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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 208

27 MARCH 2014

PAGES 25629 TO 25780



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<p style="text-align: right;">Page 25629</p> <p>1 [PROCEEDINGS ON 27 MARCH 2014] 2 [09:12] CHAIRPERSON: The Commission resumes. Ek 3 moet u daaraan herinner dat u nog steeds gebonde is deur 4 die bevestiging wat u gemaak het. 5 SALMON JOHANNES VERMAAK: Dis korrek, 6 Voorsitter. 7 CHAIRPERSON: Mr Bizos. 8 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.): 9 Thank you. Colonel Vermaak, I want to turn to exhibit LLL, 10 which is the – LLL12, which is the lengthy statement by Mr 11 Hendrickx, which you have had an opportunity to study. 12 KOLONEL VERMAAK: Dis korrek. 13 MR BIZOS SC: You have already told us 14 that generally speaking you agree with his views expressed 15 in that document. 16 KOLONEL VERMAAK: Dis korrek, daar is 17 punte wat ek met hom saamstem. 18 MR BIZOS SC: Yes, let us deal with some 19 of the most important ones and not go into the detail of 20 every one of them because of your general agreement. Let 21 us start with paragraph 38 on page 18. It's a lengthy 22 paragraph, but I think that we must read the whole of it, 23 portion after portion, and ask you as we go along as to 24 whether you agree or not. 25 The heading is "The deficiencies of command and</p>	<p style="text-align: right;">Page 25631</p> <p>1 statement by Mr Hendrickx? 2 KOLONEL VERMAAK: Nee, mnr die 3 Voorsitter, ek stem nie saam daarmee nie. Daar is 'n 4 verklaring van my waar ek sê dat tydens die werksessie was 5 daar getuienis gewees van Kaptein Thupe dat Generaal Mpembe 6 daardie opdrag gegee het dat dit gedoen moet word en dat 7 Adjudant Offisier Kuhn in opdrag opgetree het. So volgens 8 my mening was daar definitiewe opdrag gewees en het hy nie 9 uit eie oorweging uit opgetree nie. 10 MR BIZOS SC: But that does not deal with 11 the question, even if these orders were given, that they 12 were legitimate orders having regard to the provision of 13 section 11(5) of the standing orders. 14 KOLONEL VERMAAK: Voorsitter, dit gaan 15 oor die feit dat daar opdrag gegee is al dan nie en volgens 16 die getuie van Adjudant Offisier Kuhn het hy sodanige 17 opdrag van Generaal Mpembe, wat op daardie stadium die 18 senior was en ook in beheer van die operasie was, het hy 19 opgetree. Die staande order bepaal dat lede slegs in 20 opdrag kan optree, tensy dit in nood omstandighede was om 21 sy eie lewe of eiendom te beskerm. In hierdie geval was 22 dit 'n kwessie van 'n besluit wat deur die oorhoofse 23 bevelvoerder geneem was. 24 CHAIRPERSON: I'm sorry to interrupt, 25 Lieutenant Colonel Vermaak. What's being discussed at the</p>
<p style="text-align: right;">Page 25630</p> <p>1 control on 13 August 2012 are evidenced by - 2 38.1, the lack of clarity and understanding of 3 the operational strategy in relation to the group 4 interpreted at the railway line. This appears to be a 5 product of confusion within the ranks of the SAPS as to 6 whether after the group had defied the operational 7 commander's order to disarm, they were to be allowed to 8 proceed under escort, or whether to be dispersed and 9 disarmed. The apparent failure of the SAPS leadership to 10 communicate a plan to the SAPS members present and to the 11 joint operational centre (JOC) indicates a failure of 12 command and control." Do you agree on the conclusion made 13 by Mr Hendrickx? 14 KOLONEL VERMAAK: Dis korrek, ek stem 15 saam. 16 MNR BIZOS SC: Stem saam. Let's go to 17 paragraph 38.2. "Secondly, the firing of first teargas and 18 then stun grenades without a clear and direct order from 19 the operational commander," before we get to the details, 20 do you – let's deal with 38.2.1. "Section 11(5) of 21 standing order 262 stipulates that force can only be used 22 on command of the CJOC or operational commander and that 23 members can never act individually without receiving a 24 command. The firing of both teargas and stun grenades 25 qualifies as the use of force." Do you agree with that</p>	<p style="text-align: right;">Page 25632</p> <p>1 moment isn't entirely accurate. What Warrant Officer Kuhn 2 said was he received an order from someone, he does not 3 know from whom, and he doesn't say it was General Mpembe. 4 KOLONEL VERMAAK: No. 5 CHAIRPERSON: And in fact he also doesn't 6 say it was over the radio. According to the evidence he 7 was on the extreme left as the people were marching 8 forward, which I take it was your right as you were coming 9 around in the helicopter. He was on the extreme left. 10 General Mpembe was on the extreme right. So he couldn't 11 have heard anything that General Mpembe said anyway, unless 12 it was over the radio, in which case everyone else would 13 have heard it and you would have heard it. He simply says 14 he heard an order from someone, he doesn't know from whom 15 it was. In the discussion that took place at Roots, 16 General Mpembe denied he gave the order. Colonel Thupe 17 then said that he did and then there was further discussion 18 about that, but as far as Baloyi is concerned - he's 19 described here as Lieutenant Colonel Baloyi, he was simply 20 Lieutenant Baloyi – he doesn't enter into this debate at 21 all. He simply, according to his evidence he then, once 22 the teargas had been fired he then fired the stun grenade. 23 He doesn't allege, as I understand his statement, that he 24 received any order but he was effectively following on what 25 Kuhn had done. So I think we should get the facts</p>

<p style="text-align: right;">Page 25633</p> <p>1 straight.</p> <p>2 What Baloyi says, and Adv Hemraj has handed it to</p> <p>3 me, it's exhibit GGG16, in para 9 he says, he describes how</p> <p>4 he got out of his Nyala in para 8 and he watched the</p> <p>5 strikers moving towards the direction of the mountain. He</p> <p>6 then says, "Within seconds two teargases were fired, with</p> <p>7 the strikers running towards me. I then threw a stun</p> <p>8 grenade to the coming strikers, ran away to the Nyala." So</p> <p>9 that's his evidence. Or rather, that's his statement. He</p> <p>10 hasn't given evidence yet. So just to, I'm not</p> <p>11 interfering, Mr Bizos, but I think –</p> <p>12 MR BIZOS SC: No, Mr Chairman –</p> <p>13 CHAIRPERSON: - cross-examination will</p> <p>14 proceed in a more helpful fashion, if I may say so, if the</p> <p>15 facts are put correctly. It is correct, I think, as is</p> <p>16 said here in 38.2.2 that there's a dispute as to who issued</p> <p>17 the order, if any was issued, to fire the teargas, and I've</p> <p>18 sort of outlined effectively what that dispute is about.</p> <p>19 So Mr Bizos, I think on that basis we can, then you may</p> <p>20 proceed.</p> <p>21 MR BIZOS SC: Thank you, Mr Chairman. In</p> <p>22 view of what the Chairperson has brought to your attention</p> <p>23 and also if before giving a final answer that you disagree,</p> <p>24 if we can read paragraph 38.2.2. "There is a dispute</p> <p>25 between members of the SAPS as to who issued the order, if</p>	<p style="text-align: right;">Page 25635</p> <p>1 Mpembe and threats were made on his life, which were viewed</p> <p>2 by Lieutenant Colonel Vermaak with sufficient gravity as to</p> <p>3 warrant him contacting the Provincial Commissioner and</p> <p>4 arranging for the removal of Major General Mpembe from the</p> <p>5 scene for his own safety. Despite the incident the SAPS</p> <p>6 leadership failed to investigate or take action, the</p> <p>7 members involved and retained Major General Mpembe in</p> <p>8 command of the operation in the following days with members</p> <p>9 under him who had not only displayed a lack of confidence</p> <p>10 in his command but had demonstrated gross insubordination."</p> <p>11 Do you accept – you are involved in this. Do you</p> <p>12 accept the correctness of the facts described by Mr</p> <p>13 Hendrickx?</p> <p>14 KOLONEL VERMAAK: Voorsitter, dis korrek.</p> <p>15 Die feite is korrek gestel.</p> <p>16 MR BIZOS SC: Correctly stated. Now as a</p> <p>17 senior officer the conduct of the people who made those</p> <p>18 threats, was it investigated? Were any steps taken to deal</p> <p>19 with the persons who threatened to kill one of their</p> <p>20 leaders? If not, why not?</p> <p>21 KOLONEL VERMAAK: Voorsitter, sover my</p> <p>22 kennis strek was daar geen ondersoek geloods na dit nie.</p> <p>23 Ek was wel gevra of ek die lede ken wat saam met my was en</p> <p>24 wat die beweringe gemaak het. Ek het hulle nie geken nie.</p> <p>25 Dis die eerste keer wat ek saam met hulle gewerk het, en op</p>
<p style="text-align: right;">Page 25634</p> <p>1 any was issued, to fire the teargas. Major General Mpembe</p> <p>2 denied that he did. Evidence was led that the firing of</p> <p>3 the first stun grenade by Lieutenant Colonel Baloyi was</p> <p>4 done without an order. Again the confusion and</p> <p>5 contradictory evidence in relation to whether an order was</p> <p>6 issued at all, and the fact that this has still not been</p> <p>7 investigated or clarified sufficiently to resolve the</p> <p>8 question, raises concerns for me as to whether the SAPS</p> <p>9 leadership addressed this apparent failure of command and</p> <p>10 control."</p> <p>11 Now you've heard what the Chairman said. You've</p> <p>12 heard what Mr Eddie Hendrickx's basis is for making the</p> <p>13 statement in 18.2.1. Having regard to this would you like</p> <p>14 to amend your answer that you don't agree with him, in view</p> <p>15 of the new facts that have been brought to your attention?</p> <p>16 KOLONEL VERMAAK: Voorsitter, as jy albei</p> <p>17 paragrawe in, gesamentlik lees dan stem ek met dit saam.</p> <p>18 Al verskil wat ek het is die feit dat Kaptein Thupe</p> <p>19 bevestig het dat Generaal Mpembe die opdrag gegee het, maar</p> <p>20 as jy die paragrawe gesamentlik lees dan stem ek daarmee</p> <p>21 saam.</p> <p>22 MR BIZOS SC: We'll leave it at that and</p> <p>23 thank you for that. Now let us go to paragraph 39. "There</p> <p>24 is evidence before the Commission that after the deaths of</p> <p>25 the members of SAPS certain members blamed Major General</p>	<p style="text-align: right;">Page 25636</p> <p>1 daardie stadium het ek nie eers daaraan gedink om hulle</p> <p>2 name te neem of af te skryf van hulle naamplaatjies af nie</p> <p>3 aangesien ek die aangeleentheid in 'n baie ernstige lig</p> <p>4 beskou het en daarom het ek die Provinsiale Kommissaris</p> <p>5 gekontak. Ek het dit aan haar gerapporteer. Ek het aan</p> <p>6 haar genoem dat ek voel weens die dreigement en die</p> <p>7 veiligheid van Generaal Mpembe, dat ek voorstel dat hy</p> <p>8 teruggaan na die JOC toe en ek het daardie nodige reëlings</p> <p>9 getref.</p> <p>10 MR BIZOS SC: Would you agree that on the</p> <p>11 evidence before the Commission, that this is hardly the</p> <p>12 behaviour of a disciplined police force?</p> <p>13 KOLONEL VERMAAK: Voorsitter nee, dit is,</p> <p>14 dis 'n uitsonderlike geval hierdie gewees. Dis die eerste</p> <p>15 keer wat ek met so iets te doen gekry het dat daar sodanige</p> <p>16 dreigemente gemaak word, maar ek dink 'n mens moet ook in</p> <p>17 gedagte hou die emosionele toestand wat almal op daardie</p> <p>18 stadium was.</p> <p>19 MR BIZOS SC: Well, you see, this –</p> <p>20 CHAIRPERSON: That might be a mitigating</p> <p>21 factor, but essentially it was a serious attitude that was</p> <p>22 being communicated to you, was it not?</p> <p>23 KOLONEL VERMAAK: Dit is baie ernstig</p> <p>24 gewees. Ek het –</p> <p>25 CHAIRPERSON: And it's something that</p>

<p style="text-align: right;">Page 25637</p> <p>1 should have been investigated surely. I mean what the 2 ultimate disciplinary consequences of that might have been 3 is a different matter, and presumably there was a 4 substantial degree of mitigation which would have been 5 present, but nevertheless you can't have a professional 6 police force in a country like South Africa operating on 7 that kind of basis, can one? 8 KOLONEL VERMAAK: Mnr die Voorsitter, u 9 is korrek daar en dit is hoekom ek onmiddellik die 10 Provinsiale Kommissaris gekontak het en dit aan haar 11 gerapporteer het. 12 CHAIRPERSON: I mean the truth of the 13 matter is it should have been investigated. You may not 14 have been able to identify the people, but how many people 15 were walking with you? 16 KOLONEL VERMAAK: Daar was ongeveer agt 17 lede wat toe ons na die toneel, toe ons die mense agtervolg 18 het en so vier lede wat saam met my teruggeloop het en dis 19 waar die mededeling, of die dreigement dan geuite was. 20 CHAIRPERSON: And so what unit did those 21 four people belong? 22 KOLONEL VERMAAK: Ek het hulle gevra en 23 hulle het vir my gesê hulle is verbonde aan TRT Rustenburg, 24 en ek het dit – 25 CHAIRPERSON: Yes, sorry, I would have</p>	<p style="text-align: right;">Page 25639</p> <p>1 revenge. If he'd been present on the scene on the 16th and 2 had been able to sense the attitude of the people and even 3 spoken to them, he might be in a position to express on 4 opinion on the matter, but he was in the air in a 5 helicopter. So you're asking him essentially to express an 6 opinion which we are as well qualified to make as he is, 7 and I've given a number of rulings in this Commission to 8 the effect that that kind of question cannot appropriately 9 be asked. 10 MR BIZOS SC: Well, Mr Chairman, he is a 11 senior officer. An expression of opinion to the 12 proposition that I am putting may be of assistance. 13 [09:32] I don't want when I argue what I have put to the 14 witness our learned friends to say oh, but this is 15 something that Mr Bizos thought of and it wasn't put to any 16 of our people. This is why I submit that propositions such 17 as the one that I have put to the witness is a matter for 18 commentary to be answered by a senior officer. But if I am 19 safeguarded – 20 CHAIRPERSON: Mr Bizos – 21 MR BIZOS SC: - with an assurance – 22 CHAIRPERSON: I'm sorry to interrupt you. 23 You are. I've already told Mr Mpfu on a number of 24 occasions where he tried to ask questions of the kind that 25 I would allow him to argue the point at the end. I would</p>
<p style="text-align: right;">Page 25638</p> <p>1 thought that any moderately competent detective armed with 2 that information, four people, NIU Rustenburg, should have 3 been able to at least do some investigation to ascertain 4 who the people were, even if you weren't able to identify 5 them. Would you agree with that? 6 KOLONEL VERMAAK: Dis korrek, Voorsitter. 7 CHAIRPERSON: And as far as you know no 8 investigations of any kind were launched at the time into 9 those allegations, despite the fact that the Provincial 10 Commissioner was aware of them. 11 KOLONEL VERMAAK: Dis korrek, Voorsitter. 12 MR BIZOS SC: Colonel, we know that 13 without an order indiscriminate shooting at a crowd took 14 place on the morning of – or in the afternoon of the 16th. 15 Would you agree that if there were people with arms on the 16 16th that were prepared to kill one of their leaders, on a 17 previous occasion might have acted as an act of revenge – 18 CHAIRPERSON: No, Mr Bizos, I'm sorry, 19 you're asking for his opinion on a matter in respect of 20 which he has no real expertise. It's an argument that you 21 can advance to the Commission. You can ask the Commission 22 to infer in the background of the facts that you've 23 sketched – 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: - that it was a case of</p>	<p style="text-align: right;">Page 25640</p> <p>1 not allow the point to be taken against him that he hadn't 2 put it to particular witnesses to answer. So his position 3 in that case was reserved and the same obviously applies to 4 you. You'll be able to argue the point. If anyone tries 5 to raise the counterargument that you suggested, it will be 6 dealt with summarily. The basis of my previous rulings 7 applies to this as well. You'll be able to argue it at the 8 end, but without any disrespect intended to the Lieutenant 9 Colonel, I'm not interested in his answer to the question. 10 MR BIZOS SC: I accept the ruling, Mr 11 Chairman, and the safeguard is accepted, but I will move to 12 the next point. Paragraph 40, the heading, "The failure to 13 debrief in terms of section 13 of standing order 262. 14 Section 13 of standing order 262 provides for an in-depth 15 debriefing and evaluation of every level of command by the 16 commanders after each event to determine whether the 17 operation was effective and whether communication with the 18 police players was adequate. All good practice and 19 shortcomings are required to be recorded in part of a 20 learning process to enhance good practice and address or 21 prevent recurrences of identified mistakes." Do you agree 22 with Mr Hendrickx's view? 23 KOLONEL VERMAAK: Dis korrek, Voorsitter. 24 MR BIZOS SC: Yes, and it was not done. 25 KOLONEL VERMAAK: Sover my kennis strek,</p>

<p style="text-align: right;">Page 25641</p> <p>1 nee.</p> <p>2 MR BIZOS SC: And you don't know any</p> <p>3 reason why it was omitted?</p> <p>4 KOLONEL VERMAAK: Nee, ek dra nie kennis</p> <p>5 nie, Voorsitter.</p> <p>6 MR BIZOS SC: Now can we go to paragraph</p> <p>7 48 on page 24, "I believe that the shift in the SAPS</p> <p>8 operation away from crowd management by SAPS leadership was</p> <p>9 inappropriate in the circumstances." This is in relation</p> <p>10 to the 13th, and in paragraph 49, "It is my view that the</p> <p>11 crowd management regulatory framework, and particularly</p> <p>12 standing order 262 are designed to regulate unprotected</p> <p>13 strikes such as the one that took place in Marikana on the</p> <p>14 16th of August 2012." Do you agree with that?</p> <p>15 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>16 MR BIZOS SC: And do you disagree with</p> <p>17 those who say that this was a novel and special situation</p> <p>18 and the orders were inappropriate and were disregarded</p> <p>19 because of the special circumstances? Do you disagree with</p> <p>20 that view?</p> <p>21 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>22 MR BIZOS SC: Yes. Can we go to</p> <p>23 paragraph 69? "Slide 24 of Brigadier Breytenbach's</p> <p>24 presentation is entitled Mandated functions of POP as</p> <p>25 described in administrative policy, division Visible</p>	<p style="text-align: right;">Page 25643</p> <p>1 paragraph 77, please? "The inadequacy of the</p> <p>2 intelligence," is the heading. "The need for comprehensive</p> <p>3 and relevant information gathering and intelligence in</p> <p>4 public order interventions is emphasised in a number of</p> <p>5 SAPS policy documents and regulations. Accurate</p> <p>6 intelligence is essential to the proper planning and</p> <p>7 execution of crowd management operation to anticipate all</p> <p>8 possible situations or threats and to minimise the</p> <p>9 possibility of the use of force. Inadequate intelligence</p> <p>10 risks the operation not going according to plan and more</p> <p>11 force being used than had been the plan."</p> <p>12 And paragraph 78, "The SAPS should have</p> <p>13 prioritised information gathering in an operation such as</p> <p>14 that one in Marikana. However, there appears to be a</p> <p>15 noteworthy paucity of intelligence and the striking</p> <p>16 mineworkers." Do you agree with those views?</p> <p>17 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>18 MR BIZOS SC: Lieutenant Colonel Vermaak,</p> <p>19 are you really in a position to comment upon the accuracy</p> <p>20 of this criticism? Brigadier Engelbrecht has given a</p> <p>21 statement which has been put before us. He's explained</p> <p>22 they had a number of informers who appear even to have been</p> <p>23 on the koppie. They had handlers, and they were regularly</p> <p>24 getting feedback. So obviously that's information which is</p> <p>25 highly sensitive, who the informers were, how they</p>
<p style="text-align: right;">Page 25642</p> <p>1 Policing. The function in a public order of police (POP3-</p> <p>2 1-5-1-174) and 2008-11 to the 18th and lists the mandated</p> <p>3 functions of POP as performing crowd management, combating</p> <p>4 public violence, stabilising serious and violent crime</p> <p>5 incidents, giving specialised operational support and the</p> <p>6 rendering of specialised assistance to divisions, i.e.</p> <p>7 detectives, border police, and VIP protection." Do you</p> <p>8 agree with Mr Hendrickx's view?</p> <p>9 KOLONEL VERMAAK: Ek stem saam, mnr die</p> <p>10 Voorsitter.</p> <p>11 MR BIZOS SC: And paragraph 70, "I am</p> <p>12 unable to comment on the quality or adequacy of the</p> <p>13 training currently given to members of POP units. However,</p> <p>14 it is certainly my understanding that their training and</p> <p>15 function is to manage situations such as that of Marikana</p> <p>16 and that at the time of our cooperation agreement they were</p> <p>17 able to do that. In my view the Marikana operation fell</p> <p>18 directly within that mandate."</p> <p>19 Now I want to refer to your letter in which you</p> <p>20 express the view that the training of the present POPS</p> <p>21 people was inadequate. Do you agree with that and do you</p> <p>22 repeat it?</p> <p>23 KOLONEL VERMAAK: Ek stem saam, mnr die</p> <p>24 Voorsitter.</p> <p>25 MR BIZOS SC: Yes. Could we turn to</p>	<p style="text-align: right;">Page 25644</p> <p>1 operated, who the handlers were, all that stuff that's got</p> <p>2 to be kept very much secret, has it not? He did say that</p> <p>3 they had information that there was trouble coming and he</p> <p>4 suggested that something should be done already on the</p> <p>5 Sunday to – no, I think already on the Saturday, the</p> <p>6 Saturday already do something to increase the police</p> <p>7 presence at the mine. He said he reported that to General</p> <p>8 Mpmembe. He said General Mpmembe actually later said to him</p> <p>9 he was dissatisfied with the response that there had been</p> <p>10 to that and the suggestion was that the security guards who</p> <p>11 were killed on the Sunday might not have been killed if the</p> <p>12 information that he'd conveyed to General Mpmembe had been</p> <p>13 properly reacted to. Then there were regular reports to</p> <p>14 the JOCCOM, obviously without detail.</p> <p>15 The document that is referred to by Mr Hendrickx,</p> <p>16 exhibit TT5 is a document as far as I remember, dated the</p> <p>17 30th of August, stating in very brief terms what the main</p> <p>18 information was, which is essentially the same as what</p> <p>19 you'd said, that you've got to take these people seriously,</p> <p>20 that they are going to fight, they're not going to</p> <p>21 cooperate, they're not going to hand over their weapons and</p> <p>22 so on.</p> <p>23 So I'm not sure that – and I just put this to you</p> <p>24 because it's my prima facie reaction – I'm not sure, with</p> <p>25 respect, that you're in a position, and I'm not sure that</p>

