a report from you or from chopper

2 1?

3 **COLONEL VERMAAK:** Yes, that was the report of chopper 1.

4 -

5 **MS PILLAY:** So the second sentence is

6 erroneous, it should refer to chopper 1?

7 **COLONEL VERMAAK:** It is correct.

8 **MS PILLAY:** Alright, let us look at entry

9 1018. We have another situation report at 15:56 and it

10 states that Pappa1 reporting that people are running towards

11 the houses, running to the western side of the hill. Now

12 do you recall if that -

13 **COLONEL VERMAAK:** It was chopper 1.

14 **MS PILLAY:** Sorry?

15 **COLONEL VERMAAK:** It was chopper 1.

16 **MS PILLAY:** That is supposed to be chopper

17 1?

18 **COLONEL VERMAAK:** It is correct.

19 **MS PILLAY:** And the next report, 18

20 bodies are down, chopper 1 reporting this is at the back of

21 the hill, other people are running towards Karee Hostel.

22 **COLONEL VERMAAK:** It is correct.

23 **MS PILLAY:** That is correctly reflected as

24 you reported -

25 **COLONEL VERMAAK:** It is correct.

1 **MS PILLAY:** - report. And the next
2 report, water cannon moving forward to the hill, people
3 are moving out of the hill. Do you remember whose report
4 that is?

5 **COLONEL VERMAAK:** No, that report was
6 much later, it was reported at hill 3 and not
7 during the first incident where the people were
8 shot.

9 **MS PILLAY:** Alright, so that, that entry
10 does not relate to scene 1?

11 **COLONEL VERMAAK:** Not at all.

12 **MS PILLAY:** The next, the next report,
13 Pappa1 instructing the members to go to next hill. Did
14 you hear that over the radio?

15 **COLONEL VERMAAK:** Negative.

16 **MS PILLAY:** Alright and then the last one
17 I just want to draw your attention to, people are running
18 to the direction of members, Pappa5 instructing members to
19 make arrests, six people arrested. Do you recall hearing
20 that over the radio?

21 **COLONEL VERMAAK:** It is correct, it was Pappa1
22 reporting there.

23 **MS PILLAY:** Alright and then the chopper
24 2 reporting two bodies down?

25 **COLONEL VERMAAK:** It was chopper 1.

1 **MS PILLAY:** That is also erroneous, it
2 should be chopper 1 reporting two bodies down. Now
3 Colonel, if we can just deal with your report that there
4 were bodies down. I think it is now the second line that
5 you see on the screen, 18 bodies down. Can you just tell
6 us what it is that you meant when you said that there were
7 18 bodies down?

8 **COLONEL VERMAAK:** Chairperson, at that
9 stage it was clear to me that the people lying there were
10 either injured or dead, as they
11 were lying in
12 unnatural and awkward positions, we can go back
13 to the photos where the deceased were
14 lying –

15 **MS PILLAY:** Alright, let us just look at
16 JJJ11.1518.

17 **COLONEL VERMAAK:** If those people were
18 arrested, the normal procedure is, and you will
19 see it on the photos later on, if you make an arrest,
20 then you place Police Officers around them,
21 in case someone wants to escape,
22 it can be prevented, but here all the Police Officers
23 were standing in a straight line. That was one of the reasons
24 I said bodies down.

25 **MS PILLAY:** So can I just – so in your

1 mind you were clear that the people lying down were either
2 seriously injured or dead at the time?

3 **COLONEL VERMAAK:** It is correct.

4 **MS PILLAY:** Now, when you conveyed this

5 message over the radio, were you satisfied that you were
6 conveying the correct message?

7 **COLONEL VERMAAK:** Yes.

8 **MS PILLAY:** That people would understand
9 what you were –

10 **COLONEL VERMAAK:** It is correct.

11 **MS PILLAY:** - trying to, what you meant.

12 **COLONEL VERMAAK:** It is correct.

13 **MS PILLAY:** Now –

14 **CHAIRPERSON:** Sorry to interrupt you, am

15 I correct in thinking, based on what you told us yesterday,

16 that you BlackBerried, you sent by Blackberry – I do not

17 know what the correct verb is.

18 **COLONEL VERMAAK:** It is correct.

19 **CHAIRPERSON:** By Blackberry, that

20 photograph to the JOC.

21 **COLONEL VERMAAK:** It is correct., Chairperson.

22 **MS PILLAY:** Now we know that a number of

23 SAPS members who heard this report over the radio testified

24 before this Commission that they understood that either the

25 protesters were submitting to arrest or were trying to, I

1 think it was Brigadier Calitz said that there could have
2 been, it could have meant one of two things, either that
3 the strikers were submitting to arrest or that the strikers
4 were trying to avoid being shot at with rubber bullets
5 during the dispersion action. Now what is your response to
6 that?

7 **COLONEL VERMAAK:** If I may proceed
8 to hill 3, we will see there we talked about
9 suspects or arrestees and
10 not about bodies that is lying down. The only time
11 I talked about
12 bodies down from the helicopter, is the two lying at the back,
13 where I also did not see any Police Officers standing with them,
14 indicating that they were guarded,
15 to prevent them from escaping.

16 **CHAIRPERSON:** If one goes back, of
17 course, to the previous entry which reflects what General
18 Mpembe said he heard as he was getting into the helicopter,
19 a group were moving to the TRT members, they tried to
20 attack them – now if the group had moved towards the TRT
21 members and tried to attack them, the TRT members would
22 have wished to defend themselves. They could only have
23 defended themselves with the R5s they had, is that right?

24 **COLONEL VERMAAK:** It is correct, Chairperson.

25 **CHAIRPERSON:** So the almost inevitable

1 consequence of that would have been dead or seriously

2 injured bodies.

3 **COLONEL VERMAAK:** It is correct.

4 **CHAIRPERSON:** So any reasonable person

5 who heard that, what General Mpembe said he heard, would

6 have appreciated these people were not lying down because

7 they were trying to avoid rubber bullets. The TRT people

8 are not in the business of firing rubber bullets, are they?

9 **COLONEL VERMAAK:** It is correct. May I can just

10 mention for you to bear in mind, we were only attending

11 the initial JOC meeting in the morning. Afterwards,

12 when the plan was implemented and each got their tasks,

13 we were not briefed at all,

14 on the side of the air wing. We had to

15 rely on what we could observe from the

16 helicopter and then really it to the JOC.

17 -

18 **CHAIRPERSON:** At the meeting at 6:30, the

19 JOCCOM meeting at 6:30 which you were present at, we have

20 the manuscript notes that were kept at that meeting by, I

21 think it was Captain Moolman and they start off by saying

22 "Today is D-day" and it goes on to elaborate on that and

23 the evidence is that that was probably General Annandale

24 saying it. Can you remember those words being used, "Today

25 is D-day?"

1 **COLONEL VERMAAK:** Chairperson, no, I cannot
2 recall hearing those specific words, expect for what
3 we saw on the television when the
4 Provincial Commissioner made a media release, during the
5 cause of the morning.

6 **CHAIRPERSON:** Did you actually see the
7 television broadcast of the press conference by the
8 Provincial Commissioner?

9 **COLONEL VERMAAK:** It was a lot, for the next few
10 days it was televised a lot, and
11 we then got to learn about the remark that
12 was made.

13 **CHAIRPERSON:** I think you told us
14 yesterday that you were at the JOCCOM meeting at 6 o'clock,
15 as you have told us this morning again and you were told that
16 the plan was encirclement.

17 **COLONEL VERMAAK:** It is correct, Chairperson.

18 **CHAIRPERSON:** And there was also, I take
19 it – well, we have the evidence, I do not know if you can
20 remember it, that the representative of criminal
21 intelligence said that their information was that they
22 were not going to lay down their arms, they were going to
23 fight to keep their weapons.

24 **COLONEL VERMAAK:** I did –

25 **CHAIRPERSON:** Did you hear that?

1 **COLONEL VERMAAK:** It is correct. I did,
2 I repeated the remark as per the previous morning
3 when Colonel Isaacs was speaking, and again
4 confirmed exactly what I
5 said.

6 **COMMISSIONER HEMRAJ:** Colonel, your
7 message that you transmitted, 18 bodies down, did anyone at
8 all, either from the JOC or anyone else asks for
9 clarification?

10 **COLONEL VERMAAK:** No, nobody else.

11 **MS PILLAY:** And once you had sent the BBM
12 picture through to the JOC depicting what you would transmitted
13 over the radio that bodies were down, was there any request
14 for clarification either from the JOC or from Brigadier
15 Calitz?

16 **COLONEL VERMAAK:** No, at that stage
17 there were not requests for clarity,
18 immediately after I made the sitrap, regarding the bodies
19 down.

20 **MS PILLAY:** Now Colonel, was there any
21 doubt in your mind at the time that the JOC knew that there
22 was a shooting and that the strikers were, at the very
23 least, seriously injured?

24 **COLONEL VERMAAK:** I presumed they would
25 realise the importance of the matter after I said,

1 bodies down, as I did not say suspects, because if you refer
2 to suspects arrested or
3 detained, it is quite different from using the phrase bodies,
4 because in our terms it refers to injured or dead
5 people.

6 **COMMISSIONER HEMRAJ:** Can I just ask you,
7 Colonel, when you send a message, a BBM message on your
8 phone, do you get a notification that it has been accessed?

9 **COLONEL VERMAAK:** No, unfortunately not
10 Commissioner. I just send it through,
11 I just told the radio operator that I sent through a photo and
12 needed confirmation of receipt, on which they
13 replied, yes, they did receive it. So in
14 the JOC they had to make sure, before giving feedback
15 to me, that they definitely received the
16 photos.

17 **COMMISSIONER TOKOTA:** Colonel, that entry
18 which says, "Pappa1 reporting the group are moving to TRT
19 members and they tried to attack them," you say that was
20 not chopper 1?

21 **COLONEL VERMAAK:** No.

22 **COMMISSIONER TOKOTA:** Is it because it is
23 a reference to TRT or is it because you did not see it?

24 **COLONEL VERMAAK:** I did
25 not observe, neither report that.

1 **MS PILLAY:** Now, Colonel, two witnesses –
2 both General Naidoo and General Mpembe – indicate that
3 after, immediately after the attack at scene 1 there was a
4 fair amount of radio communication between you and
5 Brigadier Calitz and that it was difficult for them to
6 access the radio. Can you describe to us what was
7 happening at that stage?

8 **COLONEL VERMAAK:** No, on – after the
9 first incident there were a long period of radio silence,
10 if one refer to the transcript on the Lonmin video recording,
11 you will see there was more than enough time for anyone
12 to come forward with a message,
13 because it is normal procedure when you send
14 a message and receive one back, to
15 wait a while, before
16 sending another message, in case someone want to
17 remark on the message.

18 **[10:24] MS PILLAY:** So can you tell us what
19 communication there was between you and Brigadier Calitz at
20 that stage?

21 **COLONEL VERMAAK:** Most of the
22 communication occurred after the Nyalas formed a line.
23 If one looks at that photo, more
24 to the open field at the bottom of
25 hill 2, that is where I gave feedback

1 on the groups that came together in a line behind hill 2.

2 **MS PILLAY:** Maybe we should look at that

3 picture, Colonel –

4 **CHAIRPERSON:** Before we get there can I

5 ask a question going a step – as Mr Mpofu would say, take a

6 step back. You talked about what you heard Brigadier

7 Calitz say on the radio, communication with him and so on.

8 There was some evidence that the word “block” was used at

9 some stage at this point before the firing took place,

10 before the bodies were down. Did you hear any command

11 being given about attempts must be made to block?

12 **COLONEL VERMAAK:** No, it is negative,

13 Chairperson. I did not hear that.

14 **MS PILLAY:** Alright, can we see

15 JJJ10.4543; that is a picture taken with your Pentax. Is

16 this the picture that you were referring to?

17 **COLONEL VERMAAK:** It is correct, Chairperson.

18 That is the photo I am referring to.

19 **MS PILLAY:** Now can I just ask before we

20 reach this point where you see the Nyalas in the

21 reorganisation line and the protesters behind hill 2, can

22 you tell us what communication there was between you and

23 Brigadier Calitz before this?

24 **COLONEL VERMAAK:** No, I cannot recall

25 with honesty and surety if there were

1 any communication.

2 **MS PILLAY:** And at this stage what was

3 the communication between you and Brigadier Calitz?

4 **COLONEL VERMAAK:** At that stage

5 I reported that the group were regrouping

6 behind the hill.

7 **MS PILLAY:** Now we see the Nyalas here in

8 what has been described as the reorganisation line. Can

9 you tell us who controlled the movement of the vehicles at

10 this stage?

11 **COLONEL VERMAAK:** Brigadier Calitz called the

12 Nyalas under his command, and I assume

13 that is the Nyalas that were deployed

14 in front while they were negotiating

15 with the people. So they regrouped at that side.

16 He instructed the vehicles to deploy on the right and

17 left.

18 **MS PILLAY:** Alright. Chairperson, I see it is

19 10:30.

20 **CHAIRPERSON:** Yes, I was just looking at

21 my watch. Are you suggesting we should take a comfort

22 break?

23 **MS PILLAY:** I think it is a convenient

24 stage is now, Chairperson.

25 **CHAIRPERSON:** Well, I do not see any heads

1 being shaken in signs of disapproval, so we will take the
2 comfort break now. Let us try to be back within about 10
3 minutes, if we can, if that is in order with everybody.

4 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

5 **[10:59] CHAIRPERSON:** - came back later than we
6 promised, but the reason for it was we had discussions in
7 chambers regarding two matters that I will have to mention
8 now. The first relates to the applications to cross-
9 examine the present witness. I have received applications
10 from the Legal Resources Centre, the Monene family, and the
11 Human Rights Commission. Are there any of the other
12 parties present who wish to cross-examine the Lieutenant
13 Colonel? If so, I would expect to receive their
14 applications by lunchtime. I want to make the decision at
15 lunchtime as to whether or not the decision should be made,
16 except that I have already granted an extension to SERI, I
17 think until the end of today. Are SERI not yet in a
18 position to file their application?

19 **MR GOTZ:** Chairperson, we have people working
20 on it and not at present, but we will file by close of
21 business today.

22 **CHAIRPERSON:** Yes **[Microphone off,**
23 **inaudible]**

24 **MR GUMBI:** Chairperson -

25 **CHAIRPERSON:** **[Microphone off, inaudible]**

1 in view of the fact that that is going to happen it would be
2 unfriendly of me to refuse to extend a similar favour to
3 the other parties who wish to apply, if there are any. Mr
4 Gumbi?

5 **MR GUMBI:** Yes, Chairperson, on behalf of
6 the family of the late Warrant Officer Lepaaku and
7 Lieutenant Baloyi we forwarded our application yesterday to
8 Adv. Kameshni.

9 **CHAIRPERSON:** I haven't got it yet, but
10 never mind. So what we will do is close of business today
11 I expect all applications to be in. I will then decide the
12 matter as soon as I can, and certainly by tomorrow morning
13 decide.

14 **MR GUMBI:** Thanks, Chairperson.

15 **CHAIRPERSON:** And I have already indicated
16 to Mr Bizos that I am granting some at least of the LRC's
17 application and he has, I understand, given notice in fact
18 that he is going to rely on the two reports by Colonel
19 Hendricks which are being printed at this moment for the
20 witness to study tonight. So he will be the first cross-
21 examiner, but I will then indicate tomorrow who the cross-
22 examiners will be and the order and the topics on which I
23 will allow cross-examination. So that is the first topic
24 which took up some of our time during the comfort break.
25 The other relates to the question of Mr X and the

1 application to receive his evidence in camera with certain
2 other relief that is being sought. Now I understand that
3 those parties opposing the application have indicated that
4 they wish to file affidavits replying to the affidavit
5 filed, or the affidavit handed in actually from the bar by
6 Mr Semenya when the application was being argued. Those
7 affidavit I understand had not yet been produced, so I want
8 to enquire from the parties concerned whether they can give
9 us any information about it. Are they filing affidavits or
10 aren't they? If they are then clearly, the police must get
11 an opportunity to reply.

12 **MR GOTZ:** Chairperson, my understanding was
13 that those affidavits were signed and in fact given to
14 SAPS' representatives late yesterday afternoon. The actual
15 affidavits I have just seen on my iPad has been circulated
16 to all parties. So it has been provided to all parties as
17 of this moment. It came through about five minutes ago.

18 **CHAIRPERSON:** I was informed by Adv.
19 Baloyi and Mr Pretorius, who came to see me during the
20 comfort break, that they had not received them. That is the
21 reason I am raising it now.

22 **MS BALOYI:** Yes.

23 **CHAIRPERSON:** What is the story, Ms
24 Baloyi?

25 **MS BALOYI:** Chairperson, we have actually

1 only five minutes ago received the affidavit. It was never
2 delivered to the SAPS. Mr Gotz is mistaken in that regard.

3 We just got now five minutes ago by email.

4 **CHAIRPERSON:** So you obviously will not be
5 in a position to give immediate attention to the possible
6 drafting of a reply to those affidavits. Is that correct?

7 **MS BALOYI:** Indeed so, Chairperson.

8 **CHAIRPERSON:** So in the circumstances it
9 seems that it will be impractical for us to – Mr Gotz, are
10 you listening? Are you listening?

11 **MR GOTZ:** Sorry, I apologise for the
12 misinformation, Chairperson, but –

13 **CHAIRPERSON:** Sorry, no, no, sometimes
14 one's instructions are not always accurate. In the
15 circumstances it seems to me impractical for us to resume
16 the argument in respect of the in-camera application
17 tomorrow morning. Yes

18 **MS KEETSE:** Mr Chairperson, Ms Keetse, the
19 instructing attorney for both the injured and arrested.
20 The affidavit was done yesterday. During the lunch break
21 it was given to the evidence leaders, with respect.

22 **CHAIRPERSON:** I did not say it was given
23 to the evidence leaders. I said my information from Ms
24 Baloyi and Mr Pretorius was the SAPS did not have it, but
25 that matter has now been sorted out I think. The point is

1 it does not seem practical for us to have resumed argument
2 tomorrow because the police still have to consider whether
3 they will reply to the affidavits, draft the replies and
4 file them. So what I will do is hope to be able tomorrow
5 to announce when it will be appropriate for the argument to
6 resume in respect of the in-camera application. What will
7 be proceeding in the meanwhile will be the cross-
8 examination of the present witness.

9 **MS PILLAY:** Chairperson, the examination-in-
10 chief in the meantime.

11 **CHAIRPERSON:** No, no, the cross-
12 examination will only take place after the examination-in-
13 chief has ended, but it is anticipated according to the
14 information I was given in chambers that the examination-
15 in-chief will end today. So tomorrow the cross-examination
16 will be very much underway. Now as already indicated, Mr
17 Bizos will be the first cross-examiner and I will endeavour
18 to decide either this afternoon or certainly by early
19 tomorrow morning before we resume the hearing as to what
20 the fate of the other applications to cross-examine will be
21 and the order in which cross-examination will take place.

