

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

Lukmos
—communications—

27 MARCH 2014

TRANSCRIPT PAGES 25629 TO 25780

1 **[PROCEEDINGS ON 27 MARCH 2014]**

2 **[09:12] CHAIRPERSON:** The Commission resumes. I just have
3 to remind you that you are still binded by your
4 affirmation.

5 **COLONEL VERMAAK:** It is correct,
6 Chairperson.

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 Hendricks, which you have had an opportunity to study.

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

13 **MR BIZOS SC:** You have already told us
14 that you agree with his views expressed
15 in that document.

16 **COLONEL VERMAAK:** It is correct, there are
17 points that I agree with him.

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 is 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

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 Hendricks?

14 **COLONEL VERMAAK:** It is correct, I
15 concur.

16 **MR BIZOS SC:** Agree. Let us 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 us 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 qualify as the use of force." Do you agree with that

1 statement by Mr Hendricks?

2 **COLONEL VERMAAK:** No, Mr

3 Chairperson, I do not agree with it. There

4 in my statement I say that there were evidence by

5 Captain Thupe that General Mpembe

6 gave the order and that

7 Warrant Officer Kuhn acted out the order. According

8 to me there were a definite order and he did not act

9 on his own.

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 **COLONEL VERMAAK:** Chairperson, it is

15 about the fact that there were instructions given, and according to

16 the witness of Warrant Officer Kuhn he

17 renders General Mpembe, which at that time was the

18 senior and in charge of the operation, he

19 acted. The standing orders provide that members only

20 commissioned to act, except in emergency circumstances

21 to his own life or to protect property. In this case

22 it was a matter of a decision taken by the

23 overall commander.

24 **CHAIRPERSON:** I am sorry to interrupt,

25 Lieutenant Colonel Vermaak. What's being discussed at the

1 moment is not entirely accurate. What Warrant Officer Kuhn
2 said was he received an order from someone, he does not
3 know from whom, and he does not say it was General Mpembe.

4 **COLONEL VERMAAK:** No.

5 **CHAIRPERSON:** And in fact, he does not
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. Therefore, he could not
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 does not 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 is
19 described here as Lieutenant Colonel Baloyi, he was simply
20 Lieutenant Baloyi - he does not 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 does not allege, as I understand his statement, that he
24 received any order but he was effectively following on what
25 Kuhn had done. Therefore, I think we should get the facts

1 straight.

2 What Baloyi says, and Adv. Hemraj has handed it to

3 me, it is exhibit GGG16, in paragraph 9 he says, he describes how

4 he got out of his Nyala in paragraph 8 and he watched the

5 strikers moving towards the direction of the mountain. He

6 then says, "Within seconds two teargases were fired, with

7 the strikers running towards me. I then threw a stun

8 grenade to the coming strikers, ran away to the Nyala." So

9 that is his evidence. Or rather, that is his statement. He

10 have not given evidence yet. So just to, I am not

11 interfering, Mr Bizos, but I think –

12 **MR BIZOS SC:** No, Mr Chairman –

13 **CHAIRPERSON:** - cross-examination will

14 proceed in a more helpful fashion, if I may say so, if the

15 facts are put correctly. It is correct, I think, as is

16 said here in 38.2.2 that there is a dispute as to who issued

17 the order, if any was issued, to fire the teargas, and I have

18 sort of outlined effectively what that dispute is about.

19 So Mr Bizos, I think on that basis we can, then you may

20 proceed.

21 **MR BIZOS SC:** Thank you, Mr Chairman. In

22 view of what the Chairperson has brought to your attention

23 and also if before giving a final answer that you disagree,

24 if we can read paragraph 38.2.2. "There is a dispute

25 between members of the SAPS as to who issued the order, if

1 any was issued, to fire the teargas. Major General Mpembe
2 denied that he did. Evidence was led that the firing of
3 the first stun grenade by Lieutenant Colonel Baloyi was
4 done without an order. Again the confusion and
5 contradictory evidence in relation to whether an order was
6 issued at all, and the fact that this has still not been
7 investigated or clarified sufficiently to resolve the
8 question, raises concerns for me as to whether the SAPS
9 leadership addressed this apparent failure of command and
10 control.”

11 Now, you have heard what the Chairman said. You have
12 heard what Mr Eddie Hendricks’s basis is for making the
13 statement in 18.2.1. Having regard to this would you like
14 to amend your answer that you do not agree with him, in view
15 of the new facts that have been brought to your attention?

16 **COLONEL VERMAAK:** Chairperson, if you
17 read the two paragraphs together, then I shall agree.

18 The only difference I have is the fact that Captain Thupe
19 confirmed that General Mpembe gave the order, but if
20 you read the paragraphs together, I
21 agree.

22 **MR BIZOS SC:** We shall leave it at that and
23 thank you for that. Now let us go to paragraph 39. “There
24 is evidence before the Commission that after the deaths of
25 the members of SAPS certain members blamed Major General

1 Mpmembe and threats were made on his life, which were viewed
2 by Lieutenant Colonel Vermaak with sufficient gravity as to
3 warrant him contacting the Provincial Commissioner and
4 arranging for the removal of Major General Mpmembe from the
5 scene for his own safety. Despite the incident the SAPS
6 leadership failed to investigate or take action, the
7 members involved and retained Major General Mpmembe in
8 command of the operation in the following days with members
9 under him who had not only displayed a lack of confidence
10 in his command but had demonstrated gross insubordination.”

11 Do you accept – you are involved in this. Do you
12 accept the correctness of the facts described by Mr
13 Hendricks?

14 **COLONEL VERMAAK:** Chairperson, it is correct.
15 the facts are set correctly.

16 **MR BIZOS SC:** Correctly stated. Now as a
17 senior officer, the conduct of the people who made those
18 threats, was it investigated? Were any steps taken to deal
19 with the persons who threatened to kill one of their
20 leaders? If not, why not?