<p style="text-align: right;">Page 25645</p> <p>1 Mr Hendrickx is in a position to criticise the intelligence 2 in the way that it's been done without a full appreciation 3 of what Brigadier Engelbrecht is referring to in the 4 passages which I've summarised. How do you react to that? 5 KOLONEL VERMAAK: Voorsitter nee, ek 6 kritiseer nie Brigadier Engelbrecht se inset daaroor nie. 7 Dit gaan oor die feit dat die inligting wat wel tot ons 8 beskikking was volgens my mening nie genoegsaam was nie en 9 op grond daarvan gedurende die beplanning moes dit in 10 aanmerking geneem word oor die feit dat daar nog nie 11 genoegsame inligting oor sekere aspekte is nie. Dit, ek 12 stem saam met dit dat Brigadier Engelbrecht het ingevoer 13 hulle sukkel om inligting te kry oor bepaalde redes wat hy 14 daar vermeld het, en die kwessie dat ek saamstem is die 15 feit dat daar beperkte inligting was en dit heel moontlik 16 in ag geneem moes geword het tydens opstel van beplannings. 17 CHAIRPERSON: Well, there are two points 18 really, aren't there? Before we get to your two points – 19 I'm sorry, Mr Bizos, but this is important – 20 MR BIZOS SC: No, no – 21 CHAIRPERSON: I think you will forgive 22 me. According to Brigadier Engelbrecht already from 23 February they were busy seeking to get information because 24 of the trouble that had already manifested itself, and 25 there was trouble between the unions and of course that was</p>	<p style="text-align: right;">Page 25647</p> <p>1 you react to that? 2 KOLONEL VERMAAK: Ek stem met u saam, 3 Voorsitter. Daar is geensins die bedoeling om die 4 intelligensie mense te blameer vir die feit dat hulle nie 5 inligting kon bekom nie. Dit was tydens die JOC "meetings" 6 was dit so ingevoer deur Brigadier Engelbrecht en sy 7 personeel dat hulle sukkel om inligting te bekom en dit wat 8 hulle het, wat hulle gegee het is bevestiging op dit wat ek 9 tydens die vergaderings wel vermeld het uit ondervinding 10 uit, nie op inligting nie maar uit ondervinding uit, dit 11 wat ons waargeneem het en die gemoedere van die skare, 12 basies kan ek net kommentaar lewer oor van die Sondag af. 13 CHAIRPERSON: Alright, there are two 14 further points I want to raise with you, deal with you at 15 this stage. The one is you've made a criticism that such 16 intelligence as was available doesn't – at least I 17 understand you to have made this criticism – such 18 intelligence as was available wasn't properly taken into 19 account, factored into the planning that was done. Is 20 that, do I understand you correctly? 21 KOLONEL VERMAAK: Dis korrek, Voorsitter. 22 CHAIRPERSON: And for example the, I take 23 it the disperse, disarm and arrest plan, which as we now 24 know according to Colonel Scott was first tabled at the 25 JOCCOM on the Thursday afternoon at the meeting which you</p>
<p style="text-align: right;">Page 25646</p> <p>1 mainly at the Karee Shaft, the Karee Shaft initially, AMCU 2 becoming more influential and NUM becoming less 3 influential. 4 But the further point of course is that – I don't 5 know whether you can help us on this, but the impression I 6 get is that in this kind of mine unrest situation with 7 people being killed and so on the intelligence people have 8 great difficulty in getting informers, and getting 9 informers to give them information, for obvious reasons. 10 Is that in accordance with your experience? 11 KOLONEL VERMAAK: Dis korrek, Voorsitter. 12 CHAIRPERSON: So that obviously imposes 13 limitations on the effectiveness of the intelligence 14 operation, but I'm not sure that one can – and this brings 15 me basically to the further point – I'm not sure one can 16 necessary criticise the intelligence people. At the end of 17 the day we've got to, in terms of our terms of reference 18 we've got to deal very fully with the matters covered 19 thereby and one of the points made by the LRC's expert, Mr 20 Hendrickx, is that the intelligence people must in effect 21 bear some of the blame, and I'm not sure whether there's 22 enough material before us to say that the intelligence 23 people can be blamed. That there were problems that they 24 had, there were limitations to the operations, I can 25 understand, but blame is something different. Now how will</p>	<p style="text-align: right;">Page 25648</p> <p>1 weren't at, that that plan appears to be based to some 2 extent on the belief that a show of force and a fore 3 continuum would somehow encourage these strikers to 4 voluntarily lay down their arms. That would appear to be 5 an overbold and overoptimistic assumption in the light of 6 the intelligence that had been given to the JOC. Is that 7 your attitude as well? 8 KOLONEL VERMAAK: Dis korrek, Voorsitter, 9 ja. 10 CHAIRPERSON: And if the intelligence had 11 been taken seriously and had been borne in mind, I take it 12 what you're saying is there would never have been an 13 acceptance by the JOCCOM of that, what's described as the 14 DDA plan. Is that also correct? 15 KOLONEL VERMAAK: Dis korrek, Voorsitter. 16 CHAIRPERSON: Alright, now the other 17 point I want to ask you about is you've said that there 18 wasn't enough information. Now what kind, and you've very 19 fairly said you can't really blame the intelligence people 20 for that, but it's the statement that you make, there 21 wasn't enough information. Now what information would you 22 have, if you'd been in charge, Mr Bizos put the 23 hypothetical question to you, if you'd been in charge of 24 the operation, you'd been the operational commander, what 25 information would you have wanted – whether you could have</p>

<p style="text-align: right;">Page 25649</p> <p>1 got it is another matter, but what information would you 2 have wanted, would you have regarded as desirable, if not 3 necessary, in the circumstances? Sorry, I don't know how 4 much of that was recorded because I pressed the button on 5 the wrong side. I'd better repeat the question. 6 How much information that wasn't available would 7 you have regarded either as desirable or necessary if you 8 had been the operational commander? 9 KOLONEL VERMAAK: Voorsitter, die 10 inligting wat ons gehad het was genoeg om redelik 11 kommerwekkend te wees. As 'n mens inligting kon gekry het 12 sê vanuit geleedere van die partye wat aan hierdie stakings 13 deelgeneem het sou mens ook meer konkrete bewyse gehad het 14 moontlik om te sê behalwe dat ons waargeneem het en uit 15 ondervinding uit gesien het dat hierdie groep mense nie 16 sommer gaan oorgee nie, en jy het daardie inligting 17 konkreet gehad wat jy kon gesê het uit die skare uitkom, of 18 uit deelnemers uit wat hierdie mense sê hulle gaan nie 19 oorgee nie, of dat daar ander planne gemaak is deur van 20 hulle, dan kon 'n mens miskien andersins besluite geneem 21 het deur die besluitnemers. Maar hulle het, op daardie 22 stadium was die enigste inligting wat hulle gehad het is 23 dat ons vir hulle gesê het uit ondervinding uit is hierdie 24 mense aggressief, hulle het aan rituele deelgeneem. Uit 25 ondervinding uit het ons geweet as hulle dit gedoen het dan</p>	<p style="text-align: right;">Page 25651</p> <p>1 in the hostels they were and which shacks they were in the 2 informal settlement, so that a cordon and search could have 3 been, an information-directed cordon and search could have 4 been carried out say on the Thursday night even and weapons 5 seized, I take it that could have made a difference too? 6 KOLONEL VERMAAK: Definitief, Voorsitter. 7 CHAIRPERSON: And that would have been an 8 important part of the – I'm expressing a prima facie view, 9 obviously subject to the fact that it may well be wrong, 10 then I wish to be corrected if that's so, but that would I 11 take it have been another quite effective manner of 12 gathering information without having to rely on informers 13 with all the problems connected with informers, 14 particularly in these circumstances. Is that correct? 15 KOLONEL VERMAAK: Korrek, Voorsitter. 16 Dit kom terug na die punt toe wat ek genoem het oor 17 stilkameras op tonele waar foto's geneem kan word en dit 18 word verskaf onmiddellik aan jou ondersoekbeamptes om dan 19 daardie mense te identifiseer en dan die inligting kry, 20 soos wat u dit tereg genoem het. 21 CHAIRPERSON: The last question I'd like 22 to ask you on this subject is that might there be 23 information which because of its sensitive nature you 24 weren't privy to? 25 KOLONEL VERMAAK: Dis korrek –</p>
<p style="text-align: right;">Page 25650</p> <p>1 gaan hierdie mense nie hulle wapens afstaan sonder dat daar 2 gaan konflik wees nie. 3 [09:52] CHAIRPERSON: Ja, another aspect of 4 intelligence that strikes me, according to Brigadier 5 Engelbrecht they brought in a whole batch of detectives 6 from Gauteng to perform a particular operation. They were 7 going through – there's quite a lot of photographic 8 material taken by video people and photographers on the 9 ground of the crowd, particularly, I take it, the 400 10 people who Mr Ntsebeza likes me to call the front group, 11 and what they were doing, and I gather, I take it we'll get 12 more evidence on this if necessary later, even on the 13 Wednesday evening, I think on the Thursday they were 14 getting Lonmin to identify those people. 15 Now if that process could have continued, because 16 you've heard that what happened was the Provincial 17 Commissioner had already decided on, had made a proposal at 18 the management forum, which the management forum endorsed, 19 that the matter would be dealt with on the Thursday even if 20 there wasn't a voluntary laying down of weapons by the 21 strikers. So that introduced a new dimension into the 22 whole thing. 23 Now if that hadn't happened and the process of 24 identifying the people from the photographs and getting 25 information from Lonmin as to who they were, in which rooms</p>	<p style="text-align: right;">Page 25652</p> <p>1 CHAIRPERSON: That does happen in the 2 intelligence gatherings situation, doesn't it? 3 KOLONEL VERMAAK: Definitief. Hulle, 4 daar is sekere inligting wat nie geopenbaar word in 5 algemene vergaderings nie. 6 CHAIRPERSON: It would follow from that, 7 I take it, if that is so – and maybe we have to get 8 Brigadier Engelbrecht here to tell us these things, that 9 his summary mightn't have been complete, he might 10 deliberately have withheld certain supporting information, 11 detailed information, because of the kind of problems that 12 arise in relation to material of this sort. Is that also a 13 correct approach? 14 KOLONEL VERMAAK: Voorsitter, ek glo en 15 dit wat ek Brigadier Engelbrecht ken glo ek waar daar sulke 16 sensitiewe inligting was hy dit definitief aan die generaal 17 sou oorgedra het wat oorhoofs in bevel is. Alhoewel hy dit 18 dalk nie op die JOC "meeting" bekend gemaak het nie sou hy 19 verseker dit aan die generaal in 'n privaatgesprek genoem 20 het. 21 CHAIRPERSON: Can I ask you one last 22 question on this topic? You've known Brigadier Engelbrecht 23 for some time, have you? 24 KOLONEL VERMAAK: Dis korrek. 25 CHAIRPERSON: For how long?</p>

<p style="text-align: right;">Page 25653</p> <p>1 KOLONEL VERMAAK: Dis vandat hy in die 2 Noord Wes aangestel is, so dit is seker sewe, agt jaar. 3 CHAIRPERSON: Now I know it's a question 4 that you may have difficulty in answering, you may in fact 5 be unable to answer it and if so, don't hesitate to say so, 6 but have you had sufficient dealings with him to be able to 7 express an opinion as to whether he is an efficient able 8 officer who runs an effective efficient operation, regard 9 being had to the limitations that intelligence people have? 10 KOLONEL VERMAAK: Voorsitter, ek het al 11 met hom gedeel waar daar sekere inligting was waar ons deel 12 van operasies was en waar hy direk aan my wat sy junior is 13 inligting oorgedra het wat nie in die algemene vergadering 14 genoem was nie. So ek dink, en my mening, dis my 15 persoonlike opinie is dat Brigadier Engelbrecht 'n 16 uitstaande offisier in daardie opsig is. 17 CHAIRPERSON: Thank you. Forgive me for 18 having taken over some of your cross-examination, Mr Bizos. 19 I take it I wasn't covering topics you were going to cover 20 anyway, but I thought that while we're busy with 21 information gathering and so on I should put to him what 22 Brigadier Engelbrecht said so that we get a rounded 23 picture. 24 MR BIZOS SC: I appreciate the 25 intervention, which was helpful, Chair. Colonel, I heard</p>	<p style="text-align: right;">Page 25655</p> <p>1 CHAIRPERSON: I say I'm not saying it's 2 an improper question that can't be asked to the appropriate 3 person, but can this witness help us in response to that 4 point? 5 MR BIZOS SC: He was part of the group 6 that actually acted in one way or the other, Mr Chairman. 7 CHAIRPERSON: Alright, okay, well carry 8 on. 9 MR BIZOS SC: You see, we have had 10 statements, which have been amended in some respects, that 11 there were 3 000 hostile people bent on attacking the 12 police. You don't go along with that? And the people who 13 said it have qualified it anyway. 14 KOLONEL VERMAAK: Voorsitter, ek kan nie 15 op daardie vraag antwoord nie. Ek het nie daardie kennis 16 nie. Ek het ook nie sodanige verklarings enigsins gesien 17 nie. Daar was ook nooit in ons vergaderings verwys na 18 3 000 aggressiewe mense wat daar is nie. Daar is altyd 19 gepraat van die groepering wat daar is en dan die klein 20 groepe wat voor maar die heelyd was. So rondom 3 000 21 mense wat aggressief was, nee. 22 MR BIZOS SC: Yes. 23 CHAIRPERSON: You're talking about what 24 was discussed at the JOCCOM meeting. You of course were in 25 a position to contribute to that discussion if there was</p>
<p style="text-align: right;">Page 25654</p> <p>1 what you said, but there is one factor that I think that I 2 want to bring to your attention. There was a wrong 3 assumption by your colleagues that were in charge of the 4 situation that the crowd were the enemies of the police. 5 Am I correct in that suggestion? If not all of you, some 6 of you thought that these people are our enemies? 7 KOLONEL VERMAAK: Voorsitter nee, daar is 8 nooit verwys na, in hierdie geval na mense as vyande nie. 9 Dit word gesien as publiek. Dit word gesien as 'n openbare 10 orde wat geskend word met deelnemers en wat nie die wet 11 nakom nie, maar in my loopbaan het, en was ek ook nie deel 12 van enige plek waar ons verwys het na vyande nie. 13 MR BIZOS SC: What prompted the people 14 concerned to say that, "The police are not our enemies, our 15 quarrel is with our employer and we want our employer to 16 come and discuss our problem with us"? You accept the 17 correctness of that assertion, do you? 18 KOLONEL VERMAAK: Ek kan dit nie betwis 19 nie, Voorsitter. 20 CHAIRPERSON: Mr Bizos, how can this 21 witness answer that question? I'm not saying it's an 22 improper question to ask of the appropriate person, but can 23 this witness really help us on that? 24 MR BIZOS SC: I'm sorry, I didn't hear 25 the last bit –</p>	<p style="text-align: right;">Page 25656</p> <p>1 one because you flew over the koppie a number of times, 2 didn't you? 3 KOLONEL VERMAAK: Dis korrek, Voorsitter. 4 Uit die foto's ook wat ek geneem het en wat ek beskikbaar 5 gestel het aan die JOC op 'n daaglikse basis was dit 6 duidelik gewees dat die groot meerderheid op die koppie net 7 gesit het. Die enigste beweging wat daar was as 'n klein 8 groepering was die voorste groep gewees en verder het die 9 mense van die woongebied af na die koppie toe geloop en 10 teruggeloop sonder enige insidente. 11 MR BIZOS SC: The death of two policemen 12 and the circumstances under which they died have been 13 described. I don't know what the decision is going to be 14 as to who killed whom first, but was there information 15 given to you that those deaths were not to condemn the 16 3 000 people that were protesting for a better wage and 17 that the police should not really blame the crowd as a 18 whole? Was that information available? Was that 19 communicated to all the people concerned that this was a 20 labour issue and not war talk between the police and the 21 people participating in the gathering? 22 KOLONEL VERMAAK: Voorsitter, die, van 23 die begin af was dit geïdentifiseer as 'n geskil tussen die 24 werkgewer en die werknemer. Die polisie het probeer om 25 behulpsaam te wees om die orde te herstel, gesien in die</p>

<p style="text-align: right;">Page 25657</p> <p>1 lig van dat daar 'n hele aantal mense gedood is voor die 2 16de. So die verantwoordelikheid van die polisie was 3 gewees om lewe en eiendom te beskerm en seer sekerlik nie 4 betrokke te raak by die geskil tussen werkgewer en 5 werknemer nie.</p> <p>6 MR BIZOS SC: No specific briefing took 7 place, do not let us vent any anger against the crowd as a 8 whole?</p> <p>9 KOLONEL VERMAAK: Voorsitter, ek kan nie 10 daarop kommentaar gee nie want ek was nie by 11 voorligtingssessies of waar die lede parade gestaan het nie. 12 Ons as die Lugvleuel het basies, ek het die Lugvleuel 13 verteenwoordig in die JOC. Ek het teruggegaan na my mense 14 toe, ek het hulle voorligting gegee. Die operasionele 15 mense het uit die JOC uit het hulle na hulle mense toe 16 gegaan en hulle het hulle daar voorligting gegee. Ek kan 17 nie kommentaar lewer op dit wat vir die lede op die grond 18 oorgedra was nie. Maar dis definitief, in die JOC is daar 19 definitief baie duidelik gemaak dat dit nie "enemy" is nie, 20 hulle probeer die vrede bewaar en hulle probeer lewens 21 bewaar ook dat daar nie verdere moorde sou plaasvind nie.</p> <p>22 MR BIZOS SC: Let us turn to paragraph 88 23 on page –</p> <p>24 CHAIRPERSON: Before you move on, just to 25 round off the point that you're busy with now. I think a</p>	<p style="text-align: right;">Page 25659</p> <p>1 CHAIRPERSON: Sorry to interrupt you. We 2 discussed that yesterday.</p> <p>3 KOLONEL VERMAAK: Ja.</p> <p>4 CHAIRPERSON: Remember I worked the 5 figures out from the very passage in exhibit, the slide in 6 exhibit L to which reference is made, but you said to me 7 that the, your answer was that the NIU people normally have 8 got POP experience.</p> <p>9 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>10 CHAIRPERSON: So that was your comment –</p> <p>11 KOLONEL VERMAAK: Dis reg.</p> <p>12 CHAIRPERSON: - when I put the figures, 13 specific figures to you.</p> <p>14 KOLONEL VERMAAK: Ja.</p> <p>15 CHAIRPERSON: I'm sorry, I interrupted 16 your answer. I thought I'd remind you of what happened 17 yesterday.</p> <p>18 KOLONEL VERMAAK: Dis reg, baie dankie, 19 Voorsitter. Die gebruik van die Taakmag, in my tyd wat ek 20 betrokke is by onluste was dit die eerste keer wat daar 21 Taakmag lede gebruik was by onluste en skarebeheer as 'n 22 openbare orde funksie en in my skrywes het ek vermeld waar 23 ek my bekommernis uitgespreek het oor die aanwending van 24 TRT by onluste situasies. Dit was juis een van die punte 25 wat vir my alreeds in Mei 2012 'n bekommernis was.</p>
<p style="text-align: right;">Page 25658</p> <p>1 logical question which flows from the question that you 2 asked, Mr Bizos, was this; was it ever said at the JOCCOM 3 that particular care must be taken to see to it that the 4 individual members of the police aren't actuated by any 5 feelings of revenge flowing from their natural reaction to 6 the fact that two of their colleagues had died on the 13th, 7 and that the commanders must make it their business to 8 speak to the people under their command and convey that 9 message very forcibly to them?</p> <p>10 KOLONEL VERMAAK: Voorsitter nee, ek, 11 waar ek by die JOCCOM vergaderings was, was dit nie so 12 pertinent genoem nie.</p> <p>13 MR BIZOS SC: Thank you, Mr Chairman. If 14 we turn to paragraph 88, Mr Hendrickx says, "Of additional 15 concern is the fact that the role of the specialised units 16 of the STF, NIU, and TRT, appears to have been prioritised 17 in the plan with the members of the specialised units 18 outnumbering the POP members by nearly two to one. The use 19 of tactical units trained solely or specifically in the use 20 of deadly force in relation to Public Order Policing should 21 be limited in exceptional and accordingly requires special 22 justification." Would you agree with Mr Hendrickx's view?</p> <p>23 KOLONEL VERMAAK: Voorsitter, die 24 verhouding tussen POP en die ander vertakkinge kan ek, ek 25 het dit nie voor my nie –</p>	<p style="text-align: right;">Page 25660</p> <p>1 MR BIZOS SC: Yes. Well, that would 2 indicate that the number of non-POP group people being 3 outnumbered by heavily armed persons was unacceptable to 4 you and really shows, if I may use the expression, malice 5 of forethought by actually having a large group of people 6 with highly dangerous weapons to face a crowd of 7 protesters.</p> <p>8 KOLONEL VERMAAK: Voorsitter, al wat ek 9 kan sê, dit is verwysende na my brief aan die Provinsiale 10 Kommissaris dat ek my bekommernisse uitgespreek het rondom 11 die aanwending van mense, of van lede wat nie toegerus is 12 om onluste en skarebeheer te hanteer nie.</p> <p>13 MR BIZOS SC: In our reading of 14 situations, Colonel, there may be a necessity of having one 15 possible sharpshooter in that sort of situation who can be 16 used to good purpose if there is an obvious intention to 17 attack the police, and that is to have a warning shot and 18 if the warning shot doesn't have the effect, to try and 19 disable, not necessarily kill but disable the leader of the 20 group that is doing the attack. Have I understood the 21 history correctly?</p> <p>22 KOLONEL VERMAAK: Voorsitter nee, ek stem 23 nie saam nie. Soos ek reeds gesê het, ons het nog nooit in 24 die verlede Taakmag lede aangewend in onluste en 25 skarebeheer situasies nie en ek, ons het nog nooit 'n</p>

<p style="text-align: right;">Page 25661</p> <p>1 situasie gehad waar jy 'n leier gaan elimineer om te sê jy 2 gaan die skare beheer nie, want sou jy dit in elk geval 3 doen gaan jy definitief meer skade doen as wat jy goed 4 doen. 5 [10:12] CHAIRPERSON: In fairness I think it 6 should be pointed out that according to the information we 7 have the STF people didn't fire a shot on the 16th. They 8 were there, but they didn't fire at all according to the 9 statistics we have. So that's a point to be fed into the 10 mix as well, but the evidence I think is that they had two 11 STF people on a tower who were doing observation work with, 12 you know, binoculars and so on. So they were doing that 13 work. They didn't, as I say, actually fire at all on, any 14 shots at all on the 16th. 15 The evidence though is that, as far as I can 16 recall is that one of their specialities is acting in 17 cordon and search operations and what happens is the cordon 18 is formed by other units and then the people who actually 19 go in to do the search in a confined place, you know like 20 hostels and so on, they are very often the STF people 21 because they have special training in that kind of 22 situation. Are you able to help us to deal with the 23 question as to whether that's correct? 24 KOLONEL VERMAAK: Voorsitter, ek kan net 25 inligting gee ten opsigte van my ondervinding. Nog nooit</p>	<p style="text-align: right;">Page 25663</p> <p>1 "In the light of the intelligence relied on by the SAPS 2 leadership, particularly that the strikers would fight the 3 SAPS if they attempted to disperse them, the decision to 4 implement the phase 3 intervention seems to have been taken 5 in the knowledge that conflict was not only foreseeable but 6 likely." Would you agree with that conclusion? 7 KOLONEL VERMAAK: Dit stem ooreen met wat 8 ek gesê het oor die ondervinding wat ons gehad het van die 9 aggressiwiteit, ja. 10 MR BIZOS SC: Yes, and if we can go to 11 93, "A decision to initiate a tactical intervention against 12 the gathering is inconsistent with certain key principles 13 and rules of crowd management, including, 93.1, the 14 principle of 'situational appropriateness' which suggests 15 that public order will be more disturbed by immediate 16 police intervention than by doing nothing, then it is 17 better to opt for other solutions. Stand back and do 18 nothing, communicate and enter into dialogue with the 19 parties concerned, or postpone the planned operation." 20 Would you agree with that? 21 KOLONEL VERMAAK: Voorsitter ja, ek stem 22 saam maar ek moet daar noem dat die polisie was in gesprek 23 met die mense gewees. Hulle het aanvanklik nie toegetree 24 tot enigiets behalwe op die 16de waar daar dan 'n plan in 25 die agtermiddag uitgevoer was en ek eers hier verneem het</p>
<p style="text-align: right;">Page 25662</p> <p>1 het ons by 'n myn hostel waar ek betrokke was enigsins 2 Taakmag lede gebruik om deursoeking te doen nie. Taakmag 3 lede word gewoonlik gebruik in hoë-risiko operasies en die 4 deursoeking van hostels maak maar deel uit van jou Openbare 5 Orde Polisiëring funksie. Oral waar ons hostelle deursoek 6 het, het ons dit uitgevoer – destyds was die kommandos in 7 gebruik gewees. Hulle het vir ons die buite parameters het 8 hulle net gehelp afkordonner. Dan het ons verskillende 9 deursoekingsgroepe in die hostelle gehad. Elke groep het 10 'n speurder gehad en dan was daar op 'n sentrale punt waar 11 jou JOC, of jou "venue JOC" was het jy 'n paar lede van 12 PKRS, jou fotografe gehad; sou daar bewysstukke gekry word 13 dan het hulle gegaan, hulle het dit gefotografeer. Daar 14 was 'n speurder op die toneel gewees wat die nodige 15 verklarings en dies meer kon doen, en dan was die 16 springstof deskundiges ook op bystand by die JOC gewees. 17 Baie keer in jou hostels het jy op baie onwettige 18 springstof afgekom en dan was hulle ook getaak om dan nou 19 by daardie groepe aan te sluit waar die bewysstukke dan 20 gekry was. Ons het nooit van Taakmag lede gebruik gemaak 21 nie. 22 MR BIZOS SC: That's why I understood 23 your answer that what I have suggested of exceptional 24 circumstances, you would even veto that. Well, I would 25 accept. Please let us turn to paragraph 92 on page 41.</p>	<p style="text-align: right;">Page 25664</p> <p>1 hoe die plan in plek gestee het. 2 MR BIZOS SC: This putting the – 3 CHAIRPERSON: Sorry to interrupt you. 4 I'm not sure that Mr Hendrickx knew all the facts that we 5 now know when he wrote this report. As I told you 6 yesterday, the decision to go to a tactical intervention if 7 they didn't hand down their arms voluntarily on the 8 Thursday morning was already taken the Wednesday night, as 9 I explained to you, and it wasn't taken by the JOCCOM. The 10 members of the JOCCOM I suppose theoretically could have 11 gone against what had been decided, but they didn't, but 12 you can understand why they didn't. 13 There was a decision communicated to the JOCCOM 14 via the Provincial Commissioner at the outset of the 15 meeting at 1:30, but which she had already communicated to 16 the world at 9:30 in the morning when she addressed a media 17 conference in which she said that, "If they don't lay down 18 their arms voluntarily today, we will deal with the 19 situation and bring it to an end," or words to that effect. 20 So that's the decision what was made apparently 21 the night before even in the absence of current information 22 as to what was actually going to happen on the Thursday. 23 So it's not even correct to talk about a decision taken on 24 the Thursday afternoon at 1:30. That's when it was 25 communicated to the JOCCOM and Colonel Scott conceded that</p>