22 **MR GOTZ:** Chairperson, we had understood that
23 the reason –

24 **CHAIRPERSON:** There is also another factor
25 that I am reminded of – sorry, Mr Gotz, you want to say

1 something; I want to say something else first, if you will
2 let me. Also tomorrow, it is anticipated that we will
3 conclude the evidence of Major General Naidoo, who has to
4 be re-examined. So what is going to happen tomorrow is – I
5 hope – will be the re-examination of Major General Naidoo
6 and the cross-examination of the present witness, and I
7 hope to be able to indicate tomorrow when the resumed
8 argument in respect of the in-camera application will take
9 place. Mr Gotz, you wanted to say something.

10 **MR GOTZ:** No, Chairperson, it was concerning
11 the re-examination of General Naidoo as well.

12 **CHAIRPERSON:** Alright. So now, we have
13 dealt with all the housekeeping. Ms Pillay, are you ready
14 to carry on with the examination-in-chief –

15 **MS PILLAY:** I am, Chairperson.

16 **CHAIRPERSON:** - after I have reminded the
17 witness that he is still bound by his affirmation. You are still
18 binded by the affirmation you gave.

19 -

20 **COLONEL VERMAAK:** It is correct,
21 Chairperson.

22 **EXAMINATION BY MS PILLAY (CONTD.):** Thank
23 you, Chairperson. Colonel, may we now turn to the transcript of
24 the Coin Security chopper video, also known as the Lonmin
25 chopper video, which is exhibit CC22. The transcript is

1 exhibit 00011, which is document 22 in the bundle.

2 **COLONEL VERMAAK:** I have it.

3 **MS PILLAY:** Now if we can just confirm,

4 Colonel, that you were given a draft transcript of the Coin

5 Security chopper video and the Ryland video by the evidence

6 leaders?

7 **COLONEL VERMAAK:** It is correct.

8 **MS PILLAY:** And that you looked only at

9 the portions of the transcript which relate to the Protea

10 Coin Security video?

11 **COLONEL VERMAAK:** It is correct.

12 **MS PILLAY:** And not to the Ryland video.

13 **COLONEL VERMAAK:** It is correct.

14 **MS PILLAY:** And that you listened

15 carefully a number of times to the audio in relation to –

16 sorry, to the portions of the transcript that relate to

17 that video and that you confirm the correctness of the

18 transcript?

19 **COLONEL VERMAAK:** It is correct.

20 **MS PILLAY:** And that that accords with

21 what you recall as having heard at the time on the 16th?

22 **COLONEL VERMAAK:** It is correct.

23 **MS PILLAY:** Now just to orientate

24 ourselves and to understand where the transcript picks up,

25 Colonel, and if we can go back to JJJ10.4543, this was the

1 picture we dealt with just before the break, Colonel, and

2 which shows the strikers in the reorganisation line –

3 sorry, the strikers in a line behind hill 2.

4 **COLONEL VERMAAK:** It is correct.

5 **MS PILLAY:** And the police Nyalas in the

6 reorganisation line.

7 **COLONEL VERMAAK:** It is correct.

8 **MS PILLAY:** Now I am informed by Mr

9 Chaskalson that the ETV time for this picture is 15:59:40.

10 Do you accept that?

11 **COLONEL VERMAAK:** Yes, I will

12 accept it.

13 **MS PILLAY:** Now if we locate this now

14 onto exhibit OOO11, just to get our bearings, if we go

15 after the sixth entry on the transcript you will see the

16 sixth entry is at 15:59:02. The picture which we just saw,

17 the JJJ10.4543 would fit in there, the time being 15:59:40.

18 **COLONEL VERMAAK:** I have it.

19 **MS PILLAY:** And just for completion if we

20 go to JJJ10.4545, I am told by Mr Chaskalson that the ETV

21 time for this picture is 16:01:46, which means that it

22 comes just before the seventh entry on the transcript,

23 which is 16:02:20.

24 **COLONEL VERMAAK:** I agree.

25 **MS PILLAY:** Alright, so if we can now

1 pick up from the transcript itself, and if I can ask that
2 we play CC22 just to give us a sense of what the video
3 sounds like.

4 **[VIDEO SHOWN]**

5 Alright, can we play the video from 6:55, please?

6 That is 6:55 into the video, Chairperson.

7 **[VIDEO SHOWN]**

8 Now Colonel, can we just confirm whose voice it
9 is you hear saying "No lethal firearms now unless the
10 target engage you"?

11 **COLONEL VERMAAK:** It is Brigadier Calitz.

12 **MS PILLAY:** And in terms of the actual
13 words spoken you are quite clear that the transcript
14 accurately reflects what was said and what you hear on the
15 video?

16 **COLONEL VERMAAK:** It is correct

17 **MS PILLAY:** Can I ask the technician just
18 to play that bit again, please? Say from 6:56 or so, and
19 the words actually start at 7.

20 **[VIDEO SHOWN]**

21 Thank you. So just to confirm, Colonel, can you
22 just for the purposes of the record tell us exactly what
23 you hear Brigadier Calitz saying?

24 **COLONEL VERMAAK:** The first part, that is where
25 I talked to Pappa1, and mentioned that the

1 group were moving from the hill and told the water cannon
2 to move forward. Brigadier Calitz reacted on that
3 with, "Nyalas engage on the flank to protect"
4 and the next communication again was Brigadier Calitz saying,
5 "No lethal firearms now unless the targets
6 engage you. No need to shoot while they are running unless
7 the target engage you." I assumed it was
8 the people that had to be dispersed, that they were busy with the
9 "disperse" action and that is why he gave the instruction
10 they must not lodge any action if the
11 Police Officers are not under attack.

12 **MS PILLAY:** Colonel, just for a clearer
13 picture for those of us who were not there at the time,
14 maybe we can pick up from where the strikers were in a line
15 behind hill 2. Can you take us through what you see
16 next?

17 **COLONEL VERMAAK:** After the incident –

18 **MS PILLAY:** Yes, sorry Colonel, you can
19 go ahead.

20 **COLONEL VERMAAK:** After the incident the first
21 shooting occurred and we observed the group regrouping
22 behind hill 2 and we communicated that to
23 Brigadier Calitz and the JOC.

24 **MS PILLAY:** If we can refer to the
25 transcript, is that where we are at video time 1:21?

1 **COLONEL VERMAAK:** It is correct.

2 **MS PILLAY:** And which hill are you

3 referring to there?

4 **COLONEL VERMAAK:** Hill 2.

5 **MS PILLAY:** Alright, so you relayed to

6 the JOC and to Brigadier Calitz that they are standing

7 behind the hill. What happens next?

8 **COLONEL VERMAAK:** Brigadier Calitz and the

9 Nyalas formed a formation. We started bringing the

10 water cannons closer. At one stage I

11 realised that the one water cannon did not have

12 any radio communication and Brigadier Calitz reported to

13 me that they did issue them with a radio and I can

14 therefore communicate with them.

15 **MS PILLAY:** Can I just ask why you did

16 decide to move the water cannons forward?

17 **COLONEL VERMAAK:** The Nyalas moved

18 forward as your water cannon is the

19 least aggressive method, your first line of action, it was

20 logic that the water cannons should move through, if

21 action would be required.

22 **[11:19] MS PILLAY:** Alright, so you direct at

23 5:00 of the transcript, that the water cannon should go

24 straight. What happened next?

25 **COLONEL VERMAAK:** That is where

1 I communicated with the water cannon to direct him to
2 a specific point –

3 **MS PILLAY:** Sorry, can I just interrupt

4 you there, Colonel, you are saying that you wanted to move

5 the water cannon forward to a specific point. Now -

6 **COLONEL VERMAAK:** It is correct. There were two

7 water cannons. The one water cannon was used on

8 the right-hand side of the hill and the other

9 one on the left-hand side of the hill.

10 **MS PILLAY:** So what were you using to

11 decide where to position the water cannon?

12 **COLONEL VERMAAK:** Brigadier Calitz requested

13 me to guide the water cannons in,

14 which I did from what we could

15 see from the air, and we could see the best would be to do an

16 encirclement with the water cannons.

17 **MS PILLAY:** And at that stage why were

18 you attempting to encircle hill 3?

19 **COLONEL VERMAAK:** That was the briefing

20 we got that morning during the meeting at the JOC.

21 -

22 **MS PILLAY:** Alright, so we are picking up

23 at 5:45 of the transcript where you are saying, "I am

24 bringing the water cannon around the other side."

25 **COLONEL VERMAAK:** It is correct.

1 **MS PILLAY:** Can you tell us what happens

2 next?

3 **COLONEL VERMAAK:** I guided the one water cannon

4 to the right-hand side of the hill and the other to the left-hand side of the

5 hill. The one going to the right hand no radio communication,

6 so we were not able to communicate. That is when

7 Brigadier Calitz contacted me and informed me that

8 he issued them with a radio and I could now communicate with

9 them directly.

10 **MS PILLAY:** Okay, so this is what we see

11 at 555 of the transcript.

12 **COLONEL VERMAAK:** It is correct.

13 **MS PILLAY:** And what happens next?

14 **COLONEL VERMAAK:** On the transcript you can see that at

15 5:57 we communicated with the water cannon that

16 was accompanied by a vehicle of the task force, to

17 turn left and at 6:10 I instructed them to move

18 forward, the Nyala and the Casspir, I am not sure

19 about the number on the roof of the Nyala, but

20 I instructed them to give protection and assistance to the

21 water cannons. I then used the armoured vehicles

22 to move around with the water cannon, as the water cannon

23 vehicle is not armoured, so he has

24 to rely on additional help for protection in situations where

25 problems are anticipated.

1 **MS PILLAY:** Alright, so let us go to 6:28
2 where you say, "Pappa1, the people is now moving out of the
3 hill." Which hill are you referring to?

4 **COLONEL VERMAAK:** It was hill 2 where
5 they moved out – no, sorry, correction, it
6 was hill 3. At was at hill 3 where
7 Brigadier Calitz told us that the water cannons must
8 proceed forward.

9 **CHAIRPERSON:** May I ask, in the
10 transcript we have in respect of the entry at – Ms
11 Pillay? Ms Pillay, in the transcript we have, the entry
12 from 16:03:58 there is an insertion, "i.e. first scene" on
13 the first line. Now who was responsible for that
14 insertion? Mr Chaskalson?

15 **MR CHASKALSON SC:** Yes, anything in
16 parentheses in the transcript is not what one hears, it is
17 what I have inserted.

18 **CHAIRPERSON:** I see. Thank you. Now do
19 you agree, Colonel Vermaak, that that entry there,
20 transcription of what you said at 16:03:58, namely "Pappa1,
21 the people is now moving out of the hill, they are moving
22 out of the hill," that you were referring to the first
23 scene, because that is what appears in brackets? Do you
24 agree with that? People are moving out of the hill, now
25 what –

1 **COLONEL VERMAAK:** Chairperson, that

2 hill what I am talking about is hill 3, at

3 the back.

4 **CHAIRPERSON:** So just as well we have

5 clarified that, that the commentator appears to have erred

6 or certainly the witness disagrees with the commentator.

7 One of them is obviously wrong.

8 **MR CHASKALSON SC:** I acknowledge that I am

9 clearly wrong on this one. This was an early insertion.

10 **CHAIRPERSON:** If it happens again we may

11 have to consider imposing cakes again. We will not do it just

12 yet.

13 **MS PILLAY:** Can we pick up with CC22,

14 6:28 into the video?

15 **CHAIRPERSON:** [Microphone off, inaudible]

16 - write in on our transcripts above "i.e. first scene,"

17 "second scene." Well, the second scene is hill 3.

18 Alright, second scene, i.e. K3. I just want to make sure

19 I understand it. Some people were already at hill 3 and

20 they were now moving out of hill 3.

21 **COLONEL VERMAAK:** It is correct.

22 **CHAIRPERSON:** In which direction were

23 they going, can you remember?

24 **COLONEL VERMAAK:** Chairperson, yes. If I can explain,

25 it was away from the Nkaneng settlement

1 to the other side, where the informal

2 settlement was, so it –

3 **CHAIRPERSON:** As far as I remember, if we

4 now use the points of the compass, there was evidence that

5 Brigadier Calitz at one stage brought his vehicle to a stop

6 at a point near the north-western corner of hill 3 and

7 there is also evidence, as far as I remember, that if one

8 were to proceed from the north-eastern corner of hill 3

9 in a north-easterly direction you would come to what was

10 forward holding area 2 and behind forward holding – where

11 Captain Kidd was supposed to be guarding the informal

12 settlement but he did not stay there, and behind forward

13 holding area 2 there was another informal settlement. Is

14 that the informal settlement we are talking about?

15 **COLONEL VERMAAK:** That is what I am talking

16 about, Chairperson.

17 **CHAIRPERSON:** So are you telling us then

18 that this reference here, this transcript, this relates to

19 people who were leaving the hill at the north-eastern

20 corner or roughly the north-eastern corner and proceeding

21 in a north-easterly direction towards forward holding area

22 2 and beyond it, the second informal settlement.

23 **COLONEL VERMAAK:** It is correct.

24 **CHAIRPERSON:** North-east. Is it north-

25 east or north-west? I am not –

1 **COLONEL VERMAAK:** Chairperson, I can

2 honestly say –

3 **CHAIRPERSON:** According to the evidence,

4 according to the evidence Brigadier Calitz was in the

5 north-western corner at hill 3. That is the evidence that

6 we had. Now am I correct in thinking that forward holding

7 area 2 was to the north-east of the hill, is that wrong?

8 **MR CHASKALSON SC:** South-west.

9 **CHAIRPERSON:** South-west. Okay, alright.

10 Just as well we are getting these things right. So you

11 understand what Mr Chaskalson tells us, so if you agree

12 with it – I see you are nodding your head.

13 **COLONEL VERMAAK:** It is –

14 **CHAIRPERSON:** So these people were then

15 moving south-west, from the south-western corner of hill

16 3 in a south-westerly direction towards forward holding

17 area 2 and behind it the other informal settlement, is that

18 –

19 **COLONEL VERMAAK:** It is correct.

20 **CHAIRPERSON:** Is that right now?

21 **COLONEL VERMAAK:** It is correct.

22 **CHAIRPERSON:** Thank you.

23 **MS PILLAY:** If we can play CC22 from

24 06:58.

25 **[VIDEO IS SHOWN]**

1 **MS PILLAY:** Try to zoom in on the hill

2 itself just so that we could get the Colonel to take us

3 through what is happening there at the moment.

4 **CHAIRPERSON:** So what are we going to

5 look at now? We are going to zoom in on the hill? Can

6 that be done?

7 **MS PILLAY:** If we can zoom in on the

8 hill –

9 **CHAIRPERSON:** Are the pixels going to

10 take over the scene – let us see what we can see.

11 **[VIDEO IS SHOWN]**

12 **CHAIRPERSON:** If we are zooming, we are not

13 zooming very effectively, are we? Where are we supposed to

14 be zooming to?

15 **MS PILLAY:** Maybe we should let the video

16 run just a little longer –

17 **CHAIRPERSON:** Alright, well, you are in

18 charge, Ms Pillay.

19 **[VIDEO IS SHOWN]**

20 **MS PILLAY:** Colonel, can you describe to

21 us what is happening at this stage?

22 **COLONEL VERMAAK:** I just have to – I just

23 have to orientate myself. If I am correct,

24 that is the power station.

25 **MS PILLAY:** That is right, yes.

1 **COLONEL VERMAAK:** That is the
2 power station. The first incident occurred there. No,
3 there. No, now it is correct.
4 Here are hill 1 and 2 and there is hill 3. So at that
5 stage that group of people moved in here, at
6 this hill and that is where the water cannons and
7 Casspirs and task force vehicles moved in under my instruction,
8 and where it was reported to us that the people
9 were moving out from the hill.

10 **CHAIRPERSON:** Now how can we put that on
11 record? We are looking at the photograph, where is the
12 south-western corner again? Mr Chaskalson, you seem to be
13 more familiar with this than I am. Would you be kind
14 enough to put on record for me what the witness pointed out
15 and then giving us a couple of south-west and north-west
16 in the process so that we can follow it in the light of the
17 evidence we have heard from other witnesses, if you do not
18 mind.

19 **MR CHASKALSON SC:** Well, the screen that
20 we are looking at is at 7 minutes 33 seconds on the player
21 of CC22. The zoom is a zoomed in area that, on the left-
22 hand side, captures the three kraals around the scene 1
23 area and on the right-hand, on the far right-hand side goes
24 a short distance past the right edge of hill 3. What the
25 witness has pointed out is that people were leaving hill

1 3 towards the south-west, although one does not see it on
2 this image he is saying that his radio communication to that
3 effect was in response to people leaving the hill, hill
4 3 to the south-west. He has indicated that he and his,
5 "we," we were bringing in the armoured vehicles and the
6 water cannons which are the white flecks visible around
7 hill 2 and between hill 2 and hill 3. They were
8 being brought in. I forget the Colonel's exact testimony,
9 maybe if you can just repeat, Colonel.

10 **COLONEL VERMAAK:** It is correct. That is
11 correct.

12 **MR CHASKALSON SC:** And presumably were
13 being brought in, into the direction of hill 3.

14 **COLONEL VERMAAK:** It is correct.

15 **MR CHASKALSON SC:** Beyond that I do not
16 recall the details of the Colonel's evidence but I can – if
17 you, Chairperson, can recall what you would like –

18 **CHAIRPERSON:** I would like you to
19 indicate where the south-west was.

20 **MR CHASKALSON SC:** Oh, sorry.

21 **CHAIRPERSON:** He did – because that is
22 relevant because that is the point from which he says the
23 people were leaving the hill 3 and also we need the
24 second informal settlement because that is where he says
25 they were going to.

1 **MR CHASKALSON SC:** The second, the south-
2 west of the hill is – I am trying to get my orientation
3 here –

4 **CHAIRPERSON:** Perhaps the witness can
5 show us again what he showed us and we can then translate
6 that into south-west, north-west and so on.

7 **MR CHASKALSON SC:** I can give the
8 direction of south-west, is to the top right-hand corner of
9 the screen. This screen is oriented with south at the top
10 of the screen, north at the bottom of the screen, in broad
11 terms.

12 **CHAIRPERSON:** Yes.

13 **COMMISSIONER HEMRAJ:** But the witness –

14 **CHAIRPERSON:** Sorry, and then am I
15 correct in saying if one looks at, towards the top right-
16 hand corner, just below the top right-hand corner about a
17 quarter of the way down right close to the edge of the
18 right-hand side, which is what he called the second informal
19 settlement, is that correct? Colonel?