21 **COLONEL VERMAAK:** Chairperson, to my
22 knowledge, there have been no investigations launched into it.
23 I have been asked if I know the members who have been with me and
24 what the allegations made. I did not know them.
25 It is the first time I worked with them, and at

1 that point I did not even think of their
2 names or of taking their name tags
3 because I deal with them in a very serious light
4 and therefore I contacted the Provincial
5 Commissioner. I have reported it to her. I told
6 her that I feel the threat and safety
7 of General Mpembe, I suggest that he
8 go back to the JOC, and I have made the necessary
9 arrangements.

10 **MR BIZOS SC:** Would you agree that on the
11 evidence before the Commission, that this is hardly the
12 behaviour of a disciplined police force?

13 **COLONEL VERMAAK:** Chairperson no, it is,
14 this has been a rare event. It is the first
15 time I have been dealing with this sort of thing that
16 made such threats, but I think one should also
17 keep in mind the emotional state that everyone was in at
18 that stage.

19 **MR BIZOS SC:** Well, you see, this –

20 **CHAIRPERSON:** That might be a mitigating
21 factor, but essentially it was a serious attitude that was
22 being communicated to you, was it not?

23 **COLONEL VERMAAK:** It was very
24 serious. I did–

25 **CHAIRPERSON:** And it is something that

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 you cannot have a professional
6 police force in a country like South Africa operating on
7 that kind of basis, can one?

8 **COLONEL VERMAAK:** Mr Chairperson, you
9 are correct there and that is why I immediately
10 contacted the Provincial Commissioner and reported
11 it to her.

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 **COLONEL VERMAAK:** There were about eight
17 members when we went to the scene, when our men pursued
18 and so four members who were with me went and that is
19 where the communication, or the threat was uttered then.

20 **CHAIRPERSON:** And so what unit did those
21 four people belong?

22 **COLONEL VERMAAK:** I asked them and
23 they told me they are attached to TRT Rustenburg,
24 and I did –

25 **CHAIRPERSON:** Yes, sorry, I would have

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 were not able to identify
5 them. Would you agree with that?

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

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

12 **MR BIZOS SC:** Colonel, we know that
13 without an order 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 occasions might have acted as an act of revenge –

18 **CHAIRPERSON:** No, Mr Bizos, I am sorry,
19 you are asking for his opinion on a matter in respect of
20 which he has no real expertise. It is 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 have
23 sketched –

24 **MR BIZOS SC:** Yes.

25 **CHAIRPERSON:** - that it was a case of

1 revenge. If he had 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 are asking him essentially to express an
6 opinion, which we are as well qualified to make as he is,
7 and I have 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 do not 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 was not 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 am sorry to interrupt you.

23 You are. I have already told Mr Mpofu 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

1 not allow the point to be taken against him that he had not
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 will 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 will be able to argue it at the
8 end, but without any disrespect intended to the Lieutenant
9 Colonel, I am 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 were 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 Hendricks's view?

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

24 **MR BIZOS SC:** Yes, and it was not done.

25 **COLONEL VERMAAK:** As far as I know,

1 no.

2 **MR BIZOS SC:** And you do not know any

3 reason why it was omitted?

4 **COLONEL VERMAAK:** No, I bear no knowledge,

5 Chairperson.

6 **MR BIZOS SC:** Now can we go to paragraph

7 48 on page 24, "I believe that the shift in the SAPS

8 operation away from crowd management by SAPS leadership was

9 inappropriate in the circumstances." This is in relation

10 to the 13th, and in paragraph 49, "It is my view that the

11 crowd management regulatory framework, and particularly

12 standing order 262 are designed to regulate unprotected

13 strikes such as the one that took place in Marikana on the

14 16th of August 2012." Do you agree with that?

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

16 **MR BIZOS SC:** And do you disagree with

17 those who say that this was a novel and special situation

18 and the orders were inappropriate and were disregarded

19 because of the special circumstances? Do you disagree with

20 that view?

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

22 **MR BIZOS SC:** Yes. Can we go to

23 paragraph 69? "Slide 24 of Brigadier Breytenbach's

24 presentation is entitled *Mandated Functions of POP as*

25 *Described in Administrative Policy, Division Visible*

1 *Policing*. The Function in a Public Order of Police (POP3-
2 1-5-1-174) and 2008-11 to the 18th and lists the mandated
3 functions of POP as performing crowd management, combating
4 public violence, stabilising serious and violent crime
5 incidents, giving specialised operational support and the
6 rendering of specialised assistance to divisions, i.e.
7 detectives, border police, and VIP protection." Do you
8 agree with Mr Hendricks's view?

9 **COLONEL VERMAAK:** I agree, Mr
10 Chairperson.

11 **MR BIZOS SC:** And paragraph 70, "I am
12 unable to comment on the quality or adequacy of the
13 training currently given to members of POP units. However,
14 it is certainly my understanding that their training and
15 function is to manage situations such as that of Marikana
16 and that at the time of our cooperation agreement they were
17 able to do that. In my view the Marikana operation fell
18 directly within that mandate."

19 Now I want to refer to your letter in which you
20 express the view that the training of the present POPS
21 people were inadequate. Do you agree with that and do you
22 repeat it?

23 **COLONEL VERMAAK:** I agree, Mr
24 Chairperson.

25 **MR BIZOS SC:** Yes. Could we turn to

1 paragraph 77, please? "The inadequacy of the
2 intelligence," is the heading. "The need for comprehensive
3 and relevant information gathering and intelligence in
4 public order interventions is emphasised in a number of
5 SAPS policy documents and regulations. Accurate
6 intelligence is essential to the proper planning and
7 execution of crowd management operation to anticipate all
8 possible situations or threats and to minimise the
9 possibility of the use of force. Inadequate intelligence
10 risks the operation not going according to plan and more
11 force being used than had been the plan."

12 And paragraph 78, "The SAPS should have
13 prioritised information gathering in an operation such as
14 that one in Marikana. However, there appears to be a
15 noteworthy paucity of intelligence and the striking
16 mineworkers." Do you agree with those views?