<p style="text-align: right;">Page 25665</p> <p>1 that put them in a difficult position and there's, one of 2 the questions is why Thursday, couldn't they have waited 3 till early Friday morning and implemented the original plan 4 that was on the table at the JOC even up until the 5 Thursday, but these are all matters that we've got to look 6 at. I don't know whether you can actually help us on them, 7 but the difficulty I get with Mr Hendrickx, presumably we 8 will raise it with him when he comes, is that I'm not sure 9 when this report was written he was entirely informed as to 10 the evidence that's come out since this Commission has been 11 proceeding.</p> <p>12 But I don't know whether Mr Bizos wants to deal 13 with that, but anyway, the real question I'm asking you is 14 in the light of what I've put to you are you really able to 15 help us on this particular issue? Except perhaps in some 16 general way relating to what –</p> <p>17 KOLONEL VERMAAK: Voorsitter nee, ek kan 18 rondom die besluit en die opdrag wat daar gegee is om die 19 operasie uit te voer, kan ek geen inligting, of nuwe 20 inligting tot die Kommissie gee nie.</p> <p>21 MR BIZOS SC: Well, what the Chairperson 22 brought to your attention makes the submission that I want 23 to make a fortiori – I'm sorry for the expression – it 24 makes it more obvious that the idea that somebody can 25 decide that an action such as that, that was taken on</p>	<p style="text-align: right;">Page 25667</p> <p>1 verneem het, het die media "statement" gemaak. Ek weet nie 2 of sy oor ander inligting beskik het wat ons nie gehad het 3 op die grond nie.</p> <p>4 MR BIZOS SC: But in questions of life 5 and death it would be foolhardy and highly dangerous to 6 direct that something should come to an end and that a 7 dangerous procedure should be adopted, irrespective of the 8 circumstances that may have prevailed on the afternoon of 9 the 16th.</p> <p>10 KOLONEL VERMAAK: Voorsitter, dit is 11 korrek.</p> <p>12 MR BIZOS SC: Colonel, there is one 13 aspect that concerns us and I want you to please try and 14 give us an answer. Is it a coincidence that none of the 15 senior officers were around on the afternoon of the 16th 16 near scene 1 in order to control the situation, or was 17 there a deliberate absence by every senior officer in order 18 to avoid responsibility?</p> <p>19 KOLONEL VERMAAK: Voorsitter, ek kan nie 20 daarop kommentaar lewer nie. Ek was daardie heel dag was 21 ek in die lug gewees, so ek dra nie kennis wie was in die 22 JOC en waar die senior persone was nie.</p> <p>23 CHAIRPERSON: May I ask you, what's your 24 experience in the past when you were a POP commander, I 25 take it you were presumably never involved in an operation</p>
<p style="text-align: right;">Page 25666</p> <p>1 Thursday afternoon can be made by persons who have no 2 experience in relation to crowd control to decide that 3 phase 3 will be put into operation. That would be 4 completely contrary to everything that you know and stands 5 for in relation to crowd control.</p> <p>6 KOLONEL VERMAAK: Voorsitter, dit is 7 hoekom jy 'n JOCCOM saamstel met alle rolspelers en in 8 daardie vergadering word daar dan besluit ten opsigte van 9 optredes, wanneer die optredes gehou moet word en watse 10 optredes. Ja, ek stem saam dat dit nie 'n normale ding is 11 dat iemand, of dat persone van buite af opdrag gee dat daar 12 'n spesifieke operasie uitgevoer moet word en die JOCCOM se 13 mening is nie daarvoor gevra nie. Of hulle hulle gevra het 14 kan ek ook nie vir u sê nie, maar soos u dit stel, as 15 iemand van buite af opdrag gee is dit nie die normale 16 prosedure nie.</p> <p>17 MR BIZOS SC: Yes, and a decision that 18 "This is D-day and we will put the end to this," was 19 completely contrary to everything that would have been 20 expected in a crowd control situation – crowd management, 21 rather than control.</p> <p>22 KOLONEL VERMAAK: Ek sê weereens dit is 23 die besluit wat by die JOCCOM lê wanneer hulle dit gaan 24 uitvoer. Hoekom daar gesê dit is "D-day" kan ek nie oor 25 kommentaar lewer nie. Die Provinsiale Kommissaris soos ek</p>	<p style="text-align: right;">Page 25668</p> <p>1 exactly like Marikana because it's to some extent unique, 2 but there must have been similar ones where there were 3 large numbers of protesters or strikers, or whatever, who 4 were attracting the attention of the POP. Now you have a 5 number of people in the JOC and you then have, and 6 presumably the overall commander normally stays there. Is 7 that right?</p> <p>8 KOLONEL VERMAAK: Dis korrek.</p> <p>9 CHAIRPERSON: Then you have an 10 operational commander who's in the field.</p> <p>11 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>12 CHAIRPERSON: I take it it's important 13 though that there should be communication between the 14 operational commander and the JOC –</p> <p>15 KOLONEL VERMAAK: Dis –</p> <p>16 CHAIRPERSON: - almost on a continuous 17 basis.</p> <p>18 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>19 CHAIRPERSON: And one of the problems 20 according to the evidence is that that didn't happen and 21 there were complaints about the equipment and people having 22 opportunity to get involved because there were 23 conversations on the radio all the radio, only one channel 24 and so on. But is it normal for the senior officers who 25 are involved in the JOC to actually go out in the field, or</p>

<p style="text-align: right;">Page 25669</p> <p>1 do they stay in the JOC but keep in contact by radio or 2 mobile telephone with the operational commander and the 3 other commanders on the ground, as it were? How does it 4 normally work in your experience? 5 KOLONEL VERMAAK: Voorsitter, ek kan net 6 terugkom weer na voorbeelde toe. Ons het altyd gewerk op 7 die prinsiep jou oorhoofse bevelvoerder bly in die JOC want 8 dit is waar al die inligting toe na gekanaliseer word. Dis 9 waar dit geëvalueer word en dit is waar weer opdragte vanaf 10 uitgaan na die mense toe op die grond. 11 CHAIRPERSON: That makes sense. So the 12 coordination of all the various units operating over the 13 whole field takes place at the JOC. 14 KOLONEL VERMAAK: Dis korrek. 15 CHAIRPERSON: And so that the criticism 16 that's being put to you by Mr Bizos, would you say that 17 that's well-founded, or in the light of what you've just 18 told us it's a bit unfair to criticise the senior officers 19 for staying in the JOC? I know General Mpembe left at one 20 stage, but we won't get involved in that. But they stayed 21 in the JOC. Of course the problem was more lack of 22 communication, but can you, is it really fair to say that 23 they must be criticised for staying in the JOC, or was it 24 not their duty to stay in the JOC so that they could 25 perform a coordinating role, analyse the information as it</p>	<p style="text-align: right;">Page 25671</p> <p>1 optrede te loods en jy weet nie daardie dag wat jy daardie 2 besluit neem wat die volgende dag eers gaan gebeur nie, my 3 mening is dis onverantwoordelik om so 'n opdrag uit te reik 4 want jy het nie inligting wat die volgende dag vir jou 5 inhou nie. So my mening is jy kan nie 'n vorige dag waar 6 jy met 'n situasie, 'n plofbare situasie sit 'n besluit 7 neem en sê more gaan ek so optree nie – 8 CHAIRPERSON: Sorry to interrupt you. So 9 you're saying it's irresponsible to say on Wednesday 10 Thursday will be D-day. Even if that language wasn't used 11 on Wednesday, that was the idea conveyed and you say that's 12 irresponsible? 13 KOLONEL VERMAAK: My persoonlike mening, 14 ja. 15 CHAIRPERSON: And the second half of the 16 question, you know I interrupted you before you got to 17 that. 18 KOLONEL VERMAAK: Voorsitter, dit kom 19 maar net terug dat as die oorhoofse bevelvoerder in die JOC 20 is moet hy leiding gee. As daar 'n situasie op die grond 21 plaasvind wat daar lede genoodsaak is om uit 22 selfverdediging uit op te tree dan is dit logies dat daar 23 nie tyd is om die oorhoofse bevelvoerder te kontak en te 24 vra mag ek optree nie. So dan is dit 'n ding wat jy 25 besluit daar, jy tree daarop op en dan agterna moet jy dan</p>
<p style="text-align: right;">Page 25670</p> <p>1 came in, and so on? 2 KOLONEL VERMAAK: Voorsitter, dit is, jou 3 oorhoofse bevelvoerder is die persoon wat in die JOC moet 4 wees om daardie inligting tesame met die ander senior mense 5 wat hy dan saam met hom deel van die span uitmaak besluite 6 te neem en dit te kanaliseer na die mense toe op die grond, 7 want as hy nie daar is nie, hy is tog verantwoordelik as jy 8 'n beplanning opstel, dis jou oorhoofse bevelvoerder; hy 9 moet betrokke wees by die operasie in die sin van leiding 10 gee, en die enigste manier hoe hy kan kontak hê met sy 11 mense op die grond is in jou sentrale punt. Dis hoekom jy 12 'n JOC stig. Dis waar jou inligting na toe kom. Dis waar 13 jou inligting geëvalueer en weer uitgaan. 14 MR BIZOS SC: Colonel, I'm going to 15 suggest to you that common sense where you have a volatile 16 situation and a decision taken beforehand that at a certain 17 time on the afternoon of the 16th there will be a force used 18 which would inevitably result in the loss of life, that a 19 senior officer should have been there in order to control 20 the situation and not have persons not in overall authority 21 to control it, but people to start shooting on their own 22 initiative. 23 KOLONEL VERMAAK: Voorsitter, ek dink die 24 vraag is tweeledig op hierdie stadium. Die gedeelte oor 25 die besluit wat vooraf geneem is om die volgende dag 'n</p>	<p style="text-align: right;">Page 25672</p> <p>1 net verduidelik hoekom het jy daardie besluit geneem. 2 [10:32] CHAIRPERSON: Can I ask you one more 3 question - Mr Bizos I take it won't object, until we take 4 the first comfort break, and that is it was put to you that 5 you should have a senior officer on the field as it were at 6 the time the operation is implemented. Now the operational 7 commander was Brigadier Calitz. He's a fairly senior 8 officer, isn't he? 9 KOLONEL VERMAAK: Dis korrek. 10 CHAIRPERSON: Ja, so would it be fair to 11 say that a senior officer was on the field in operational 12 charge of the members at the relevant time? 13 KOLONEL VERMAAK: Dis is korrek, 14 Voorsitter, hy was op die grond gewees maar as ons kyk na 15 die omvang van die area wat dit was moes hy noodwendig 16 ander bevelvoerders onder hom aanstel om sekere funksies te 17 verrig en die oorhoofse bevelvoerder bly nog steeds maar 18 verantwoordelik om soos wat inligting inkom na jou 19 operasionele bevelvoerder en daar word besluit deur die 20 operasionele bevelvoerder geneem wat weer na die lede toe 21 gekommunikeer word en hy nie daarmee saamstem nie, dan sal 22 hy onmiddellik die operasionele bevelvoerder kontak en sy 23 gevoel met hom deel. 24 CHAIRPERSON: Thank you. I think we'll 25 take the first comfort break at this point. Sorry, unless</p>

<p style="text-align: right;">Page 25673</p> <p>1 – forgive me, Mr Bizos, unless there's a point you want to 2 make before we take the comfort break. It's your cross- 3 examination. 4 MR BIZOS SC: No, I can take the matter 5 up after the adjournment. 6 CHAIRPERSON: Alright, we take the first 7 comfort break now and we must try to be back within 10 or 8 15 minutes because, I know it's difficult but we must try 9 to use the time as best we can. 10 [COMMISSION ADJOURNS COMMISSION RESUMES] 11 [11:18] CHAIRPERSON: The Commission resumes. Ek 12 herinner u dat u nog steeds gebonde is aan u plegtige 13 bevestiging. 14 SALMON JOHANNES VERMAAK: Bevestig. 15 CHAIRPERSON: Mr Bizos. 16 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.): 17 Colonel, I want to read out to you paragraph 9(3) of the 18 standing orders relating to the CJOC. "All information 19 that is gathered during and before an operation must 20 continually be reported to the CJOC so that he or she is 21 always aware of the actions of the participants. The 22 members must report all information to their officer in 23 charge on the ground who must then report to the CJOC. 24 This information must be reported either telephonically or 25 by radio, using the designated channel for upward reporting</p>	<p style="text-align: right;">Page 25675</p> <p>1 only heard about it later. You put before us what the 2 relevant section in the standing order says. I don't know 3 it's fair to ask the witness to speculate about why Major 4 General Mpembe did what he did, or even to say whether it 5 was appropriate or not. We – 6 MR BIZOS SC: Well, that's – I amend my 7 question. You see, he wasn't there. He wasn't there. 8 Well, taken in itself it may not be so significant, but all 9 the other senior officers and the provincial commander were 10 nowhere near the JOC, or if they were there, the 11 communication system did not work, or the Provincial 12 Commissioner was out of it. The net result is that we are 13 told by a number of senior officers that they were unaware 14 that people were killed on scene 1 until in some instances 15 an hour after it happened. Is that what you have expected 16 to be a proper compliance with section 9(3) of the standing 17 orders? 18 KOLONEL VERMAAK: Voorsitter, soos 19 uiteengesit in die staande orders word daar sekere 20 vereistes gestel. Wie daar in die JOC was kan ek weer sê, 21 ek was nie bewus wie daar was nie maar die staande orders 22 is duidelik ten opsigte van die kanalisering van inligting 23 en dies meer. 24 CHAIRPERSON: As far as the particular 25 point raised is concerned in relation to the deaths, your</p>
<p style="text-align: right;">Page 25674</p> <p>1 to the CJOC." Does this indicate to you that the CJOC had 2 to play a very important role in the decision as to whether 3 maximum force was to be used or not? 4 KOLONEL VERMAAK: Voorsitter, in normale 5 omstandighede, ja. 6 MR BIZOS SC: But now we have something 7 here that was either coincidental or deliberate. Let me 8 tell you what I am about. The overall commander was Mr 9 Mpembe. Is that right? 10 CHAIRPERSON: Major General Mpembe. 11 MR BIZOS SC: Sorry, General - Major 12 General Mpembe, yes. Is that correct? 13 KOLONEL VERMAAK: Dis korrek. 14 MR BIZOS SC: Where was he at this vital 15 moment in order to be reported to in order to make a 16 decision? 17 KOLONEL VERMAAK: Voorsitter, op daardie 18 dag is ek nie bewus waar hy was nie. Ek was in die lug 19 gewees, so ek dra nie kennis waar hy was, tot ek later 20 uitgevind het dat hy in 'n helikopter van Coin Sekuriteit 21 was. 22 MR BIZOS SC: Now was that an accident? 23 What was he doing in – he's the overall commander – 24 CHAIRPERSON: Mr Bizos, how can the 25 witness answer that? He says he didn't know anything, he</p>	<p style="text-align: right;">Page 25676</p> <p>1 evidence is that you sent by BlackBerry a photograph, which 2 you took a minute or so after the shooting, of the bodies 3 on the ground. Whether that was received – obviously you 4 don't know whether it was received and you don't know what 5 action was taken thereafter, but I take it further than 6 that you can't take it yourself. Is that correct? 7 KOLONEL VERMAAK: Dis korrek, Voorsitter. 8 MR BIZOS SC: Calitz was a senior 9 officer. Where was he at the vital time? 10 KOLONEL VERMAAK: Ek weet hy was – 11 CHAIRPERSON: I'm sorry, I think that 12 question was already asked and he said, I asked him that as 13 to whether at the time of the shooting he knew where 14 Brigadier Calitz's vehicle was and he said he didn't know, 15 and I asked him actually, he's going to come back to me on 16 that, I asked – no, no, sorry, I asked you about something 17 else. I asked him about Major General Naidoo, whether on 18 his photographs we can see where Major General Naidoo was 19 and when, but I did ask him where Brigadier Calitz was at 20 the appropriate time and he said he couldn't tell us. Are 21 you able to tell us anything further in regard to Brigadier 22 Calitz's movements immediately after the shooting? 23 KOLONEL VERMAAK: Ongelukkig kan ek nie 24 vir u enige antwoord op dit gee nie. Ek was glad nie bewus 25 op daardie stadium nie. Ons het gekonsentreer op wat ons</p>

<p style="text-align: right;">Page 25677</p> <p>1 op die grond gesien het, foto's geneem, radioberigte 2 deurgestuurd, so ek het nie spesifiek dopgehou waar elke 3 Nyala is. 4 MR BIZOS SC: I want you to accept, 5 Colonel, from me, that the evidence that we have heard thus 6 far that there was no senior officer anywhere near scene 1 7 where the deaths took place. Will you accept that? 8 KOLONEL VERMAAK: As u dit so stel, ja. 9 MR BIZOS SC: Isn't that a flagrant 10 disregard of the provisions of the standing order? 11 KOLONEL VERMAAK: Voorsitter, ek kan nie 12 kommentaar lewer oor waar hulle was en wat hulle gedoen het 13 nie. Ek glo hulle sal kan verduidelik wat die 14 omstandighede was hoekom hulle op spesifieke tye nie op 15 plekke was nie. 16 MR BIZOS SC: Well, we are going to 17 submit that their absence from the scene of action was 18 deliberate in order to avoid responsibility. 19 CHAIRPERSON: Mr Bizos – 20 MR BIZOS SC: That's what our submission 21 is going to be. 22 CHAIRPERSON: Mr Bizos – 23 MR BIZOS SC: May I ask a question on it, 24 Mr Chairman? 25 CHAIRPERSON: Yes, I'm sorry, I want to</p>	<p style="text-align: right;">Page 25679</p> <p>1 was just saying the question must be clear when you talk 2 about senior officers – 3 MR BIZOS SC: Yes, well – 4 CHAIRPERSON: - you must define, which 5 you've now done. So put the question and let's see if the 6 witness can answer it. 7 MR BIZOS SC: Is it a coincidence that 8 the most senior officers that were members of JOC were 9 absent at the vital time that the shooting took place? 10 KOLONEL VERMAAK: Voorsitter, ek kan nie 11 kommentaar lewer oor waar hulle was nie en soos ek gesê 12 het, ek weet ook nie die redes as hulle dan nie daar was, 13 wat die redes is dat hulle nie op daardie stadium daar was 14 nie. Ek was in die helikopter gewees, so ek kan ongelukkig 15 nie vir u 'n antwoord op dit gee nie. 16 MR BIZOS SC: If you were in charge of 17 the operation would you have expected some of the senior 18 officers who have responsibility in terms of the standing 19 order to be somewhere near the action in which people lost 20 their lives? 21 KOLONEL VERMAAK: Ek het getuig dat jou 22 oorhoofse bevelvoerder verantwoordelik is om in die JOC te 23 wees om leiding te gee, Voorsitter. 24 MR BIZOS SC: The idea of having the JOC 25 some four kilometres, sitting some four kilometres away on</p>
<p style="text-align: right;">Page 25678</p> <p>1 say something about your question. I'm not sure whether 2 the witness can help us, but when you say senior officers, 3 what do you mean by senior officers? 4 MR BIZOS SC: The generals, the 5 brigadiers. 6 CHAIRPERSON: Okay, because we had, the 7 evidence seems to indicate that some of the colonels may 8 have been present. I think Makhubela and Pitsi and so on 9 may have been in the vicinity. The person in charge of the 10 TRT was Loest, I think he's a captain. 11 KOLONEL VERMAAK: Captain Loest. 12 CHAIRPERSON: He's not a senior officer. 13 So what I want to ask you is when you say senior officers 14 weren't present, what rank of seniority are you referring 15 to? Brigadier Calitz – 16 MR BIZOS SC: May I amend it to senior 17 commanders? 18 CHAIRPERSON: Yes, Brigadier Calitz told 19 us he'd left a short while before. That's what he claims. 20 But your question relates what, to generals and brigadiers? 21 MR BIZOS SC: Yes, the people that were 22 in overall command in order to control or manage the police 23 action, Mr Chairman. I'm entitled, with respect, to put to 24 the witness as an expert – 25 CHAIRPERSON: I wasn't stopping you. I</p>	<p style="text-align: right;">Page 25680</p> <p>1 the premises of the mine, how good a practice is that in 2 your opinion as an expert? 3 KOLONEL VERMAAK: Voorsitter, daar was 4 nie nader fasiliteite gewees wat gebruik kan word nie. Die 5 feit dat dit vier kilometer of so van die toneel af was is 6 nie werklik 'n probleem nie aangesien die kommunikasie daar 7 is met die radio's, selfone is beskikbaar. So ek het nie 8 'n probleem met die plasing van die JOC by die mynperseel 9 self nie. 10 MR BIZOS SC: Situations where life or 11 death may develop are sufficiently important to be observed 12 from nearby. Even in battles generals are, may not be 13 completely on the frontline, but they're expected to be 14 there with their binoculars in order to determine what is 15 to happen next. Is that not good practice? 16 KOLONEL VERMAAK: Negatief, Voorsitter. 17 Ek het al aan operasies deelgeneem waar jou JOC 10 18 kilometer en verder van die punt is waar die diens verrig 19 word. Jy moet net sorg dat daar ordentlike kommunikasie is 20 tussen jou en die mense wat die diens buite verrig. 21 MR BIZOS SC: Is that best practice, do 22 you think? 23 KOLONEL VERMAAK: Ek het nie 'n 24 probleem – 25 MR BIZOS SC: Wouldn't it be very helpful</p>

<p style="text-align: right;">Page 25681</p> <p>1 to be there on the spot in order to direct the operation?</p> <p>2 KOLONEL VERMAAK: Nêrens sê hulle die JOC</p> <p>3 moet by die toneel self wees nie. Ek glo ook nie, soos ek</p> <p>4 sê was daar voorsien gewees dat mense hulle lewens gaan</p> <p>5 verloor nie. So die plasing van die JOC is werklikwaar in</p> <p>6 my oogpunt uit nie 'n probleem nie.</p> <p>7 MR BIZOS SC: I want to turn to paragraph</p> <p>8 93.2. "The principle of proportionality aims at moderation</p> <p>9 between goals and means and recommends that only those</p> <p>10 measures essential for the execution of successful</p> <p>11 operation should be employed." Would you agree with that</p> <p>12 principle of proportionality?</p> <p>13 KOLONEL VERMAAK: Dit hang weer af van</p> <p>14 omstandighede. 'n Mens moet kyk wat die –</p> <p>15 MR BIZOS SC: Yes, I'm sure that it</p> <p>16 depends on the circumstances, but let us look at the</p> <p>17 circumstances.</p> <p>18 KOLONEL VERMAAK: Die omstandighede was</p> <p>19 so gewees dat daar nie nader 'n voldoende perseel was om as</p> <p>20 'n JOC gebruik te kan word nie en soos ek weer vir u gesê</p> <p>21 het dit wat beskikbaar was, was gebruik gewees en volgens</p> <p>22 my voldoen dit definitief aan die plasing van 'n JOC.</p> <p>23 MR BIZOS SC: We know that this operation</p> <p>24 led to 34 deaths in scene 1 and scene 2, and 76 people were</p> <p>25 seriously injured. We also know that not a single</p>	<p style="text-align: right;">Page 25683</p> <p>1 you can accept that the factual basis for the question is</p> <p>2 correct.</p> <p>3 MR BIZOS SC: Do you think that the</p> <p>4 actions taken by the police in killing and injuring so many</p> <p>5 people in the manner in which the documents show, shows</p> <p>6 that there was proportionality, that the police really out</p> <p>7 of fear of being attacked managed to kill 34 and injure 206</p> <p>8 – 76, I beg your pardon. Do you think that the</p> <p>9 proportionality called for in the standing orders was</p> <p>10 observed by the police?</p> <p>11 KOLONEL VERMAAK: Voorsitter, die</p> <p>12 omstandighede op daardie toneel kan ek nie oor enige</p> <p>13 kommentaar lewer nie. Ek was nie op die grond gewees nie.</p> <p>14 Ek het uit die lug uit sekere goed waargeneem. Hoekom die</p> <p>15 lede op die grond geskiet het en hoeveel hulle geskiet het</p> <p>16 kan net daardie lede wat daar is dit verduidelik, en geen</p> <p>17 staande order maak enigsins voorsiening dat enige mens sy</p> <p>18 lewe moet verloor nie. Dit is juis daar om te kyk dat ons</p> <p>19 na die belange van almal omsien.</p> <p>20 MR BIZOS SC: You took part in the</p> <p>21 transformation of the police force in the early 90s and the</p> <p>22 middle, late 90s, during Mr Mandela's presidency and you</p> <p>23 were involved in the training and operations of POPS.</p> <p>24 KOLONEL VERMAAK: Dis korrek.</p> <p>25 MR BIZOS SC: Did you think that the</p>
<p style="text-align: right;">Page 25682</p> <p>1 policeman suffered a scratch. Will you accept those facts?</p> <p>2 KOLONEL VERMAAK: Dis korrek.</p> <p>3 MR BIZOS SC: Do you understand what</p> <p>4 proportionality means?</p> <p>5 KOLONEL VERMAAK: Dis korrek.</p> <p>6 MR BIZOS SC: Was this a proportional</p> <p>7 result?</p> <p>8 KOLONEL VERMAAK: Die uitkoms van daardie</p> <p>9 dienste kon nie vooraf bepaal geword het nie, mnr die</p> <p>10 Voorsitter.</p> <p>11 MR BIZOS SC: Are you aware of the fact</p> <p>12 that a substantial number of the dead and injured were</p> <p>13 either shot in the back or on the side?</p> <p>14 KOLONEL VERMAAK: Voorsitter, ek het nie</p> <p>15 toegang tot daardie dokumentasie nie, so –</p> <p>16 MR BIZOS SC: We have.</p> <p>17 KOLONEL VERMAAK: Dis, as u dit so stel,</p> <p>18 ek het dit nie voor my nie, so ek kan nie vir u sê dit is</p> <p>19 so of dit is nie so nie.</p> <p>20 CHAIRPERSON: I can tell you that those</p> <p>21 documents are before us and the point put to you by counsel</p> <p>22 is in accordance with the post mortem reports that we've</p> <p>23 seen, and I think some of the – I'm not sure what detailed</p> <p>24 documents we've got in relation to the 76 who were injured,</p> <p>25 but that point has also been covered in the evidence. So</p>	<p style="text-align: right;">Page 25684</p> <p>1 policies of the then Commissioner – you remember his name?</p> <p>2 Commissioner of Police during this period.</p> <p>3 [11:38] KOLONEL VERMAAK: Fivaz.</p> <p>4 MR BIZOS SC: - Fivaz, to transform the</p> <p>5 militarisation of the police substantially succeeded?</p> <p>6 Would you agree with that?</p> <p>7 KOLONEL VERMAAK: Dis korrek.</p> <p>8 MR BIZOS SC: After Mr Mandela's</p> <p>9 retirement and choice of not running for a second term, was</p> <p>10 there discomfort about the police about the</p> <p>11 demilitarisation process that had taken place?</p> <p>12 KOLONEL VERMAAK: Voorsitter, ek kan u</p> <p>13 die versekering gee dit het niks impak gehad op die optrede</p> <p>14 op die grond nie. Die lede het nog steeds die wetgewing</p> <p>15 nagekom. Daar is nie wetgewing geignoreer omdat dit nou</p> <p>16 gemilitariseer en gedemilitariseer is nie. Ons het op</p> <p>17 dieselfde wyse voortgegaan en ons het ons werk gedoen na</p> <p>18 die beste van ons vermoë. Die kwessie van range is 'n</p> <p>19 administratiewe ding in ons oë gewees want dit het geen</p> <p>20 uitwerking op ons werk gehad nie.</p> <p>21 MR BIZOS SC: You jumped ahead, Colonel.</p> <p>22 Was there dissatisfaction among the police officers about</p> <p>23 the demilitarisation of the police?</p> <p>24 KOLONEL VERMAAK: Negatief.</p> <p>25 MR BIZOS SC: The question of ranks was</p>