20 **MR CHASKALSON SC:** And –

21 **CHAIRPERSON:** Colonel, am I right?

22 **COLONEL VERMAAK:** That is correct.

23 **CHAIRPERSON:** That is right. And you say
24 that is the direction in which the people were going?

25 **COLONEL VERMAAK:** That is correct.

1 **CHAIRPERSON:** And they were moving in a
2 south, from the south-western corner of – once we know that
3 south-west is the top right-hand corner we can work out
4 where the south-western corner of hill 3 was. You say
5 they were leaving there and going in a south-westerly
6 direction –

7 **COLONEL VERMAAK:** That is correct.

8 **CHAIRPERSON:** Towards the second informal
9 settlement.

10 **COLONEL VERMAAK:** That is correct.

11 **CHAIRPERSON:** And that was the forward
12 holding area 2, I think, is that correct, where Captain
13 Kidd was supposed to be?

14 **COLONEL VERMAAK:** Yes, afterwards we
15 realised that he was posted there, yes.

16 **CHAIRPERSON:** Alright. Is there anything
17 else that you want to tell us that Mr Chaskalson can
18 explain to us –

19 **COLONEL VERMAAK:** No –

20 **CHAIRPERSON:** - on how, how this
21 will later help us to understand when
22 looking at the photo?

23 **COLONEL VERMAAK:** I think with still photos
24 one will get a better idea, Chairperson.

25 **COMMISSIONER HEMRAJ:** But Colonel, when

1 you were using your pointer earlier on to show the
2 direction of the strikers moving, you were indicating lower
3 down on the photograph, not in the direction that –
4 **COLONEL VERMAAK:** Chairperson, in that region
5 there is two informal
6 settlements. The one is on the one side of the gravel road,
7 and the one on the other side.

8 That is why I say, just a still photo can give a clear
9 overview, where one can be much more
10 accurate.

11 **CHAIRPERSON:** Well, perhaps after the tea
12 adjournment which I am going to take in a moment, someone
13 can get you a still photograph of it. Thank you, Mr
14 Chaskalson, for your assistance, without which we could not
15 have proceeded as far as we have but in order to celebrate
16 the progress we have made, I suggest we take the tea
17 adjournment now.

18 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

19 **[12:01] CHAIRPERSON:** The Commission resumes. You are
20 still binded by the affirmation you made
21 yesterday.

22 **COLONEL VERMAAK:** Thank you,
23 Chairperson.

24 **CHAIRPERSON:** Ms Pillay –

25 **MS PILLAY:** Thank you, Chairperson –

1 **CHAIRPERSON:** I can see you have taken an
2 enormous lot of trouble to prepare this examination-in-
3 chief, moving from one police video material to another and
4 the transcript. Now I fear that in dealing, endeavouring
5 to put on record some of the things the witness was
6 explaining in relation to the video I may have taken you a
7 bit off the track you were intending to follow. So if I
8 did, I apologise, and please feel free to go back to where
9 you were proposing to go from on the track, if I did that.

10 **EXAMINATION BY MS PILLAY (CONTD.):** Not
11 at all, Chairperson. Colonel, if we can just contextualise where
12 we were immediately before the break, it was at 7:33 on
13 CC22, which would place us at page 2 of the transcript, and
14 just immediately after the second entry. You agree with
15 that?

16 **COLONEL VERMAAK:** 7:28?

17 **MS PILLAY:** Yes, immediately after 7:28.

18 **COLONEL VERMAAK:** Okay.

19 **MS PILLAY:** Because we were at 7:33.

20 That is the still footage of the video, of CC22 which we were
21 looking at immediately before the break.

22 **COLONEL VERMAAK:** Okay.

23 **MS PILLAY:** Alright, so what I propose to
24 do now, Colonel, is just to take you to selected excerpts
25 from CC22 and just to get you to confirm portions of the

1 transcript, and then we will do what you initially suggested

2 and that is go to the stills and lead your evidence as to

3 what occurred from the still photographs.

4 **COLONEL VERMAAK:** It is in order then.

5 **MS PILLAY:** If we can then start with –

6 or maybe have a look at the first still, which is

7 JJJ10.4546. Now according to Mr Chaskalson this is at

8 16:09:21 ETV time, Colonel, which would place us then on

9 page 3 of the transcript.

10 **CHAIRPERSON:** Page 3?

11 **MS PILLAY:** Page 3 of the transcript.

12 **CHAIRPERSON:** So can you just tell me

13 where north, south, east and west are on this? So I find

14 these easier to follow if I know what the basic direction

15 is, but either the witness can tell us or you can tell us.

16 Can you tell me, Luitenant Colonel, where is north and

17 where is south?

18 **COLONEL VERMAAK:** No, Mr

19 Chairperson. Unfortunately we did not concentrate on the

20 directions of the wind. We concentrated on the

21 placing of the helicopter, as I explained.

22 **CHAIRPERSON:** Yes, are we going to get –

23 **MR CHASKALSON SC:** Chairperson, if I can

24 possibly be of assistance here. North is broadly on the

25 right-hand side of this photograph. North is on the axis

1 that I am indicating now on the right edge of the
2 photograph. West is towards the top of the photograph,
3 east to the bottom of the photograph, and south to the left
4 of the photograph.

5 **CHAIRPERSON:** That is probably good
6 enough –

7 **MR CHASKALSON SC:** It is a broad
8 indication.

9 **CHAIRPERSON:** That is good enough. Where
10 you indicated where west was and east and south and north
11 were you indicated in each case a point in the middle of
12 the edge of the photograph. Is that correct?

13 **MR CHASKALSON SC:** Yes, that is broadly
14 where –

15 **CHAIRPERSON:** Just give us north again,
16 please.

17 **MR CHASKALSON SC:** North is to the right
18 of the photograph, possibly a little bit above the centre
19 on the right-hand side of the photograph.

20 **CHAIRPERSON:** Once we have, we know
21 where north is, we should be able to find south, east, and
22 west, without too much difficulty. Thank you. The
23 suggestion is that are we going to be given copies of these
24 still photographs in due course, and if we are then it
25 would be helpful if the wind directions, as the Colonel

1 calls them, were indicated. It just helps us to follow it
2 more accurately. Just those you are referring to, obviously
3 not them all, just those that you specifically –

4 **MS PILLAY:** We will prepare a bundle of
5 photographs.

6 **CHAIRPERSON:** Thank you very much. Now I
7 see you people have done an enormous amount of work already
8 but I feel reluctant to place a further burden on you, but
9 if you would be prepared to do it I would be very grateful.
10 Thank you.

11 **MS PILLAY:** No, we will definitely do that,
12 Chairperson. Colonel, if I can then use this photograph just to
13 orientate ourselves, this is at 16:09:21. Can you just
14 firstly describe to us what is happening in this photograph?

15 **COLONEL VERMAAK:** If I look at the time
16 of 16:09:17, it is where I called the JOC and told them that
17 I saw two “bodies” at the back,
18 that will now be in a western direction, if I am correct, in
19 that direction where we saw that two “bodies” and
20 reported it to them.

21 **MS PILLAY:** So before, we get to the two
22 bodies, which we see happens at 16:09:32, if you can just
23 describe to us what happens a few seconds before this
24 photograph is taken, which is at 16:08:50 onwards, what it
25 is that you see at that stage?

1 **COLONEL VERMAAK:** At that stage,
2 we brought in the water cannons from both sides,
3 to encircle the hill, as was the original plan,
4 and communicated continuously with Brigadier Calitz
5 on the position of the water cannons and the armoured
6 vehicle that accompanied them for protection.

7 At one stage we saw the back of the hill,
8 on the western side, people running out,
9 and we reported it as such to the JOC
10 and Brigadier Calitz.

11 **MS PILLAY:** Is this what you are referring
12 to at 16:08:50?

13 **COLONEL VERMAAK:** Yes, "They are going to
14 break through." It is correct.

15 **MS PILLAY:** Alright, and after you say
16 they are going to break through, what happens then?

17 **COLONEL VERMAAK:** The people
18 were in the centre of the hill. We still brought the
19 water cannons around to encircle them from both sides.

20 We struggled with communication at that
21 stage with some of the vehicles not indicating that
22 they received our instructions on where to go.

23 **MS PILLAY:** Alright, now at 16:09:32 we
24 see you report that you see two bodies down at the back of
25 the second hill.

1 **COLONEL VERMAAK:** It is correct.

2 **MS PILLAY:** Now can you tell us, did you

3 see anything in terms of how these two people were killed?

4 **COLONEL VERMAAK:** No, Not at all. We saw them there.

5 We saw how the incident

6 occurred.

7 **COMMISSIONER HEMRAJ:** Colonel, the entry

8 at 16:09:17, what does that mean to you?

9 **COLONEL VERMAAK:** I just want to make sure,

10 is it 16:09:17, Commissioner?

11 **COMMISSIONER HEMRAJ:** 16:09:17.

12 **COLONEL VERMAAK:** Yes, I cannot recall

13 what I –

14 **CHAIRPERSON:** What appears from the – I am

15 sorry to interrupt you. What appears from the transcript

16 is you said "JOC chopper," and then stopped for 15 seconds.

17 **COLONEL VERMAAK:** Yes.

18 **CHAIRPERSON:** And then you then said what

19 we see there –

20 **COLONEL VERMAAK:** "At the back of the" –

21 **CHAIRPERSON:** - at 16:09:32 you again

22 said "JOC, JOC chopper, two bodies, two bodies at the back

23 of the second hill, two bodies."

24 **COLONEL VERMAAK:** Yes.

25 **CHAIRPERSON:** So I take it the

1 commentator put that between brackets after the first bit –

2 **COLONEL VERMAAK:** It is correct.

3 **CHAIRPERSON:** - to indicate that he had

4 identified your voice –

5 **COLONEL VERMAAK:** It is correct., yes.

6 **CHAIRPERSON:** - as having started to say

7 “JOC chopper” and then you were silent for 15 seconds and

8 then carried on.

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** Is that what it is, or am

11 I misinterpreting –

12 **COLONEL VERMAAK:** Yes, it can be, yes.

13 **CHAIRPERSON:** Okay.

14 **MS PILLAY:** Chairperson, if I may just

15 correct JJJ10.4546 and just ask to put that on the screen

16 again? I think the correct ETV time for this photograph is

17 16:07:18, which means it then comes in on page 2 of the

18 transcript.

19 **CHAIRPERSON:** So it is 16:07, how many

20 seconds?

21 **MS PILLAY:** 16:07:18.

22 **CHAIRPERSON:** 18.

23 **MS PILLAY:** Which means it comes in at

24 page 2 of the transcript.

25 **CHAIRPERSON:** So it is just before

1 Lieutenant Colonel Vermaak says, "The Nyalas move in, that

2 Nyala there on the point move left, turn left," –

3 **MS PILLAY:** That is correct.

4 **CHAIRPERSON:** - just before that.

5 **MS PILLAY:** That is correct, Chairperson.

6 **CHAIRPERSON:** I see.

7 **MS PILLAY:** Does that make sense to you,

8 Colonel?

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** Now can you show us on this

11 photograph the Nyalas that you were talking to?

12 **COLONEL VERMAAK:** Mr Chairperson, at

13 that stage the water cannon was on the right,

14 if you look towards the front, it is that Nyala that

15 had to give protection on the left-hand side,

16 the vehicle assisting with protection on this side of

17 the water cannon.

18 **CHAIRPERSON:** Let us get some clarity on

19 that. What you are telling us is if you look at the left-

20 hand bottom corner, as it were, of the photograph, it is

21 some distance up, about a quarter of the way up there are

22 two white vehicles.

23 **COLONEL VERMAAK:** It is correct.

24 **CHAIRPERSON:** The top one is a water

25 cannon.

- 1 **COLONEL VERMAAK:** It is correct.
- 2 **CHAIRPERSON:** The lower one is a Nyala.
- 3 **COLONEL VERMAAK:** It is correct.
- 4 **CHAIRPERSON:** Right, and then if one goes
- 5 across the picture to a point more or less in the middle,
- 6 middle both from top to bottom and from left to right,
- 7 there are again two vehicles. One is clearly a water
- 8 cannon because we see it is –
- 9 **COLONEL VERMAAK:** Spraying –
- 10 **CHAIRPERSON:** - spouting forth blue
- 11 water, and below it there is another white vehicle, that is
- 12 another Nyala.
- 13 **COLONEL VERMAAK:** That is another –
- 14 **CHAIRPERSON:** So you were talking to
- 15 those two Nyalas. Is that correct?
- 16 **COLONEL VERMAAK:** That is correct.
- 17 **CHAIRPERSON:** Alright.
- 18 **MS PILLAY:** Now at that stage of the
- 19 transcript, Colonel, immediately after JJJ10.4546, which is
- 20 the picture on screen, the next photograph is 4547 –
- 21 **CHAIRPERSON:** I am sorry to interrupt you,
- 22 Ms Pillay, please forgive me. That entry we were busy
- 23 with, the Nyalas move in. You told us which two Nyalas
- 24 were. This is now 16:07:36, the Nyalas move in. "That
- 25 Nyala there on the point move left, turn left," now which

1 of the two Nyalas was the one that you described as "That
2 Nyala there on the point"?

3 **COLONEL VERMAAK:** Chairperson, the last one
4 one that I brought in was this one on the left,
5 which I brought in from the side.

6 **CHAIRPERSON:** Alright, so that is the one
7 below the Nyala [**Microphone off, inaudible**]. I am sorry,
8 that is the Nyala below the water cannon [**Microphone off,**
9 **inaudible**]

10 **COLONEL VERMAAK:** It is correct.

11 **CHAIRPERSON:** Sorry, I have to repeat
12 that. It was not recorded. That is the Nyala below the
13 water cannon that are not spouting forth water. The dry
14 water cannon –

15 **COLONEL VERMAAK:** It is correct.

16 **CHAIRPERSON:** - for the moment. That is
17 the one there on the point to who you said "Move left, turn
18 left."

19 **COLONEL VERMAAK:** It is –

20 **CHAIRPERSON:** Then you said "Where the
21 people are getting out now, turn left." Now where were the
22 people getting out? Can you indicate that to us? You say,
23 "Where the people are getting out now, turn left. Go up in
24 the hill there. You can go with the Nyala." Now those
25 people who were "getting out now," where were they getting

1 out?

2 **COLONEL VERMAAK:** Chairperson, it is there

3 where that Nyala were moving, the people were moving

4 from the hill towards them. They came from

5 the bushes over the rocks to the

6 middle where there was quite a large open space.

7 **COMMISSIONER HEMRAJ:** Colonel, the Nyala

8 that you are directing to go left, is that the one that

9 appears on the right-hand side of the hill or on the

10 left-hand side? Because I do not understand why the one on

11 the left would be directed to go left. So which one are

12 you actually directing to go left?

13 **COLONEL VERMAAK:** The one here on the

14 left, bear in mind he was not there immediately.

15 We brought him in to assist with the necessary

16 protection, Commissioner.

17 **COMMISSIONER HEMRAJ:** So are you saying

18 that that Nyala that is there on the left-hand side of the

19 hill was not there at the time that you were directing it

20 to go left?

21 **COLONEL VERMAAK:** It is correct.

22 **COMMISSIONER HEMRAJ:** I understand that.

23 **CHAIRPERSON:** You told it to go left and

24 we see it left on the photograph.

25 **COLONEL VERMAAK:** Yes.

1 **CHAIRPERSON:** We see it at the place to

2 which you had directed it.

3 **COLONEL VERMAAK:** Yes.

4 **CHAIRPERSON:** Is that correct?

5 **COLONEL VERMAAK:** Yes, it is correct.

6 **CHAIRPERSON:** Alright, and then when you

7 told us about the people who were getting out now, they

8 were in the bush area. Is that right?

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** The bush area not very far

11 from the blue water cannon, the water cannon –

12 **COLONEL VERMAAK:** It is correct.

13 **CHAIRPERSON:** - spouting forth blue

14 water.

15 **COLONEL VERMAAK:** It is correct., Chairperson.

16 **CHAIRPERSON:** So they were in the bush

17 near there and then they went across the rocks there, you

18 say.

19 **COLONEL VERMAAK:** It is correct.

20 **CHAIRPERSON:** And then towards, in the

21 direction to the top of the photograph –

22 **COLONEL VERMAAK:** It is –

23 **CHAIRPERSON:** - to that, it looks like a

24 flat open area –

25 **COLONEL VERMAAK:** It is correct.

1 **CHAIRPERSON:** - immediately above the

2 rocks.

3 **COLONEL VERMAAK:** It is correct.

4 **CHAIRPERSON:** They went there.

5 **COLONEL VERMAAK:** It is correct.

6 **CHAIRPERSON:** That is what you were

7 talking about, and then when you said, "The people are

8 getting out now, turn left, go up in the hill there," was

9 that still directed to the Nyala that you told to go left

10 or was it directed to the other Nyala?

11 **COLONEL VERMAAK:** The one that - it was

12 the other Nyala, it was where the Nyala were spraying

13 water at that stage.

14 **CHAIRPERSON:** So you were directing the

15 Nyala which is below what I call the blue water cannon, for

16 sake of brevity -

17 **COLONEL VERMAAK:** It is correct.

18 **CHAIRPERSON:** You were intending that

19 Nyala effectively I suppose to go upwards past the water

20 cannon to that flat area -

21 **COLONEL VERMAAK:** It is correct.

22 **CHAIRPERSON:** - to which the people were

23 going. Is that -

24 **COLONEL VERMAAK:** It is correct.

25 **CHAIRPERSON:** Alright, thank you.

1 **MS PILLAY:** Now Colonel, there is a later
2 photograph taken just six seconds or so after this one.
3 It is 4547, which is still before the entry at 10:06 of
4 CC22.

5 **COMMISSIONER HEMRAJ:** Before you address
6 this photograph, how do the Nyalas that you are conveying
7 these commands to understand which one you are referring to?
8 Do you differentiate between them?

9 **COLONEL VERMAAK:** Commissioner,
10 there were numbers painted on the roof, which we referred to, but you will
11 see we frequently talked about the Nyala on the right-hand side or
12 left-hand side of the hill. We did not
13 use wind directions. We used the hill as a point
14 of reference, so
15 if you told someone to move left, they knew it
16 was left and the other one had to go
17 to the right of the hill, so they knew where
18 they had to go.

19 **COMMISSIONER HEMRAJ:** Thank you. I am
20 sorry to have interrupted you, Ms Pillay.

21 **MS PILLAY:** So Colonel, this picture
22 taken with your Pentax camera was at ETV time 16:07:24,
23 which is still 12 seconds before the entry at 10:06 on the
24 transcript. Do you see that, Colonel?