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

18 **MR BIZOS SC:** Lieutenant Colonel Vermaak,
19 are you really in a position to comment upon the accuracy
20 of this criticism? Brigadier Engelbrecht has given a
21 statement, which has been put before us. He has explained
22 they had a number of informers who appear even to have been
23 on the hill. They had handlers, and they were regularly
24 getting feedback. So obviously, that is information, which is
25 highly sensitive, who the informers were, how they

1 operated, who the handlers were, all that stuff that is got
2 to be kept very much secret, has it not? He did say that
3 they had information that there was trouble coming and he
4 suggested that something should be done already on the
5 Sunday to – no, I think already on the Saturday, the
6 Saturday already do something to increase the police
7 presence at the mine. He said he reported that to General
8 Mpembe. He said General Mpembe actually later said to him
9 he was dissatisfied with the response that there had been
10 to that and the suggestion was that the security guards who
11 were killed on the Sunday might not have been killed if the
12 information that he had conveyed to General Mpembe had been
13 properly reacted to. Then there were regular reports to
14 the JOCCOM, obviously without detail.

15 The document that is referred to by Mr Hendricks,
16 exhibit TT5 is a document as far as I remember, dated the
17 30th of August, stating in very brief terms what the main
18 information was, which is essentially the same as what
19 you would say, that you have to take these people seriously,
20 that they are going to fight, they are not going to
21 cooperate, they are not going to hand over their weapons and
22 so on.

23 So, I am not sure that – and I just put this to you
24 because it is my prima facie reaction – I am not sure, with
25 respect, that you are in a position, and I am not sure that

1 Mr Hendricks is in a position to criticise the intelligence
2 in the way that it is been done without a full appreciation
3 of what Brigadier Engelbrecht is referring to in the
4 passages which I have summarised. How do you react to that?

5 **COLONEL VERMAAK:** Chairperson no, I

6 criticize Brigadier Engelbrecht's input about it.

7 It is about the fact that the information that we had

8 to our disposal was not enough,

9 and it should have been taken into

10 consideration that we did not

11 have enough information. I

12 agree with that Brigadier Engelbrecht introduced

13 that they are struggling to get information about specific reasons

14 that he stated, and the issue that I agree with is the

15 fact that there was limited information and it is quite possible

16 considering one should have in setting the planning.

17 **CHAIRPERSON:** Well, there are two points

18 really, are not there? Before we get to your two points –

19 I am 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

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 do not

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 difficulties in getting informers, and getting

9 informers to give them information, for obvious reasons.

10 Is that in accordance with your experience?

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

12 **CHAIRPERSON:** So that obviously imposes

13 limitations on the effectiveness of the intelligence

14 operation, but I am not sure that one can – and this brings

15 me to the further point – I am not sure one can

16 necessary criticise the intelligence people. At the end of

17 the day we have to, in terms of our terms of reference

18 we have to deal very fully with the matters covered

19 thereby and one of the points made by the LRC's expert, Mr

20 Hendricks, is that the intelligence people must in effect

21 bear some of the blame, and I am not sure whether there is

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, and I can

25 understand, but blame is something different. Now how will

1 you react to that?

2 **COLONEL VERMAAK:** I agree with you,

3 Chairperson. There were no intentions of

4 blaming the intelligent people for the fact that they could

5 not obtain information. It was during the JOC "meetings"

6 it was so imported by Brigadier Engelbrecht that

7 his staff struggled to obtain information and what

8 they had, they are given confirmation on what I

9 do during the meetings mentioned from experience,

10 not from the information but from experience, what

11 we observed and the general feeling of the crowd,

12 basically, I can only comment on this for the Sunday.

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 have made a criticism that such

16 intelligence as was available does not – at least I

17 understand you to have made this criticism – such

18 intelligence as was available was not properly taken into

19 account, factored into the planning that was done. Is

20 that, do I understand you correctly?

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

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

1 were not 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 **COLONEL VERMAAK:** It is correct, Chairperson,
9 yes.

10 **CHAIRPERSON:** And if the intelligence had
11 been taken seriously and had been borne in mind, I take it
12 what you are 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 **COLONEL VERMAAK:** It is correct, Chairperson.

16 **CHAIRPERSON:** Alright, now the other
17 point I want to ask you about is you have said that there
18 was not enough information. Now what kind, and you have very
19 fairly said you could not really blame the intelligence people
20 for that, but it is the statement that you make, there
21 was not enough information. Now what information would you
22 have, if you had been in charge, Mr Bizos put the
23 hypothetical question to you, if you had been in charge of
24 the operation, you had been the operational commander, what
25 information would you have wanted – whether you could have

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 do not know how
4 much of that was recorded because I pressed the button on
5 the wrong side. I had better repeat the question.

6 How much information that was not available would
7 you have regarded either as desirable or necessary if you
8 had been the operational commander?

9 **COLONEL VERMAAK:** Chairperson, the
10 information we had was enough to be
11 concerned. If one could have gotten information
12 from say among the parties that these strikes
13 took part would we also have evidence that is more concrete
14 possible to say except that we observed and from
15 experience seeing that this group of people is not
16 just going to surrender, and you have had concrete
17 information what you could have said from the crowd, or
18 participants of these people say they will not
19 surrender, or that there are other plans made by some of
20 them, then perhaps other decisions could be taken by
21 the decision makers. But they did, at that
22 time was the only information they had is
23 what we told them from experience that these people
24 are aggressive, they participated in rituals. From
25 experience we knew if they did it then

1 these people will not give up their weapons without
2 there being conflict.

3 **[09:52] CHAIRPERSON:** Yes, 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 is 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 will 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 have 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 was not 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 had not 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

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 **COLONEL VERMAAK:** Definitely, Chairperson.

7 **CHAIRPERSON:** And that would have been an
8 important part of the – I am 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 is 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 **COLONEL VERMAAK:** Correct, Chairperson.

16 It comes back to the point I mentioned about
17 cameras on scenes where pictures can be taken and it
18 is provided immediately to your investigators to then
19 identify those people and then get the information,
20 as you rightly mentioned.