<p style="text-align: right;">Page 25685</p> <p>1 comparatively minor whether you were called, continued to 2 be called a colonel and what would your title have been if 3 Mr Fivaz' amendments continued? Something else? 4 KOLONEL VERMAAK: Superintendent. 5 MR BIZOS SC: Would it have made any 6 difference? 7 KOLONEL VERMAAK: Dit maak geen verskil 8 nie. 9 MR BIZOS SC: Yes, well, so that's not 10 really what we are concerned with. What – 11 CHAIRPERSON: The interesting question of 12 course is if it made no difference, why was it done, but 13 that's something the witness can't answer, I take it. You 14 say it made no difference to the police themselves what 15 titles they bore or what ranks they had because – 16 KOLONEL VERMAAK: Dit het geen verskil 17 gemaak aan ons nie. 18 CHAIRPERSON: But of course it might have 19 made a difference to the public who viewed them now as 20 carriers of military rank rather than civilian rank, but 21 that's something I take it you can't help us on. 22 KOLONEL VERMAAK: Nee, daarmee kan ek nie 23 help, Voorsitter. 24 MR BIZOS SC: Yes, but we, whether we 25 like it or not, have to admit that there was and still is</p>	<p style="text-align: right;">Page 25687</p> <p>1 considerable criticisms, there were considerable criticisms 2 of the Constitution and the courts being more interested in 3 the rights of criminals than the rights of people? You've 4 not heard that, and was not that something that was pushed 5 at the time? 6 CHAIRPERSON: [Microphone off, inaudible] 7 two questions, Mr Bizos. I think you should ask them one 8 at a time. Lieutenant Colonel, what do you say about the 9 first question he asked you? Did you hear that – 10 KOLONEL VERMAAK: Voorsitter ja, nee, dit 11 was algemene inligting in die media gewees. So via media 12 het jy daardie berigte gelees. Dit is korrek, ja. 13 MR BIZOS SC: Yes, that's what I meant. 14 Yes, and the others, that – 15 KOLONEL VERMAAK: Daar was baie 16 spekulاسie in die media oor die aangeleenthede. 17 MR BIZOS SC: Actually that wasn't only 18 speculation, there were statements by senior policemen, a 19 minister – 20 CHAIRPERSON: Wait, wait, wait, before 21 you carry on. I think you should be more precise. You're 22 referring to a statement by the minister. I'm sure the 23 witness can understand that, but when you talk generally 24 about statements by senior police officials then you should 25 give him more detail so that he can deal with the question.</p>
<p style="text-align: right;">Page 25686</p> <p>1 unacceptable crime being committed against members of the 2 public. Is that right? 3 KOLONEL VERMAAK: Herhaal net weer die 4 vraag, asseblief. 5 MR BIZOS SC: There is a lot of crime in 6 South Africa. 7 KOLONEL VERMAAK: Dis korrek. 8 MR BIZOS SC: Were there people within 9 the police force and some politicians who gave out that the 10 constitutional rights of people of not being sentenced to 11 death, of there being due process in our criminal law 12 system, was responsible for the high rate of crime? I'm 13 not saying about you. Was that something that was debated 14 by certain people? I see you shaking your head – 15 KOLONEL VERMAAK: Nee, nee – 16 MR BIZOS SC: Do you say that that did 17 not happen? 18 KOLONEL VERMAAK: Nie waar ek was nie. 19 MR BIZOS SC: No, no, no, but you don't – 20 KOLONEL VERMAAK: Ek kan nie oor – 21 MR BIZOS SC: You don't remember it but – 22 KOLONEL VERMAAK: Ek kan nie oor iets 23 kommentaar lewer as ek nie kennis het daarvan nie. 24 MR BIZOS SC: You're not living in a 25 vacuum, Colonel. Were you not aware that there was</p>	<p style="text-align: right;">Page 25688</p> <p>1 MR BIZOS SC: Are you aware – 2 CHAIRPERSON: You should also tell him 3 what the statements are so – 4 MR BIZOS SC: The statements were that 5 the hands of the police are tied behind their back and they 6 must have the freedom, and expressly in one statement said 7 that they have the right to shoot and kill. 8 KOLONEL VERMAAK: Voorsitter, ek dink mnr 9 Bizos verwys na ons vorige kommissaris wat baie opgekom het 10 ten opsigte van die dood van polisiemanne, waarop hy op 'n 11 stadium gesê het vuur moet met vuur beantwoord word. Ek is 12 bewus van daardie uitlatings wat gemaak is. 13 Die kwessie rondom dat polisiemanne se hande 14 agter hulle rug vasgemaak is, dat hulle nie die wet kan 15 toepas nie, ek stem nie daarmee saam nie. Ons het, vandat 16 ek in die polisie is het ek altyd die wet toegepas, maak 17 nie saak wie aan bewind was nie, solank die wetgewing daar 18 was het jy die nodige wetgewing toegepas. So ek verskil 19 van die kwessie dat polisie na sekere tye nie ten volle 20 hulle pligte kon uitgevoer het nie. 21 MR BIZOS SC: I'm not talking about your 22 lack of respect of the law, which I accept. I am talking 23 about a culture being promoted that the police must have 24 power to kill if need be in order to do their job properly. 25 KOLONEL VERMAAK: Ek verskil daarmee.</p>

<p style="text-align: right;">Page 25689</p> <p>1 CHAIRPERSON: Mr Bizos, when you reach a 2 suitable stage, if you'd let me know because I was 3 proposing to take the tea adjournment soon, but I don't 4 want to unduly interfere with your cross-examination. If 5 there's a point you want to make before we take the tea 6 adjournment, please carry on. 7 MR BIZOS SC: Mr Chairman, I have a 8 section that I want to read to him in FFF17 in support of 9 what I am saying, and it may be necessary, or convenient to 10 take the adjournment so that that – 11 CHAIRPERSON: Was it in your bundle of 12 documents to which you drew the witness's attention? 13 MR BIZOS SC: It wasn't in the bundle of 14 documents, but I'll ask for leave to refer to the document. 15 CHAIRPERSON: Alright, have you got a 16 hardcopy in the meanwhile? 17 MR BIZOS SC: Yes. 18 CHAIRPERSON: So we'll take the tea 19 adjournment now. We'll let the witness look at it while 20 he's drinking his tea. We'll arrange to put it up on the 21 screen and then you can carry on. Let's take the tea 22 adjournment now so that you can attend to all those 23 housekeeping arrangements once the adjournment has 24 commenced. 25 MR BIZOS SC: Thank you.</p>	<p style="text-align: right;">Page 25691</p> <p>1 CHAIRPERSON: Oh, I see, it's paragraph 7 2 on page 11. 3 MR BIZOS SC: Yes. 4 CHAIRPERSON: Ja, it looks as if it's 5 actually – yes, I see. 6 MR BIZOS SC: Statements, actions during 7 the period April 2008 to 12th of November 2009. "It is 8 submitted that the following statements and/or actions 9 during the period of April 2008 to 12 November 2009 may be 10 taken as evidence, that the responsible officials of 11 government had a deliberate policy that involves 12 encouraging greater use of force by members of the South 13 African Police Service." So it wasn't only by own 14 experience that I put it to you. I'm going to read a 15 couple of paragraphs - listen carefully – and I'm going to 16 ask you they must have had, they must have had influence on 17 the South African Police, and more particularly on the 18 police at Marikana on the 16th of August. 19 Paragraph 8, "The statement by the then Deputy 20 Minister of Safety & Security, Susan Shabangu, on the 9th of 21 April 2008 to the effect 'You must kill the bastards 22 (criminals) if they threaten you or the community.'" "If 23 they threaten you or the community." "You must not worry 24 about the regulations" - you mustn't worry the standing 25 orders, I would say may have been interpreted – "if they</p>
<p style="text-align: right;">Page 25690</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [12:07] CHAIRPERSON: The Commission resumes. Ek 3 moet u daaraan herinner dat u nog gebonde is deur die 4 plegtige bevestiging wat u gemaak het. 5 SALMON JOHANNES VERMAAK: Dis korrek, 6 Voorsitter. 7 CHAIRPERSON: Mr Bizos. 8 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.): 9 Thank you, Mr Chairman. Colonel, the Council for the 10 Advancement of the South African Constitution has made a 11 submission, which is part of the papers before the 12 Commission. I want to refer you to what they say in their 13 report – 14 CHAIRPERSON: I'm sorry to interrupt you. 15 Were you given a copy and you've had a chance to see it? 16 KOLONEL VERMAAK: Ek het, dankie 17 Voorsitter. 18 MR BIZOS SC: Have you got paragraph 7 19 there? 20 KOLONEL VERMAAK: Ek het hom. 21 MR BIZOS SC: It's on the screen, on page 22 11. 23 CHAIRPERSON: Which page specifically are 24 you referring to, Mr Bizos? 25 MR BIZOS SC: Page 11, paragraph 7.</p>	<p style="text-align: right;">Page 25692</p> <p>1 threaten you or the community. I want no warning shots. 2 You have one shot and it must be a kill shot. I want to 3 assure you, assure the police station commissioners and 4 policemen and women from these areas that have permission 5 to kill these criminals, I will not tolerate any pathetic 6 excuses for you not to be able to deal with crime. You 7 have been given guns; now use them. If criminal dare to 8 threaten the police or the livelihood or lives of innocent 9 men, women and children, then they must be killed." 10 And then in paragraph 9, "Deputy Minister's words 11 were not repudiated by the leadership of the African 12 National Congress and the South African government. Mr 13 Zuma became President of South Africa in May 2009 and 14 appears to have represented a broad agreement of reinforced 15 as follows. The fact that he on the 11th of April 2008, two 16 days after Ms Shabangu's made the above statement, Mr Zuma 17 who was then President of the ANC said, 'If you have a 18 deputy minister saying the kinds of things that the Deputy 19 Minister was saying, this is what we need to happen," a 20 clear endorsement of her statement. "What the Deputy 21 Minister was saying is what we are to be doing in dealing 22 with the criminals, rather than talking about it." 23 "The statements made by the Minister of Safety & 24 Security, Nathi Mthethwa, reappointed as Minister of Police 25 in May 2009, during a briefing of parliament's select</p>

<p style="text-align: right;">Page 25693</p> <p>1 committee on security on the 12th of November 2008 to the 2 effect that those involved in cash-in-transit heists are 3 people who go out to get what they want, whatever the 4 circumstances. If it means they kill those security 5 guards, they kill whoever is around. We don't believe that 6 when you are faced with criminals armed with sophisticated 7 weaponry the police's task would be to take out some human 8 rights charter because we are in the field, we are in the 9 killing field where criminals are killing law-abiding 10 citizens, now we are saying to the police that we ourselves 11 had an obligation as well to strengthen the arm of these 12 task forces so that they are on the field to teach those 13 people a lesson, fight fire with fire. There's no other 14 way than that." I don't know that I have to read any – 15 CHAIRPERSON: I don't think we need to 16 look at the amendment of section 49. That's a different 17 matter, surely. 18 MR BIZOS SC: Yes. Well, is that not 19 enough? The police must have welcomed, or the majority of 20 the police or some of them must have welcomed this as a 21 licence to kill. Do you agree? 22 KOLONEL VERMAAK: Ek stem nie saam nie, 23 mnr die Voorsitter. 24 MR BIZOS SC: Well, do you say that 25 policemen can ignore statements that are made by deputy</p>	<p style="text-align: right;">Page 25695</p> <p>1 relating to you. Your present conduct and the effect of 2 your evidence proves that you are right in relation to 3 yourself, Colonel. The question is not about you. The 4 question is about the force of which you are a member, who 5 may well have welcomed the endorsement by the political 6 figures. 7 CHAIRPERSON: The real question is are 8 you able from your own knowledge of what was going on in 9 the police force, particularly that section in which you 10 were involved, are you able to respond to Mr Bizos' 11 question, which I take it is really this; that these 12 statements that were made, or quoted, did they bring about 13 a culture in the police of not firing warning shots, of 14 shooting to kill, and so forth? 15 KOLONEL VERMAAK: Negatief, Voorsitter. 16 Dit het geen invloed gehad op die polisiemanne nie. Soos 17 ek sê dit was van die bestuur se kant af altyd nog die 18 beleid gewees minimum geweld en nie maksimum nie. 19 MR BIZOS SC: Well, this may be your 20 belief, Colonel, but that belief was proved wrong at 21 Marikana. 22 CHAIRPERSON: Is that a question or a 23 comment, Mr Bizos? 24 MR BIZOS SC: Well – 25 CHAIRPERSON: Perhaps you should put it</p>
<p style="text-align: right;">Page 25694</p> <p>1 ministers and confirmed by presidents? 2 CHAIRPERSON: The statement wasn't 3 confirmed by any president of the country at the time. 4 MR BIZOS SC: I beg your pardon? 5 CHAIRPERSON: The statement was not 6 confirmed by any president of the country at the time. The 7 very passage that you read – 8 MR BIZOS SC: Yes. 9 CHAIRPERSON: - contained a statement 10 allegedly made by Mr Zuma at the time before he was elected 11 President of the country. So you can't say the statement 12 was confirmed by the President – 13 MR BIZOS SC: Well, I see the point. By 14 deputy ministers and high-ranking politicians. Are they 15 ignored by the police? Is that what you are saying? 16 KOLONEL VERMAAK: Enige – ek kan dit nie 17 sien as opdragte nie. Dit is media "statements" wat gemaak 18 was. Dit vervang geen wetgewing en ek kan u verseker dat 19 die polisie daarop is om die wet na te kom en nie onwettige 20 mededelings na te kom nie. In my omgewing waar ek gewerk 21 het, het dit geen invloed gehad op polisiemanne se optrede 22 nie. Inteendeel, daar is altyd dit op polisiemanne se 23 harte gelê dat hulle nie onnodig hulle vuurwapens moet 24 gebruik nie. 25 MR BIZOS SC: I accept your evidence</p>	<p style="text-align: right;">Page 25696</p> <p>1 in a question form. You heard what Mr Bizos says. He says 2 that that's your belief that it wasn't that culture. He's 3 suggesting to you that what happened at Marikana disproves 4 that belief. What comment do you have about that? 5 KOLONEL VERMAAK: Dis negatief, ek stem 6 nie daarmee saam nie, Voorsitter. 7 MR BIZOS SC: Well, I can understand that 8 you are under an obligation to show some solidarity with 9 the profession that you are a member of – 10 CHAIRPERSON: Mr Bizos, I think that's, 11 with respect, an improper comment to make to the witness. 12 You are in effect suggesting to him that he's saying 13 something which he doesn't sincerely believe out of some 14 sense of obligation. Well, I think if I may say so, that 15 has the effect of insulting the witness. I don't think 16 that that's – 17 MR BIZOS SC: No, I didn't intend to do 18 that, Mr Chairman. 19 CHAIRPERSON: I'm sure you didn't intend 20 to do it, but I must say I think it might well have been 21 interpreted in that way. I think that that's perhaps a 22 comment best withdrawn and I suggest you carry on with your 23 cross-examination on other topics. 24 MR BIZOS SC: You see, we are going to 25 submit that what happened at Marikana, particularly in the</p>

<p style="text-align: right;">Page 25697</p> <p>1 apparent absence of senior officers who in the words of an 2 international judge sought to be deliberately absent, 3 deliberately blind, and deliberately deaf on the evidence 4 that we have, really shows that there was in fact – 5 MR NGALWANA: Sorry, Mr Chairman, I don't 6 think there's any evidence to the effect that the senior 7 officials were deliberately absent from where the people 8 were shot. 9 CHAIRPERSON: No, I think that's correct. 10 Deliberate, I mean there are a couple of questions that 11 arise. One is whether Brigadier Calitz's statement that he 12 wasn't there at the time he'd left can be accepted as 13 correct, and the second question is if it can be accepted 14 as correct, whether he absented himself deliberately or 15 whether he absented himself for the reason that he gave. 16 But I don't think you can put it as a fact that there was a 17 deliberate abstention. There were, as far as we know, 18 other senior officers there. There were lieutenant 19 colonels and so on. I don't think there was any other – 20 MR BIZOS SC: I'll amend the question, Mr 21 Chairman. 22 CHAIRPERSON: Yes, I think you should. 23 MR BIZOS SC: We are going to submit, 24 Colonel, that the absence of senior officers from the 25 Marikana scenes where death took place was not</p>	<p style="text-align: right;">Page 25699</p> <p>1 CHAIRPERSON: Mr Bizos, what he says is 2 he doesn't know whether it was deliberate or accidental 3 because he was 300 feet in the air, that's why he can't 4 comment. Now that's his answer. 5 MR BIZOS SC: Yes. Well, we'll have to 6 accept that from him at this stage, Mr Chairman. Let us go 7 to paragraph 93.3, "The principle of optimisation 8 prescribes the least violent solution to solve problems. 9 The principle incorporates the rule of optimal effect of 10 means which recommends the use of those means to obtain the 11 maximum intensity with the minimum damage on both sides." 12 Would you agree with that as a principle? 13 KOLONEL VERMAAK: Nee, ek stem nie saam 14 daarmee nie. 15 MR BIZOS SC: Well, does that mean that 16 you don't agree that if there is a non-violent solution 17 such as for instance giving a warning, you say that that 18 doesn't matter if no warning was given? I'm sure that you 19 don't mean that. 20 KOLONEL VERMAAK: U het vir my gevra of 21 ek saamstem met die stelling wat aan my gemaak is. Ek stem 22 nie saam met die stelling nie. Vir my gaan dit oor 23 "minimum intensity with minimum damage." 24 MR BIZOS SC: What is your objection to 25 that?</p>
<p style="text-align: right;">Page 25698</p> <p>1 coincidental, but as a result of the senior persons wanting 2 to be said to be absent deliberately so in order to avoid 3 responsibility. Have you got any comment on that? 4 KOLONEL VERMAAK: Ek stem nie daarmee 5 saam nie, Voorsitter. 6 MR BIZOS SC: You say that it must have 7 been an accident that they weren't – 8 KOLONEL VERMAAK: Nee, ek het ook nie 9 gesê dit is so nie. Ek sê net ek stem nie saam met die 10 stelling wat u nou maak nie. 11 MR BIZOS SC: Well, there are two 12 possibilities. Either it was accidental or it was 13 deliberate. Either it was – 14 CHAIRPERSON: There are three 15 possibilities. Either it was accidental, or it was 16 deliberate, or he doesn't know because he's not in a 17 position to comment. 18 MR BIZOS SC: Yes, well which of the 19 three do you choose, Colonel? 20 KOLONEL VERMAAK: Voorsitter, ek sal maar 21 die laaste een vat want ek was 300 voet in die lug gewees. 22 MR BIZOS SC: I'm sorry, I didn't hear it 23 or understand your answer. 24 KOLONEL VERMAAK: I wasn't present – 25 MR BIZOS SC: What is the difference –</p>	<p style="text-align: right;">Page 25700</p> <p>1 KOLONEL VERMAAK: Presies wat ek vir u 2 sê. 3 MR BIZOS SC: What does it mean on the 4 facts of this case? What do you want to say to us? 5 KOLONEL VERMAAK: As u vir my 'n vraag 6 direk vra sal ek hom so antwoord. 7 MR BIZOS SC: Yes, would it have been 8 better if there were warning shots? 9 KOLONEL VERMAAK: Dit hang alles van 10 omstandighede af. Ek kan ongelukkig nie vir u sê wat die 11 omstandighede op die grond op daardie oomblik was nie. Die 12 mense wat daar opgetree het, hulle is die mense wat vir u 13 op daardie vraag sal kan antwoord. 14 MR BIZOS SC: If you were there, would 15 you have insisted on giving a warning and if the warning 16 didn't have the desired effect, would you have said shoot 17 in the air as warning shots before there was shooting to 18 kill? 19 KOLONEL VERMAAK: Voorsitter, alles hang 20 van omstandighede af. Ek is nie op daardie toneel gewees 21 en ek kan nie sê wat daar gebeur het nie. Ek kan nie hier 22 sê as ek daar was het ek daardie opdrag gegee nie. Ek was 23 nie in daardie omstandighede op daardie oomblik daar gewees 24 nie. 25 MR BIZOS SC: Yes, but you will agree</p>

<p style="text-align: right;">Page 25701</p> <p>1 that in principle warning shots and shots in the air are 2 better options than shooting to kill? 3 KOLONEL VERMAAK: Nie noodwendig nie, 4 Voorsitter. Ek dink een van die groot gevare van "warning 5 shots in the air" is een van die redes hoekom ek 'n 6 helikopter weggevat het, want as hy in die lug in opskiet, 7 skiet hy my uit die lug uit. 8 [12:26] So dis 'n gevaar, en die ballistiese mense sal 9 vir u verduidelik die spoed wat 'n patroon in die lug 10 ingaan is die spoed wat hy mee afkom. So waar gaan daardie 11 patroon eindig? So die beste opsie is nie altyd "warning 12 shots. 13 MR BIZOS SC: Well, was there any 14 evidence of shooting at the police on the day in question? 15 KOLONEL VERMAAK: Voorsitter, ek kan net 16 vir u sê wat ek weet en dit wat ek oop die media gesien 17 het. So ek kan nie spekulêer oor wat daar gebeur het nie. 18 MR BIZOS SC: Can we turn to paragraph 19 96? Mr Hendrickx says, "My first concern in relation to 20 the implementation of the tactical intervention plan to 21 disperse, disarm and arrest the striking mineworkers is the 22 absence of an adequate plan." I think that you have 23 already agreed that that is so. 24 KOLONEL VERMAAK: Ek het saamgestem dat 25 daar leemtes in die plan was, Voorsitter.</p>	<p style="text-align: right;">Page 25703</p> <p>1 examination, Colonel, I want to thank you for what I will 2 submit are sincere responses in agreeing with the 3 independent expert which we on behalf of the victims have 4 made, and that concludes my cross-examination – my 5 examination, Mr Chair. 6 CHAIRPERSON: Thank you, Mr Bizos. Ms 7 Mosebe, are you ready to cross-examine – 8 MS MOSEBE: Yes, Chair. 9 CHAIRPERSON: - on behalf of the family 10 of Warrant Officer Monene? 11 CROSS-EXAMINATION BY MS MOSEBE: Thank 12 you, Chairperson, we are. Colonel, good afternoon. 13 COLONEL VERMAAK: Good afternoon. 14 MS MOSEBE: Colonel, on the 24th of March, 15 that was on Monday when you started off with your 16 testimony, you testified before this Commission that while 17 you were on air you observed teargas that was thrown into 18 the crowd and then you observed the protesters, or a group 19 of protesters attacking the police. Am I accurate? 20 KOLONEL VERMAAK: Dis korrek. 21 MS MOSEBE: Okay, and then you further 22 testified, Colonel, that you testified that Captain 23 Oosthuizen pointed out to you that the police were running 24 away. Is that your observation? 25 KOLONEL VERMAAK: Al drie van ons wat in</p>
<p style="text-align: right;">Page 25702</p> <p>1 MR BIZOS SC: Yes, and could we turn to 2 101? "In my view the briefing of members prior to the 3 phase 3 deployment was inadequate. Again would this appear 4 to be a result at least in part of the haste with which the 5 decision to implement phase 3 was made on Thursday. The 6 SAPS commentators were only briefed for the first time on 7 phase 3 plan about an hour before the operation." Do you 8 agree with that paragraph? 9 KOLONEL VERMAAK: Ek stem saam, 10 Voorsitter. 11 MR BIZOS SC: And then can we go to 104, 12 "The failure to communicate with the crowd prior to the 13 deployment of the razor wire. My primary concern in 105 in 14 relation to the deployment of the razor wire is the failure 15 of the SAPS command to communicate with the crowd prior to 16 the deployment." Do you agree with that? 17 KOLONEL VERMAAK: Voorsitter, ja. 18 MR BIZOS SC: Yes, and 106, "I believe 19 that communication with the crowd was necessary in the 20 circumstances, irrespective of whether the deployment was 21 planned as a defensive measure or an offensive measure." 22 Do you agree with that? 23 KOLONEL VERMAAK: Voorsitter, sover my 24 kennis strek was daar gesprekke met die mense gewees. 25 MR BIZOS SC: Yes. In conclusion of my</p>	<p style="text-align: right;">Page 25704</p> <p>1 die helikopter was het dit waargeneem. 2 MS MOSEBE: And then you further 3 testified and it's further borne out in your affidavit, 4 that is LLL8, paragraph 7 thereof, that at that stage you 5 threw a total of 20 teargas canisters down to where this 6 attack was happening. 7 KOLONEL VERMAAK: Dis korrek, ons het 8 skokgranate en "teargas" gegooi. 9 MS MOSEBE: Yes, now Colonel, I would 10 like to refer you to a statement which is an exhibit before 11 this Commission, it is exhibit HHH3, that is the statement 12 of Warrant Officer Farmander Daniel Mkhabele. It's 13 contained in the bundle that we've handed to you where you 14 are able to find it. 15 CHAIRPERSON: HHH3, is it? The wrong one 16 is on the screen. We need exhibit HHH3. 17 MS MOSEBE: It's a handwritten statement 18 of Mkhabele. 19 CHAIRPERSON: [Microphone off, inaudible] 20 HHH3 and it is so marked in the top right-hand corner, but 21 according to the operators the supplementary statement of 22 General Mpembe is HHH3. So there's a problem there. 23 Perhaps Ms Pillay with her knowledge of these things can 24 help us. 25 MS PILLAY: Chair, if I could ask Ms</p>