25 **COLONEL VERMAAK:** It is correct.

1 **MS PILLAY:** So if you can then just take
2 us through what happens from this point, and specifically
3 where you say, "The people are caught there in the middle
4 now," what it is that you are referring to.

5 **COLONEL VERMAAK:** At that stage we saw the
6 water cannons spraying and we saw that the
7 Nyalas we brought in, had some of their
8 Police Officers on foot on the hill and we then told
9 the Nyalas to stop spraying as there
10 are Police Officers into the hill, and that the hill
11 was "encircled" by Police Officers, which
12 would be able to make arrests.

13 **MS PILLAY:** And when you say the people
14 are in the middle of the hill, where are you referring to
15 on this picture?

16 **COLONEL VERMAAK:** On this photo is this
17 flat piece of land. Behind these rocks we
18 had an open field and on other photos we will see
19 that this was also the area where the Canter vehicle and
20 the arrestees were.

21 **[12:20] CHAIRPERSON:** Am I understanding
22 correctly, what you are pointing out to us now is an area
23 which is a dark area there - exactly in the middle of the
24 photograph are rocks and immediately above those rocks in
25 the middle of the photograph there is an area, presumably a

1 flat piece of land but it is a darker colour than the rocks.

2 **COLONEL VERMAAK:** It is correct.

3 **CHAIRPERSON:** And there are some paths

4 that go across it.

5 **COLONEL VERMAAK:** It is correct.

6 **CHAIRPERSON:** People were gathering

7 there, were they?

8 **COLONEL VERMAAK:** It is correct.

9 **CHAIRPERSON:** That is – alright, thank

10 you.

11 **MS PILLAY:** And when you say at 11:12 of

12 the tape, "Alright guys, you have got them in the middle,"

13 who were you talking to?

14 **COLONEL VERMAAK:** I immediately

15 reported to all the vehicles deployed in that area,

16 that the protestors were encircled by

17 police officers, and that a discernment will take place,

18 as we were briefed that morning,

19 followed by encirclement and disarming, and

20 that would be followed up with

21 arrests.

22 **MS PILLAY:** And when you say on the next

23 page of that transcript, "They are going to break through,

24 they are going to break through," can you just describe to

25 us what you were seeing in relation to this?

1 **COLONEL VERMAAK:** It was where there were a group,
2 you will see it almost looks like a dry dam there on
3 the left-hand side –no, more to the centre of the
4 photo, it looks like a dry dam there.

5 The people were moving toward that direction,
6 and we informed them about it –

7 **CHAIRPERSON:** Near the top of the
8 photograph, slightly on the right-hand side of what one
9 could describe as the middle line there is an area which
10 is, the ground is a lighter colour than the area that I
11 described earlier where the ground is of a darker colour
12 with paths crossing it – that is the area which you say is a
13 dry dam.

14 **COLONEL VERMAAK:** It is correct.

15 **CHAIRPERSON:** That is where the people
16 were going.

17 **COLONEL VERMAAK:** It is correct.

18 **MS PILLAY:** Now when you say at 12:02
19 that there are two bodies at the back of the second hill,
20 can you just show us on this photograph where it is that
21 you are referring to?

22 **MR NTSEBEZA SC:** Excuse me, Chairperson. Can
23 the witness point out where the Chairman was indicating is
24 a dam? Can you use your pointer to point it out?

25 **CHAIRPERSON:** You want him to point out

1 the dam?

2 **MR NTSEBEZA SC:** Yes.

3 **CHAIRPERSON:** Well, the dry dam – I have
4 described that before. If you look at the photograph you
5 will see near the top –

6 **MR NTSEBEZA SC:** Yes, yes, yes, now I see
7 it.

8 **CHAIRPERSON:** It is been pointed –

9 **MR NTSEBEZA SC:** Yes, thank you.

10 **MS PILLAY:** If you can now show, Colonel,
11 where the two bodies were found at the back of the second
12 hill?

13 **COLONEL VERMAAK:** Chairperson, if I recall correctly,
14 they were in this area.
15 -

16 **CHAIRPERSON:** How do I put that on
17 record? In the top right-hand corner one moves into the
18 photograph, I suppose about a quarter of the way and down
19 about a quarter of the way, which is the area you are pointing
20 out, is that right?

21 **COLONEL VERMAAK:** It is correct.

22 **CHAIRPERSON:** Where is the second hill
23 on the photograph?

24 **COLONEL VERMAAK:** The second hill is
25 not visible on the photo, but if I can indicate to you,

1 it must be towards this side.

2 **MS PILLAY:** Can we put up KKK16.5137,

3 it is one of Colonel Botha's pictures, and can we zoom in on

4 the area of the dry dam? It will just - which the witness

5 is showing now. Can you now see the two bodies that you

6 were referring to, Colonel? Can we just try and zoom in a

7 bit more? Oh, there we go. So are those the two bodies

8 that you are referring to?

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** Can we go back to the

11 question I asked you a minute ago? I am sorry, I am not

12 following and I am sure it is my fault but please help me.

13 At the entry at 11:47 - no, sorry, at the entry at 12:02,

14 that is 16:09:32 you say "JOC, JOC, chopper, two bodies, two

15 bodies at the back of the second hill." Now I understood

16 you to indicate a point on the extreme right-hand top

17 corner of the photograph, then I asked where you the second

18 hill was and you indicated something, bottom left-hand,

19 beyond the bottom left-hand corner of the photograph. So

20 it makes me wonder whether you meant the second hill in

21 the sense that we have been using up to now. When you said

22 at the back of the second hill, what did you mean?

23 **COLONEL VERMAAK:** Chairperson, at

24 stage during the operation, we talked about the first hill, and it

25 included hill 1 en 2, as it would

1 later be –

2 **CHAIRPERSON:** So in other words I am

3 correct, therefore, in assuming that when you said “two

4 bodies, two bodies at the back of the second hill,” you

5 meant hill 3, i.e. what we describe here as scene 2?

6 **COLONEL VERMAAK:** It is correct.

7 **CHAIRPERSON:** That is that clarified,

8 thank you.

9 **MS PILLAY:** Thank you, Chairperson. And just

10 also to clarify, at 12:13 Brigadier Calitz says, “There are

11 several people in the small hill, hiding in the small

12 hill.” So which hill would that be referring to?

13 **COLONEL VERMAAK:** If we can just

14 zoom in – there he is. It is basically this

15 area here, that is what they referred to as the

16 small hill.

17 **CHAIRPERSON:** So what you are doing is

18 you are pointing out a spot on hill 3.

19 **COLONEL VERMAAK:** On hill 3.

20 **CHAIRPERSON:** Hill 3 actually consists

21 of a number of sort of rocky elevations.

22 **COLONEL VERMAAK:** That is correct.

23 **CHAIRPERSON:** With some flat bits in

24 between and in order to understand what is being said we have

25 got to be clear what we are talking about. So the spot

1 you are referring to is a spot – just give it to us again?

2 **COLONEL VERMAAK:** According to the documents,

3 that will be hill 3, although we talked about

4 hill 2 during the operation, it is – they

5 changed it to

6 hill 3 for presentation proposed, this is the hill that Brigadier Calitz referred

7 to.

8 **CHAIRPERSON:** Right, well, more or less

9 in the middle of the photograph one can see a flat area

10 which is below, in the photograph below probably the

11 highest rocky elevation visible and in this area are three

12 vehicles. Are they all Nyalas? One is a water cannon, I

13 think.

14 **COLONEL VERMAAK:** One is a water cannon –

15 **CHAIRPERSON:** One is a water cannon and

16 two Nyalas.

17 **COLONEL VERMAAK:** It is correct.

18 **CHAIRPERSON:** Is that right? And that is

19 the area that you are talking about?

20 **COLONEL VERMAAK:** It is correct., Chairperson.

21 **MS PILLAY:** Can I ask that we now play

22 CC22 at around 12:33 onwards? I think that is fine, 12:32.

23 I am just going to ask –

24 **[VIDEO IS SHOWN]**

25 **COLONEL VERMAAK:** It is Brigadier Calitz,

1 yes.

2 **MS PILLAY:** That is Brigadier Calitz.

3 **COLONEL VERMAAK:** That is correct.

4 **MS PILLAY:** And if look at 12:35 on the

5 transcript, you will confirm that that is said by Brigadier

6 Calitz.

7 **COLONEL VERMAAK:** That is correct.

8 **CHAIRPERSON:** Can I ask a question now

9 about something that is been puzzling me? Has Brigadier

10 Naidoo – sorry, has Major-General Naidoo arrived here yet

11 or is he still on his way and if so, if he is here, where

12 is he? Well, I am really asking Ms Pillay. The witness

13 will not know when Brigadier -

14 **COLONEL VERMAAK:** Yes.

15 **CHAIRPERSON:** - when Major-General Naidoo

16 arrived but -

17 **MR CHASKALSON SC:** Sorry, Chairperson, I

18 thought you were asking whether he was ready for re-

19 examination.

20 **CHAIRPERSON:** Well, I did not mean that

21 but it is also a good question but I do not have to, I do not

22 need the answer to that just at the moment. I am just

23 asking because I am trying to follow this in relation to

24 some of the other evidence we heard earlier. It just

25 suddenly struck me, is Brigadier – sorry, is Major-General

1 Naidoo supposed to be on the scene yet? If so, can we see

2 him? If not, well, that explains why we cannot see him.

3 **MR CHASKALSON SC:** Chairperson, we can in

4 fact see him or we can see his bakkies which – we are at

5 12:58. If we can move the zoom a little bit to the left,

6 can we move the zoom a little to the left and stop? Just

7 pause, pause. The bakkies that Major-General Naidoo

8 brought in with the K9 unit I am indicating on the screen

9 now, which are the white patches on – we are at 13:01 on the

10 counter. They are at the white patches to the top right-

11 hand, just near the top right-hand corner of hill 3 on

12 this image. They are visible there from 10:06.

13 **CHAIRPERSON:** Okay, thank you. Well,

14 thank you for that. That brings me to the question I want

15 to ask the Colonel, Lieutenant-Colonel. Were you aware of

16 the fact that Major-General Naidoo was in the vicinity with

17 Nyalas, K9 people, firing shots, and doing all sorts

18 of things? Because you see, from what I can see from the

19 transcript you were talking to the other Nyalas, you were

20 talking to Brigadier Calitz who said he did not know Major-

21 General Naidoo was there, you were talking to the Nyalas

22 which obviously Brigadier Calitz also knew about. So are

23 you telling us that you did not know Brigadier – sorry,

24 Major-General, I am sorry, I did not mean to be unkind – that

25 you did not know that Major-General Naidoo was there?

1 **COLONEL VERMAAK:** It is correct., Chairperson.

2 We were not aware that he were there. We just

3 concentrated on the Nyalas and the

4 water cannons and at a later stage,

5 Brigadier Calitz asked us to assist with the

6 Canters in order to take them to where the

7 people were arrested.

8 **CHAIRPERSON:** Thank you. Sorry, Ms

9 Pillay, if that took you off your track.

10 **MS PILLAY:** No, that is fine.

11 **CHAIRPERSON:** It is something that was

12 worrying me for some time.

13 **MS PILLAY:** Just to orientate ourselves,

14 Colonel, we are now on page 3 of the transcript. CC22 is

15 at 13:01 which means that we are six entries from the

16 bottom of the transcript. Now if we can then move on to

17 14:45 of the video? We are now at 16:12:15 ETV time and I am

18 just going to ask you to identify the voice, if you can

19 identify the voice at 14:45.

20 **[VIDEO IS SHOWN]**

21 **MS PILLAY:** Take it back a bit to about

22 14:43. Again Colonel, at 14:45 if you can see if you

23 identify the voice.

24 **[VIDEO IS SHOWN]**

25 **MS PILLAY:** The voice saying, "Okay, live

1 fire," are you able to identify that voice, Colonel?

2 **COLONEL VERMAAK:** It is the voice of, Brigadier

3 Calitz.

4 **MS PILLAY:** The voice saying "Live fire?"

5 **COLONEL VERMAAK:** "Live fire," yes.

6 **MS PILLAY:** Live fire. We see in the

7 transcript at page 4 and the third entry from the top that

8 it is unknown where we have "Okay, live fire." Are you

9 now saying that that is Brigadier Calitz's voice?

10 **COLONEL VERMAAK:** Yes, yes.

11 **CHAIRPERSON:** Are we going to look at

12 15:11 as well because that could not have been General

13 Mpembe surely? Maybe the witness will identify – sorry, if

14 you are going to get there I will not interrupt.

15 **MS PILLAY:** We will turn to that now,

16 Chairperson, 15:11. Can we play 15:11?

17 **[VIDEO IS SHOWN]**

18 **MS PILLAY:** Colonel, are you able to

19 identify the voice?

20 **COLONEL VERMAAK:** Yes, it is General

21 Mpembe.

22 **CHAIRPERSON:** Can we have that again,

23 please? I am not quarrelling with the witness, I just want

24 to hear it again?

25 **MS PILLAY:** Can we replay from 15:11 of

1 the transcript, of –

2 **[VIDEO IS SHOWN]**

3 **CHAIRPERSON:** Yes, it was, it sounded like

4 General Mpembe, did not it? Now we know that General Mpembe

5 was in another helicopter. That was the – I think it was

6 the Protea Coin helicopter.

7 **COLONEL VERMAAK:** It is correct.

8 **CHAIRPERSON:** With Brigadier Fritz –

9 **COLONEL VERMAAK:** No, he was not

10 there.

11 **CHAIRPERSON:** No, that is wrong, that is

12 wrong.

13 **COLONEL VERMAAK:** No.

14 **CHAIRPERSON:** Sorry, Brigadier Fritz, he

15 was in chopper 2 with Lieutenant-Colonel Botha.

16 **COLONEL VERMAAK:** It is correct.

17 **CHAIRPERSON:** General Mpembe, who was

18 with General Mpembe?

19 **MR CHASKALSON SC:** The Protea Coin people

20 and Brigadier Tsiloane.

21 **CHAIRPERSON:** That is it.

22 **MR CHASKALSON SC:** And whoever was making

23 this video because this video is from inside that

24 helicopter.

25 **CHAIRPERSON:** Yes, yes, I understand.

1 Now did you see that, around about the time this was heard,

2 "They are firing - the dogs," did you see the Protea Coin

3 helicopter in the area?

4 **COLONEL VERMAAK:** Mr Chairperson, we

5 were not aware of the helicopter in the air.

6 According to the briefing, I was the commander in

7 charge of the air wing telling the pilots how and where to

8 fly and there were no

9 knowledge about the helicopter of Protea Coin to

10 be used in that

11 specific operation.

12 **CHAIRPERSON:** Now you told, you were

13 round about 300 feet, is that right?

14 **COLONEL VERMAAK:** It is correct.

15 **CHAIRPERSON:** Now do you know, as a

16 result of information you subsequently obtained because you

17 did not know at the time, but do you know what height the

18 Protea Coin helicopter was flying?

19 **COLONEL VERMAAK:** I had no

20 idea.

21 **CHAIRPERSON:** No, you did not know at the

22 time, do you know now?

23 **COLONEL VERMAAK:** In hindsight I heard they

24 talked of 10 000 foot.

25 **CHAIRPERSON:** No, well, that would

1 explains why you were not aware of them.

2 **MS PILLAY:** And from this still, Colonel,

3 are you able to tell where the Coin Security helicopter was
4 flying in relation to the hill?

5 **[12:40] COLONEL VERMAAK:** Yes, quite a lot

6 – on top of the scene. If you look at the height

7 from where the photo was taken in relation to the vehicles,

8 one can see that he was

9 very close to being directly on top.

10 **MS PILLAY:** For the purposes of the

11 record, Chairperson, this is at 15:23 of CC22.

12 **CHAIRPERSON:** Yes, no, I see that.

13 Judging by the size of the vehicles, based on your

14 experience as an air wing commander, can you tell us more

15 or less how high they were probably going at that stage

16 when that photograph was taken or when that clip was taken?

17 **COLONEL VERMAAK:** One cannot say

18 with precise accuracy – let me put it this way,

19 according to my knowledge, it was far above 1 000

20 foot.

21 **CHAIRPERSON:** Thank you. You see what

22 interests me is, could they have seen dogs at that height?

23 If you see how big a motor, a vehicle is, presumably unless

24 you had enormous great Danes or something, you would have

25 difficulty seeing them from this height, surely? I do not

1 understand, but anyway you cannot help us on that, it is –

2 **MS PILLAY:** Now, Colonel, the next still

3 we have –

4 **CHAIRPERSON:** Could I ask one question

5 before you carry on with the next thing? Did you see any

6 dogs?

7 **COLONEL VERMAAK:** Sorry, Chairperson,

8 repeat?

9 **CHAIRPERSON:** Did you see any dogs?

10 **COLONEL VERMAAK:** No, no, Not at all,

11 Chairperson.

12 **CHAIRPERSON:** So you did not see anyone

13 firing in the direction of the dogs?

14 **COLONEL VERMAAK:** Not at all.

15 **CHAIRPERSON:** We know that Major-General

16 Naidoo came with some dogs because he came with the K9

17 people from forward holding area 1 and I assume that

18 Captain Kidd had some dogs because he had some K9 people

19 from forward holding area 2. You did not see any dogs?

20 **COLONEL VERMAAK:** No. I can just mention,

21 Chairperson, at one stage, we can go back to the

22 video clip and you will see the Oryx

23 helicopter flying under us and we then decided to

24 fly more to the side and on another height,

25 for the sake of

1 safety as the Oryx helicopter was flying very low.

2 **MS PILLAY:** Is that the chopper that is

3 visible on this very video?

4 **COLONEL VERMAAK:** It is correct,

5 those that –

6 **CHAIRPERSON:** Is that the one that

7 Brigadier Visser was in?

8 **COLONEL VERMAAK:** No, negative. I think

9 it is where the NIU group –

10 **CHAIRPERSON:** Oh, I see.

11 **COLONEL VERMAAK:** – was.

12 **CHAIRPERSON:** Alright, we are getting

13 helicopters in order eventually, getting them all in a row.

14 **MS PILLAY:** That lapse of time that you

15 testified to now, Colonel, is evident from your still

16 photographs because the next photograph after 4547 is 4548

17 which were taken at ETV time 16:20:04. Can we just look at

18 JJJ10.4548?

19 **COLONEL VERMAAK:** Yes, it was taken with the Pentax

20 afterwards.

21 **MS PILLAY:** And this is at scene 1?

22 **COLONEL VERMAAK:** It is correct.

23 **MS PILLAY:** You had moved from scene 2 to

24 scene 1.

25 **COLONEL VERMAAK:** It is correct.