21 **CHAIRPERSON:** The last question I would like
22 to ask you on this subject is that might there be
23 information which because of its sensitive nature you
24 were not privy to?

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

1 **CHAIRPERSON:** That does happen in the
2 intelligence gatherings situation, does not it?

3 **COLONEL VERMAAK:** Definitely. They,
4 There is certain information that is not revealed
5 in general meetings.

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 **COLONEL VERMAAK:** Chairperson, I believe
15 that if Brigadier Engelbrecht had such sensitive
16 information to his disposal, he would have conveyed it to the General
17 that was in overall command. He might not have
18 mentioned it at the JOC "meeting", he would definitely conveyed
19 it to the General in a private
20 conversation.

21 **CHAIRPERSON:** Can I ask you one last
22 question on this topic? You have known Brigadier Engelbrecht
23 for some time, have you?

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

25 **CHAIRPERSON:** For how long?

1 **COLONEL VERMAAK:** It is from when he was
2 appointed in the North West, so it is probably seven, eight years.

3 **CHAIRPERSON:** Now I know it is a question
4 that you may have difficulty in answering, you may in fact
5 be unable to answer it and if so, do not 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 **COLONEL VERMAAK:** Chairperson, I did
11 deal with him during operations where
12 there were such information and he shared it with me,
13 his junior, although he did not share it in the
14 general meeting. So I think, my opinion, that is my
15 personal opinion and it is that Brigadier Engelbrecht is
16 an outstanding officer in that regard.

17 **CHAIRPERSON:** Thank you. Forgive me for
18 having taken over some of your cross-examination, Mr Bizos.
19 I take it I was not covering topics you were going to cover
20 anyway, but I thought that while we are 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, Chairperson. Colonel, I heard

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 **COLONEL VERMAAK:** Chairperson no, there was
8 never referred to, in this case to people as enemies.
9 This has been seen as public. It is regarded as a public
10 order that violated with participants who do not comply with
11 the law, but in my career did, and I was not part
12 of any place where we were referring to enemies.

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 **COLONEL VERMAAK:** I cannot dispute,
19 Chairperson.

20 **CHAIRPERSON:** Mr Bizos, how can this
21 witness answer that question? I am not saying it is 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 am sorry, I did not hear
25 the last bit –

1 **CHAIRPERSON:** I say I am not saying it is
2 an improper question that cannot 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 do not go along with that? And the people who
13 said it have qualified it anyway.

14 **COLONEL VERMAAK:** Chairperson, I cannot
15 answer that question. I do not have that knowledge.

16 I have not seen any of such statements.
17 it was also never referred in our meetings to

18 3 000 aggressive people there. We talked
19 about the grouping and the small

20 group in front. So about 3 000
21 people were aggressive, no.

22 **MR BIZOS SC:** Yes.

23 **CHAIRPERSON:** You are talking about what
24 were discussed at the JOCCOM meeting. You of course were in
25 a position to contribute to that discussion if there was

1 one because you flew over the hill a number of times,
2 did you not?

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

4 from the photos what I have taken and what I
5 made available to the JOC on a daily basis was it
6 clear that there have been a majority just sitting on
7 the hill. The only movement that was there as a small
8 group was the leading group and further the
9 people of the residential went to the hill and
10 went back without any incidents.

11 **MR BIZOS SC:** The death of two police officers
12 and the circumstances under which they died have been
13 described. I do not 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 **COLONEL VERMAAK:** Chairperson, the, from
23 the beginning it was identified as a dispute between the
24 employer and the employee. Police tried to be
25 helpful to restore calmness, in the light

1 of that there are a number of people killed on the
2 16th. Therefore, the responsibility of the police was
3 to have been protecting life and property and certainly not to
4 get involved in the dispute between employer and
5 employee.

6 **MR BIZOS SC:** No specific briefing took
7 place, do not let us vent any anger against the crowd as a
8 whole?

9 **COLONEL VERMAAK:** Chairperson, I cannot
10 comment because I was not at the counselling
11 session or the parade where the members stood.
12 we as the Air wing basically, I have represented the
13 Air wing in the JOC. I went back to my people,
14 I have given them guidance. The operational
15 people from the JOC went to their own people and
16 they gave them guidance. I can
17 not comment what was transferred to the members
18 on the ground. However, it is definitely, in the JOC it was
19 definitely made clear that it is not "enemy",
20 they try to keep peace and trying to preserve their lives
21 so that no further killings would take place.

22 **MR BIZOS SC:** Let us turn to paragraph 88
23 on page -

24 **CHAIRPERSON:** Before you move on, just to
25 round off the point that you are busy with now. I think a

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 are not 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?

10 **COLONEL VERMAAK:** Chairperson no, I,
11 where I gathered at the JOCCOM meeting, it was not
12 specifically mentioned.

13 **MR BIZOS SC:** Thank you, Mr Chairman. If
14 we turn to paragraph 88, Mr Hendricks 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 Hendricks's view?

23 **COLONEL VERMAAK:** Chairperson, the
24 relationship between POP and the other branches can I, I
25 do not have it before me—

1 **CHAIRPERSON:** Sorry to interrupt you. We

2 discussed that yesterday.

3 **COLONEL VERMAAK:** Yes.

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.

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

10 **CHAIRPERSON:** So that was your comment –

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

12 **CHAIRPERSON:** - when I put the figures,

13 specific figures to you.

14 **COLONEL VERMAAK:** Yes.

15 **CHAIRPERSON:** I am sorry, I interrupted

16 your answer. I thought I would remind you of what happened

17 yesterday.

18 **COLONEL VERMAAK:** That is right, thank you,

19 Chairperson. The use of the Task force, in my time I

20 engaged in riots, it was the first time that there

21 were Task force members in riots and crowd control as a

22 public policy function and in my writings I mentioned that

23 I expressed concern about the use of

24 TRT in riot situations. It was one of the points

25 that I was concerned of in May 2012.