<p style="text-align: right;">Page 25705</p> <p>1 Mosebe just to repeat the name slowly so that I could look 2 for it?</p> <p>3 CHAIRPERSON: Well, it's on her list</p> <p>4 [Microphone off, inaudible] Farmander Daniel Mkhabele, M-K- 5 H-A-B-E-L-E, and the copy that she's given us in her 6 bundle, or at least the copy I was given when the bundle 7 was prepared is marked HHH3 in the top right-hand corner.</p> <p>8 MS PILLAY: Chair, it's HHH33.</p> <p>9 MS MOSEBE: 33.</p> <p>10 CHAIRPERSON: 33.</p> <p>11 MS MOSEBE: Thank you.</p> <p>12 CHAIRPERSON: Alright. The problem has 13 disappeared. Yes, carry on.</p> <p>14 MS MOSEBE: Thank you, Chairperson.</p> <p>15 CHAIRPERSON: Ms Pillay to the rescue, as 16 usual.</p> <p>17 MS MOSEBE: Yes, thank you, Chairperson. 18 I would like to refer this Commission to page 2, paragraph 19 8 thereof. I wouldn't want to read the rest of it, but I 20 would like to paraphrase and read the end there. I will 21 read the first line on paragraph 8, it says that, "By the 22 time I was in the Nyala that was moving far-left of the 23 strikers. When I looked back I saw the policeman who was 24 under attack by the strikers using their different weapons. 25 I then get out of the Nyala to go and help. By the time</p>	<p style="text-align: right;">Page 25707</p> <p>1 gasmaskers by hulle gehad het nie. So ek wil die stelling 2 maak dat as die lid sy gasmasker aangehad het, sou hy nie 3 geaffekteer gewees het deur die traanrook nie.</p> <p>4 MS MOSEBE: Is this something that you 5 observed, Colonel, that the police officers were not 6 wearing their gasmasks before you can throw 20 teargas 7 canisters on the scene?</p> <p>8 KOLONEL VERMAAK: Voorsitter, op daardie 9 stadium was ek in die lug gewees. Die feit dat ons 10 traanrook en skokgranate uit die helikopter uit gegooi het 11 was om te kyk om die lede te help wat aangeval was. Dis 'n 12 poging gewees om lewens te red.</p> <p>13 MS MOSEBE: Now Colonel, I would like to 14 refer you to another statement, that is the statement of 15 Constable Fanie Leonard Rikhotso. Chairperson, this is not 16 an exhibit before this Commission.</p> <p>17 CHAIRPERSON: Yes, it's not an exhibit, 18 but it is in your bundle.</p> <p>19 MS MOSEBE: Yes, it is.</p> <p>20 CHAIRPERSON: Fanie Leonard Rikhotso, is 21 it?</p> <p>22 MS MOSEBE: Rikhotso, yes, that is 23 correct.</p> <p>24 CHAIRPERSON: Ms Pillay, what is the next 25 exhibit number?</p>
<p style="text-align: right;">Page 25706</p> <p>1 that the policeman was already down. When the strikers see 2 me facing on them, they then start to attack me."</p> <p>3 I would like to skip the rest of that, the 4 contents thereof, and go to page 3, that is paragraph 10 5 thereof, and I'll start from the beginning. "As there was 6 a smoke of teargas all around and I have asked my, I ended 7 fell on the ground. It was the time the strikers (my 8 attackers) leave me, thinking that they got me. By the 9 help of God all weapons ended on my bulletproof and the 10 helmet. When I got up I discovered that there were three 11 marks on the back of right of my bulletproof, two on the 12 back left of my bulletproof and two marks on my helmet."</p> <p>13 Now Colonel, did you see that? Yes, now Colonel, 14 what is concerning to the family that I represent is that 15 this warrant officer who was trying to help seems to have 16 been deterred by the tear smoke that was all over, and that 17 was all over the scene and he therefore could not help one 18 of the injured policemen, and those are Warrant Officer 19 Monene and Warrant Officer Lepaaku who died, and Lieutenant 20 Baloyi who was subsequently injured. Now what is your 21 comment on that?</p> <p>22 KOLONEL VERMAAK: Mnr die Voorsitter, in 23 die eerste plek het ek getuig op die 13de die verslag wat 24 ek na die Provinsiale Kommissaris toe gestuur het is een 25 van die waar ons opgemerk het dat die lede nie hulle</p>	<p style="text-align: right;">Page 25708</p> <p>1 MS PILLAY: Chair, we haven't used OOO15. 2 For some reason that exhibit number, I think it's entirely 3 my fault, was skipped. So if we could mark this exhibit 4 OOO15?</p> <p>5 CHAIRPERSON: So the statement of Fanie 6 Leonard Rikhotso is exhibit OOO15.</p> <p>7 MS MOSEBE: Thank you, Chairperson. 8 Colonel, this constable is also one of those officers who 9 were present on the scene of the 13th and he also attempted 10 to help and he states his account on page 2 of his 11 statement, that is paragraph 9 thereof, and he states that 12 at – I will start some with paragraph 8. "I proceeded 13 forward to a armoured vehicle in front of the violent 14 marchers and the members started shooting CS smoke. As the 15 members started shooting CS smoke to stop the crowd, then 16 they became more violent." That is the protesters. "I 17 moved forward only to find strikers on top of police 18 officer, busy stabbing and attacking him with their 19 weapons."</p> <p>20 Paragraph 9 he states, "I then shout 'Officer 21 down' to alert other officers. As there was CS smoke all 22 over they kept on stabbing him until I draw my pistol again 23 and shot one round to the ground and they leave him and 24 start to run away, to run forward."</p> <p>25 And then paragraph 10 he says that, "I then</p>

<p style="text-align: right;">Page 25709</p> <p>1 joined, I was then joined by Constable Tshabangu to do 2 follow-up drill, trying to check if we can find back the 3 firearms that they took from our officers while attacking 4 them, and we failed due to CS smoke making our visions not 5 clear. Then we moved back to our injured colleagues next 6 to the road." Did you see that, Colonel? 7 KOLONEL VERMAAK: Ek het dit gesien, 8 Voorsitter. Dit kom maar net weer terug waar ek verwys na 9 my skrywes toe dat die onluste POP mense nie ten volle 10 hulle toerusting by hulle gehad het en hulle daarmee 11 behoorlik kon opgetree het nie. Die feit dat ons traanrook 12 gegooi het, u het self nou gelees dat dit nie net ons was 13 nie, dat daar lede was wat ook traanrook afgevuur het. 14 Maar ek kan ook vandag vir u verseker as jy in 15 die lug is en jy sien mense onder jou wat besig is om 16 doodgekap te word en dis jou kollegas, gaan jy enigiets 17 moontlik doen om daardie lewens te red. 18 MS MOSEBE: But then Colonel, according 19 to the record that was presented here by the SAPS before 20 this Commission, it is a document, Chairperson, which was 21 issued out as discharged 13 August 2012, it's contained in 22 the bundle that we've handed to the Commissioners and to 23 the witness. 24 CHAIRPERSON: But that's not an exhibit, 25 so we'll have to make it exhibits.</p>	<p style="text-align: right;">Page 25711</p> <p>1 HHH23, which is what it's called already. 2 MS PILLAY: That's correct, Chair, HHH23. 3 CHAIRPERSON: Alright. 4 MS PILLAY: It says "Discharge sheet 13 5 August." Anyway, we now have the document on the screen 6 and it's a bit clearer in Technicolor rather than the black 7 and white copy we had before. So what passage, what 8 sections particularly do you wish to refer us to? 9 MS MOSEBE: Yes, Chairperson, I would 10 like to refer you to the last paragraph, that is the bottom 11 paragraph, or it's written "Total," and then it's got the 12 number of the CS that was fired, rounds of CS fired, and 13 then it says "Total 21." Can you see, Colonel – 14 COMMISSIONER HEMRAJ: Do you want to 15 refer us first I think to the top-most column – 16 MS MOSEBE: Yes, that is the rounds 17 fired. 18 COMMISSIONER HEMRAJ: - with the 19 witness's name and those – 20 MS MOSEBE: Yes, yes. It states that 21 it's 20 there. Now Colonel, if you have a look at number 1 22 it refers to your name. That is Lieutenant Colonel SJ 23 Vermaak and then it goes on to the CS and the stun. It 24 says that you fired 20 CS and as we go down to the bottom 25 it says that the total, and it gives the total number of CS</p>
<p style="text-align: right;">Page 25710</p> <p>1 MS PILLAY: Chair, it will be OOO19. 2 CHAIRPERSON: Yes, I thought so. OOO19. 3 MS MOSEBE: Yes, thank you. According 4 to – 5 CHAIRPERSON: So I've got to describe it 6 for the record. OOO19, what is it? Perhaps we must ask 7 the witness to tell us. How can this document be 8 described? You've been given a copy, I take it, of this 9 document. It's a document that – this is what the document 10 looks like. 11 KOLONEL VERMAAK: Well, thank you. I've 12 got him, Sir. 13 CHAIRPERSON: Now you've got it. Now how 14 would one describe it? 15 KOLONEL VERMAAK: Mnr die Voorsitter, ek 16 sal dit beskryf as 'n staat van die uitreiking van wapens 17 en ammunisie. 18 CHAIRPERSON: So it's a statement – 19 MS PILLAY: Chair, if I may just 20 interrupt – 21 CHAIRPERSON: Yes. 22 MS PILLAY: I apologise. I think the 23 document is an exhibit already and it's HHH23. 24 CHAIRPERSON: Alright, so the use of the 25 exhibit number OOO19 is withdrawn and we'll call this</p>	<p style="text-align: right;">Page 25712</p> <p>1 that was fired, and it says 21, and if you go back to the 2 middle, that is number 8, it bears reference to Warrant 3 Officer DP Kuhn and then he fired only one CS, and that 4 makes the total 21. Now what is your comment on that it 5 seems that from this document the majority of the CS 6 canisters that were fired were fired by you? 7 KOLONEL VERMAAK: Ek ontken dit nie, 8 Voorsitter. Ek sê weer ek het traanrook gegooi om mense se 9 lewens te beskerm. 10 [12:46] As u gaan kyk na die stappe is traanrook een van 11 jou minimum geweld wat jy gebruik. Verder moet ek noem 12 elke onluste polisieman is uitgereik met onluste toerusting 13 en as hy ontplooi word is dit ook sy verantwoordelikheid om 14 te sorg dat hy al sy toerusting by hom het, en veral waar 15 hulle ontplooi was sou 'n mens verwag het dat hulle die 16 toerusting wat hulle mee uitgereik word by hulle sal hê. 17 Maar die groot oorweging, en ek ontken dit nie, ek het die 18 traanrook gegooi. Dit was minimum geweld gewees en dit was 19 om lewens te red. 20 MS MOSEBE: And Colonel, I would like to 21 refer you to another statement, that is the witness 22 statement of a protester who was present at the scene of 23 the 13th. That is Mr Xolani Nzuzi. His statement is 24 contained in the bundle that we've provided to you. I 25 would like to refer you to page 3, paragraph 10 thereof.</p>

<p style="text-align: right;">Page 25713</p> <p>1 MS PILLAY: Chair, that's exhibit HHH21.</p> <p>2 CHAIRPERSON: Yes, yes, the copy we've</p> <p>3 been given is so marked. So thank you. Sorry, Ms Mosebe,</p> <p>4 what paragraph are you referring to?</p> <p>5 MS MOSEBE: Paragraph 10, Chairperson.</p> <p>6 CHAIRPERSON: 10, thank you.</p> <p>7 MS MOSEBE: In paragraph 10 thereof he</p> <p>8 states that, "All of a sudden" – maybe let me rather start</p> <p>9 from paragraph 9. He says that, "After a long debate the</p> <p>10 leader of the police, General Mpembe, said that he would</p> <p>11 count to 10, after which there would be trouble. We then</p> <p>12 decided to sing a song and proceed to the koppie. It</p> <p>13 looked like the police had decided to escort us as</p> <p>14 requested."</p> <p>15 Paragraph 10, "All of a sudden the police</p> <p>16 released teargas into the crowd, followed by stun grenades</p> <p>17 and live ammunition from the ground and from a helicopter.</p> <p>18 There was pandemonium with strikers running away mainly in</p> <p>19 the direction of the koppie. Some of the policemen were</p> <p>20 among the fleeing crowd and there were violent encounters</p> <p>21 with the strikers."</p> <p>22 Now Colonel, it seems from this paragraph that</p> <p>23 the protesters viewed the throwing of stun grenades and</p> <p>24 teargas from a helicopter as the cause of the attack that</p> <p>25 eventually happened. Now what is your comment on that? Is</p>	<p style="text-align: right;">Page 25715</p> <p>1 MS MOSEBE: And then Colonel, you then</p> <p>2 mentioned this stabbing event, that the police officers</p> <p>3 mentioned to you that General Mpembe must go and lie where</p> <p>4 the members are lying and so on. Now my question to you is</p> <p>5 that as that was happening, did you enquire from this group</p> <p>6 of gathered protesters as to why they ran away, they didn't</p> <p>7 render any assistance to the members who were lying dying</p> <p>8 on the ground?</p> <p>9 KOLONEL VERMAAK: Verwys u na die</p> <p>10 polisiemanne, of verwys u na die "protester"?</p> <p>11 MS MOSEBE: I'm referring to the</p> <p>12 policemen that you say that you and Captain Loest gathered</p> <p>13 and you walked with them to pursue the strikers. Is that</p> <p>14 correct?</p> <p>15 KOLONEL VERMAAK: Dis korrek.</p> <p>16 MS MOSEBE: Yes, and then you further</p> <p>17 stated that as you were coming back from pursuing the</p> <p>18 strikers the policemen then reported to you that General</p> <p>19 Mpembe had given wrong instructions. Am I still correct?</p> <p>20 KOLONEL VERMAAK: Dis korrek.</p> <p>21 MS MOSEBE: Yes, and then my question to</p> <p>22 you is that as they were reporting that to you, why did</p> <p>23 you, or rather did you at any stage of that conversation</p> <p>24 enquire from them that, 'I saw you gentlemen as I was up in</p> <p>25 the air, your colleagues were being attacked but I saw you</p>
<p style="text-align: right;">Page 25714</p> <p>1 that the correct order of events? Is that how you saw it?</p> <p>2 KOLONEL VERMAAK: Dis negatief. Daar is</p> <p>3 videomateriaal beskikbaar wat van Lonmin is waar dit</p> <p>4 duidelik wys direk nadat die eerste traanrookgranaat en</p> <p>5 skokgranaat gegooi was, was die polisiemanne aangeval.</p> <p>6 Daarna kan gesien word waar die traanrook en die</p> <p>7 skokgranate vanuit die helikopter uit gegooi word.</p> <p>8 Die kwessie rondom dat daar uit die helikopter</p> <p>9 uit geskiet is, is nie waar nie. Dit kan moontlik wees dat</p> <p>10 hulle dit verwar het met die skokgranate wat afgegaan het.</p> <p>11 'n Skokgranaat maak twee knalgeluide. As jy hom gegooi</p> <p>12 het, drie sekondes is die eerste ene en dan een en 'n halwe</p> <p>13 sekonde daarna sal die tweede knal afgaan.</p> <p>14 MS MOSEBE: Colonel, you further</p> <p>15 testified before this Commission that when you, after</p> <p>16 throwing the stun grenades and the teargas you landed the</p> <p>17 helicopter, or Captain Oosthuizen landed the helicopter and</p> <p>18 then you gathered a couple of members and you started to</p> <p>19 pursue the protesters, or the attackers who had taken the</p> <p>20 firearm. Is that correct?</p> <p>21 KOLONEL VERMAAK: Dis korrek. Die feit</p> <p>22 dat ek die polisiemanne bymekaar gemaak het was dat ons</p> <p>23 gesien het uit die helikopter uit 'n persoon word gesleep</p> <p>24 en wou ons verhoed het dat hy weggeneem word van die toneel</p> <p>25 af, want dit maak deel van 'n misdadertoneel uit.</p>	<p style="text-align: right;">Page 25716</p> <p>1 running away. Why did you run away?' Did you ever enquire</p> <p>2 from them?</p> <p>3 KOLONEL VERMAAK: Dis – voordat ek</p> <p>4 daardie vraag aan hulle kon vra was dit deel van die</p> <p>5 stelling wat hulle aan my gemaak het hoekom hulle kwaad is</p> <p>6 vir Generaal Mpembe, dat hy by die treinspoor sou opdrag</p> <p>7 gegee het dat hulle hulle wapens in die Nyalas gaan plaas.</p> <p>8 CHAIRPERSON: The members of the police</p> <p>9 service who were walking back with you, I think you said</p> <p>10 there were four.</p> <p>11 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p> <p>12 CHAIRPERSON: Did any of them have a</p> <p>13 weapon in his hand?</p> <p>14 KOLONEL VERMAAK: Ja, hulle het</p> <p>15 vuurwapens by hulle gehad.</p> <p>16 CHAIRPERSON: So they had firearms?</p> <p>17 KOLONEL VERMAAK: Dis reg, want dit was</p> <p>18 nadat hulle by hulle voertuie en goed weer kon uitgekrom</p> <p>19 het. Die insident het plaasgevind. Ons het geland, gaan</p> <p>20 noodhulp probeer gee aan die polisiemanne daar, en waar</p> <p>21 hulle toe gestaan het by die voertuie en goed het ons</p> <p>22 daardie polisiemanne bymekaar gemaak dat hulle saam met my</p> <p>23 gaan –</p> <p>24 CHAIRPERSON: I see. So did you assume</p> <p>25 that what they were saying was at the time they didn't have</p>

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1 weapons –

2 KOLONEL VERMAAK: Ek het – ja –

3 CHAIRPERSON: But they got them and then

4 they went with you to try to –

5 KOLONEL VERMAAK: Dis korrek.

6 CHAIRPERSON: - catch up with the person

7 who – I take it the injured striker –

8 KOLONEL VERMAAK: Ja.

9 CHAIRPERSON: - who was being carried by

10 his –

11 KOLONEL VERMAAK: Dis korrek.

12 CHAIRPERSON: Oh, I see. So was it

13 obvious to you then that if you'd ask them why didn't they

14 defend their colleague they would have said well, we didn't

15 have weapons with which to do so. Is that why you didn't

16 ask the question, or do I understand you incorrectly?

17 KOLONEL VERMAAK: Dis korrek, Voorsitter.

18 Ek het, toe hulle dit vir my meegedeel het, het ek nou maar

19 aangeneem dis hoekom van hulle nie opgetree het nie.

20 COMMISSIONER HEMRAJ: The weapons that

21 they referred to, they referred to the R5s, not the 9mms

22 which they would have had on the operation –

23 COLONEL VERMAAK: No, the R5s. Die lang

24 wapens. Either R5 or the shotgun.

25 COMMISSIONER HEMRAJ: So they would still

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1 have been in possession of their 9mms?

2 COLONEL VERMAAK: They were in possession

3 9mms.

4 MS MOSEBE: Colonel, I would like to

5 refer you back to HHH23. That is the discharge sheet.

6 According to the discharge sheet and according to a few of

7 the statements that these police officers have handed to

8 this Commission there was a total of 33 rounds of R5

9 ammunition that was fired on that particular day, and also,

10 that is HHH23 bears out the names of the officials who

11 fired, or the officers who fired from these R5 rifles. Now

12 if you say that they didn't have their R5s at the time when

13 their fellow members were being attacked, do you know at

14 which stage this ammunition was fired from these R5 rifles?

15 KOLONEL VERMAAK: Voorsitter, as ek reg

16 onthou het ek gesê by die treinspoor het die groot

17 meerderheid lede nie lang wapens by hulle gehad nie. Ek

18 weet nie op watter stadium daardie vuurwapens afgevuur was

19 nie.

20 MS MOSEBE: Chairperson, that's our

21 questions, thank you.

22 CHAIRPERSON: So you've got no more

23 questions. Can I ask you a question before we carry on?

24 Did you actually see the members who walked with you

25 towards the stream, did you actually see them taking

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1 firearms from vehicles –

2 KOLONEL VERMAAK: Negatief, Voorsitter –

3 CHAIRPERSON: - or is it just an

4 allegation that they made to you –

5 KOLONEL VERMAAK: Dis korrek.

6 CHAIRPERSON: - which may or may not be

7 true?

8 KOLONEL VERMAAK: Dis korrek.

9 CHAIRPERSON: So it's an allegation they

10 made which may or may not be true?

11 KOLONEL VERMAAK: Dis korrek.

12 CHAIRPERSON: I see. Mr Gumbi, you are

13 next, but it's now 3 minutes to 1. Do you want to start

14 off for three minutes, or do you want to start after lunch?

15 I'm in your hands.

16 MR GUMBI: We can start after lunch,

17 Chairperson.

18 CHAIRPERSON: We will take the lunch

19 adjournment. Let's try – I know these attempts have not

20 been very successful in the past, but let's try very hard

21 to recommence at 1:45. We now adjourn until 1:45.

22 [COMMISSION ADJOURNS COMMISSION RESUMES]

23 [14:05] CHAIRPERSON: The Commission resumes. We

24 resumed later than I said we would because we had some

25 housekeeping to do and we had an interview with

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1 representatives of SERI who were explaining the

2 difficulties they have in relation to tomorrow. Luitenant-

3 kolonel, ek moet u daaraan herinner dat u nog gebonde is

4 aan die plegtige bevestiging van eergister.

5 KOLONEL VERMAAK: Dit is so, Voorsitter.

6 CHAIRPERSON: Mr Gumbi, you were going to

7 commence your cross-examination.

8 SALMON JOHANNES VERMAAK: (bevestig

9 verder)

10 MR GUMBI: Yes. Thank you very much,

11 Chairperson and the Commission.

12 CHAIRPERSON: [Microphone off, inaudible]

13 a substantial file containing the documents that you wish

14 to refer to. It does appear from the list that you also

15 want us to look at certain videos, is that correct?

16 MR GUMBI: I didn't hear that,

17 Chairperson?

18 CHAIRPERSON: It appears from your – do I

19 read your list correctly that you intend to refer to a

20 video?

21 MR GUMBI: Yes, the video of the 13th,

22 Chairperson.

23 CHAIRPERSON: Now, have you made the

24 necessary arrangements with the operator so that at the

25 appropriate time the video clip can be shown?

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1 MR GUMBI: Yes, I did make those
 2 arrangements yesterday but I must confess, Chairperson,
 3 that I didn't confirm it now.
 4 CHAIRPERSON: Well, I don't know whether
 5 you're going to get to that video clip today anyway. It
 6 looks as if you've got a lot of material to cover but let's
 7 ask, just in case. Is the operator here? Can the operator
 8 confirm? Do you confirm that you're ready to show the clip
 9 that Mr Gumbi wants you to show?
 10 OPERATOR: [Inaudible]
 11 CHAIRPERSON: Well, we will take a tea
 12 break at some stage in the afternoon and you may have to
 13 make the necessary arrangements then.
 14 MR GUMBI: I will do that, Chairperson.
 15 CHAIRPERSON: You're not starting
 16 immediately with the video clip, are you?
 17 MR GUMBI: I'm going to do that
 18 immediately.
 19 CHAIRPERSON: I think it's item 7 on your
 20 list.
 21 MR GUMBI: Yes, Chairperson.
 22 CHAIRPERSON: Anyway please start and if
 23 in fact you get to item 7 earlier than I think you may,
 24 maybe that bit of cross-examination can stand over till
 25 after the tea adjournment.