1 **MS PILLAY:** Can we then look at 4552

2 because we notice that all of the pictures before 4552 are

3 in relation, are pictures of scene 1. So the first scene

4 of scene 2 after that break is 4552 which is ETV time

5 16:53:38.

6 **COLONEL VERMAAK:** It is correct.

7 **MS PILLAY:** But before we get – so this

8 is the next time that you were flying over.

9 **COLONEL VERMAAK:** It is correct, yes. At

10 that stage we were also tasks to fly over the

11 informal settlement to see if any regrouping

12 occurred, in order to warn the

13 JOC in time.

14 **MS PILLAY:** So can you tell us in terms

15 of what you saw happening at this stage, Colonel, from the

16 picture and from your recollection what was happening?

17 **COLONEL VERMAAK:** At that stage

18 it was clear that the people were arrested, as we had to move

19 the Canter-vehicles in. They struggled

20 because no one had any beforehand knowledge

21 of the are before deployment. We had to

22 look for a path for the

23 Canters out of the air, in order to get them to

24 where the arrests were made.

25 That is what we observed,

1 arrests were made and the Canters were needed

2 to take the suspects away from the scene.

3 **MS PILLAY:** And before we move from scene

4 2, Colonel, if I can just take you back to CC2, can we go

5 back to CC22 please, the Coin Security video and can we

6 pick up at 30:05? Now Colonel, I am going to ask you to

7 identify the voice at 30:07.

8 **[VIDEO IS SHOWN]**

9 **MS PILLAY:** So the words "Let them come,

10 the area is secure, let them go through," do you recognise

11 whose voice that is?

12 **COLONEL VERMAAK:** It is the voice of Brigadier Calitz.

13 -

14 **MS PILLAY:** Alright, so you confirm

15 what is reflected in the transcript, that that is Brigadier

16 Calitz's voice.

17 **COLONEL VERMAAK:** It is correct.

18 **MS PILLAY:** And it is on page 6 now of the

19 transcript, Chairperson. If we can then go to 34:22 of CC22 and

20 if I can ask you to identify the voice at 34 -

21 **[VIDEO IS SHOWN]**

22 **MS PILLAY:** Do you recognise that voice,

23 Colonel?

24 **COLONEL VERMAAK:** It is correct., Chairperson,

25 it is mine.

1 **MS PILLAY:** Now can you – you say there,
2 “Okay, I saw the 105 with the generals also arrived and
3 they are turning above us.” Can you explain to us what you
4 meant by that?

5 **COLONEL VERMAAK:** On the airfreight radio,
6 the pilot bringing in the General with the
7 helicopter, communicated with our pilots,
8 informing them that he arrived with them from
9 Pretoria.

10 **MS PILLAY:** Now you mentioned that the
11 generals were on that helicopter. Which generals are you
12 referring to?

13 **COLONEL VERMAAK:** It was General
14 Mawela and later I learned that he was accompanied by a General from
15 the army.

16 **MS PILLAY:** Right, maybe it will be
17 useful if I refer you to the flight logs, Colonel, in
18 particular exhibit OOO12.3 which is document 23.4 of your
19 bundle and if we go to the second page of that document and
20 I think this is – I do not think this is the correct exhibit
21 being shown on the screen. Can we see 12.3? We go further
22 down.

23 **COLONEL VERMAAK:** A little more,
24 yes, there.

25 **MS PILLAY:** Yes.

1 **COLONEL VERMAAK:** No, more.

2 **MS PILLAY:** Sorry, further down, the 13th.

3 **COLONEL VERMAAK:** More.

4 **MS PILLAY:** That is the page, yes. This

5 is the second page of exhibit OOO12.3. Are you –

6 **COLONEL VERMAAK:** That is on the 13th.

7 **MS PILLAY:** Oh no, this is still on the

8 13th, sorry. Can we go further down?

9 **COLONEL VERMAAK:** Go on.

10 **MS PILLAY:** Can we try exhibit OOO12.3?

11 I think this is 12.1 that is open - I thought I saw it as

12 well –

13 **CHAIRPERSON:** I think it is the second

14 page of OOO12.3, is what you have marked as 23.4 of the

15 documents in the bundle and there, there is a reference to,

16 in the extreme left-hand corner, to General Mbombo, General

17 Mawela and it looks like General Mdutjana.

18 **COLONEL VERMAAK:** It is him.

19 **CHAIRPERSON:** Is that ... is -

20 **COLONEL VERMAAK:** That is correct.

21 **CHAIRPERSON:** Is that correct?

22 **COLONEL VERMAAK:** That is correct.

23 **MS PILLAY:** The generals from the SANDF

24 that you mentioned, is that General Mdutjana?

25 **COLONEL VERMAAK:** It is correct. We were

1 not aware of that. Only after I sent the
2 Squirrel back to drop off Brigadier Fritz
3- He came back with our Squirrel, accompanied by
4 General Mbombo, General Mawela
5 and General Mdutjana of the SANDF.

6 **MS PILLAY:** Chairperson, I see it is now a few
7 minutes to one. May we take the break now so that we can
8 just arrange for the proper exhibits to be put up on the
9 screen when the witness is answering?

10 **CHAIRPERSON:** It seems a reasonable
11 request in the circumstances, well-motivated, so we will take
12 the lunch adjournment at this stage.

13 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

14 **[13:57] CHAIRPERSON:** The Commission resumes.

15 Luitenant Colonel, you are still binded by the
16 affirmation you made
17 yesterday.

18 **COLONEL VERMAAK:** It is correct.,

19 Chairperson.

20 **CHAIRPERSON:** Adv. Pillay.

21 **EXAMINATION BY MS PILLAY (CONTD.):** Thank
22 you, Chairperson. Colonel, before we broke for lunch we were
23 dealing with the entry at 34:25 of page 6 of the transcript
24 where you say, "Okay, I saw the 105 with the Generals also
25 arrived and they are turning above us." Now can you tell

1 us at the time that you made this report over the radio,

2 how long had the Generals been circling above you?

3 **COLONEL VERMAAK:** No, they was just

4 circling once for the final approach to go and land at the

5 Lonmin Security offices.

6 **MS PILLAY:** So this is where you saw,

7 this is before they landed at the JOC?

8 **COLONEL VERMAAK:** That is correct.

9 **MS PILLAY:** Now we see that the report at

10 34:25 is at 16:31:55 ETV time.

11 **COLONEL VERMAAK:** I have it.

12 **MS PILLAY:** And you testified that the

13 Generals, and we know that it is General Mbombo, General

14 Mawela, and General Mdutjana from the SANDF - or sorry,

15 Mawela and Mdutjana. You testified that they were from

16 Pretoria.

17 **COLONEL VERMAAK:** Yes, we knew about

18 General Mawela coning. In hindsight after

19 the 105 landed with the Generals, I sent the

20 Squirrel back to the JOC,

21 where they picked up the Provincial Commissioner, General Mawela and

22 the General of the SANDF. When they landed

23 at scene 2, hill 3, I was still in the

24 R44. We landed there,

25 and I then for the first time saw the other

1 passengers with General Mawela and General

2 Mbombo.

3 **MS PILLAY:** And do you know, Colonel, how

4 long it takes to travel by helicopter from Pretoria to

5 Marikana?

6 **COLONEL VERMAAK:** It takes about

7 20 to 25 minutes from Pretoria West until they

8 reach Marikana.

9 **MS PILLAY:** Right, Colonel, just to now

10 round up the first part of our session on scene 2, I just

11 want to take you through the BlackBerry pictures because it

12 seems that after JJJ11.1518, which is obviously the

13 critical picture of scene 1 which we have dealt with both

14 today and yesterday, the first picture of scene 2 on the

15 BlackBerry is JJJ11.1520. Can we just put up JJJ11.1520?

16 Now Mr Chaskalson indicates that the time is 16:54:13 ETV

17 time and it appears that this picture was taken after the

18 arrests had commenced at scene 2.

19 **COLONEL VERMAAK:** It is correct.

20 **MS PILLAY:** Now does this mean that there

21 are no other, there were no BlackBerry pictures that were

22 transmitted to the JOC of scene 2 specifically?

23 **COLONEL VERMAAK:** It is correct., yes.

24 **CHAIRPERSON:** Was there a reason for

25 that?

1 **COLONEL VERMAAK:** Chairperson, no. At
2 that stage, according to what I observed, everything
3 was under control. Nothing else occurred,
4 except for what happened the last time, which
5 were also available at that stage.

6 **MS PILLAY:** Thank you, Colonel. Now
7 yesterday we covered the difference between air support,
8 Air Wing commander, and aerial command post. You recall
9 that?

10 **COLONEL VERMAAK:** It is correct.

11 **MS PILLAY:** And you testified that in
12 this operation you were never appointed as aerial command
13 post and that you did not perform the function of an aerial
14 command post. Do you recall that?

15 **COLONEL VERMAAK:** It is correct.

16 **MS PILLAY:** Now I would like to refer you to
17 the testimony of Brigadier Calitz and ask for day 165, page
18 19140 to be put up on the screen. 19140, and specifically
19 line 19 of that transcript of that day.

20 **CHAIRPERSON:** *[Microphone off, inaudible]*

21 I will translate it into English. It seems if we start with

22 *[inaudible]* the line, line 15 *[inaudible]* -

23 **MS PILLAY:** I think if we can pick up
24 from line 15, yes.

25 **CHAIRPERSON:** Okay.

1 **MS PILLAY:** We have to go just before

2 that.

3 **CHAIRPERSON:** Yes [**Microphone off,**

4 **inaudible**].

5 **MS PILLAY:** From 12.

6 **CHAIRPERSON:** "Because there was an

7 attack and the things from then on went over into a

8 dispersion action and I had communication with him, I was

9 at that stage not in contact in any way with Brigadier

10 Fritz on the chopper, but," I think he means "in relation

11 to the fact to which Mr Chaskalson now referred, but I then

12 was in contact with Colonel Vermaak and I then asked him,

13 knowing that he also is an experienced Public Order Police

14 member for years, I think I testified 20 or 30 years, I

15 then asked him to do the eye-in-the-sky role for me," I

16 suppose "in relation to these vehicles I asked him to do

17 the eye-in-the-sky role for me and then to take command or

18 control over them to that hill." Then I asked, "What

19 role was Brigadier Fritz playing, which is set out in slide

20 146?" There was a little bit of questioning about that,

21 but the passage that counsel is referring you to

22 specifically is the statement at line 19 that, "I then

23 asked him [*that is you*] to do the eye-in-the-sky role for

24 me," I think he means "in relation to those vehicles and

25 then to take control over them to that hill." Is that

1 adequate translation, Ms Pillay?

2 **MS PILLAY:** Thank you, Chairperson, it is.

3 **CHAIRPERSON:** That was the evidence that

4 he gave and I think Ms Pillay wants you to comment whether

5 you agree with that.

6 **COLONEL VERMAAK:** Mr Chairperson, at

7 no stage I was instructed to take command

8 of any group or any group of

9 vehicles. We were requested to assist

10 in taking the vehicles in to where they were needed

11 for specific tasks. There again, I refer to

12 the Nyala vehicles.

13 Yes, on our own initiative we knew that the

14 – water cannons is not armoured and we

15 through it necessary to send an armoured vehicle

16 with each water vehicle, for protection. With the

17 Canters we had a problem, as they had no knowledge

18 of the area and we had to assist them from the

19 air with the best and shortest route through the rocks,

20 in order to get them to the point where the

21 arrests occurred

22 **CHAIRPERSON:** Are you going to put

23 another passage to him, because I –

24 **MS PILLAY:** I am, Chairperson. I am.

25 **CHAIRPERSON:** Yes, there was another

1 passage which takes the point further.

2 **MS PILLAY:** Yes, I am going to take him

3 to further passages. Colonel, if I can then go to page

4 19142, line 6, 19142, line 6. We see here that Brigadier

5 Calitz testified that you were aware that you were aerial

6 commander. Let us just pick up with the question from Mr

7 Chaskalson at line 6. "Did you inform Lieutenant Colonel

8 Vermaak that he was now aerial commander?" and the answer

9 from Brigadier Calitz, "I informed Colonel Vermaak when

10 we were static, and from there

11 we communicated on the radio and I requested him to

12 take the vehicles to the hill

13 and take charge out of the air."

14 **CHAIRPERSON:** [*Microphone off, inaudible*]

15 Then Mr Chaskalson says, "And so you were saying that

16 Lieutenant Colonel Vermaak understood that he was aerial

17 commander and in control of the operation at, in command of

18 the operation at hill 3?" And then he says, "I would be able

19 to testify to that, yes." "I can testify thus, yes."

20 **MS PILLAY:** Colonel, can we just get your

21 comment up to that point?

22 **COLONEL VERMAAK:** Chairperson, if you can recall,

23 I mentioned yesterday that we spend seven hours

24 in the air with the helicopter. I saw Brigadier

25 Calitz for the last time, that morning at the JOC "meeting" and

1 after that I only talked to him personally after the incident
2 at hill 3, after the Provincial
3 Commissioner, General Mbombo and General Mawela landed there
4 and I walked with them to hill 3, where the
5 arrests took place and where the
6 the bodies were laying. Some of that photos I took, was
7 part of the album I compiled. Nowhere during
8 the day, since the meeting at the JOC
9 6 o'clock, until that evening when we landed, we were
10 static, so we could not have such conversation.

11 **MS PILLAY:** Colonel, I think Brigadier
12 Calitz is referring to the fact that the Nyalas were static
13 in the reorganisation line and at that point he asked you
14 to take control of scene 2.

15 **CHAIRPERSON:** What he says is, "I
16 informed Colonel Vermaak when we stood static," he was
17 obviously, as Ms Pillay says, referring to himself and his
18 Nyala, "and from then on he and I had communication on the
19 radio and I put the request to him that he must take the
20 cars for me and then go into the hill and take control
21 from out of the air" – "take charge out of the air." So
22 what he is saying is that in the course of a radio
23 communication with you while his Nyala was stationary in
24 the vicinity of hill 3 he not only asked you to direct
25 the vehicles into the hill, but also asked you to take

1 control from out of the air. That is what he said, and then
2 when it was then put by Mr Chaskalson, he was saying,
3 "Lieutenant Colonel Vermaak understood that he was aerial
4 commander and in control of the operation," he agreed that
5 that was what he was saying. Now I understand you to say
6 that is not correct.

7 **COLONEL VERMAAK:** Mr Chairperson,
8 no, at no stage any command was handed over to me.
9 If command were given over to me, it would have been
10 noted in the incident book at the
11 control room.

12 My role was to take the vehicles to
13 the point where they were needed to lodge
14 the "dispersing and encirclement" plan and
15 at no stage did I give order,
16 except for instructing them on which route
17 they had to follow. I did communicate with the
18 vehicles and then Brigadier Calitz
19 would then confirm it afterwards and divert it into
20 an order.

21 **MS PILLAY:** Now Colonel, we again see
22 this theme emerging in Brigadier Calitz's testimony at page
23 19146, line 5, where he says, "I do not know if the word
24 command is correct, but I believe Colonel Vermaak
25 would be able to testify if he can recall the exact words, but

1 I instructed him to take command from the air and then give
2 me feedback." Can you comment on that, Colonel?

3 **COLONEL VERMAAK:** The command was
4 to get the vehicles to their destinations and
5 then to give feedback on where the vehicles were,
6 as he could not really know the whereabouts of the
7 vehicles, as he was on the ground. We then play the role of
8 the "eye-in-the-sky" so that we can give him
9 feedback, or to give feedback to an operational commander,
10 where the vehicles, his "resources,"
11 his people are, and on that he will the make his
12 operational decision. In this case we
13 had a lot of radio communication issued, so if I
14 got the impression that the people on the ground did not hear him,
15 I would just repeat it afterwards.

16 **MS PILLAY:** So we see, Colonel, that this
17 theme of handing over command and control of scene 2 to you
18 is developed until page 19149 where the Commission adjourns
19 for tea break. Now we know that this transcript we have been
20 looking at have been for day 165, which is the 9th of January
21 2014. Now can I just find out from you, Colonel, did you
22 have any contact with Brigadier Calitz on the 9th of January
23 2014?

24 **COLONEL VERMAAK:** I made a note in my diary,
25 especially after the Commission was appointed to

1 investigating the whole Marikana incident, I tried to make
2 very accurate notes of any meetings and information and
3 circulars that I received, or that was sent out, or people
4 phoning me, or me phoning them. On the 9th of
5 January, I received a phone call from Brigadier Calitz,
6 and I made a note of it in my
7 diary.

8 **MS PILLAY:** Chairperson, we have copies of the
9 excerpt from Colonel Vermaak's diary of the 9th of January.
10 In fact the excerpt we have is of the 9th and 10th of
11 January because both are relevant.

12 **CHAIRPERSON:** *[Microphone off, inaudible]*

13 new exhibits?

14 **MS PILLAY:** They are new exhibits, Chairperson.

15 **CHAIRPERSON:** What is their –

16 **MS PILLAY:** It will be exhibit OOO15,
17 OOO15.

18 **CHAIRPERSON:** 15 –

19 **MS PILLAY:** Sorry, 16. OOO16.

20 **CHAIRPERSON:** So OOO15 and 16?

21 **MS PILLAY:** No, just OOO16, Chairperson.

22 **CHAIRPERSON:** OOO16. These are

23 extracts –

24 **MS PILLAY:** It is a single page, Chairperson,
25 which has two days on it.

1 **CHAIRPERSON:** Extract from diary of

2 Lieutenant Colonel Vermaak for 9 and 10/1/2014.

3 **MS PILLAY:** Now if we look at 00016,

4 Colonel, we see that the inclusion we are referring to is

5 against 15:30.

6 **[14:17]** Is that an accurate reflection of the time during

7 which you referred, you received a call from Brigadier –

8 **COLONEL VERMAAK:** It can be inaccurate

9 with about five minutes, but it is the region in

10 which I received, the phone call.

11 **MS PILLAY:** And it is the 9th of January

12 which is day 165.

13 **COLONEL VERMAAK:** It is correct.

14 **MS PILLAY:** Now, can you read out the

15 insertion please, Colonel?

16 **COLONEL VERMAAK:** "Phone call received from

17 Brigadier Calitz regarding his evidence that I was in charge of

18 hill 3. According to his evidence he gave command over to me,

19 where both of us talked and reported to each other.

20 I was the eye in the sky and

21 only talked the vehicles in to their positions as I was briefed on

22 the morning on the 16th of August 2012."

23 **MS PILLAY:** Now can you just tell us in

24 as much detail as you can, exactly what the telephone

25 conversation was with Brigadier Calitz, just to emphasise

1 at this stage Brigadier Calitz was under cross-examination
2 by Mr Chaskalson. If you can just tell us exactly what
3 that conversation was about?

4 **COLONEL VERMAAK:** It was

5 basically about that, and I said I will stick to the facts,
6 I will not change anything.