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.

8 **COLONEL VERMAAK:** Chairperson, all I can
9 say, it is referring to my letter to the Provincial
10 Commissioner that my concerns expressed regarding
11 the use of people, or members who are not equipped
12 to handle riot and crowd control.

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 does not 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?

22 **COLONEL VERMAAK:** Chairperson no, I do
23 not agree, as I said, we have never in
24 the past used Task force members in riot and
25 crowd control situations and I, we have never had a

1 situation where you eliminate a leader to say you are
2 going to crowd control, because you would be doing it
3 anyway you will definitely do more damage as what you do
4 good.

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 did not fire a shot on the 16th. They
8 were there, but they did not fire at all according to the
9 statistics we have. So that is 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 did not, 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 is correct?

24 **COLONEL VERMAAK:** Chairperson, I can only
25 give information regarding my experience. Never

1 did we at a mine hostel where I was involved in any way
2 used Task force members to do searching. Task force
3 members are usually used in high-risk operations and
4 of searching hostels but part of your Public
5 Order Policing feature. Everywhere we searched the
6 hostel, we have performed – then the commandos have been
7 in use. They just helped us to cordon off
8 the areas out of the parameters.
9 Then we had different group searching the hostels. Each group had
10 a detective and then there was a central point where
11 you JOC, or your "venue JOC" where a few members of
12 PKRS, had your photographs; evidence would be found
13 then they went, they were photographed. There
14 was a detective at the scene what the necessary
15 explanations and others could do, and then the
16 explosives experts have been on standby at the JOC.
17 many times in your hostels there was many illegal
18 explosives found and then they were tasked to
19 join those groups where the evidence was
20 found then. We never used Task force
21 members.

22 **MR BIZOS SC:** That is 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.

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 **COLONEL VERMAAK:** This is consistent with what
8 I said about the experience we had on the
9 virulence, yes.

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 **COLONEL VERMAAK:** Chairperson yes, I agree
22 but I must mention that the police were talking
23 to the people. They are initially entered to
24 anything except on the 16th where a plan was
25 conducted in the afternoon I first learned how the

1 plan was stabbed in place.

2 **MR BIZOS SC:** This putting the –

3 **CHAIRPERSON:** Sorry to interrupt you.

4 I am not sure that Mr Hendricks 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 did not hand down their arms voluntarily on the

8 Thursday morning was already taken the Wednesday night, as

9 I explained to you, and it was not taken by the JOCCOM. The

10 members of the JOCCOM I suppose theoretically could have

11 gone against what had been decided, but they did not, but

12 you can understand why they did not.

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 do not 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 is 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 is not even correct to talk about a decision taken on

24 the Thursday afternoon at 1:30. That is when it was

25 communicated to the JOCCOM and Colonel Scott conceded that

1 that put them in a difficult position and there is, one of
2 the questions is why Thursday, could not 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 have got to look
6 at. I do not know whether you can actually help us on them,
7 but the difficulty I get with Mr Hendricks, presumably we
8 will raise it with him when he comes, is that I am not sure
9 when this report was written he was entirely informed as to
10 the evidence that is come out since this Commission has been
11 proceeding.

12 But I do not know whether Mr Bizos wants to deal
13 with that, but anyway, the real question I am asking you is
14 in the light of what I have put to you, are you able to
15 help us on this particular issue? Except perhaps in some
16 general way relating to what –

17 **COLONEL VERMAAK:** Chairperson no, around
18 the decision and the and the orders that was give,
19 I could not give information or comment,
20 or give new information to the commission.

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 am sorry for the expression – it
24 make it more obvious that the idea that somebody can
25 decide that an action such as that, that was taken on

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 stand
5 for in relation to crowd control.

6 **COLONEL VERMAAK:** Chairperson, this is
7 why you need to compile JOCCOM with all stakeholders and in
8 that meeting it was then decided in respect of
9 acts, when the actions should be kept and what
10 actions. Yes, I agree that it is not
11 normal practice that someone from outside gives
12 instructions and the opinion of the JOCCOM
13 is not taken into consideration. If they asked then,
14 I cannot tell, but
15 that someone from the outside gave the order,
16 that is not normal procedure.

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.

22 **COLONEL VERMAAK:** Again, it is
23 a decision that needs to be made by JOCCOM, on when they are going
24 to act. Why they said it is - "D-day" - on that I cannot
25 comment. Provincial Commissioner made the

1 media "statement". I do not
2 know if she had information to her disposal, which
3 we did not have on the ground.
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.

10 **COLONEL VERMAAK:** Chairperson, it is
11 correct.

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?

19 **COLONEL VERMAAK:** Chairperson, I cannot
20 comment on that. I was in the air
21 the whole day, so I have no knowledge of who were present in the
22 JOC and where the senior personnel were.

23 **CHAIRPERSON:** May I ask you, what is your
24 experience in the past when you were a POP commander, I
25 take it you were presumably never involved in an operation

1 exactly like Marikana because it is 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?

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

9 **CHAIRPERSON:** Then you have an
10 operational commander who is in the field.

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

12 **CHAIRPERSON:** I take it, it is important
13 though that there should be communication between the
14 operational commander and the JOC –

15 **COLONEL VERMAAK:** It is –

16 **CHAIRPERSON:** - almost on a continuous
17 basis.

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

19 **CHAIRPERSON:** And one of the problems
20 according to the evidence is that that did not 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

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 **COLONEL VERMAAK:** Chairperson, I can
6 just refer to the examples again. We always worked on the
7 principle that the overall commander stayed at the JOC,
8 because that is where all the information is conveyed to. It is
9 where it was evaluated and where the orders were
10 given to the personnel on the ground.

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 **COLONEL VERMAAK:** It is correct.

15 **CHAIRPERSON:** And so that the criticism
16 that is being put to you by Mr Bizos, would you say that
17 that is well founded, or in the light of what you have just
18 told us it is a bit unfair to criticise the senior officers
19 for staying in the JOC? I know General Mpmembe left at one
20 stage, but we will not 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

1 came in, and so on?