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1 MR GUMBI: Yes, Chairperson, we'll see
 2 when we reach that bridge.
 3 CHAIRPERSON: And I think all the
 4 documents you wish to refer to are already exhibits and I
 5 don't think it's necessary for us to give the transcript of
 6 the inspection in loco an exhibit number because it is part
 7 of the transcript of the Commission.
 8 MR GUMBI: Yes, Chairperson.
 9 CHAIRPERSON: So everything else is
 10 already before us as an exhibit, so there's no housekeeping
 11 in the form of exhibit marking that has to be, is that
 12 correct?
 13 MR GUMBI: Yes, Chairperson.
 14 CROSS-EXAMINATION BY MR GUMBI: Good
 15 afternoon, Lieutenant-Colonel.
 16 COLONEL VERMAAK: Good afternoon, sir.
 17 MR GUMBI: Before I could even start with
 18 my cross-examination on behalf of my clients, there are
 19 certain few introductory remarks that I wanted to place on
 20 record on behalf of my clients here. First of all, I
 21 represent the late Warrant Officer Lepaaku, the family of
 22 the late Warrant Officer Lepaaku who was killed on the 13th
 23 of August 2012 and the client I represent in this
 24 Commission, when he was killed he had 23 years of
 25 experience as a POP member. He didn't have any

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1 disciplinary action or step ever taken against him. He had
 2 two medals in the SAPS, two loyal medals, it's for 10 years
 3 and it's for 20 years and I'm representing his family in
 4 this Commission.
 5 And the second client I represent in this
 6 Commission is Lieutenant Baloyi. As you are aware that on
 7 the 13th of August 2012 Lieutenant Baloyi also again was
 8 severely injured, in fact he sustained almost nine stab
 9 wounds near the railway line and he had plus or minus 23
 10 years' experience as a POP member who was mobilised from
 11 that day from Pretoria.
 12 So our mandate, our instruction in this
 13 Commission, Lieutenant-Colonel, from the family of the late
 14 Warrant Officer Lepaaku, especially his wife, is that we
 15 must ensure that in this Commission we leave no stone
 16 unturned surrounding the death of the late Warrant Officer
 17 Lepaaku and that's our instruction on behalf of the family
 18 of the late Warrant Officer Lepaaku. And from Lieutenant
 19 Baloyi we also have a clear instruction from Lieutenant
 20 Baloyi who was injured near the railway line, is that we
 21 must also not leave no stone unturned in this Commission
 22 surrounding his injury and we are going to do that, as you
 23 know that since the beginning of this Commission we stick
 24 to that mandate of leaving no stone unturned surrounding
 25 the injury of Lieutenant Baloyi.

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1 So those are the few remarks I wanted to place it
 2 on record and on behalf of Lieutenant Baloyi obviously,
 3 Lieutenant-Colonel, he will come and testify before this
 4 Commission about the incident of the 13th and he will also
 5 testify, as you testified before this Commission how you
 6 were intimidated by senior management of the SAPS to adduce
 7 evidence in this Commission and it's on record, Lieutenant
 8 Baloyi will testify as to how he was intimidated by senior
 9 police officers in the SAPS when he wanted to present his
 10 own independent evidence about what transpired on the 13th
 11 of August 2012. He's an experienced POP. He will tell
 12 this Commission what was supposed to be done on the 13th of
 13 August and we will put his version as we move on. Those
 14 are the few remarks, Lieutenant, I wanted to make with you.
 15 SPEAKER: Sorry, Mr Chairman, up to so
 16 far there is no evidence regarding, evidence on record
 17 regarding any intimidation of or statement –
 18 CHAIRPERSON: I was thinking about
 19 raising that with you. Is that something you're going to
 20 mention later? Anyway presumably the intimidation or
 21 alleged intimidation to which you refer isn't something
 22 that the Lieutenant-Colonel knows about, so it can't be
 23 covered in your cross-examination. If you client is going
 24 to say something about that when he gives evidence, it's
 25 not in the statement that he filed as far as I can – so you

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1 may have to file a supplementary statement to deal with
 2 that material.
 3 MR GUMBI: Chairperson, it is on record
 4 in our litigation wherein we were complaining, the SAPS –
 5 CHAIRPERSON: We're not – we're not part
 6 of the litigation.
 7 MR GUMBI: Yes.
 8 CHAIRPERSON: So things may be on record
 9 somewhere else but they're not on record before us.
 10 MR GUMBI: Yes, yes.
 11 CHAIRPERSON: But in any event I don't
 12 think it concerns the Lieutenant-Colonel –
 13 MR GUMBI: Yes.
 14 CHAIRPERSON: So presumably it won't be
 15 traversed in your cross-examination.
 16 MR GUMBI: Yes, but that evidence, on the
 17 instruction of Lieutenant Baloyi, we come before this
 18 Commission -
 19 CHAIRPERSON: All I'm telling you, all
 20 I'm telling you is, you're going to have to supplement the
 21 statement you filed on his behalf in order to deal with
 22 that and I don't know the details of it, I don't know who
 23 the senior police officials are who allegedly intimidated
 24 him. If they have already testified – have they? You
 25 don't need to tell me now who they are but have they

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1 already testified?
 2 MR GUMBI: Not yet, Chairperson.
 3 CHAIRPERSON: I see. So –
 4 MR GUMBI: We will deal with that aspect
 5 –
 6 CHAIRPERSON: So there's no-one to whom
 7 you could have put the matter in cross-examination.
 8 MR GUMBI: We'll –
 9 CHAIRPERSON: Anyway, we'll get there
 10 when we get there. Let's get on with this witness's cross-
 11 examination at the moment.
 12 MR GUMBI: Thanks very much, Chairperson,
 13 for allowing me to make those remarks on behalf of my
 14 clients. Lieutenant-Colonel, the first topic I wanted to
 15 canvass with you on behalf of my clients, both of them they
 16 were experienced POP members, that's the late Warrant
 17 Officer Lepaaku and Lieutenant Baloyi, Warrant Officer
 18 Lepaaku I mean. I wanted to deal with these issues of
 19 threat assessment of the group and intelligence gathering
 20 before General Mpembe intercepted those armed strikers near
 21 the railway line. When we cross-examined General Mpembe on
 22 behalf of Baloyi and Lepaaku, that was on the 20th of August
 23 2013, General Mpembe testified that he assumed the role of
 24 being an operational commander on the 13th near the railway
 25 line. He testified that before he confronted those

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1 strikers near the railway line, the information about
 2 strikers performing rituals with sangoma, with the belief
 3 that they could not be shot at by police or mine security,
 4 he had that information before he intercepted that. That
 5 is on record. The version of Lieutenant Baloyi who was
 6 mobilised from Pretoria POP is that that information
 7 General Mpembe had at his disposal about this group of
 8 strikers who had performed rituals with the sangoma over
 9 the past days, that information was supposed to be conveyed
 10 to members in advance but on that day, on the 13th of August
 11 2012 it was not, never conveyed. What is your opinion on
 12 that as an experienced POP commander?
 13 KOLONEL VERMAAK: Voorsitter, nee, ek
 14 stem saam dis inligting wat aan die lede oorgedra moes
 15 gewees het tydens 'n voorligtingsessie.
 16 MR GUMBI: So his version is that that
 17 information was important so that the members, especially
 18 for them who were mobilised from Pretoria, it was important
 19 for them so that they will know the type of group they are
 20 going to confront, to confront. There was no way that they
 21 were supposed to be deployed without this information. Do
 22 you agree with him on that?
 23 KOLONEL VERMAAK: Dis korrek.
 24 MR GUMBI: Furthermore, on this aspect of
 25 intelligence gathering before POP intervention, there is a

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1 statement that I wanted to refer you to. That is the
 2 statement of – that should be exhibit HHH7.3, do you have
 3 that information? HHH7.3. That is a statement of an owner
 4 who testified, who deposed a statement that, if you go to
 5 paragraph 3, that on the 11th of August 2012 he owned a shop
 6 in that area, almost – he sold almost 30 pangas to certain
 7 men around that day. Do you see that?
 8 KOLONEL VERMAAK: Korrek.
 9 MR GUMBI: So did you know about this
 10 fact on the 11th of August 2012, Lieutenant?
 11 KOLONEL VERMAAK: Dis negatief,
 12 Voorsitter.
 13 MR GUMBI: I assume that if the police
 14 knew about these facts you will agree with me that they
 15 were, that information was supposed to be factored in the
 16 operational plan moving, since the 11th moving towards the
 17 16th.
 18 KOLONEL VERMAAK: Dit is belangrike
 19 inligting gewees, ja.
 20 MR GUMBI: The version of Lieutenant
 21 Baloyi again who is a POP, an experienced POP member, is
 22 that when Mpembe testified before this Commission he kept
 23 on saying that when he intercepted strikers near the
 24 railway line, he applied this principle of situationally
 25 appropriateness. Baloyi's version is that even if you

<p style="text-align: right;">Page 25729</p> <p>1 apply that principle, there is no way that you can deploy 2 members without briefing them about the group they are 3 going to confront. You have to sanction an emergency 4 parade and inform the members. You agree with him on that? 5 KOLONEL VERMAAK: Dis die regte 6 prosedure, ja. 7 MR GUMBI: Let us deal about the line of 8 command. 9 MR NGALWANA: Sorry, Mr Chairman, is it 10 Mr Baloyi's case that as at the 11th the police had this 11 information of protesters buying dangerous weapons? 12 CHAIRPERSON: No, if it was available, he 13 says. And I assume, but I'm maybe assuming wrongly, that 14 it may be contended later that it was the duty of the 15 police to keep an eye on the arms emporia of this kind to 16 see whether people were buying weapons and who was buying 17 them and that kind of thing, but I didn't understand Mr 18 Gumbi to suggest that the police knew the information. 19 There presumably will be an argument later that they should 20 have known, should have made steps to, taken steps to see 21 that they did know and if they – what the witness said was 22 if they had known, then they would have done certain 23 things. Am I interpreting it correctly, Mr Gumbi? 24 MR GUMBI: That's correct, Chairperson. 25 If the police office, if the police knew about this</p>	<p style="text-align: right;">Page 25731</p> <p>1 despite the fact that these different units had their own 2 commanders, if you assume the role of an operational 3 commander you talk direct to your members and you give them 4 instructions. Do you agree with Lieutenant Baloyi? 5 KOLONEL VERMAAK: Dis negatief, 6 Voorsitter. Afhangende van die grootte van jou operasie, 7 dis hoekom jy bevelvoerders het van sekere seksies en 8 groepe. Jy bespreek dit met hulle en dit is hulle 9 verantwoordelikheid om dan terug te gaan na die lede toe en 10 aan hulle dan hulle opdragte uit te gee. 11 MR GUMBI: Okay, let's deal with the 12 evidence of General Mpembe on that particular aspect. When 13 we cross-examined him on that aspect, that was on the 22 of 14 August 2013. For the record, the reference, you can go to 15 day number 12423 where General Mpembe said that on the 13th 16 of August near the railway line he did not speak direct 17 with members. He talked to members via the operational 18 commanders. So in other words he expected operational 19 commanders to convey his instruction to them. Was he 20 correct in handling the situation in that way, the line of 21 communication with – 22 KOLONEL VERMAAK: Dis korrek. 23 MR GUMBI: - his members in that manner? 24 KOLONEL VERMAAK: Dit is korrek. 25 MR GUMBI: On the 13th of August again,</p>
<p style="text-align: right;">Page 25730</p> <p>1 information, they ought to have factored in their 2 operational plan. We assume – 3 CHAIRPERSON: Are you going to contend 4 that they ought to have known because they should have kept 5 observation on an arms emporium of this kind to see what 6 was happening to the weapons that were for sale? 7 MR GUMBI: Yes, if the police knew about 8 that, Chairperson. Thank you very much, Chairperson. 9 Lieutenant-Colonel, let us deal with the line of command 10 before the attack of Lieutenant Baloyi and the killing of 11 the late Warrant Officer Lepaaku. Brigadier Mkhwanazi who 12 is a POP trainer, he testified before this Commission and 13 his testimony was that it is very important for operational 14 commanders to have a dialogue with protesters because that 15 will minimise the chances of conflict between the police 16 and the strikers. Do you agree with him on that? 17 KOLONEL VERMAAK: Dis korrek. 18 MR GUMBI: And an operational commander, 19 when he has a dialogue – I'm putting the version of 20 Lieutenant Baloyi that when an operational commander had 21 this dialogue with members, I mean with strikers, an 22 operational commander must talk direct to members. We know 23 for a fact that on the 13th of August there were different 24 units that were there, TRT and NIU and POP units, but once 25 you assume the role of being an operational commander,</p>	<p style="text-align: right;">Page 25732</p> <p>1 2012, Lieutenant Baloyi's contention is that the group that 2 was there, that group of strikers, was plus or minus 200 3 and they were armed and the number of police officers they 4 were plus or minus seven, so they were outnumbered by a 5 large amount of strikers that were there who were fully 6 armed. The police were outnumbered. Do you agree with him 7 on that? 8 CHAIRPERSON: Mr Gumbi, I think you've 9 made a mistake. You said there were about 200 strikers and 10 you said the number of police officers was seven. Now – 11 MR GUMBI: No – 12 CHAIRPERSON: I think you meant 70. 13 MR GUMBI: Yes. 14 CHAIRPERSON: I thought you meant, I 15 thought you were going to tell us the number of officers 16 and the number of ordinary, of non-commissioned members but 17 it's 70 members of the police service. 18 MR GUMBI: Yes, of police service. I 19 wanted to say that – 20 CHAIRPERSON: Versus 200 strikers. 21 MR GUMBI: Yes, versus 200 strikers, 22 Chairperson. 23 CHAIRPERSON: Okay. 24 MR GUMBI: Yes. So the police in fact 25 they were outnumbered near the railway line, do you agree</p>

<p style="text-align: right;">Page 25733</p> <p>1 with him on that?</p> <p>2 KOLONEL VERMAAK: Dis korrek.</p> <p>3 [14:25] MR GUMBI: And it is his contention</p> <p>4 again, Lieutenant, that when General Mpembe, because they</p> <p>5 were outnumbered there at the railway line, when he was</p> <p>6 busy conducting negotiations with these strikers he was</p> <p>7 supposed to call for a backup. Do you agree with him that</p> <p>8 how would the POP operate? When you are outnumbered by</p> <p>9 strikers you delay them, you call for more backup and on</p> <p>10 the 13th that didn't happen.</p> <p>11 KOLONEL VERMAAK: Voorsitter, dis nie</p> <p>12 altyd om 'n een tot een verhouding met jou skare te hê nie.</p> <p>13 Afhangende van die omstandighede waar jy moet optree, gaan</p> <p>14 bepaal die hoeveelheid mannekrag jy sal hê of sal nodig hê</p> <p>15 om daardie taak uit te voer. As dit 'n normale vreedsame</p> <p>16 betoging was dan sou daardie aantal polisiemanne genoegsaam</p> <p>17 gewees het om dit te kan hanteer.</p> <p>18 MR GUMBI: Okay. General Mpembe, will</p> <p>19 you regard him as an experienced POP negotiator?</p> <p>20 KOLONEL VERMAAK: Dis negatief.</p> <p>21 MR GUMBI: You are an experienced POP</p> <p>22 negotiator?</p> <p>23 KOLONEL VERMAAK: Dis korrek.</p> <p>24 MR GUMBI: And you were available on that</p> <p>25 particular day, the 13th, to render any negotiation with</p>	<p style="text-align: right;">Page 25735</p> <p>1 KOLONEL VERMAAK: Hulle sal ten minste</p> <p>2 moet weet in die rigting en waarheen hulle die mense sal</p> <p>3 moet escort en ook naastenby 'n idee gee wat die afstand is</p> <p>4 waar hulle hierdie mense heen moet vergesel.</p> <p>5 MR GUMBI: You did have a look at the</p> <p>6 video of the 13th while you were at Roots analysing what</p> <p>7 transpired, did you?</p> <p>8 KOLONEL VERMAAK: Dis korrek.</p> <p>9 MR GUMBI: But we don't see General</p> <p>10 Mpembe on the 13th near the railway line informing the</p> <p>11 strikers that now the police have taken a decision to</p> <p>12 escort you, we are escorting you. We don't see him.</p> <p>13 KOLONEL VERMAAK: Voorsitter, ek kan nie</p> <p>14 regtig kommentaar lewer ten opsigte van die gesprekke wat</p> <p>15 daar gevoer was nie. Ek was self nie daar nie. Ek kan ook</p> <p>16 nie my herinner dat ek op daardie videobande so 'n gesprek</p> <p>17 kon gehoor het nie, aangesien hy ook nie in Engels of</p> <p>18 Afrikaans met hulle gepraat het nie. So as hy met hulle</p> <p>19 gepraat het in 'n ander taal dan kan die moontlikheid daar</p> <p>20 wees.</p> <p>21 MR GUMBI: The issues of tactical</p> <p>22 communication is one of the issues that Brigadier</p> <p>23 Mkhwanazi, who is a POP member, testified about in this</p> <p>24 Commission. Let us have a look on that issue. While you</p> <p>25 were above, circling above these, when you observed these</p>
<p style="text-align: right;">Page 25734</p> <p>1 those strikers.</p> <p>2 KOLONEL VERMAAK: Ek was daar gewees as</p> <p>3 lugvleuel se bevelvoerder maar ja, ek was beskikbaar.</p> <p>4 MR GUMBI: Okay. The version of General</p> <p>5 Mpembe again near the railway line on the 13th that when</p> <p>6 General Mpembe took a decision to escort miners, strikers</p> <p>7 from the railway line on their way to the koppie, he was</p> <p>8 supposed to inform the members that he has made a decision</p> <p>9 to escort, loud and clear, and he was supposed to tell the</p> <p>10 members that the police will escort strikers from which</p> <p>11 point to which point and what is expected from them as</p> <p>12 members while escorting the strikers to point A to point B</p> <p>13 and on the 13th that didn't happen. Do you agree with him</p> <p>14 on that?</p> <p>15 KOLONEL VERMAAK: Voorsitter, ek dink die</p> <p>16 omstandighede was ook van so 'n aard op daardie stadium dat</p> <p>17 dit dalk onmoontlik vir hom was om direk met al die lede te</p> <p>18 kon praat. Ek neem aan hy sou dit met sy</p> <p>19 seksiebevelvoerders of sy groepsbevelvoerders bespreek het.</p> <p>20 Dit sou die regte prosedure gewees het en dat hulle dan die</p> <p>21 mense wat onder hulle bevel het, kan presies sê wat van</p> <p>22 hulle verwag word.</p> <p>23 COMMISSIONER HEMRAJ: But Colonel, would</p> <p>24 an order to escort require it to be conveyed in detail what</p> <p>25 they were expected to be doing?</p>	<p style="text-align: right;">Page 25736</p> <p>1 strikers with General Mpembe near the railway line, were</p> <p>2 you communicating with General Mpembe over the radio?</p> <p>3 KOLONEL VERMAAK: Voorsitter, ek het</p> <p>4 getuig ons was uitgestuur Marikana toe om aandag te gee aan</p> <p>5 'n ander klagte wat ons gekry het. Onderweg soontoe het</p> <p>6 ons hierdie groep mense waargeneem waar hulle langs die</p> <p>7 treinspoor gesit het, dit deurgegee na die JOC toe. Nadat</p> <p>8 ons teruggekeer het by die JOC is ons deur brigadier</p> <p>9 Seboloke aangesê om te gaan ondersteuning gee. Met ons</p> <p>10 aankoms basies was dit in sekondes wat hierdie insident</p> <p>11 plaasgevind het, so voordat daar enige kommunikasie tussen</p> <p>12 die helikopter en die mense op die grond kan wees, het die</p> <p>13 insident klaar gebeur.</p> <p>14 MR GUMBI: Okay but were you in touch</p> <p>15 with the JOC, you, Lieutenant?</p> <p>16 KOLONEL VERMAAK: Ja, ons was in</p> <p>17 radiokommunikasie met die JOC gewees.</p> <p>18 MR GUMBI: So General Mpembe was in touch</p> <p>19 with the JOC.</p> <p>20 KOLONEL VERMAAK: Sover my kennis strek,</p> <p>21 ja.</p> <p>22 MR GUMBI: So let me probe the decision.</p> <p>23 If General Mpembe was communicating with the JOC and what</p> <p>24 General Mpembe communicated to the JOC, was it conveyed to</p> <p>25 you?</p>

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1 KOLONEL VERMAAK: Ek was in die JOC
 2 gewees toe General Mpembe gevra het vir 'n tolk om
 3 behulpsaam te kan wees, aangesien die mense wat hy mee moet
 4 gesprek voer hom nie kon verstaan het nie. Dis waar ons
 5 toe aangesê is om te gaan lugsteun gee. So in die tyd
 6 vandat ons in die lug gekom het totdat ons by die toneel
 7 was, is 'n baie kort afstand as jy vlieg. So ons was nie
 8 regtig op daardie stadium, enigsins nodig gehad om te
 9 kommunikeer met die JOC nie.

10 MR GUMBI: Do you know the commanders of
 11 the various units that were there, whether they were also
 12 communicating with the JOC or General Mpembe was the
 13 central point to communicate information from the railway
 14 line to the JOC?

15 KOLONEL VERMAAK: Soos ek sê, onderweg na
 16 daardie toneel toe was daar geen kommunikasie gewees op die
 17 radio wat ons waargeneem het nie.

18 MR GUMBI: Chairperson, I wanted to have
 19 a look at the video footage of the 13th. I don't know,
 20 maybe we can have a comfort break so that I will check
 21 whether he's ready.

22 MS PILLAY: Chair, I'm sure it's easily
 23 accessible.

24 MR GUMBI: Yes.

25 MS PILLAY: It's just exhibit Z1 -

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1 MR GUMBI: Yes.

2 MS PILLAY: - that has to be played.

3 CHAIRPERSON: It's just exhibit Z1? So
 4 have you got exhibit Z1 there that you can show us, Mr
 5 Operator? Do you want to see the whole video, Mr Gumbi, or
 6 is there a particular passage that you –

7 MR GUMBI: No, Chairperson, if we can
 8 play the scene wherein we saw the police officers trying to
 9 stand in front of this group with the shotguns, yes.

10 CHAIRPERSON: I think you're going to
 11 have to give us more precise details than that.

12 MS PILLAY: Chair, it's the scene at the
 13 railway line which is just –

14 MR GUMBI: It's the scene at the railway
 15 line, yes, after address of Mpembe.

16 CHAIRPERSON: Now we're on the railway
 17 line, okay.

18 MR GUMBI: Yes, you can proceed. Fast
 19 forward, please. After address by General Mpembe.

20 [VIDEO IS SHOWN]

21 MR GUMBI: Please pause it again.

22 CHAIRPERSON: I just want to put it on
 23 record. It's line – how does one describe this place on
 24 the video?

25 [VIDEO IS SHOWN]

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1 MR GUMBI: Will you please fast forward
 2 it? I wanted to deal with the scene wherein a police
 3 official is depicted carrying a shotgun in front of the
 4 strikers as they move near the back rock, the big rock.

5 [VIDEO IS SHOWN]

6 MR GUMBI: Yes, yes. That's right, yes.

7 CHAIRPERSON: Is that 23.24?

8 MR GUMBI: Yes. Could you please,
 9 Lieutenant-Colonel, have a look at this slide, this video
 10 footage?

11 [VIDEO IS SHOWN]

12 MR GUMBI: You have to – stop it.

13 CHAIRPERSON: 23.42.

14 MR GUMBI: Yes. Lieutenant, you saw on
 15 that video footage, you saw the police officer standing in
 16 front of these strikers who are armed. Did you see it?

17 KOLONEL VERMAAK: Dis korrek.

18 MR GUMBI: That was a POP member?

19 KOLONEL VERMAAK: Dis korrek.

20 MR GUMBI: And you saw him pointing a gun
 21 at these strikers who were approaching him, I mean a
 22 shotgun.

23 KOLONEL VERMAAK: Dis korrek.

24 MR GUMBI: And the strikers ignored him
 25 and they proceeded with their march.

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1 KOLONEL VERMAAK: Dis korrek.

2 MR GUMBI: In fact he stepped back when
 3 they were approaching him. Did you notice that or –

4 KOLONEL VERMAAK: Dis reg.

5 MR GUMBI: As an experienced POP member,
 6 you see that police officer is standing alone there. He is
 7 not supported by any police officer, he is just alone
 8 there.

9 KOLONEL VERMAAK: Dis korrek.

10 MR GUMBI: In a crowd management
 11 situation wherein you have such a group armed with such a
 12 dangerous weapon, can you instruct your member to stand in
 13 front of that group in that way? I'm not suggesting that
 14 there was an instruction, I'm just saying is it possible
 15 that you can instruct your member to form this police line
 16 – I don't know whether it's a police line.

17 KOLONEL VERMAAK: Voorsitter, die ideaal
 18 is. is dat jy in seksie verband sal optree, dat jy nie as
 19 'n enkeling voor 'n skare sal gaan staan alleen nie.

20 MR GUMBI: Okay, so how would you
 21 describe the conduct of this police officer? Can you
 22 describe him as a POP member who acted correctly?