7 If there were erred, I will admit it, if no errors

8 I will not make any allegations, and

9 we regular discussed the fact that we will stick

10 to the truth and he just then

11 emphasised the fact that it will seem as if the blame is

12 shifted towards me regarding what happened on

13 that day. That is why I seemed it necessary to make the

14 note of this in my diary.

15 **MS PILLAY:** And what was your response

16 when he informed you that it might appear as if he is trying

17 to shift the blame to you? What was your response?

18 **COLONEL VERMAAK:** I confirmed

19 to him that I am sticking to the truth and

20 nothing else but the truth.

21 **MS PILLAY:** And why did you feel it

22 necessary to emphasise that you would stick to the truth?

23 **COLONEL VERMAAK:** Mr Chairperson,

24 during the consultation with the legal team of the police,

25 which at that stage I was under the impression were representing me too,

1 it was mentioned to me that
2 I will have to take the responsibility of the people that
3 were killed at hill 3. My argument was to the fact
4 on what they were basing that allegation against me.
5 It came back to my experience in
6 Public Order Policing and the fact that
7 I deliberately entrapped the
8 the protestors in the hill,
9 and that lead to the cross fire,
10 and that the Police Officers were under the impression
11 that the shots are being fired
12 from the middle of the hill and that it could be
13 their colleagues. After this
14 was put to me by the legal team,
15 I realised that I had to take notes of everything,
16 all circulars,
17 meetings, conversations between me and the legal team
18 of the police,
19 individually and in groups over the period of
20 18 months in which I have been consulted with.
21 I realised that I will have to have all my
22 documentation in order.
23 From the start I made it clear to the
24 National Commissioner and the Provincial
25 Commissioner and the legal team, which I am going to

1 stick to the facts. There were a lot of things and
2 incidents happening and occurring, which made
3 me realise that I will have to keep immaculate record of
4 everything.

5 **MS PILLAY:** Now when it was put to you
6 that you may ultimately be held responsible for what
7 occurred at scene 2 because you directed the vehicles to
8 encircle scene 2, what was your response to that?

9 **COLONEL VERMAAK:** I was very
10 disappointed, that after all these months of consultation,
11 it was decided that I am the culprit,
12 and that because of all my years' experience in riots,
13 it made me indirectly responsible for the death of these people.
14 I told them I was unhappy and
15 I thought it to be unacceptable. When I asked
16 legal team, how it can be my responsibility, if I never had a briefing,
17 except for the morning with the JOC meeting,
18 where another plan was put in place,
19 I did not get an answer.

20 **MS PILLAY:** So in other words the only
21 plan that you were aware of and which you were implementing
22 was the encirclement plan?

23 **COLONEL VERMAAK:** It is correct.

24 **MS PILLAY:** Now apart from – sorry,
25 Chairperson.

1 **CHAIRPERSON:** Are you going to put other
2 passages from Brigadier Calitz's evidence to him in this
3 regard?

4 **MS PILLAY:** No, I am –

5 **CHAIRPERSON:** There was a passage, as far
6 as I remember, where he talks about dispersing of the
7 strikers on the hill and that he had received information
8 from Colonel Vermaak that they were encircled and they
9 could be dispersed, as far as I can remember, and they
10 could be arrested and he then said, as I recall, that
11 Colonel Vermaak had then, as it were, taken over and given
12 the necessary instructions and he was questioned by Mr
13 Chaskalson about that and there were problems about whether
14 they had been given a warning before attempts were made to
15 disperse them and so on. It is quite a lengthy passage in
16 his evidence where, as far as I can recall, he did say that
17 he had not given the orders, the orders were given by
18 Colonel Vermaak who was, as it were, in charge. I do not
19 know whether that passage can be found. I hope my
20 recollection is correct but anyway, you were not intending
21 to put such a passage to him?

22 **MS PILLAY:** Chairperson, but we will find the
23 passage and put it to the witness.

24 **CHAIRPERSON:** I do not know if –

25 **MS PILLAY:** My learned junior –

1 **CHAIRPERSON:** Were you in the chamber at
2 that point because I know you, Mr Chaskalson - as your
3 junior, is he? I hope you will give him a red bag when he is
4 finished.

5 **MS PILLAY:** Mr Chaskalson has found a
6 passage, Chairperson, it is at page 19090.

7 **CHAIRPERSON:** If you think, because
8 you are in charge, if you think that the passage your junior
9 has found is something that should be put on the screen,
10 then I am sure you can ask for it to be done.

11 **MS PILLAY:** No, absolutely, Chairperson. It is
12 19090 and we can pick up from line 9, Brigadier Calitz
13 says, "No, what Colonel Vermaak told me, and it is
14 clear in the transcript, maybe we have to go and look at the
15 precise words, 'Yes, Pappa1, if that water cannon can wait
16 there. The people are encircled. You can make arrests now
17 down there.' So it means the water cannons was used,
18 an according to me the Public Order
19 Policing succeeded in encircling the people,
20 and break them up in smaller group. Maybe that is when I said,
21 okay, water cannons hold back. In other
22 words, it was no longer necessary to break them up,
23 guys get out of your Nyalas under
24 protection and engage. In other words, go and make the
25 arrests. That precise words were used

1 there.”

2 **CHAIRPERSON:** Then Mr Chaskalson says, “I

3 know what the words are, but I am trying to understand your

4 state of mind at the time. Did you think you are issuing

5 an order to the people to engage in the hill, or to engage

6 out of the hill? Did you think that the small groups

7 were inside the hill or had already been flushed out of

8 the hill?” then Brigadier Calitz says, “No, as

9 Colonel Vermaak talked to me, to me it sounded the whole time,

10 that the people were still together, as I listened to the conversation,

11 he said drive in here, go left here and go

12 right there.” And then – there is a passage, is there not,

13 where he said that Colonel Vermaak gave the order, I

14 did not?

15 **MS PILLAY:** Chairperson, we are looking for the

16 relevant passage?

17 **COMMISSIONER HEMRAJ:** If you look at

18 16:11:18 of the – sorry, are you talking about the

19 transcript of the evidence?

20 **MS PILLAY:** Yes.

21 **COMMISSIONER HEMRAJ:** I beg your pardon,

22 I thought you were looking at the Coin transcript.

23 **CHAIRPERSON:** Mr Chaskalson was cross-

24 examining at the time, is his recollection the same as mine

25 that there was evidence to the effect that I have

1 summarised?

2 **MR CHASKALSON SC:** After – my

3 recollection is that after the tea break I put to Brigadier

4 Calitz that he was unfairly seeking to put responsibility

5 onto Colonel Vermaak and at that point he took issue with

6 the proposition and gave, I think, an example where he said

7 Lieutenant-Colonel Vermaak was exercising command.

8 **CHAIRPERSON:** Yes, that is my recollection

9 too. That is also my recollection. Anyway I suppose that

10 it is something that we can check overnight if necessary,

11 unless someone else can help us. Mr Gotz looks as if he is

12 found something. No, he pleads not guilty, alright.

13 **COLONEL VERMAAK:** Chairperson, if I may assist,

14 on 16:11:28 ETV time, it is the transcript of the

15 video recording –

16 **COMMISSIONER HEMRAJ:** It is actually the

17 one before that, Colonel, at 16:11:18, if you look at that

18 one.

19 **COLONEL VERMAAK:** Yes, yes. If I can read

20 it, "Colonel Vermaak: Yes, Pappa1 if the water cannon can

21 wait, the people they are encircled and you can make

22 arrests now." Then Brigadier Calitz repeats, "Okay, water

23 cannons hold back, guys get out of the Nyalas and the

24 protection, get out, get out there, engage, and get out there

25 and engage, those vehicles with the task force." So i

1 do not know who gave the order.

2 **CHAIRPERSON:** It certainly does look as

3 if – well, there are two things really. The first is the

4 entry at 16:11:18 is you speaking and you appear to be

5 speaking to Brigadier Calitz.

6 **COLONEL VERMAAK:** That is correct.

7 **CHAIRPERSON:** Certainly the first part,

8 “If that water cannon can wait, the people are encircled”

9 appears to be a remark you were making to him. And then

10 “You can make arrests now there” -

11 **COLONEL VERMAAK:** It is correct.

12 **CHAIRPERSON:** To whom was that directed,

13 that –

14 **COLONEL VERMAAK:** It was part of the conversation with

15 Brigadier Calitz.

16 **CHAIRPERSON:** And then Brigadier Calitz

17 responds and seems to be issuing orders based upon what

18 you have told him as far as I can see, prima facie, I do not

19 know. “Okay, water cannons hold back, guys get out of the

20 Nyalas under protection, under protection, get out, get out

21 there, engage.” They sound like orders to me, are they?

22 **COLONEL VERMAAK:** It is correct., Chairperson.

23 **CHAIRPERSON:** “Get out there and engage,

24 those vehicles with the task force.” So he is giving the

25 orders on the basis, presumably, of what you have told him,

1 acting in your capacity as the eye in the sky.

2 **COLONEL VERMAAK:** That is correct.

3 **MS PILLAY:** Chairperson, if we can put up 19144

4 of day 165 at line 17. 19144 –

5 **CHAIRPERSON:** While we are looking at

6 that, before we look at that I just want to get clarity on

7 something. It does appear from the transcript that at some

8 point you were given authority, to use a neutral word, to

9 direct the vehicles to particular positions.

10 **COLONEL VERMAAK:** It is , dis –

11 **CHAIRPERSON:** So inasmuch as you were

12 saying go there and you were directing, go left, go right,

13 you were directing them and in that sense, I suppose

14 ordering them as to where they were to go, but did the

15 authority that you had go any further than merely giving

16 what amounts to traffic directions to particular vehicles?

17 **COLONEL VERMAAK:** It is correct,

18 Chairperson, my responsibility was, as I explained,

19 almost none of the people deployed there, were familiar with the are,

20 they did not know

21 the circumstances and we took over the role of,

22 when they needed a vehicle at a specific point,

23 we would have talked that vehicle in on how

24 to get there, in order

25 to do his work.

1 **CHAIRPERSON:** Look at the passage to
2 which Adv. Pillay has referred us, 19144. We see Mr
3 Chaskalson is asking a question from line –
4 **MS PILLAY:** 17, Chairperson.
5 **CHAIRPERSON:** 17, I think, yes. We cannot
6 see the whole of it on the screen at the moment. What he is
7 doing is he is reading the passage we just looked at and
8 then where do we see the Brigadier's answer to Mr
9 Chaskalson's question?
10 **MS PILLAY:** If we go down to 19145 –
11 **CHAIRPERSON:** So the question Mr
12 Chaskalson asks, having put the passage we have looked at is,
13 "So why would it have been necessary for you to give any
14 order like that if Lieutenant-Colonel Vermaak was in charge
15 of the operation at hill 3?" And Brigadier Calitz's
16 answer is, Mr Chairman, I think that question can be asked
17 for, to Colonel Vermaak because he requests – sorry, Mr
18 Chairman, I think that question can be asked to Colonel
19 Vermaak why he requested it, is it requested it from me and
20 did not give them the instruction himself. If he had given
21 that instruction, it was not wrong. He does not seem to be
22 answering the question directly. Then I ask a question,
23 line 17, I do not know what that says. "Did you," the first
24 question is, I want to ask you two questions, "May I ask
25 you two questions," I said. "The first is did you

1 specifically say to Lieutenant” – it should be Lieutenant-
2 Colonel – “Vermaak at some stage I am asking you or
3 authorising you to take command from the air because you
4 can see what is going on and I cannot? Did you ever say
5 anything of that kind specifically to him?” And his answer
6 was, Mr Chairman, yes, I cannot remember my precise words.
7 It was after we looked back that first time and saw that
8 the TRT were not following up and I, the whole time, only
9 with him could receive communication and then I said to him
10 it looks to me as if it is only you and I who have
11 communication so please take for me control of these
12 vehicles and give me feedback.
13 **[14:36]** I do not know if the word control or what, but I
14 believe Colonel Vermaak can definitely testify if he
15 remembers these words precisely, but I did say to him to
16 take control from the air and then to give me feedback.”
17 And then I asked him, “But what stage was that?” and he
18 said, “It was still while we were, when we communicated,
19 when I could not come into contact with the rear group of
20 the TRT and I asked him to fly back for me and to go and
21 see why they were not coming, and that is when he counted, I
22 think his words were that he counted to about 25, but the
23 occurrence book entry says 18 bodies it was at that stage.”
24 So I then said to him, “So in other words after scene 1
25 when you were in the vicinity of the dry riverbed,” and he

1 said, "It is after scene 1," and then I went on, "when you
2 were in the vicinity of the dry riverbed, is that right?"
3 and he says, "Yes." That seems to be the passage.
4 Yes, there is a passage in the transcript that
5 we are now busy with, it is page 3, and it is an entry at 16:09:43
6 where he says, addresses you by your first name and he
7 says, "Salmon, talk to the vehicles in the small hill.
8 There are several people in the small hill, hiding in the
9 small hill," and you then reply, "Yes, that is why I am
10 trying to take the Nyalas in, Brigadier, but I am not very
11 successful with it." That is the passage that has a bearing
12 on it.
13 But anyway, the point that Adv. Pillay was putting
14 to you and I am taking it a bit further, was there is that
15 passage which Mr Chaskalson, who probably does deserve a
16 red bag if he does not have one already, which Mr Chaskalson
17 has referred us to does say virtually in express terms what
18 had been put to you and I think what Ms Pillay is trying to
19 get from you is your comment on - is that right, Ms Pillay?
20 - is your comment on that passage.

21 **MS PILLAY:** That is correct, Chairperson.

22 **COLONEL VERMAAK:** Chairperson, if we look at the specific
23 point at 16:09:50, you will see that it is
24 much later during the incidents at hill 3. That
25 is where we will listen to the communication by Brigadier

1 Calitz where he saw something and said,
2 "Salmon, talk to the vehicles in the small
3 hill. There are several people in the small hill,
4 hiding in the small hill." I understood this that
5 he saw people in the small hill. He wanted to
6 deployed vehicles to the hill, but he were not aware of the position
7 die of all the vehicles. Then you go and look from the air,
8 which vehicles are the closest to assist with that
9 specific task.

10 **CHAIRPERSON:** When you talk about the
11 "small hill," he talked about the "small hill," I think
12 you have explained that means one of the sections of the
13 scene 2, the -

14 **COLONEL VERMAAK:** It is correct.

15 **CHAIRPERSON:** - the so-called hill 3.

16 **COLONEL VERMAAK:** It is correct.

17 **CHAIRPERSON:** And then from what you say
18 it seems as if he was merely asking you to give what I would
19 call traffic directions to the nearest vehicle. Is that
20 correct?

21 **COLONEL VERMAAK:** It is correct. He said,
22 "talk to the vehicles into the small hill," so it is
23 "scene 2." He asked me to take the vehicles from where they are
24 and to talk them in to that point.

25 **CHAIRPERSON:** The passage Mr Chaskalson

1 referred us to talks about some authority allegedly
2 conferred upon you at the dry river. Now you remember the
3 dry river is a section near hill 2 where the forces were
4 to reorganise themselves, or be reorganised. Now the
5 transcript that we have, does that deal with that period?
6 What time – perhaps Mr Chaskalson can tell us that – what
7 time did the so-called reorganisation at the dry riverbed
8 take place?

9 **MR CHASKALSON SC:** It starts, the
10 reorganisation line forms up at 15:56. Well, our first
11 evidence of it is at 15:56:04 and it stays in place until
12 16:03:51.

13 **CHAIRPERSON:** So the point that Adv.
14 Hemraj is putting to me, is if we look at the beginning of
15 this transcript it starts at 15:57:48. That is after the
16 reorganisation period at the dry riverbed has begun, but
17 the action then seems to move on quite quickly to scene 2,
18 hill 3. Round about 16:02 it looks – well, I suppose we
19 should ask the witness if he knows. Do you have page 1
20 there of this exhibit OOO11 –

21 **COLONEL VERMAAK:** I have it, Mr
22 Chairperson.

23 **CHAIRPERSON:** Entry 16:02:30 you are now
24 talking. Now you are telling them where to go to, past the
25 power lines and go straight and so on. Is this still at a

1 time when Brigadier Calitz was dealing with the

2 reorganisation at the dry riverbed?

3 **COLONEL VERMAAK:** It is at that stage

4 where they came together and where

5 we deployed the Nyalas and the water cannons towards

6 hill 3.

7 **CHAIRPERSON:** And at what point would you

8 say does this transcript begin to deal with things that

9 happened at hill 3? Because at entry 16:03:15 where you

10 say, "Pappa1 chopper, I am bringing the water cannon around

11 the other side," now is that the other side of scene 2 or

12 hill 3 or where is it?

13 **COLONEL VERMAAK:** Hill 3, it is correct.

14 We are on the wind directions again, if you look at the

15 photo, where we are moving towards hill 3,

16 most of the Nyalas were on the

17 right-hand side, which is where the originally formed their line, and I had

18 to bring a water cannon around from that side, to

19 this side and assure that he gets the

20 necessary protection and –

21 **CHAIRPERSON:** You say "to this

22 side," you indicate –

23 **COLONEL VERMAAK:** To the left-hand side.

24 **CHAIRPERSON:** - indicate with your left

25 hand.

1 **COLONEL VERMAAK:** It is correct.

2 **CHAIRPERSON:** Alright, so what it amounts

3 to is this; according to the passage that was put to you

4 that Mr Chaskalson found for us, this alleged delegation of

5 authority to you appears to have taken place either shortly

6 before this transcript begins or up until the time, round

7 about 16:02, perhaps 16:03:15, by which time you were

8 clearly busy with what was happening at hill 3. On the

9 transcript itself at the moment we cannot see any delegation

10 of authority in that period and the passage that he refers

11 to later appears to be the passage clearly dealing with

12 something that happened at hill 3. Would that be a

13 correct understanding?

14 **COLONEL VERMAAK:** It is correct. At no

15 stage I was informed by anyone that

16 I have to take over command, in my capacity as officer

17 and helicopter commander, on the incident,

18 from the air. I only played

19 a supportive role to

20 be of assistance to the operational commander,

21 to keep him informed on the position of his vehicles so that he could

22 take critical decisions.

23 If any grouping would occur,

24 which they were not aware of,

25 and we could see it from the air,

1 we would convey it to the operational
2 commander in the field and the JOC. You will then
3 report to the JOC and the automatically
4 indirectly to your operational commander.

5 -

6 **CHAIRPERSON:** It does seem that that is
7 what he is saying in the passage you recorded on the 10th of
8 January in your diary. I do not think you have dealt with
9 that yet in your evidence, have you? On the right-hand
10 side of OOO16 there is a passage which is I take it a note
11 that you made about a conversation you had on the following
12 day, that is the 10th of January, with the Brigadier. Am I
13 correct?