2 **COLONEL VERMAAK:** Chairperson, it is, your

3 overall commander must be in the JOC,

4 to discuss information with the other seniors

5 and to take decisions, which they

6 then convey to the people on the ground,

7 your overall commander needs to be there

8 and to be part of the decisions

9 made and to also give guidance

10 and the only way to have contact with your people on the ground

11 is from a central point. That is why there is a

12 JOC. It is where all the information is conveyed to,

13 evaluated and reverted back to the people on the ground.

14 **MR BIZOS SC:** Colonel, I am 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 **COLONEL VERMAAK:** Chairperson, I think the question

24 has two sides. The one on the

25 decision made to lodge

1 the action on the following day, you cannot take a
2 decision on what will happen on the next day, according
3 to me it will be irresponsible to lodge such an
4 order, as you have no idea what the next day will
5 hold in. My opinion is that
6 you cannot decide today on how
7 you will act tomorrow –

8 **CHAIRPERSON:** Sorry to interrupt you. So
9 you are saying it is irresponsible to say on Wednesday
10 Thursday will be D-day. Even if that language was not used
11 on Wednesday, that was the idea conveyed and you say that is
12 irresponsible?

13 **COLONEL VERMAAK:** My personal opinion,
14 yes.

15 **CHAIRPERSON:** And the second half of the
16 question, you know I interrupted you before you got to
17 that.

18 **COLONEL VERMAAK:** Chairperson, it comes back
19 to the fact that if the overall commander is in the JOC,
20 he or she must give guidance. If there is a situation
21 on the ground and the members are forced to act
22 in self-defence, it is logic that there will not be time
23 to contact the overall commander and ask for
24 permission to act. It is where you
25 act and later on just

1 explain as to why you acted.

2 **[10:32] CHAIRPERSON:** Can I ask you one more

3 question - Mr Bizos I take it will not 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 is a fairly senior

8 officer, is he not?

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

10 **CHAIRPERSON:** Yes, 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 **COLONEL VERMAAK:** It is correct,

14 Chairperson, he was on the ground, but if

15 we look at the extent of the area, he had to

16 appoint other commanders to help him with certain matters,

17 but the overall commander still remains

18 responsible, and as information is conveyed to your

19 operational commander, he will

20 make decisions, which he will communicate to the other members,

21 but if he does not agree,

22 he will immediately contact the overall commander and

23 discuss the matter with him.

24 **CHAIRPERSON:** Thank you. I think we shall

25 take the first comfort break at this point. Sorry, unless

1 – forgive me, Mr Bizos, unless there is a point you want to
2 make before we take the comfort break. It is 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 is 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. I just
12 want to remind you that you are still binded by your
13 affirmation.

14 **COLONEL VERMAAK:** Affirmed.

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

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 **COLONEL VERMAAK:** Chairperson, in normal
5 circumstances, yes.

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 **COLONEL VERMAAK:** It is correct.

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 **COLONEL VERMAAK:** Chairperson, I was not aware of his whereabouts
18 on that day. I was in the air,

19 I have no knowledge on his whereabouts, until

20 I was informed that he was in a Coin Security
21 helicopter.

22 **MR BIZOS SC:** Now was that an accident?

23 What was he doing in - he is the overall commander -

24 **CHAIRPERSON:** Mr Bizos, how can the
25 witness answer that? He says he did not know anything, he

1 only heard about it later. You put before us what the
2 relevant section in the standing order says. I do not know
3 it is 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 is – I amend my
7 question. You see, he was not there. He was not 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 **COLONEL VERMAAK:** Chairperson, as
19 per the standing order, there are certain
20 requirements. I am not aware of who was in the JOC,
21 but the standing order is clear regarding the
22 channelling of information and so
23 forth.

24 **CHAIRPERSON:** As far as the particular
25 point raised is concerned in relation to the deaths, your

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 do not know whether it was received and you do not know what
5 action was taken thereafter, but I take it further than
6 that you cannot take it yourself. Is that correct?

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

8 **MR BIZOS SC:** Calitz was a senior
9 officer. Where was he at the vital time?

10 **COLONEL VERMAAK:** I know he was –

11 **CHAIRPERSON:** I am 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 did not know,
15 and I asked him actually, he is 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 could not tell us. Are
21 you able to tell us anything further concerning Brigadier
22 Calitz's movements immediately after the shooting?

23 **COLONEL VERMAAK:** Unfortunately,
24 I cannot answer that. I was not aware of it
25 at that stage. We concentrated on what we observed

1 on the ground, took photos and communicated on the
2 the radio, so I was not aware of the position of each
3 Nyala.

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 **COLONEL VERMAAK:** If you put it that way, yes.

9 **MR BIZOS SC:** Is that not a flagrant
10 disregard of the provisions of the standing order?

11 **COLONEL VERMAAK:** Chairperson, I cannot
12 comment on their whereabouts or what they did.
13 I trust they will be able to testify on the
14 circumstances and why they were not at specific places
15 at certain times.

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 is 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 am sorry, I want to

1 say something about your question. I am 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 is a captain.

11 **COLONEL VERMAAK:** Captain Loest.

12 **CHAIRPERSON:** He is not a senior officer.

13 So what I want to ask you is when you say senior officers
14 were not present, what rank of seniority are you referring
15 to? Brigadier Calitz –

16 **MR BIZOS SC:** May I amend it to senior
17 commanders? ———communications———

18 **CHAIRPERSON:** Yes, Brigadier Calitz told
19 us he had left a short while before. That is 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 am entitled, with respect, to put to
24 the witness as an expert –

25 **CHAIRPERSON:** I was not stopping you. I

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 have now done. So put the question and let us 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 **COLONEL VERMAAK:** Chairperson, as I said,

11 I cannot comment on their whereabouts,

12 or the reasons why they were not there at

13 certain stages.

14 I was in the helicopter, so I cannot

15 answer to that.