23 KOLONEL VERMAAK: Voorsitter, ek weet nie
 24 waar die res van die mense was nie. Dit wys nie op die
 25 videoband of daar nog ander polisiemanne dalk by hom was

<p style="text-align: right;">Page 25741</p> <p>1 nie, maar die feit dat hy alleen daar gestaan het, as hy 2 alleen was, sal dit nie die regte prosedure wees nie. 3 MR GUMBI: Okay. When you analyse this, 4 that video footage, you saw he's a POP member, he's in 5 possession of the shotgun. The strikers ignored him, they 6 proceeded with their march. According to the version of 7 Lieutenant Baloyi is that the operational commander, as 8 soon as he noticed this he was supposed to implement what 9 we call protective measures to protect the police because 10 this police, he placed himself in a dangerous situation and 11 the operational commander was supposed to apply protective 12 measures and ensure that his members are safe after this 13 incident. What is your version on that? 14 KOLONEL VERMAAK: Dis korrek, veral 15 gesien in die lig van die gebeure die vorige dag en die 16 feit dat hierdie mense dit geignoreer het en net opgestaan 17 het en geloop het, sou daar definitief ernstig aandag gegee 18 moes gewees het om die polisiemanne te beskerm in so 'n 19 situasie. 20 MR GUMBI: I think after this incident, 21 the testimony of General Mpembe, if I can refer you to 22 exhibit HHH, HHH16.1 and 16.2 – are you in possession of 23 those exhibits, Lieutenant-Colonel? 24 COLONEL VERMAAK: Yes, I just want to get 25 it. Ek het dit.</p>	<p style="text-align: right;">Page 25743</p> <p>1 how the POP operate and they expected the commanders to 2 tell their members to maintain that distance? Is it how 3 POP operates? 4 KOLONEL VERMAAK: In normale 5 omstandighede waar jy 'n vreedsame betoging het, sal jy jou 6 lede agter so 'n groep sit, aan die een kant om orde te 7 handhaaf om toe te kyk dat die optoggangers hulle reg kan 8 uitoefen om deel te wees van 'n optog en ook te kyk dat 9 daar nie van buite af enige inmenging is ten opsigte van 10 the deelnemers aan die optog nie, maar in hierdie 11 omstandighede dink ek sou daar meer versigtige maniere moes 12 gekies gewees het. 13 [14:45] MR GUMBI: Okay, those members who 14 followed these strikers, when you analysed this video 15 footage of the 13th at Roots, according to your own 16 analysis, Lieutenant-Colonel, were they properly equipped 17 to confront any spontaneous situation that might happen 18 there while they were following these strikers on their way 19 to the koppie? 20 KOLONEL VERMAAK: Voorsitter, nee. Dit 21 is een van die punte van kritiek wat van my was op my 22 skrywes, is dat die lede nie behoorlik hulle 23 onlustetoerusting by hulle gehad het nie. 'n Mens kan 24 duidelik sien waar van die lede op die spoor staan, dat ek 25 dink niemand daar het eers 'n gasmasker gehad nie en nêrens</p>
<p style="text-align: right;">Page 25742</p> <p>1 MR GUMBI: Yes, okay. General Mpembe, he 2 said the police must form the police line behind the 3 strikers after this incident, then that's the police line 4 he instructed the members to form behind. In this 5 situation wherein you observe one of your members, I can 6 say ignored by armed protes – strikers, if you were an 7 operational commander will you instruct your members to 8 follow the people who ignore a POP member before? 9 KOLONEL VERMAAK: Voorsitter, nee. Uit 10 my ondervinding uit sal ek eerder die lede in 11 pantservoertuie die groep laat begelei, veral in hierdie 12 omstandighede waar hulle bewapen was en dit duidelik was 13 dat daar nie van hulle kant af regtig samewerking is nie. 14 MR GUMBI: Ja. The evidence adduced 15 before this Commission is that when we cross-examined 16 General Mpembe, there was no instruction issued by the 17 operational commander to say to members, please remain 18 inside your Nyalas as a safe haven. 19 KOLONEL VERMAAK: Ek kan nie regtig op 20 dit kommentaar lewer nie. Ek was nie daar nie so ek moet 21 aanvaar wat voor die Kommissie gehou word. 22 MR GUMBI: Okay. And he further said 23 that he instructed members to keep a safe, a reasonable 24 distance – I mean the members to maintain a reasonable 25 distance between the strikers and the police. So is this</p>	<p style="text-align: right;">Page 25744</p> <p>1 is enige onlusteskiilde gesien nie. Een van die belangrike 2 goed is wanneer jy enige teenstand verwag en jy oorweeg dit 3 om mense te volg, sal jy jou linie agter hulle sit met die 4 nodige skilde. 5 MR GUMBI: Thank you very much, 6 Lieutenant-Colonel. If I proceed with this aspect, can I 7 take you back to that police officer we saw standing in 8 front of the armed strikers? One question I wanted to 9 confirm with you on that one. When you check this officer 10 standing in front of his group, can you say it's an officer 11 who was properly briefed to do that, or he acted on his 12 own? 13 KOLONEL VERMAAK: Ek kan regtig nie vir 14 jou 'n mening uitspreek oor dit nie, want presies wat 15 daardie omstandighede daar was kan ek nie 'n besluit oor 16 neem nie. 17 MR GUMBI: Okay. Let's deal with this 18 question of vehicle information, vehicle formation. 19 According to Lieutenant Baloyi, he's an experienced POP, as 20 I've said, that when you take a decision to escort you also 21 issue an instruction on vehicle formation to say Nyala so- 22 and-so, you go in front of this group, Nyala so-and-so you 23 go on the left-hand side, Nyala so-and-so you go on the 24 right-hand side, Nyala so-and-so you go on that side as a 25 backup or stuff like that. So on the 13th there was no</p>

<p style="text-align: right;">Page 25745</p> <p>1 instruction of vehicle formation when General Mzembe took a 2 decision to escort. What is your comment on that? 3 KOLONEL VERMAAK: Dit wat ek waargeneem 4 het is, jou stelling is korrek. 5 MR GUMBI: Okay. Before the firing of a 6 stun grenade and teargas, you were above, right. According 7 to the statement of Lieutenant Baloyi, he was inside his 8 Nyala and they were following this group, they passed this 9 group and the Nyala stopped in front of this group. Then 10 he alighted from his Nyala in order to contain this group. 11 While he was outside, a stun grenade was fired and teargas. 12 He tried to go back to his Nyala, then he was attacked. 13 That is his version. I wanted to know with you, 14 Lieutenant-Colonel, that while you were above the air there 15 inside your chopper observing this incident near the 16 railway line, did you see any Nyala moving in front of this 17 group? 18 KOLONEL VERMAAK: Ons het 'n voertuig 19 gesien, ja, wat ombeweeg het. 20 MR GUMBI: Did you see Lieutenant Baloyi 21 or did you see any police officer alighting from that 22 Nyala? 23 KOLONEL VERMAAK: Nee, dis negatief, 24 Voorsitter. Ons was meer gekonsentreer op die groep wat 25 geloop het.</p>	<p style="text-align: right;">Page 25747</p> <p>1 I don't think it has to be on the screen. If you have it, 2 you can read it. If the witness has difficulty we can put 3 it on the screen and then take the adjournment, but why 4 don't you just read it out now? Let's see how much 5 progress we can make. 6 MR GUMBI: If the Chairperson can bear 7 with me because I have it on my screen here, so I have to 8 check it again. 9 COMMISSIONER HEMRAJ: Can I just ask you, 10 Mr Gumbi, are you putting this, what is said in this 11 transcript as factually, being factually correct to the 12 witness? 13 MR GUMBI: Not at all. I wanted to 14 invite his comment on this. 15 COMMISSIONER HEMRAJ: I see. 16 MR GUMBI: Yes. 17 CHAIRPERSON: Mr Gumbi, if you're going 18 to take some time to find it, it's probably wisest for us 19 to take the tea adjournment now. I was going to take it a 20 little bit later on but if we'll save time ultimately by 21 taking it now, I'll take it now. 22 MR GUMBI: Yes, Chairperson, if we can do 23 that because – 24 CHAIRPERSON: Alright, we'll take the tea 25 adjournment. It's now five to three, let's try to be back</p>
<p style="text-align: right;">Page 25746</p> <p>1 MR GUMBI: Okay. And I wanted to deal 2 with this topic of firing of teargas and stun grenades. 3 You testified in evidence-in-chief that when the stun 4 grenades and teargas were thrown you were surprised because 5 you observed the strikers that they were just walking 6 peacefully and there was no reason that necessitated the 7 firing of teargas and stun grenades. Do you still remember 8 that? 9 KOLONEL VERMAAK: Dit is korrek. 10 MR GUMBI: We had an inspection in loco 11 on the 20th of March 2013. In that inspection in loco it 12 was alleged by Adv Dali Mpfu's client that the first stun 13 grenade on that day was fired from the helicopter and in 14 that regard I will refer you to the transcript of the 15 inspection in loco of the 13th. 16 CHAIRPERSON: Page? 17 MR GUMBI: If you can go there? 18 CHAIRPERSON: Page? 19 MR GUMBI: It's page 40, it's line number 20 9 to 24, if you can put it up on the screen. The date of 21 the inspection in loco is 20 March 2013. 20 March '13, 22 2013, line number 9 to 24. Chairperson, with your leave 23 can we have five minutes' comfort break? I want us to 24 facilitate the availability of this transcript. 25 CHAIRPERSON: Why not just read it out?</p>	<p style="text-align: right;">Page 25748</p> <p>1 by ten past. 2 MR GUMBI: Thank you very much, 3 Chairperson. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [15:12] VOORSITTER: U is nog gebonde aan u 6 plegtige bevestiging. 7 SALMON JOHANNES VERMAAK: (bevestig 8 verder). 9 CHAIRPERSON: Mr Gumbi, are you ready 10 now? Have you got all your ducks in a row? 11 MR GUMBI: Thank you very much, 12 Chairperson, I do apologise for these inconveniences. 13 CROSS-EXAMINATION BY MR GUMBI (CONTD.): 14 Lieutenant-Colonel, I refer you to the transcript of 20 15 March 2013 of our inspection in loco and I hope you are in 16 possession of it, page 40. You can go to page 40, let's go 17 to line number 7, starting from line number 7. Let me read 18 it on record. Chairperson, "Shots were fired from the 19 Nyala or from the police." Mr Mpfu, "He says the first 20 thing that happened was the teargas from the helicopter and 21 then shortly thereafter two shots were fired in his 22 direction. Chairperson, we haven't heard anything about a 23 helicopter. There was a helicopter." Mr Mpfu, "Oh yes, 24 there was a helicopter, General." What is your comment on 25 this allegation?</p>

<p style="text-align: right;">Page 25749</p> <p>1 KOLONEL VERMAAK: Voorsitter, nee, die 2 eerste traanrook en skokgranate wat afgevuur was, was deur 3 die lede op die grond. Ek dink daar is videomateriaal wat 4 dit ook wys. 5 MR GUMBI: So that this information is 6 incorrect? 7 KOLONEL VERMAAK: Ja, dis korrek, hierdie 8 informasie is verkeerd. 9 MR GUMBI: So will I be correct if, we 10 move on on this one, will I be correct, Lieutenant-Colonel, 11 that according to Baloyi, his version, the teargas and the 12 stun grenades when they were fired, the police officers who 13 were following these strikers, they were on foot. Is it 14 what you observed while you were in the chopper there? 15 KOLONEL VERMAAK: Dis korrek. 16 MR GUMBI: And you further testified that 17 you saw police officers running away. 18 KOLONEL VERMAAK: Dis korrek. 19 MR GUMBI: Would you agree with me if I – 20 yes. 21 KOLONEL VERMAAK: Dit is korrek, nadat 22 die traanrook en die skokgranaat afgegaan het en die 23 stakers omgedraai het, het die polisiemanne weggehardloop 24 van hulle af. 25 MR GUMBI: Yes. Will you agree with me,</p>	<p style="text-align: right;">Page 25751</p> <p>1 that they were armed and they were there, should have 2 defended their colleague, is another matter but you're 3 suggesting that another possibility is that they ran away 4 because they weren't aware there was going to be a 5 confrontation, is that right? 6 MR GUMBI: They ran away because they 7 were attacked, that's why – 8 CHAIRPERSON: They ran away because they 9 were attacked – 10 MR GUMBI: Yes, it's possible. They 11 never anticipated this attack from the strikers. Okay. In 12 your evidence-in-chief, Lieutenant-Colonel, you testified 13 that on the 13th of August 2012, according to your own 14 observation, the police who were near the railway line, 15 they were not properly equipped to deal with that 16 situation, with those strikers. 17 KOLONEL VERMAAK: Dis korrek. 18 MR GUMBI: I want us to zoom on that 19 particular aspect. We have Lieutenant Baloyi, the POP 20 member who was mobilised from Pretoria on that day. I 21 wanted to know, Lieutenant-Colonel, as to in that situation 22 where we have members mobilised out of North-West, whose 23 responsibility is it to ensure that these members are fully 24 equipped before they are deployed in any area in that 25 province? Is it the responsibility of the POP member as an</p>
<p style="text-align: right;">Page 25750</p> <p>1 Lieutenant-Colonel, if I put this proposition that another 2 reason why the police officer would run away, it is because 3 they were outnumbered by the number of strikers that were 4 there, it's another possibility. 5 KOLONEL VERMAAK: Voorsitter, ja. In die 6 lyn wat hulle geplaas was agter die optogangangers en die 7 insident wat daar toe plaasgevind het, was die getalle van 8 die polisie definitief nie genoegsaam gewees nie. 9 MR GUMBI: Another possibility is that 10 they ran away, it's possible that they ran away because 11 they did not anticipate this confrontation between them and 12 those strikers. It is another possibility, will you agree 13 with me? 14 KOLONEL VERMAAK: Dis korrek, dit kan so 15 wees. 16 CHAIRPERSON: If they didn't anticipate 17 the confrontation then why did they run away? What were 18 they running away from? 19 MR GUMBI: When the – 20 CHAIRPERSON: I can understand if there 21 was a confrontation – 22 MR GUMBI: Yes. 23 CHAIRPERSON: That they feared they were 24 going to be killed, attacked, I can understand them running 25 away. Whether that was commendable in view of the fact</p>	<p style="text-align: right;">Page 25752</p> <p>1 individual or a unit or is it the responsibility of an 2 operational commander? 3 KOLONEL VERMAAK: Dis die 4 verantwoordelikheid, mnr die Voorsitter, van elke opgeleide 5 POP lid om te weet wat sy toerusting is en die toerusting 6 wat hy moet gebruik waar hy gaan werk. Veral in hierdie 7 omstandighede waar hulle blootgestel was aan hierdie skare 8 is dit die verantwoordelikheid van die lid maar ook van sy 9 seksiebevelvoerder om toe te sien dat sy lede korrekte 10 toerusting by hulle het. 11 MR GUMBI: Right. Members were mobilised 12 from other provinces like the likes of Lieutenant Baloyi. 13 When they are mobilised from Pretoria they are going to 14 Northwest, do they come with their own stun grenade, helmet 15 or stuff like that and rubber rounds, shotguns? 16 KOLONEL VERMAAK: Dis korrek. 17 MR GUMBI: When you check the statement 18 of Lieutenant Baloyi, that is GGG16 – are you in possession 19 of that exhibit? 20 CHAIRPERSON: Colonel, before you look at 21 the passage to which counsel is going to refer you, I 22 understood you to say that the POP member who is deployed, 23 say from Pretoria, is supposed to bring his own equipment 24 with him. Would that include riot shields? Has each POP 25 member got, as part of his basic equipment, a riot shield?</p>

<p style="text-align: right;">Page 25753</p> <p>1 KOLONEL VERMAAK: Dis positief, 2 Voorsitter. 3 CHAIRPERSON: So if he's deployed 4 somewhere he should take his riot shield with him? 5 KOLONEL VERMAAK: As jy êrens heen 6 ontplooi moet jy sorg dat jy jou toerusting wat aan jou 7 uitgereik is saamvat. 8 COMMISSIONER HEMRAJ: Wouldn't it have 9 been obvious on parade before they left their home units 10 that they did not have all the equipment with them? 11 KOLONEL VERMAAK: Voorsitter, daar is dit 12 die verantwoordelikheid van die bevelvoerder van die groep 13 wat saam met sy lede ontplooi om toe te sien, want hy moet 14 'n SAP15 en uitreikingstaat en dies – moet hy voltooi en 15 nagaan, dit teken dat dit korrek is en as hy dan by die 16 ander eenheid of stasie aankom dan handig hy daardie 17 dokumentasie dan ook in sodat hulle weet wie is daar en 18 watter vuurwapens en ammunisie en goed hulle het. 19 MR GUMBI: Thank you very much, 20 Lieutenant-Colonel. 21 CHAIRPERSON: You were going to refer the 22 witness – 23 MR GUMBI: Yes. 24 CHAIRPERSON: - to a passage in 25 Lieutenant Baloyi's statement.</p>	<p style="text-align: right;">Page 25755</p> <p>1 CHAIRPERSON: If you look in paragraph 2, 2 he talks in the third line about arriving at Marikana at 3 11:40AM. Now, as far as I can remember, there is a police 4 station at Marikana. So it may presumably the storeroom 5 where there were shotguns that were issued to the members, 6 that would have been at the Marikana police station. He 7 does also say, "We met other unit members who worked night 8 shift who were going to be relieved of their duties." It's 9 not clear actually, it could have been at the mine as well. 10 KOLONEL VERMAAK: Dis korrek, Voorsitter. 11 In normale omstandighede, kan ek dalk net meld dat daar nie 12 so 'n groot hoeveelheid haelgewere by polisiestasies gehou 13 word nie. Dis maar meestal van net jou 9 millimeter en jou 14 R5 en R1 gewere wat by die polisiestasies is. Die 15 haelgewere word hoofsaaklik gebruik deur openbare orde 16 polisie. 17 CHAIRPERSON: And if one goes back to 18 paragraph 2, he says how he arrived in Rosslyn, that POPS 19 PTA unit and there he found East Johannesburg members 20 already there and he says, "At 9:30 we left Rosslyn to 21 Marikana under the command of Lieutenant-Colonel Tsiloane." 22 So was it Lieutenant-Colonel Tsiloane's responsibility to 23 see to it that they had their equipment with them, 24 including their riot shields? 25 KOLONEL VERMAAK: Dis korrek, Voorsitter.</p>
<p style="text-align: right;">Page 25754</p> <p>1 MR GUMBI: GGG16. 2 CHAIRPERSON: What passage is it? 3 MR GUMBI: It's paragraph 3. Are you in 4 possession of that, Colonel? 5 CHAIRPERSON: Paragraph 3. 6 MR GUMBI: Can I read it? Then it reads 7 as follows, "Captain Makukule and I agreed that it was a 8 crowd management situation and therefore we needed shotgun 9 and rubber rounds. We then proceed to a storeroom where we 10 were issued with 12 shotguns without the rounds, as the 11 storeman for rubber rounds was not around. We then 12 distributed shotguns among members and I was in possession 13 of a shotgun, a Ram 86. I received four rounds from 14 Warrant Officer Moyatshe who brought along some rubber 15 rounds." Do you see that, Lieutenant-Colonel? 16 KOLONEL VERMAAK: Ek sien dit. 17 MR GUMBI: Do you confirm that there was 18 a storeroom there at the JOC somewhere, storing all this 19 equipment for POP? 20 KOLONEL VERMAAK: Voorsitter, dis nie vir 21 my baie duidelik met vermelding watter stoor hy na verwys 22 nie. Ek weet nie of dit dalk by sy eie eenheid was en of 23 dit by POP Rustenburg was nie, maar sover my kennis strek 24 was daar geen by die JOC 'n stoorkamer or 'n kluis waar 25 wapens uitgereik was nie.</p>	<p style="text-align: right;">Page 25756</p> <p>1 MR GUMBI: Okay. Thanks very much, 2 Chairperson. Let's deal with the equipment he was in 3 possession of before he confronted the strikers and I will 4 seek your opinion that, Lieutenant-Colonel. I've read the 5 content of paragraph 3. Let me focus on the last sentence, 6 he said, "I received four rounds from Warrant Officer 7 Moyatshe who brought along some rubber rounds." So we can 8 assume that he was in possession of a shotgun, let's say 9 also again in possession of four rounds. Can you deploy a 10 police member in possession of that equipment to confront 11 the strikers who were armed like that one of the 13th of 12 August 2012? 13 KOLONEL VERMAAK: Voorsitter, elke lid 14 wat 'n haelgeweer kry, kry 'n band saam met hom en daardie 15 band is gevul met die nodige ammunisie. Hy vat gewoonlik 16 20 rondtes en dan word 'n lid ook dan met addisionele 17 rondtes uitgereik vir enige onvoorsienbare gebeurde. So vir 18 my is dit onduidelik dat lede, OOP-lede van 'n eenheid af 19 ontplooi na 'n plek toe sonder hulle nodige toerusting. 20 MR GUMBI: Okay. Let's move on, on this 21 aspect. I wanted to focus to another topic now, after the 22 incident, your observation of General Mpembe, your 23 interaction of General Mpembe after the police killing and 24 I understand that you were above when you observed this. 25 You testified that the first thing you observed, you</p>

<p style="text-align: right;">Page 25757</p> <p>1 observed about General Mpembe that he was in the state of 2 shock. Do you still remember that? 3 KOLONEL VERMAAK: Dis korrek. 4 MR GUMBI: And you further said that you 5 observed that he had lost control of the members. 6 KOLONEL VERMAAK: Dis korrek. 7 MR GUMBI: Can you explain, Lieutenant- 8 Colonel, when you say he had lost control of members, what 9 really do you mean about that as an experienced POP member, 10 a commander in that – 11 KOLONEL VERMAAK: Mnr die Voorsitter, in 12 die eerste plek na so 'n insident is dit die belangrikste 13 om jou lede so gou as moontlik bymekaar te kry, dan seker 14 te maak dat al jou lede daar is, dat daar nie enige verdere 15 ongevallen is nie. Dit is ook belangrik om in hierdie 16 insident waar jy geweet het twee van jou polisiemanne of 17 drie van jou polisiemanne was beseer en waarvan twee 18 noodlottig was, is om te kyk na die lede se gemoed op 19 daardie stadium, en General Mpembe was, was in 'n toestand 20 van skok. Hy het tussen die polisiemanne gehardloop en vir 21 die mense gesê sy lede is doodgeskiet, sy lede is 22 doodgeskiet. So dit is duidelik dat hy op daardie stadium 23 glad nie beheer gehad het oor die lede nie. Hulle het 24 rondgestaan, almal was geskok gewees en dit is waar ek en 25 kaptein Loest toe probeer het om die lede bymekaar te kry</p>	<p style="text-align: right;">Page 25759</p> <p>1 move, if we take the point further, did you – we know for a 2 fact that on the 13th various units were involved, TRT, POP 3 and NIU. Did you enquire from the members whether this 4 instruction was communicated to all the units that were 5 there or maybe what instruction that was communicated to 6 one unit, did you enquire? 7 KOLONEL VERMAAK: Voorsitter, nee, ek het 8 geen verdere navraag daar gedoen op daardie stadium nie. 9 Ons was gekonsentreerd om al die lede bymekaar te kry, te 10 kalmeer, kyk dat daar nie nog beserings is aan lede nie en 11 verder het ons aan die forensiese deskundige kolonel Botha 12 ook die nodige hulpverlening gegee. Ek het voorligting 13 gegee aan brigadier Van Zyl en Calitz asook op 'n latere 14 stadium aan die generale wat ook gearriveer het. 15 MR GUMBI: Do you know, Lieutenant- 16 Colonel, whether General Mpembe informed the JOC that at a 17 certain occasion, at any stage, he instructed the members 18 to leave their shotguns inside their Nyalas so that they 19 will not provoke the strikers? 20 KOLONEL VERMAAK: Ek dra nie kennis van 21 so iets nie. 22 MR GUMBI: The JOC, were they aware about 23 that? 24 KOLONEL VERMAAK: Ek sal nie kennis dra 25 nie.</p>
<p style="text-align: right;">Page 25758</p> <p>1 op 'n stadium. 2 MR GUMBI: Okay. You testified that you 3 enquired from members, I think it was the TRT members from 4 Rustenburg, what had happened and they told you that 5 General Mpembe gave instructions to leave their shotguns in 6 their Nyalas so that they will not provoke strikers. Do 7 you still remember that? 8 KOLONEL VERMAAK: Nee, ek het hulle nie 9 gevra nie. Terwyl ons teruggeloopt het, het hulle die 10 mededeling aan my gemaak. 11 MR GUMBI: Yes. 12 KOLONEL VERMAAK: Dis korrek. 13 MR GUMBI: Yes. This instruction, if we 14 can probe it further, the instruction of leaving a shotgun 15 inside their Nyalas so that they will not provoke the 16 strikers, when this instruction was relayed to members was 17 it before General Mpembe intercepted members near the 18 railway line or was this instruction conveyed to members 19 while General Mpembe was addressing armed strikers there, 20 do you know? 21 KOLONEL VERMAAK: Ek sal ongelukkig nie 22 vir jou daarop kan antwoord nie. Ek dra nie kennis van op 23 watter stadium die opdrag gegee was nie, mnr die 24 Voorsitter. 25 MR GUMBI: These instructions again if we</p>	<p style="text-align: right;">Page 25760</p> <p>1 MR GUMBI: In your experience as an 2 operational commander, Lieutenant-Colonel, have you ever 3 had the situation like this wherein you'll find an 4 operational commander, if indeed happened, wherein you'll 5 find an operational commander instructing his members to 6 leave their shotguns behind so that they will not provoke 7 strikers? Have you ever heard of such a – 8 [15:32] KOLONEL VERMAAK: Soos ek vir u gesê het, 9 dit hang af van omstandighede. As jy 'n vreedsame optog 10 het waar daar geen inligting van enige aard is dat jy gaan 11 verset kry nie, jy kan ooglopend sien dat die mense 12 vreedsaam is, jy kan vrylik met die mense gesels, dan neem 13 jy 'n besluit om die lede dan aan te sê om daardie wapens 14 dan in die voertuie te los, en soos ek gesê het, dan pos jy 15 gewoonlik lede wat saam met die groep sal loop vir twee 16 verskillende redes, soos ek verduidelik het. 17 MR GUMBI: We know for a fact that on the 18 13th those strikers, they were armed. They were plus or 19 minus 200 and we had 70 police officers near the railway 20 line. If Mpembe - we don't know that, we are probing – if 21 Mpembe issued that type of instruction, according to your 22 own experience as an operational commander was it correct 23 for him to do that, if indeed he issued that instruction to 24 members? 25 KOLONEL VERMAAK: As dit so was dat hy</p>