14 **COLONEL VERMAAK:** It is correct.

15 **CHAIRPERSON:** And I do not think you read
16 that for us yet, have you?

17 **COLONEL VERMAAK:** No, I did not
18 read it.

19 **CHAIRPERSON:** Would you like to read it
20 for us? Because you are handwriting I am afraid -

21 **COLONEL VERMAAK:** It is my -

22 **CHAIRPERSON:** Well, a bit better than a
23 doctor's, but not much. So can you perhaps read it for us?

24 **COLONEL VERMAAK:** "Received a phone call from
25 Brigadier Calitz where he explained

1 regarding his evidence that I was in charge of hill 3. According to him
2 he did not mean on the ground, but in the air,
3 to talk the vehicles into position and to convey
4 orders. He said that we agreed since the start
5 that we will tell the truth and that we will stick to that," and I then
6 said, "I will stick to that."

7 **MS PILLAY:** Just to round off this point,
8 Colonel, we have been through FFF25, which is the occurrence
9 book, and as you pointed out earlier from entry 1018
10 onwards, which deals with firstly the shootings at scene 1
11 and then the incidents at scene 2, there is no mention of
12 command and control being shifted from the operational
13 commander to you in Chopper 1.

14 **COLONEL VERMAAK:** Under no circumstances
15 did that happen, Chairperson.

16 **COMMISSIONER HEMRAJ:** Colonel, if we look
17 at this transcript of the Protea Coin chopper, was there
18 communication between, radio communication between you and
19 Brigadier Calitz prior to where this commences, where this
20 starts, this transcript?

21 **COLONEL VERMAAK:** Chairperson, the lasts
22 conversations that occurred before these were recorded, if I
23 may go back to "scene" 1 where the shooting occurred, and I
24 repeated the orders of Brigadier Calitz for them to
25 "engage," where the group attacked the police and

1 police reacted.

2 **COMMISSIONER HEMRAJ:** And thereafter the

3 next would be as you are proceeding towards – the next

4 communication is as you proceed towards the –

5 **COLONEL VERMAAK:** On the transcriptions.

6 **COMMISSIONER HEMRAJ:** I see. Thank you.

7 **MS PILLAY:** Colonel, can you just then

8 tell us what happens after you leave scene 2?

9 **COLONEL VERMAAK:** After we accompanied the Generals

10 at hill 3, of “scene 2”, we had to

11 withdraw the helicopters. It was sunset and

12 my pilot did not have a

13 “night rating” on his license, so legally I had to get

14 him back to the base before it

15 were dark. He is only allowed to fly half an hour

16 before sunrise and half an hour after sunset,

17 but legally he is not allowed to fly

18 in between that.

19 **MS PILLAY:** Now before we move away

20 completely from scene 2, Colonel, can you just explain to

21 us, I know that you have had some limited involvement in the

22 allegations that Warrant Officer Myburgh made in relation

23 to an occurrence at scene 2. Can you just explain to us

24 what the extent of your involvement was?

25 **COLONEL VERMAAK:** Chairperson, we were –

1 I do not have the date, but we had a meeting one evening with
2 the National Commissioner in
3 Rustenburg, while we were having a break,
4 we were at the guest house and the warrant officer
5 asked if he could talk to me – I do not know why,
6 maybe because I am in touch with the people in the field,
7 during my time in the riot unit I worked all over the province,
8 which was the same in the
9 air wing – he told me of an incident at the hill
10 where he walked passed an injured person,
11 and shortly after that
12 he heard a shot. He turned around and saw
13 a person standing there with a weapon. He asked him,
14 “What are you doing? Why are you doing this?” and the person
15 replied, “He does not deserve to live.”
16 I realised that it was very serious.
17 I immediately called Brigadier Calitz and
18 requested him to take over the matter and to discuss it with
19 General Naidoo and all the other senior officers
20 present.

21 **MS PILLAY:** Now can I ask, Colonel,
22 appreciating what an important allegation it was, why
23 does not it feature in any of your six statements that you
24 filed before the Commission?

25 **COLONEL VERMAAK:** I concentrated on

1 incidents, 13, 14, 15 to 16.

2 The events before and after that were not important.

3 I know I made a note of it in my diary,

4 and I also stipulated the fact that

5 I handed it over to my seniors and believed that to be

6 in order and that

7 they will handle the matter further.

8 **CHAIRPERSON:** You say you handed it to

9 your seniors. To whom specifically did you hand it?

10 **COLONEL VERMAAK:** I called Brigadier

11 Calitz and mentioned it to him. The warrant officer

12 was with me. I asked him to repeat everything

13 to Brigadier

14 Calitz and then we said Brigadier Calitz will handle the matter

15 further with General Naidoo and the other

16 senior officers.

17 **MS PILLAY:** Colonel, if we can now turn

18 to paragraph 12 of LLL8 where you deal with the meeting in

19 Potchefstroom, or Roots as it is now called.

20 **COLONEL VERMAAK:** Let me just get it.

21 **CHAIRPERSON:** Ms Pillay, I was proposing

22 to take tea at 3 o'clock, but I am in your hands. You must

23 tell me whether you want to go on for five minutes with

24 this topic and resume after tea, or whether you want me to

25 take the adjournment now. It is for you to tell me.

1 **MS PILLAY:** Chairperson, this is a convenient
2 moment because it is a new topic that I will be starting.

3 **CHAIRPERSON:** We will take the tea
4 adjournment now.

5 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

6 **[15:20] CHAIRPERSON:** The Commission resumes.

7 Luitenant-Colonel, you are still binded
8 by your affirmation.

9 **COLONEL VERMAAK:** Thank you, Chairperson.

10 **CHAIRPERSON:** You were moving on to a new
11 topic, I believe.

12 **MS PILLAY:** Thank you, Chairperson. Chairperson,
13 just a bit of housekeeping before we carry on with the
14 examination-in-chief. We have been requested by certain of
15 the parties to put together a photograph with annotations
16 by the Colonel indicating the movement of the strikers just
17 before scene 1 and we have put that together and we need to
18 hand it up as an exhibit now, Chairperson.

19 **CHAIRPERSON:** I see. Right, well, then
20 you do want to hand it in? The next exhibit will be?

21 **MS PILLAY:** It is 00017.

22 **CHAIRPERSON:** 00017.

23 **MS PILLAY:** Which is –

24 **CHAIRPERSON:** How do I describe it?

25 **MS PILLAY:** It is photograph 1515, JJJ11 –

1 **CHAIRPERSON:** Sorry, JJJ?

2 **MS PILLAY:** 11.1515.

3 **CHAIRPERSON:** 11.1515 yes?

4 **MS PILLAY:** With annotations by Colonel

5 Vermaak.

6 **CHAIRPERSON:** Very well, I have entered

7 it into my book as photograph JJJ11.1518, is that right?

8 **MS PILLAY:** 1515.

9 **CHAIRPERSON:** 1515, cannot read my own

10 handwriting. 1515 with Colonel Vermaak's annotations.

11 **MS PILLAY:** Thank you, Chairperson.

12 **COLONEL VERMAAK:** (Still under affirmation)

13 **EXAMINATION BY MS PILLAY (CONTD.):**

14 Colonel, if we can just confirm, if you can look at OOO17

15 and can you –

16 **CHAIRPERSON:** Are we going to get copies

17 too or is that something that we are not going to be

18 favoured with?

19 **MS PILLAY:** Chairperson, we must apologise but

20 because of the short notice we do not have colour copies but

21 we will make sure you get colour copies in due course.

22 They are black and white for now.

23 **CHAIRPERSON:** Yes, but in glorious

24 technicolour but without supersonic sound. Thank you.

25 **MS PILLAY:** Chairperson, this will be OOO17.

1 **CHAIRPERSON:** I think either you or Ms
2 Pillay or the Lieutenant-Colonel had better take us through
3 this document.

4 **MS PILLAY:** Yes, Chairperson. Colonel, can I
5 ask you to have a look at OOO17? Yes and can you just
6 explain to us what it is that is shown on OOO17?

7 **COLONEL VERMAAK:** Mr Chairperson,
8 you will see it there in front, there
9 is a cross road and a footpath. That big part
10 that is dark of colour and where the word "front" stands,
11 that is where the group in front always gathers,
12 during the deploying of the wire vehicles,
13 that group moved across the line, there where the points of the arrows
14 is. That is where I mentioned that they were closing in on the
15 Nyalas and the wire vehicles. The arrows showing to the
16 "second" is the direction the group in front followed,
17 and it was at that point where the group from
18 hill 1 and 2 met up with them,
19 the people that did not want to be a part of them, you can
20 see on the photo there is a lot of people walking away from the
21 scene. The next direction of the arrows is towards the
22 TSW is during the first incident where wire vehicle 4 rolled out,
23 and it is where the tear gas and stun grenades and
24 water cannons were observed –

25 **CHAIRPERSON:** So TSW stands for teargas,

1 stun grenades and water cannon?

2 **COLONEL VERMAAK:** And water. After they stopped,

3 they moved back as indicated by the arrows,

4 regrouped at the back,

5 made an arrow, and moved back, passed the kraal on the left-hand side,

6 as one look the photo, where you see the point of the

7 last arrow, that is where the confrontation

8 occurred.

9 **CHAIRPERSON:** While we are talking about

10 that, it occurs to me, you remember you said you could not

11 see exactly what was happening at that point because of the

12 smoke and the dust and so on.

13 **COLONEL VERMAAK:** It is correct.

14 **CHAIRPERSON:** But I take it if one

15 accepts that the people in the TRT line stayed more or less

16 where they were in the line, and those strikers who

17 advanced further forward, advanced more or less where their

18 bodies were found and which one can see on your photograph

19 which you took a few minutes later –

20 **COLONEL VERMAAK:** It is correct.

21 **CHAIRPERSON:** - it looks as if there

22 was not actually a contact between the two groups because

23 there is a gap, isn't there, between the line where the TRT

24 was and then the place where the –

25 **COLONEL VERMAAK:** It is correct. –

1 **CHAIRPERSON:** - the front, the front

2 people –

3 **COLONEL VERMAAK:** Yes.

4 **CHAIRPERSON:** - of the group who were

5 shot.

6 **COLONEL VERMAAK:** It is correct.

7 **CHAIRPERSON:** But you could not actually

8 see that because of the dust and the smoke, is that right?

9 **COLONEL VERMAAK:** It is correct.

10 **CHAIRPERSON:** Right. Sorry, is there

11 anything else you want to ask the witness about this? I

12 wanted to ask him about something else before you move on

13 to –

14 **MS PILLAY:** Nothing in relation to –

15 **CHAIRPERSON:** - paragraph 12. Adv. Hemraj

16 wants to ask something. Do you want to ask –

17 **MS PILLAY:** Nothing in relation to this

18 exhibit.

19 **CHAIRPERSON:** Right, Adv. Hemraj?

20 **COMMISSIONER HEMRAJ:** Thank you.

21 Colonel, where those two arrows emanate from the word

22 “front” and where they end, did I understand your evidence

23 that at that stage your helicopter was on a wide circle to

24 the other side and you lost sight of the miners for a short

25 while?

1 **COLONEL VERMAAK:** After I took this photo,
2 we turned anti-clockwise. We basically -
3 - If I can show you on the photo there on the
4 die board.

5 **COMMISSIONER HEMRAJ:** Let me rephrase the
6 question. When the miners first moved from the position
7 where they were seated in that group -

8 **COLONEL VERMAAK:** It is correct.

9 **COMMISSIONER HEMRAJ:** And as they moved
10 straight towards the direction of the wire -

11 **COLONEL VERMAAK:** It is correct.

12 **COMMISSIONER HEMRAJ:** At that stage did
13 you lose sight of them for a short while?

14 **COLONEL VERMAAK:** It is correct., while the
15 helicopter turned.

16 **COMMISSIONER HEMRAJ:** Yes. Can I just
17 understand for how long it would have been that you would
18 have lost sight of them, approximately?

19 **COLONEL VERMAAK:** For about a minute.

20 **COMMISSIONER HEMRAJ:** One minute?

21 **COLONEL VERMAAK:** Yes.

22 **COMMISSIONER HEMRAJ:** Thank you very
23 much.

24 **CHAIRPERSON:** I want to ask a question
25 about something else. At scene 2, you have told us what you

1 saw and you pointed out photographs and so on and you
2 remember I asked a question about Major-General Naidoo.
3 You said you did not see him and Mr Chaskalson showed us on
4 one of your photographs where he says, judging from the
5 evidence, Major-General Naidoo's vehicles were. According
6 to Major-General Naidoo's evidence and this is shown in a
7 photograph that we were given, there was a time when a line
8 of NIU people were advancing on hill 3 from the east.

9 Now did you see that at all?

10 **COLONEL VERMAAK:** Chairperson, yes. There were
11 a line at one stage, and on one of the photos,
12 I cannot recall which one,
13 but if one can use this photo as an example, the line
14 was approximately formed in this area,
15 if I am recalling correctly.

16 **CHAIRPERSON:** Yes, perhaps the operator
17 can give us, I think it is MMM2. I think that is the exhibit
18 I have in mind. I left mine in chambers I am afraid, but if
19 we could see that, perhaps I can illustrate the point to
20 the Lieutenant-Colonel. Now can you see exhibit MMM2? Now
21 it is got a grid on it, that is just so we can identify
22 positions. Now you will see at the top, the top row of
23 squares on the border between H and I, can you see there is
24 what appears to be a line of people there?

25 **COLONEL VERMAAK:** It is correct.

1 **CHAIRPERSON:** Now according to the
2 evidence of Major-General Naidoo that was a line of NIU
3 people who were advancing on the hill – to some extent to
4 the north of the hill – and he of course was approaching
5 from the bottom of the picture. And there is perhaps, to
6 put it gently, there is a lack of clarity as to precisely
7 when he arrived at the relevant spot compared with the NIU
8 people but you obviously cannot help us on that but did you
9 see that line of NIU people at any stage?

10 **COLONEL VERMAAK:** It is correct, at
11 one stage we did notice that line. I just have to
12 make sure, but there is a photo that was taken
13 from the other side where one can see the line where they
14 formed, but I will have to search for that specific
15 photo –

16 **CHAIRPERSON:** Perhaps if you cannot give
17 it to us today, perhaps you can give it to us tomorrow or
18 something but I am particularly interested to know at what
19 time you saw that group, that line of people approaching
20 the hill and what, if anything, you saw them doing. Can
21 you help us on that?

22 **COLONEL VERMAAK:** It is correct. It was the
23 first time we saw them, Chairperson, was basically just
24 after they – one can say when they were between the
25 wire vehicles that was deployed, between the Nyala and the

1 wire vehicle itself there is a gap, some of them
2 came through there and formed a line, but I will
3 search for such a photo and then check the time for you.

4 **CHAIRPERSON:** I would appreciate that very
5 much, thank you. Sorry, Ms Pillay, I prevented you from
6 dealing with paragraph 12 and following of the same –

7 **MS PILLAY:** Thank you, Chairperson. Chairperson,
8 could I ask that KKK16.5113 be shown? Colonel, can I ask
9 you to identify where the strikers are coming through,
10 sorry, where the NIU line is coming through?

11 **COLONEL VERMAAK:** On the photo you will see,
12 Chairperson, if you follow the line of Nyalas,
13 in a straight line,
14 you will see the group of people that came through there and
15 then grouped.

16 **CHAIRPERSON:** Sorry, where did they form
17 up?

18 **COLONEL VERMAAK:** In this area,
19 Chairperson.

20 **CHAIRPERSON:** What you have pointed to us
21 is round about, just above the middle of the photograph,
22 slightly in from the left-hand side, in fact very close to
23 a pole which has a vehicle parked in front of, next to it,
24 is a group of people who are to the left as one looks at
25 the photograph, to the left of that vehicle by the pole.

1 That is where you – that indicates it?

2 **COLONEL VERMAAK:** It is correct.

3 **CHAIRPERSON:** And then you have indicated

4 as one moves to the right there is a path that runs up from

5 the foot of the page to a point, to the T-junction really.

6 **COLONEL VERMAAK:** It is correct.

7 **CHAIRPERSON:** Just on the, beyond the

8 hill and you indicate that that line moved in a line,

9 moved over that path -

10 **COLONEL VERMAAK:** It is correct.

11 **CHAIRPERSON:** - runs up to the bottom -

12 **COLONEL VERMAAK:** It is correct., Chairperson.

13 **CHAIRPERSON:** Adv. Hemraj says could you

14 please – she wants to zoom in to see that group by the

15 vehicle and the pole. Probably the mast, I think, power

16 mast.

17 **COMMISSIONER HEMRAJ:** Are those strikers

18 or are they police officers, Colonel?

19 **COLONEL VERMAAK:** That is police officers,

20 Commissioner.

21 **COMMISSIONER HEMRAJ:** And you say those

22 are which police officers, which unit? Are you able to say?

23 **COLONEL VERMAAK:** No, I did not know at

24 that stage but we see them coming through there and they are

25 lined up on the other side.

1 **CHAIRPERSON:** No, you see, I was

2 interested in – I was interested in the NIU. You see what

3 Major-General Naidoo told us, and I showed you MMM2 –

4 **COLONEL VERMAAK:** Yes.

5 **CHAIRPERSON:** He said there was a line of

6 NIU people advancing from the east on hill 3, in fact

7 slightly above, slightly to the north, most of them to the

8 north of hill 3 and I was interested to know whether

9 you would see them, at what stage and where. Now from your

10 answer it seems as if you are saying these are NIU people

11 but can one be sure that these are NIU people?

12 **COLONEL VERMAAK:** I am not sure if it is

13 NIU people, Chairperson.

14 **CHAIRPERSON:** Alright, let us zoom out and

15 see if we can see them elsewhere on the photograph.

16 anyway, one does not seem to see them on that elsewhere in

17 the photograph either.

18 **COLONEL VERMAAK:** It is just there.

19 **CHAIRPERSON:** Sorry?

20 **COLONEL VERMAAK:** It is just there where

21 we saw them coming through and forming a line,

22 but if it was the NIU or – that I cannot tell.

23 **CHAIRPERSON:** I understand. Alright it

24 sounds as if we cannot take it further for the moment but

25 you did say you would look, you think you have a photograph

1 somewhere that may help.

2 **COLONEL VERMAAK:** I will go and have a look.

3 **CHAIRPERSON:** You may have to give me

4 that tomorrow.

5 **COLONEL VERMAAK:** I will do that.

6 **CHAIRPERSON:** Alright, but use MMM2 as a

7 guide.

8 **COLONEL VERMAAK:** Okay.

9 **CHAIRPERSON:** Because that is the group

10 that Major-General Naidoo was talking about. Yes, Ms

11 Pillay, do you want to carry on with your cross-

12 examination?