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 **COLONEL VERMAAK:** I testified that

22 your overall commander has to be in the JOC

23 in order to provide guidance, Chairperson.

24 **MR BIZOS SC:** The idea of having the JOC

25 some four kilometres, sitting some four kilometres away on

1 the premises of the mine, how good a practice is that in

2 your opinion as an expert?

3 **COLONEL VERMAAK:** Chairperson, there were

4 no other facilities available. The fact

5 that it was approximately four kilometres from the scene,

6 was not really a problem, as the

7 communication was conveyed on the radio and there were cellphones. So, I

8 did not have a problem of the JOC at the mine

9 itself.

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 are expected to be

14 there with their binoculars in order to determine what is

15 to happen next. Is that not good practice?

16 **COLONEL VERMAAK:** Negative, Chairperson.

17 I was part of operations where the JOC was 10

18 kilometre or further away from where the operation

19 took place. You just have to assure proper communication

20 between the JOC and the people participating in the operation.

21 **MR BIZOS SC:** Is that best practice, do

22 you think?

23 **COLONEL VERMAAK:** I do not have a

24 problem –

25 **MR BIZOS SC:** Would it not be very helpful

1 to be there on the spot in order to direct the operation?

2 **COLONEL VERMAAK:** Nowhere it is stated that the JOC

3 must be at the scene itself. I also do not believe

4 that it was anticipated that people will lose their

5 lives. The placement of the JOC is definitely

6 not a problem.

7 **MR BIZOS SC:** I want to turn to paragraph

8 93.2. "The principle of proportionality aims at moderation

9 between goals and means and recommends that only those

10 measures essential for the execution of successful

11 operation should be employed." Would you agree with that

12 principle of proportionality?

13 **COLONEL VERMAAK:** It depends on

14 circumstances. One has to look at –

15 **MR BIZOS SC:** Yes, I am sure that it

16 depends on the circumstances, but let us look at the

17 circumstances.

18 **COLONEL VERMAAK:** The circumstances

19 was of such that there were no sufficient site for the

20 JOC to use, as I said, that was what was available,

21 that was what was used and according to me it definitely

22 complied with the placement of the JOC.

23 **MR BIZOS SC:** We know that this operation

24 led to 34 deaths in scene 1 and scene 2, and 76 people were

25 seriously injured. We also know that not a single

1 police officer suffered a scratch. Will you accept those facts?

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

3 **MR BIZOS SC:** Do you understand what
4 proportionality means?

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

6 **MR BIZOS SC:** Was this a proportional
7 result?

8 **COLONEL VERMAAK:** The outcome of those
9 services cannot be determined beforehand, Mr
10 Chairperson.

11 **MR BIZOS SC:** Are you aware of the fact
12 that a substantial number of the dead and injured were
13 either shot in the back or on the side?

14 **COLONEL VERMAAK:** Chairperson, I do not have
15 access to those documentation, so –

16 **MR BIZOS SC:** We have.

17 **COLONEL VERMAAK:** It is, if you put it that way,

18 I do not have it in front of me, so I cannot
19 confirm it.

20 **CHAIRPERSON:** I can tell you that those
21 documents are before us and the point put to you by counsel
22 is in accordance with the post mortem reports that we have
23 seen, and I think some of the – I am not sure what detailed
24 documents we have got in relation to the 76 who were injured,
25 but that point has also been covered in the evidence. So

1 you can accept that the factual basis for the question is
2 correct.

3 **MR BIZOS SC:** Do you think that the
4 actions taken by the police in killing and injuring so many
5 people in the manner in which the documents show, shows
6 that there was proportionality, that the police really out
7 of fear of being attacked managed to kill 34 and injure 206
8 – 76, I beg your pardon. Do you think that the
9 proportionality called for in the standing orders was
10 observed by the police?

11 **COLONEL VERMAAK:** Chairperson, I cannot
12 comment on the circumstances at the
13 scene. I was not on the ground.
14 I observed some things from the air. Why the members
15 on the ground fired and why,
16 only the members will be able to explain that, no standing
17 order makes provision for anyone to lose his or her
18 life. It is there in order for us to
19 take into consideration the interest of all.

20 **MR BIZOS SC:** You took part in the
21 transformation of the police force in the early 90s and the
22 middle, late 90s, during Mr Mandela's presidency and you
23 were involved in the training and operations of POPS.

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

25 **MR BIZOS SC:** Did you think that the

1 policies of the then Commissioner – you remember his name?

2 Commissioner of Police during this period.

3 **[11:38] COLONEL VERMAAK:** Fivaz.

4 **MR BIZOS SC:** - Fivaz, to transform the

5 militarisation of the police substantially succeeded?

6 Would you agree with that?

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

8 **MR BIZOS SC:** After Mr Mandela's

9 retirement and choice of not running for a second term, was

10 there discomfort about the police about the

11 demilitarisation process that had taken place?

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

13 assure you that it had no impact on the

14 actions on the ground. The members complied with

15 legislation. They did not ignore the legislation.

16 We continued as always,

17 and performed our duties to the best

18 of our abilities. The question of ranks is a administrative

19 factor and had no

20 effect on our work.

21 **MR BIZOS SC:** You jumped ahead, Colonel.

22 Was there dissatisfaction among the police officers about

23 the demilitarisation of the police?

24 **COLONEL VERMAAK:** Negative.

25 **MR BIZOS SC:** The question of ranks was

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 **COLONEL VERMAAK:** Superintendent.

5 **MR BIZOS SC:** Would it have made any
6 difference?

7 **COLONEL VERMAAK:** It makes no
8 difference.

9 **MR BIZOS SC:** Yes, well, so that is 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 is something the witness cannot 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 **COLONEL VERMAAK:** It made
17 no difference to us.

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 is something I take it you cannot help us on.

22 **COLONEL VERMAAK:** No, I cannot assist with
23 that, Chairperson.

24 **MR BIZOS SC:** Yes, but we, whether we
25 like it or not, have to admit that there was and still is

1 unacceptable crime being committed against members of the
2 public. Is that right?