<p style="text-align: right;">Page 25761</p> <p>1 die instruksie gegee het dan sal ek sê dit was 'n verkeerde 2 besluit gewees.</p> <p>3 MR GUMBI: Even if we applied this 4 principle of situational appropriateness as he contended 5 before this Commission, he was not supposed to instruct 6 members to leave their shotguns behind.</p> <p>7 KOLONEL VERMAAK: Mnr die Voorsitter, nee 8 ek dink in daardie omstandighede, as jy gaan kyk na die 9 omstandighede dan –</p> <p>10 MR NGALWANA: There is no evidence that 11 General Mpembe issued such an instruction because of the 12 situational appropriateness, or at all.</p> <p>13 CHAIRPERSON: What he said about 14 situational appropriateness was he decided to allow the 15 strikers to proceed to the koppie under escort and not to 16 disarm them there by the railway line because he was afraid 17 that you'd have another Tatane situation. That is what he 18 said in that regard. He never said anything about giving 19 an instruction to people to put their shotguns in the 20 vehicle, and neither has your client mentioned that in his 21 statement either.</p> <p>22 MR GUMBI: I do understand that, 23 Chairperson, but those are the facts that were presented 24 before this Commission to say on the 13th General Mpembe 25 issued instruction –</p>	<p style="text-align: right;">Page 25763</p> <p>1 MR GUMBI: - of this Commission –</p> <p>2 CHAIRPERSON: I think he's answered your 3 question. He said that if it happened it wouldn't have 4 been an appropriate order, and wouldn't have been an 5 appropriate application of the doctrine of situational 6 appropriateness. That's what I understood his evidence to 7 be. I think you've made that point. I suggest you move on 8 to the next point.</p> <p>9 MR GUMBI: Thanks very much, Chairperson. 10 I will move on to the next point. Let us continue, 11 Lieutenant Colonel, and try to zoom in on this instruction 12 to disperse, firing of stun grenade and teargas. When you 13 were there at the scene did you try maybe and probe from 14 those members the circumstances under which this 15 instruction was issued by General Mpembe, if –</p> <p>16 CHAIRPERSON: I'm sorry, what instruction 17 is this now?</p> <p>18 MR GUMBI: To fire teargas and stun 19 grenade.</p> <p>20 CHAIRPERSON: Well, that's also a 21 controversial question, isn't it? The witness heard no 22 such instruction over the radio. According to the evidence 23 we have General Mpembe was on the far right, Warrant 24 Officer Kuhn was on the far left. The allegation has been 25 made that there was an instruction. Kuhn himself according</p>
<p style="text-align: right;">Page 25762</p> <p>1 CHAIRPERSON: So we've got hearsay 2 evidence given by the Colonel that that was told him by the 3 members who came back with him from the stream. Whether it 4 was true or whether it was merely a false explanation they 5 gave to try to justify their conduct, if they were in fact 6 guilty of such conduct in running away and not standing by 7 to defend their colleagues, is a matter we may have to 8 decide. But there's no direct evidence at all, in fact the 9 Colonel said that he certainly saw nothing of the kind and 10 didn't see them retrieving their weapons from the vehicle. 11 In fact they had the weapons in their hands, as I 12 understood him to say, when they walked with him to the 13 stream and they claimed that they'd retrieved them earlier, 14 but he never saw that. So that's hearsay. It may be true, 15 it may not be true, but you can't put questions on the 16 basis that that's what happened. It was never put to 17 General Mpembe previously and as I say your client doesn't 18 mention it in his statement either.</p> <p>19 MR GUMBI: I do understand that, 20 Chairperson, that's why my question, the way I phrase it, I 21 said if, although we are still probing this aspect, if 22 indeed that's what happened, then I wanted to seek an 23 opinion to Lieutenant Colonel as an experienced POP. We 24 don't know whether it indeed happened, we don't know the –</p> <p>25 CHAIRPERSON: He's answered –</p>	<p style="text-align: right;">Page 25764</p> <p>1 to his statement doesn't know who gave him the instruction. 2 The Colonel was present at Roots when there was a 3 discussion about this, but you certainly can't put a 4 question based on the acceptance of the allegation that 5 General Mpembe gave the instruction because that's a 6 controversial matter at the moment.</p> <p>7 MR GUMBI: Yes, Chairperson, I do 8 understand that. The reason why I'm posing this question, 9 Lieutenant Colonel, he's the first police officer who 10 arrived there who was not there, and –</p> <p>11 CHAIRPERSON: I know that. You can ask 12 him questions about the alleged instruction, provided –</p> <p>13 MR GUMBI: Yes.</p> <p>14 CHAIRPERSON: But you must formulate them 15 correctly. You mustn't formulate them on the basis that 16 such an instruction was in fact given. That's the only 17 point I'm putting to you.</p> <p>18 MR GUMBI: Yes, Chairperson, I will 19 rephrase my question. It was not my intention to contend 20 that indeed instruction was issued. I'm working on 21 allegation. You must understand me, Lieutenant Colonel, 22 I'm working on this allegation that was conveyed to you 23 immediately when you arrived at the scene. On those 24 allegation when members said to you General Mpembe issue 25 instruction, did you enquire from them –</p>

<p style="text-align: right;">Page 25765</p> <p>1 CHAIRPERSON: No, no, no, wait. I don't 2 think that's right either. Lieutenant Colonel, were you 3 told when you were at the scene that – sorry, I'll phrase 4 it again. Were you told when you were at the scene on the 5 13th that General Mpembe had given this instruction in 6 relation to teargas and stun grenades? 7 KOLONEL VERMAAK: Negatief, Voorsitter. 8 CHAIRPERSON: Now did you enquire, you 9 told us that you were surprised, you and your colleagues in 10 the helicopter were surprised that teargas had been, a 11 canister had been fired because there didn't seem to be any 12 reason for it. So did you enquire from people, ask why was 13 teargas fired? I take it you had other matters to attend 14 to. 15 KOLONEL VERMAAK: Nee Voorsitter, daar 16 was regtigwaar, dis die laaste ding wat ek aan gedink het. 17 Op daardie stadium vir my het dit gegaan oor na die lede om 18 te sien, die veiligheid van die Generaal te hanteer, en dan 19 ook die nodige ondersteuning nog steeds as Lugvleuel 20 bevelvoerder aan ander vertakkinge wat daar moet wees te 21 gee. 22 MR GUMBI: Thanks very much, Lieutenant 23 Colonel. You removed General Mpembe from the scene. On 24 this allegation did he say anything about it? 25 CHAIRPERSON: Sorry, what allegation are</p>	<p style="text-align: right;">Page 25767</p> <p>1 KOLONEL VERMAAK: Voorsitter, ek het nou 2 net verduidelik dat ek dit nie gedoen het nie en ek het die 3 redes verskaf hoekom ek nie tyd gehad het om lede te kry en 4 'n nabetragting daar te doen nie. 5 MR GUMBI: Okay, thanks very much, 6 Lieutenant. And I wanted to move on now to another topic. 7 At the Roots meeting in preparation for this Commission, 8 that took place on the 27th of August 2012 until the 6th of 9 September 2012, you testify in chief that you were in that 10 group that discussed the incident of the 13th August 2012. 11 Still remember? 12 KOLONEL VERMAAK: Dis korrek, Voorsitter. 13 MR GUMBI: We know for a fact that on the 14 13th of August 2012 different units they were involved 15 there. I wanted to deal with the composition of the group 16 wherein you were in, discussing this incident of 13 August 17 2012. Operational commanders, or commanders of these 18 different units, were they there? 19 KOLONEL VERMAAK: Dis korrek. 20 MR GUMBI: Rank and file members who were 21 there on the 13th of August near the railway line were in 22 that group when you were discussing this? 23 KOLONEL VERMAAK: Ekskuus, herhaal net 24 jou vraag vir my. 25 MR GUMBI: I'm saying ordinary members of</p>
<p style="text-align: right;">Page 25766</p> <p>1 you talking about? He removed him on the basis that there 2 were threats. 3 MR GUMBI: Yes. 4 CHAIRPERSON: Threats to his life, in 5 fact. 6 MR GUMBI: Yes. 7 CHAIRPERSON: Now is that what you want? 8 You want to know from the witness whether General Mpembe 9 reacted at all to the allegation about threats? As far as 10 my understanding of the evidence is the General didn't know 11 there were threats. Threats hadn't been communicated to 12 him, except by the witness. 13 MR GUMBI: Yes, Chairperson. What I 14 wanted to check from the Lieutenant Colonel, when he 15 removed General Mpembe from the scene, whether this 16 allegation surrounding the firing of teargas and stun 17 grenades was ever, have you ever had a conversation with 18 General Mpembe on that one? 19 KOLONEL VERMAAK: Nee, glad nie. 20 MR GUMBI: Okay. After you removed 21 General Mpembe from the scene you remained behind with 22 members who were involved in that operation, not so? 23 KOLONEL VERMAAK: Dis korrek. 24 CHAIRPERSON: Did you discuss with them 25 what had transpired before?</p>	<p style="text-align: right;">Page 25768</p> <p>1 POP, TRT and NIU who were there – 2 KOLONEL VERMAAK: Ja, dis korrek. 3 MR GUMBI: - near the railway line, were 4 they there also again on the 13th when, in your group when 5 you discussed about this incident? 6 KOLONEL VERMAAK: Nie al die lede nie. 7 Dit was hoofsaaklik maar die bevelvoerders en dan was daar 8 individue wat ook aangesê was om by die konferensie te 9 wees. 10 MR GUMBI: Right, you testified in this 11 Commission again that during a break you met Lieutenant 12 Colonel Merafe, and Lieutenant Colonel Merafe said to you 13 he was not happy the manner in which General Mpembe handled 14 the scene of the 13th near the railway line. Do you still 15 remember that? 16 KOLONEL VERMAAK: Dis korrek. 17 MR GUMBI: And he further said to you he 18 was not happy because General Mpembe he took over from him 19 as an operational commander and he contravened standing 20 order 202. Is that what he said to you? 21 KOLONEL VERMAAK: Dis korrek, staande 22 order 262. 23 MR GUMBI: I mean 262. Thanks for that 24 correction, Lieutenant Colonel. And it's Lieutenant 25 Colonel Merafe who approached you and you didn't go to him?</p>

<p style="text-align: right;">Page 25769</p> <p>1 KOLONEL VERMAAK: Dis korrek, hy het na 2 my toe gekom waar ons besig was om vir ons koffie in te 3 gooi. 4 MR GUMBI: And Colonel Merafe knew very 5 well that on the 13th of August 2012 near the railway line 6 you were not there but you were in your chopper when this 7 incident unfolded? 8 KOLONEL VERMAAK: Dis korrek. 9 MR GUMBI: On the 13th of August 2012 when 10 you landed with your chopper after this incident, did you 11 talk to Lieutenant Colonel Merafe? 12 KOLONEL VERMAAK: Negatief. Hy was nie 13 daar nie. Hy het, wat ek verneem het, het hy vir Luitenant 14 Baloyi – nee, nie Baloyi nie, een, Lepaaku hospitaal toe 15 gevat. 16 MR GUMBI: Okay, according to your 17 testimony you said that Lieutenant Colonel Merafe informed 18 you that he was not happy with Mpembe's instructions he 19 issued on the 13th, instructing members to leave their 20 shotgun behind the Nyalas. Is that what he said to you? 21 KOLONEL VERMAAK: Nee, hy het nie vir my 22 dit gesê nie. Hy het vir my gesê hy was ongelukkig oor 23 Generaal Mpembe by hom oorgevat het en dat hy sekere 24 voorstelle aan Generaal Mpembe gemaak het en dit geïgnoreer 25 was.</p>	<p style="text-align: right;">Page 25771</p> <p>1 KOLONEL VERMAAK: Na die gesprek het van 2 die ander lede ook begin deelneem in die gesprek, soos ek 3 reeds getuig het waar Kaptein Thupe gesê het dat die 4 Generaal die opdrag gegee het. Die videokamera operateurs 5 het vir Generaal Mpembe gekonfronteer omdat hy as 'n senior 6 polisieoffisier nie staande orders nagekom het nie en dat 7 hulle daarvoor ongelukkig was. 8 MR GUMBI: So would I be correct if I – I 9 wanted to have a clear vision, or clear explanation what 10 happened on that – all the members who were there, they 11 were accusing General Mpembe? 12 KOLONEL VERMAAK: Nee, negatief. Dis nie 13 al die lede wat hom beskuldig het nie. 14 MR GUMBI: Ja. 15 KOLONEL VERMAAK: Dis net die mense wat 16 by spesifieke insidente wat op daardie stadium onder 17 bespreking was. 18 MR GUMBI: And you further indicated that 19 General Mpembe, he wanted to know those members who said he 20 issued instruction on the 13th and he would open a case 21 against you for defeating the ends of justice. Still 22 remember that? 23 KOLONEL VERMAAK: Nee, jy is verkeerd, 24 mnr die Voorsitter. 25 MR GUMBI: Ja?</p>
<p style="text-align: right;">Page 25770</p> <p>1 MR GUMBI: And he didn't deal with this 2 aspect. Okay, let's move on. Let us focus now on this 3 debate you had with General Mpembe about what – not General 4 Mpembe, with General Mpembe, including all the members that 5 were involved in that operation of the 13th. That 6 discussion, who was leading this discussion? Was Mpembe or 7 was it you or was it Merafe? 8 KOLONEL VERMAAK: Aanvanklik moes 9 Generaal Mpembe, wat die senior was, die inisiatief geneem 10 het om die nabetrugting te gedoen het, maar weens die feit 11 dat daar nie rërig vordering gemaak was nie het ek 'n 12 voorstel gemaak dat ons moet begin by die begin van die dag 13 se verrigtinge waar dit by die brug begin het. 14 MR GUMBI: Yes, you testified that you 15 suggested that the discussion of the 13th of August 2012 16 should start, or should flow from the moment you saw these 17 armed strikers, must continue until General Mpembe 18 intercepted those strikers, then you said General Mpembe 19 was angry when you suggested that, that discussion should 20 continue in that fashion? 21 KOLONEL VERMAAK: Ja, hy was ongelukkig 22 nadat ek die opmerkings gemaak het ten opsigte van dat 23 Kolonel Merafe na my toe gekom het en sy misnoeë 24 uitgespreek het. 25 MR GUMBI: What about other members?</p>	<p style="text-align: right;">Page 25772</p> <p>1 KOLONEL VERMAAK: Generaal Mpembe wou 2 geweet het wie was die lede wat die dreigemente geuiter het 3 en toe ek vir hom sê ek ken nie die lede nie toe het hy 4 gesê dat hy 'n saak teen my sal registreer. 5 MR GUMBI: Okay, the debate about 6 instruction to leave shotgun behind, you had a debate about 7 that at Roots? 8 KOLONEL VERMAAK: Op daardie stadium? 9 Verwys u na die vergadering toe van die groepie? 10 MR GUMBI: Yes, the meeting of the group. 11 KOLONEL VERMAAK: Daar was 'n gesprek 12 gewees daarvoor, dis korrek. 13 MR GUMBI: Captain Thupe is a commander, 14 TRT commander, Rustenburg. Did he confirm that General 15 Mpembe issued this instruction for members to leave their 16 shotgun behind? 17 KOLONEL VERMAAK: Nee, dis negatief. Die 18 enigste wat hy bevestig het is dat Generaal Mpembe langs 19 hom was toe die instruksie uitgereik was dat die traanrook 20 en die skokgranaat gebruik moes word. 21 MR GUMBI: Okay, we know for a fact that 22 Lieutenant Colonel Selokane was a commander of Lieutenant 23 Baloyi from POP, Pretoria, and he was there in that 24 discussion. Do you know him? If I can start, do you know 25 him?</p>

<p style="text-align: right;">Page 25773</p> <p>1 KOLONEL VERMAAK: Ek ken hom, ja. Ek het 2 hom daar, wel dis waar ek hom vir die eerste keer ontmoet 3 het. 4 MR GUMBI: He was there. Lieutenant 5 Khutu, he was a POP commander from Klipgat. Then he was a 6 commander of the late Warrant Officer Lepaaku. Was he 7 there also? 8 CHAIRPERSON: Sorry, who? I didn't 9 catch. 10 MR GUMBI: I beg your pardon, 11 Chairperson? 12 CHAIRPERSON: What was the name of the 13 officer to whom you referred? 14 [15:52] MR GUMBI: Lieutenant Khutu. 15 CHAIRPERSON: Khutu? 16 MR GUMBI: Yes. 17 CHAIRPERSON: Now this is the discussion 18 that took place on the 5th of September, isn't it? 19 KOLONEL VERMAAK: Dis korrek, Voorsitter. 20 Ek – 21 CHAIRPERSON: Now we have an attendance 22 list which was provided for us by Mr Gumbi's side. Exhibit 23 GGG3 contains all the call-ups, as well as the attendance 24 list. Right near the end, it's quite a thick pack of 25 documents, right near the end just before Lieutenant</p>	<p style="text-align: right;">Page 25775</p> <p>1 CHAIRPERSON: Yes, I'm just pointing out 2 it's not on the screen. 3 MR GUMBI: Yes. If you go, the 4 attendance register of the 27th – 5 CHAIRPERSON: Ja, we're busy with the 5th 6 of September. The 5th of September is the day when these 7 discussions took place about which the witness testified. 8 MR GUMBI: Yes, Chairperson. 9 CHAIRPERSON: You want to go back 10 earlier? 11 MR GUMBI: Yes, I wanted also again to 12 check – 13 CHAIRPERSON: What date do you want to go 14 to? 15 MR GUMBI: I'm checking the 27th of August 16 2012. When you go to page 2, entry number 9. Entry number 17 9 we see the name of Captain Thupe, TRT Rustenburg, there. 18 CHAIRPERSON: You know Thupe is 19 definitely on the 5th of September, but why must we look at 20 the 27th of August? Forgive me, Mr Gumbi, but I don't 21 understand the relevance of looking at the 27th of August if 22 what we are talking about is a discussion that took place, 23 a meeting of a particular section of those at the Roots 24 meeting – 25 MR GUMBI: Yes, Chairperson –</p>
<p style="text-align: right;">Page 25774</p> <p>1 Baloyi's own statement, which is the next document I think, 2 it's GGG16, we have the debriefing list for the 5th of 3 September, starting with General Annandale, and there are 4 altogether, it looks like – yes, it's altogether 38 people 5 and let's go through that. Let's look at that quickly to 6 see whether the lieutenant to whom Mr Gumbi is referring is 7 listed there. No, Mr Gumbi, I don't see the name. 8 MR GUMBI: Chairperson, if I can maybe 9 try to canvass this aspect properly. Let's start with 10 Lieutenant Colonel Seloane, that's operational commander 11 for Pretoria POP. I'm trying to check his name here. I 12 think I must have seen it here. 13 CHAIRPERSON: I don't see it, I'm afraid. 14 MR GUMBI: Chairperson, let me deal with 15 Captain Thupe. I see his name, if I can refer you – 16 CHAIRPERSON: Captain Thupe was there, 17 number 28. 18 MR GUMBI: Yes. Thupe, I see his name. 19 He attended – 20 CHAIRPERSON: We're looking at a 21 different thing at the moment, 2 of 41. This should be 22 somewhere, the pages aren't numbered but it's somewhere in 23 the late 30s, this – 24 MR GUMBI: I'm looking at the attendance 25 register, you know, where it is –</p>	<p style="text-align: right;">Page 25776</p> <p>1 CHAIRPERSON: - which took place on the 2 5th of September. 3 MR GUMBI: Yes, Chairperson, let me just 4 leave that point. 5 CHAIRPERSON: I think you should. 6 MR GUMBI: I'll re-canvass it. In the 7 meantime let me – 8 CHAIRPERSON: Move on to your next point. 9 MR GUMBI: Yes. 10 CHAIRPERSON: You've got four minutes 11 before we adjourn, so see what you can do with those four 12 minutes. 13 MR GUMBI: Okay, Chairperson. Thanks 14 very much, I will do that. So in wrapping up this point, 15 Lieutenant Colonel, will I be correct that the operational 16 commanders of all the units that were there, of all the 17 units that were involved in the operation of the 13th, do 18 you confirm that they were there? 19 KOLONEL VERMAAK: Ek sal nie kan sê almal 20 was daar nie. Ek was maar net deel van die wat opgeroep 21 is. Ek dink as 'n mens die SAP15s kan nagaan en jy kan kyk 22 na die oproepinstruksies dan sal ons weet wie daar was, 23 maar ek kan nie sê almal was daar nie. 24 MR GUMBI: Yes, you cannot even confirm 25 whether the members, ordinary members they were there who</p>

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1 were involved in the operation of the 13th?
 2 KOLONEL VERMAAK: Ek het gemeld dat daar
 3 van die onderoffisiere ook was.
 4 COMMISSIONER HEMRAJ: But everyone that
 5 was there, Colonel, would have signed that attendance
 6 register?
 7 KOLONEL VERMAAK: Dis korrek, Voorsitter.
 8 MR GUMBI: The video of the 13th of August
 9 2012 near the railway line, it's your testimony that you
 10 played that video, nè?
 11 COLONEL VERMAAK: I played the video, ja.
 12 MR GUMBI: All the members they were
 13 there.
 14 COLONEL VERMAAK: Yes, I saw the video.
 15 CHAIRPERSON: Yes, we've seen the video.
 16 MR GUMBI: Yes, so when you analysed the
 17 video, according to your evidence-in-chief would I be
 18 correct that then the accusation was raised of General
 19 Mpmembe of not complying with standing order 262?
 20 CHAIRPERSON: No, wait, wait, wait. The
 21 video that he saw is the video taken on the 13th.
 22 MR GUMBI: Yes.
 23 CHAIRPERSON: I didn't understand him to
 24 say that – we've seen the video. There's no suggestion on
 25 the video that there was a complaint about Major General

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1 Mpmembe taking over and contravening the provisions of
 2 standing order 262. That is the point that was raised
 3 subsequently. Is that not correct?
 4 KOLONEL VERMAAK: Dis korrek, dis nou
 5 die –
 6 CHAIRPERSON: Raised at Roots, was it?
 7 KOLONEL VERMAAK: Dis –
 8 CHAIRPERSON: Raised at Roots?
 9 KOLONEL VERMAAK: Dis korrek, Voorsitter.
 10 CHAIRPERSON: Yes, he was tackled at
 11 Roots on the 5th of September on two points. One was the
 12 allegation he gave the instruction about the teargas, and
 13 the other one was the suggestion raised by the
 14 videographer, I think you said, that he hadn't complied
 15 with standing order 262 and how –
 16 KOLONEL VERMAAK: Dis korrek.
 17 CHAIRPERSON: - and here he, the most
 18 senior officer there on the scene, and he wasn't even
 19 complying with the standing order. This was the point that
 20 was raised.
 21 KOLONEL VERMAAK: Dis korrek.
 22 CHAIRPERSON: It must have got a bit
 23 unpleasant, that session.
 24 KOLONEL VERMAAK: Dis korrek.
 25 CHAIRPERSON: And how did he react to the

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1 allegation that he hadn't complied with the standing order?
 2 Did he lose his temper?
 3 KOLONEL VERMAAK: Op daardie stadium,
 4 Voorsitter, het, was ons nou alreeds in 'n warm gesprek
 5 gewees en het ek eerder besluit om nie verder aan dit deel
 6 te neem.
 7 CHAIRPERSON: Did you withdraw from the
 8 room or did you just –
 9 COLONEL VERMAAK: No –
 10 CHAIRPERSON: - sit quietly in the
 11 corner –
 12 KOLONEL VERMAAK: Ek het net –
 13 CHAIRPERSON: - and keep your mouth shut?
 14 KOLONEL VERMAAK: Ek het net stilgebly.
 15 MR GUMBI: I wanted to wrap up on this
 16 aspect, Lieutenant Colonel. Would I be correct as far as I
 17 analyse your evidence-in-chief that General Mpmembe was
 18 further accused of taking over from Colonel Merafe, in that
 19 heated debate?
 20 KOLONEL VERMAAK: Dis korrek, ja.
 21 MR GUMBI: And General Mpmembe, he said
 22 he's a senior police officer and he doesn't need permission
 23 from anyone to take over?
 24 KOLONEL VERMAAK: Dis korrek.
 25 MR GUMBI: Chairperson, I see it's 4

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1 o'clock. Maybe if we can proceed tomorrow.
 2 CHAIRPERSON: Yes, it sounds a sensible
 3 suggestion, Mr Gumbi. Let's try to start as promptly as we
 4 can after 9 o'clock tomorrow morning –
 5 MR GUMBI: Yes, Chair.
 6 CHAIRPERSON: - when you'll resume your
 7 cross-examination and some of the ducks that you didn't
 8 have in a row this afternoon you will have neatly arranged
 9 in a row?
 10 MR GUMBI: I promise, Chairperson.
 11 CHAIRPERSON: Alright, we'll take the
 12 adjournment till tomorrow.
 13 [COMMISSION ADJOURNED]
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