13 **MS PILLAY:** Examination-in-chief, Chairperson.

14 **CHAIRPERSON:** Oh, did I say cross-

15 examination?

16 **MS PILLAY:** You did, Chairperson.

17 **CHAIRPERSON:** I am terribly sorry, I

18 apologise for that. I meant examination-in-chief. There

19 was nothing of a cross-examination nature about it at all.

20 **MS PILLAY:** Colonel, we were dealing with

21 Roots and paragraph 12 of LLL8. Can you tell us when you

22 first received the call-up instruction to go to Roots?

23 **COLONEL VERMAAK:** Chairperson, it was, if I recall correctly,

24 it was two days before we started with the meeting there.

25 At that stage I was still

1 deployed in Rustenburg.

2 **MS PILLAY:** And who issued the call-up

3 instruction?

4 **COLONEL VERMAAK:** We got it from the

5 provincial head office, I cannot recall

6 who issued the order.

7 **MS PILLAY:** Now what was your

8 understanding at the time and I mean before the conference

9 at Roots actually took place? What was your understanding

10 of the purpose of the meeting?

11 **COLONEL VERMAAK:** We were told it was

12 to pick all the loose ends in order to make a proper

13 presentation to the National Commissioner and the

14 President and to get all the information

15 which was not processed yet,

16 and to work it into the

17 presentation.

18 **MS PILLAY:** Now in the second line of

19 paragraph 12 you describe it as a rethinking session.

20 **COLONEL VERMAAK:** It is correct.

21 **MS PILLAY:** Can you tell us what does

22 that mean?

23 **COLONEL VERMAAK:** It was basically,

24 get all the information that was not yet

25 available. The main purpose was to

1 obtained information that was not handed in yet,
2 and to compile a presentation from
3 that.

4 **MS PILLAY:** Now we know that a literal
5 translation of "rethinking" is a debriefing session.

6 **COLONEL VERMAAK:** Yes.

7 **MS PILLAY:** Did you understand the
8 purpose of the meeting to be a debriefing session?

9 **COLONEL VERMAAK:** No, we did not
10 sit and said, this is the mistakes we made
11 and that is how we can handle the mistakes we
12 made and identified.

13 A debriefing is basically where you sit
14 with your commanders,
15 and re-evaluate the whole process,
16 a debriefing certificate is handed in to the commander,
17 and then all the best practices are took out of
18 that.

19 **[15:40] MS PILLAY:** Now can you describe to us,
20 Colonel, what transpired at Roots?

21 **COLONEL VERMAAK:** Colonel Scott
22 took all the information and compiled a report and then
23 Colonel – I cannot recall his name now –

24 **MS PILLAY:** Visser?

25 **COLONEL VERMAAK:** Visser, Colonel Visser

1 was also asked to assist with the compiling of
2 the presentation. There were various groups,
3 for example,
4 on the 13th there would be a group sitting and have discussions on
5 what happened,
6 who still had information to share,
7 and so forth, and it would then be made available to
8 Colonel Visser-and his team, to compile the presentation.

9 On the 5th of September there were a
10 incident during a tea break.

11 **MS PILLAY:** Just before we deal with the
12 5th of September, which group were you part of at Roots?

13 **COLONEL VERMAAK:** Initially you will be part of the group,
14 and then they will say, okay,
15 this group will split and this group will go and discuss this. I
16 in the group of the 5th of September discussing what
17 happened on the 13th where Police Officers and mine workers
18 died.

19 **MS PILLAY:** And what happened on the 5th
20 of September?

21 **COLONEL VERMAAK:** During a tea break,
22 before we had the meeting, of which General
23 Mpembe was the senior amongst us, Colonel Merafe came to me
24 while we were drinking tea, and said he
25 was unhappy on the decisions that General

1 Mpembe took on that day while at the scene. He
2 was unhappy that General Mpembe, which took over
3 from the POP commander was not in accordance with standing
4 order 262, and that he allegedly said the police officers
5 had to leave their weapons in the vehicles.

6 I then realised that what they told
7 me at the scene, could
8 be true, it could
9 be a definite possibility if even Colonel Merafe
10 informed me about it, but it told him
11 let us wait until we are in the group and then
12 we will discuss it.

13 **MS PILLAY:** Now you mention in paragraph
14 12, nine lines from the top, that the group could not get
15 going. "The group could not get started."

16 **COLONEL VERMAAK:** It is correct.

17 **MS PILLAY:** What did you mean by that?

18 **COLONEL VERMAAK:** They could not start at
19 a specific point regarding the discussion of the 13th,
20 where it started and how it happened.

21 I then said we have to start at the beginning,
22 where we saw the people out of the
23 helicopter and then reported it to the
24 JOC, General Mpembe-and them were sent, to
25 go and give attention to the complaint.

1 I suggested that we have to start at the beginning
2 and in such a way try to get
3 all the facts on what occurred.
4 I then suggested that the people were not happy
5 with the way the General handled the matter, at which stage
6 he was very cross at me.

7 **MS PILLAY:** When you say "he," who are
8 you referring to?

9 **COLONEL VERMAAK:** General Mpembe.
10 General Mpembe was very cross at me for making
11 the remark. I explained to him
12 – and at that stage Colonel Merafe
13 sat next to him, and I told him not to be
14 cross with me, but with the people that initially
15 made the allegations. He can just look to his side,
16 Colonel Merafe, he is the one making
17 the allegation that he made the wrong
18 decision at the scene. A huge
19 argument started amongst the members, and
20 I, Captain Loest,
21 Captain Thupe, and two POP members were the video
22 operators -

23 **MS PILLAY:** Before we get to that, what
24 was Colonel Merafe's response?

25 **COLONEL VERMAAK:** He just

1 initially dismissed the fact that he made these allegations,
2 I said it has no need for him to dismiss it,
3 all of us is going to stand in front of the
4 Commission and then he will have to speak the truth,
5 and then the conversation coincide from there. It
6 was also discussed on why I removed the General from
7 the scene and he was furious with me. He
8 said he was going to take legal action against me
9 because of the fact that I did not tell him about the
10 people making the threats. I tried to explain that
11 I am guilty of not taking the names of those people,
12 in those specific circumstance,
13 but at that stage his safety was my primary
14 concern and not
15 to walk around and take the names of people.
16 A further argument broke out on the
17 use of the tear gas and stun grenades and
18 Captain Thupe of TRT Rustenburg got up and told the
19 General that he was next to him when he
20 gave the order that the tear gas and
21 stun grenades had to be used. It was quite
22 a hectic confrontation with harsh words. General Mpembe
23 denied it. Later, Captain Thupe told him that he did
24 not make a mistake, he knew for a fact that the
25 General was next to him when he gave the order.

1 He said he gave the order,
2- We later came to know that W/O Kuhn was
3 the one throwing it –Captain Thupe said
4 W/O Kuhn asked him if he understood correctly, and
5 they confirmed the order to him.
6 Yes, after that everyone was very agitated.
7 Then it came forward that some members made the allegations
8 that they were ordered to go and put their weapons in
9 the Nyalas. Then there were an argument on that,
10 and I referred General Mpembe to the
11 video material that we saw, which was taken by the
12 Police Officers, clearly indicated the
13 Police Officers standing on the railway without any
14 “riot gear”. Some of them did not have shotguns.
15 I cannot recall seeing one of them on that video with
16 tears gas or teargas mask.
17 I did not see any helmets or shields,
18 at all.
19 So, I then told him
20 if you look at the video,
21 one can only came to the conclusion that their
22 assumptions were correct. He was furious,
23 and the video operators confronted him on his reason for not
24 following standing order 262,
25 he is a General, why does he

1 take over the command from a qualified riot unit
2 commander. He said is the
3 General, he is the person in charge of operations in the province,
4 and does not need permission from anyone to take
5 over command at a scene.

6 **MS PILLAY:** Can I just ask on the
7 question of whether or not there was an instruction to use
8 the teargas and the stun grenades, what was the eventual
9 outcome of the discussion on that issue?

10 **COLONEL VERMAAK:** He denied it.
11 Initially he totally denied it. Captain
12 Thupe then said, "But you did say it." He
13 at one stage then said, if he said that, he
14 cannot recall it and it was then confirmed again and
15 Thupe stuck to the fact that General
16 gave this order. It was on the grounds of that order that
17 tear gas was fired.

18 The group then broke up because
19 the General started to threaten us, telling us that he
20 will lock us up and that we are spreading lies regarding him,
21 and so forth, and I then said I am not willing
22 anticipate in anymore discussion.
23 I am withdrawing myself entirely. I will give my evidence
24 on the day that I am called to come and testify in front of the
25 Commission.

1 **MS PILLAY:** Okay Colonel, now can I refer
2 you to HHH28, which is the Marikana narrative. We know
3 that is one of the two documents that emerged from Roots,
4 and specifically page 35 and paragraph 3.

5 **CHAIRPERSON:** I think the passage you
6 want is the top paragraph of this page. Sorry, you are
7 quite right. Sorry. I beg your pardon.

8 **MS PILLAY:** If you can just read the last
9 sentence into the record, the last sentence of paragraph 3.

10 **COLONEL VERMAAK:** "Defending himself and
11 their colleagues" –

12 **CHAIRPERSON:** No, no, no, that is not it.
13 What Ms Pillay wants you to read is the paragraph beginning
14 on the screen, "To prevent people from entering the
15 settlement police used teargas and stun grenades to
16 disperse, discouraging them from their intended path.
17 Major General Mpembe issued a command for stun and teargas,
18 after which Warrant Officer Kuhn fired a shotgun CS rifle
19 grenade." That is the passage, Ms Pillay, is it correct?

20 **MS PILLAY:** That is correct, Chairperson. Does
21 that accord with your understanding of what eventually was
22 the outcome of that discussion at Roots?

23 **COLONEL VERMAAK:** No, the – after
24 we adjourned, I went to General Annandale and
25 Brigadier, Brigadier of head office, which facilitated it,

1 and informed them that the discussions ended in
2 an argument and that W/O Kuhn
3 confirmed that he got the order and, Captain Thupe
4 also confirmed that he heard the order coming from the General.
5 They just worked on the presentation and the
6 presentation was adjusted to such that General Mpembe did
7 give the order.

8 **MS PILLAY:** Which is what we see in the
9 paragraph that you just read.

10 **COLONEL VERMAAK:** It is correct.

11 **MS PILLAY:** Were you party to any
12 discussions at Roots in relation to the 16th, the incident
13 of –

14 **CHAIRPERSON:** Are you moving away from
15 this now?

16 **MS PILLAY:** Yes, I am, Chairperson.

17 **CHAIRPERSON:** Shouldn't you then put
18 slide 47 of exhibit L to him? Because that is the follow-up
19 to it. Can we have that on the screen, please? Slide 47
20 of exhibit L, second bullet. That is the document that
21 ultimately came before the Commission and you will see
22 there is a significant change. The second sentence, the
23 paragraph that I read to the effect that Major General
24 Mpembe gave the instruction was not there. So at some
25 stage after the session to which you referred a decision

1 was taken to delete that sentence.

2 **COLONEL VERMAAK:** It is correct., Chairperson.

3 At one stage, as we were working through the
4 presentation, it said that

5 General Mpembe gave the order and at a later
6 stage we saw that it was taken out.

7 I confronted Colonel Scott,

8 which then lead to further problems due to the fact

9 that I confronted him on hearsay

10 that it was in the

11 - "presentation"

12 and then taken out of the "presentation"

13 again. So -

14 **MS PILLAY:** And what was Colonel Scott's
15 response?

16 **COLONEL VERMAAK:** He

17 was not very happy that I confronted him on some of the
18 aspects.

19 **CHAIRPERSON:** He was not happy, but did he
20 say anything? Or did you just deduce from his body
21 language that he was not happy?

22 **COLONEL VERMAAK:** No, he said that,
23 Chairperson.

24 **CHAIRPERSON:** What did he say?

25 **COLONEL VERMAAK:** His words were,

1 "does not tell me on how to comply the presentation".
2 He said he was doing it in consultation with senior officers
3 and I left it at that, because I felt
4 that I was scratching the surface on too many
5 issues.

6 **MS PILLAY:** Now Colonel, we know that
7 your photographs feature quite prominently in exhibit L.
8 Was there any interaction between you and Colonel Scott in
9 relation to your photographs during Roots?

10 **COLONEL VERMAAK:** It is correct,
11 Chairperson. At one stage – I cannot recall,
12 which photo or which day -
13 but I did see some of the times differed.

14 **[15:59]** Where the photos was used in the "presentation",
15 a time was added in, and
16 I then compared those time with the time on the "properties"
17 and I saw them differing drastically, and
18 when I went to confront them, or him, he replied that it was
19 due to the fact that our cellphones and watches was not
20 synchronised. We then were in an argument
21 because I said he cannot change the dates and times on the
22 photos that I took. At the end of the day it is going to
23 be presented and when it comes to light, it will be
24 said that someone changed it.
25 We had a huge difference because of that.

1 General Annandale instructed him the following
2 day to synchronise everything. Myself and
3 Captain Botha had to bring our cellphones, cameras and video cameras,
4 etc., to Scott in order for him
5 to work out a "timeline", but I distant myself
6 from that.

7 Generals Annandale

8 and Naidoo instructed me to accompany Captain

9 Adriano to the SABC, where we had to go look at the

10 video material they had, in order to see if there is anything

11 that the police were not aware of, especially due to the fact

12 that I made the remark that the Police Officers were

13 on the railway track, not properly armed,

14 and I said that if the

15 Police Officers were standing there unarmed,

16 it was the reason why they turned around and

17 ran away when the protestors came towards them.

18 Me and Captain Adriano went to look at the

19 video material. At first the two

20 video operators of POP Rustenburg and Phokeng, disagreed

21 with me, but when we came back and sat down with them and

22 worked through the videos that they took,

23 we all realised that the

24 people that was deployed, was not armed

25 properly.

1 **MS PILLAY:** Now you mentioned that you
2 showed Colonel Scott the properties features on your
3 photographs in order to show him the times that the
4 photographs were taken. Was he familiar with how to look
5 at the properties of the photos?

6 **COLONEL VERMAAK:** Yes, it is correct. He
7 showed me the first time when he went into the
8 "properties" to try and synchronise the "timelines".
9 That is why I went back to check the time on
10 my photos. In my file,
11 on top of the photos,
12 I have the time of the photos as it appeared in the "properties",
13 I have written it down and kept it like that in my file.

14 **MS PILLAY:** Now apart from –

15 **CHAIRPERSON:** Someone has a cell
16 phone or somehow attached, it is either their earphones that
17 are plugged into a radio or someone has an interesting
18 call sign. Who is it? Mr Mojapelo, if you do that again
19 I will have you thrown out. I think that is probably a signal
20 that we should stop for the day –

21 **MS PILLAY:** Chairperson, I am just about to –

22 **CHAIRPERSON:** - and finish off this last
23 piece of evidence. I know you have a small little piece
24 of evidence you want to give us as a sort of final morsel
25 before we go home, but in the light of this –

1 **MS PILLAY:** Just to round the –

2 **CHAIRPERSON:** Sorry, in the light of this

3 unfortunate interruption would not it be better for us to

4 carry on tomorrow? I am in your hands, Ms Pillay.

5 **MS PILLAY:** Chairperson, it is literally one

6 question to round up Roots and then we can go on to a new

7 topic. It is not an Mpofu “one question.” It really is

8 just one question, Chairperson.

9 **CHAIRPERSON:** Mr Mpofu, you seem to have

10 picked up a bad reputation in this matter. I do not know

11 whether you deserve it, but anyway, let us not get involved

12 in that one now.

13 **MR MPOFU:** I do not, Chairperson.

14 **CHAIRPERSON:** Ms Pillay, you could ask

15 one question.

16 **MS PILLAY:** Colonel, apart from the

17 photograph in relation to the 16th, were you involved in any

18 other discussions around the 16th at Roots?

19 **COLONEL VERMAAK:** They did ask my opinion

20 on certain photos from time to time, but we

21 did not sit down and discuss it as a group. I distanced

22 myself from that. When I was asked about a photo

23 I would tell them what I saw and

24 let it be.

25 **MS PILLAY:** Thank you, Chairperson, that is the

1 question.

2 **CHAIRPERSON:** Very well. Well, there is
3 something left of paragraph 13 of the statement, but that I
4 think we will have a look at – unless you do not want to
5 lead that, we will have a look at –

6 **MS PILLAY:** That is a separate, a discrete
7 topic, Chairperson.

8 **CHAIRPERSON:** Yes, I know it is a discrete
9 topic. So two discrete topics we can deal with on the
10 morrow.

11 **COMMISSIONER HEMRAJ:** Ms Pillay, I know
12 you said that the witness did not look at that part of the
13 video transcript that relates to Captain Rylands. There
14 are instances where he is reported to have said certain
15 things. Are you going to be leading that?

16 **MS PILLAY:** Commissioner Hemraj, we have
17 discussed that with the witness and he is agreed to look at
18 the Rylands video and to try and confirm the portions that
19 apply to him.

20 **COMMISSIONER HEMRAJ:** Thank you.

21 **CHAIRPERSON:** Now tomorrow you are going,
22 when Ms Pillay finally concludes the examination-in-chief
23 you are going to be cross-examined, firstly, by Mr Bizos for
24 the LRC. Have you received the reference to the documents
25 that you have to study?

1 **COLONEL VERMAAK:** I have received it,

2 Chairperson.

3 **CHAIRPERSON:** Alright, so will you make

4 sure that you have done that by tomorrow?

5 **COLONEL VERMAAK:** I will do it tonight.

6 **CHAIRPERSON:** Alright, and we have also –

7 there is a request on behalf of the Monene family. Have you

8 received – they also refer to some documents. Have you

9 received those as well?

10 **COLONEL VERMAAK:** They said they would

11 provide it to me, Chairperson.

12 **CHAIRPERSON:** Alright, so you will have

13 study that by tomorrow as well.

14 **COLONEL VERMAAK:** Not received yet, but

15 if they can give it to me I will do it.

16 **CHAIRPERSON:** It is really largely the

17 Hendricks stuff as well, but anyway, I will ask Mr

18 Pretorius if he can see to it that you get the relevant –

19 you have it, I see. It is been done.

20 **COLONEL VERMAAK:** I have it, thank you,

21 Chairperson.

22 **CHAIRPERSON:** Alright, problem has fallen

23 away. Very well, you will study that overnight – sorry to

24 spoil your evening, but you will have to do it; you may find

25 it interesting reading, and we will carry on tomorrow

1 morning just after 9 o'clock. The Commission will now

2 adjourn.

3 **COLONEL VERMAAK:** Thank you, Chairperson.

4 **[COMMISSION ADJOURNED]**