3 **COLONEL VERMAAK:** Just repeat the
4 question, please?

5 **MR BIZOS SC:** There is a lot of crime in
6 South Africa.

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

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 am
13 not saying about you. Was that something that was debated
14 by certain people? I see you shaking your head –

15 **COLONEL VERMAAK:** No, no –

16 **MR BIZOS SC:** Do you say that that did
17 not happen? ———communications———

18 **COLONEL VERMAAK:** Not from where I was.

19 **MR BIZOS SC:** No, no, no, but you do not –

20 **COLONEL VERMAAK:** I cannot –

21 **MR BIZOS SC:** You do not remember it but –

22 **COLONEL VERMAAK:** I cannot comment
23 on something I have no knowledge of.

24 **MR BIZOS SC:** You are not living in a
25 vacuum, Colonel. Were you not aware that there was

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 have
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 **COLONEL VERMAAK:** Chairperson, yes, no, it
11 was general knowledge in the media. So, via media
12 you could read all about it. It is correct, yes.

13 **MR BIZOS SC:** Yes, that is what I meant.

14 Yes, and the others, that –

15 **COLONEL VERMAAK:** There were
16 a lot of speculation in the media regarding the matter.

17 **MR BIZOS SC:** Actually that was not only
18 speculation, there were statements by senior policemen, a
19 minister –

20 **CHAIRPERSON:** Wait, wait, and wait, before
21 you carry on. I think you should be more precise. You are
22 referring to a statement by the minister. I am 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.

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 **COLONEL VERMAAK:** Chairperson, I think Mr

9 Bizos refers to our previous Commissioner, which

10 were very passionate about deaths of police officers and

11 and said that fire must be answered with fire. I am aware

12 of those statements made.

13 The question about the hands of the police being tied

14 behind their backs and not allowed to

15 uphold the law, with that I disagree. Since I

16 joined the police, we always uphold the law, no matter

17 who was in charge, as long as the legislation was in place,

18 you had to uphold such legislation. I disagree with

19 the fact that the police were not able

20 to perform their duties at all times.

21 **MR BIZOS SC:** I am 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 **COLONEL VERMAAK:** I disagree.

1 **CHAIRPERSON:** Mr Bizos, when you reach a
2 suitable stage, if you had let me know because I was
3 proposing to take the tea adjournment soon, but I do not
4 want to unduly interfere with your cross-examination. If
5 there is 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 was not in the bundle of
14 documents, but I shall 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 shall take the tea
19 adjournment now. We shall let the witness look at it while
20 he is drinking his tea. We shall arrange to put it up on the
21 screen and then you can carry on. Let us 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.

1 **[COMMISSION ADJOURNS / COMMISSION RESUMES]**

2 **[12:07] CHAIRPERSON:** The Commission resumes. I have

3 to remind you of the fact that you are still binded by

4 your affirmation.

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

6 Chairperson.

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 am sorry to interrupt you.

15 Were you given a copy and you have had a chance to see it?

16 **COLONEL VERMAAK:** I did, thank you,

17 Chairperson.

18 **MR BIZOS SC:** Do you have paragraph 7

19 there?

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

21 **MR BIZOS SC:** It is 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.

1 **CHAIRPERSON:** Oh, I see, it is paragraph 7

2 on page 11.

3 **MR BIZOS SC:** Yes.

4 **CHAIRPERSON:** Yes, it looks as if it is

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 was not only by own

14 experience that I put it to you. I am going to read a

15 couple of paragraphs - listen carefully – and I am 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 must not worry the standing

25 orders, I would say may have been interpreted – “if they

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 police officers 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

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 do not 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 is no other
14 way than that." I do not know that I have to read any –

15 **CHAIRPERSON:** I do not think we need to
16 look at the amendment of section 49. That is 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 **COLONEL VERMAAK:** I disagree,
23 Mr Chairperson.

24 **MR BIZOS SC:** Well, do you say that
25 police officers can ignore statements that are made by deputy

1 ministers and confirmed by presidents?

2 **CHAIRPERSON:** The statement was not

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 cannot 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 **COLONEL VERMAAK:** Any – I cannot see

17 it as order. It is media “statements” that were made.

18 It does not replace legislation, and I can assure you that the police

19 are there to obtain the law.

20 I had no influence

21 on how police officers behaved.

22 In fact, it was always made clear to the police offices,

23 that they must not use their weapons

24 unnecessarily.

25 **MR BIZOS SC:** I accept your evidence

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 **COLONEL VERMAAK:** Negative, Chairperson.
16 It had no effect on the police offices. As I said,
17 from the side of management, it has always been
18 a policy of minimum violence.

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

1 in a question form. You heard what Mr Bizos says. He says
2 that that is your belief that it was not that culture. He is
3 suggesting to you that what happened at Marikana disproves
4 that belief. What comment do you have about that?

5 **COLONEL VERMAAK:** It is negative, I
6 disagree, Chairperson.

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 is,
11 with respect, an improper comment to make to the witness.
12 You are in effect suggesting to him that he is saying
13 something, which he does not 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 do not think
16 that that is –

17 **MR BIZOS SC:** No, I did not intend to do
18 that, Mr Chairman.

19 **CHAIRPERSON:** I am sure you did not 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 is 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

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 do not
6 think there is 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 is correct.

10 Deliberate, I mean there are a couple of questions that
11 arise. One is whether Brigadier Calitz's statement that he
12 was not there at the time he had 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 do not 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 do not think there was any other –

20 **MR BIZOS SC:** I shall 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

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. Do you have any comment on that?

4 **COLONEL VERMAAK:** I disagree,

5 Chairperson.

6 **MR BIZOS SC:** You say that it must have

7 been an accident that they were not –

8 **COLONEL VERMAAK:** No, I did

9 say that. I disagree with

10 your statement.

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 does not know because he is not in a

17 position to comment.

18 **MR BIZOS SC:** Yes, well which of the

19 three do you choose, Colonel?

20 **COLONEL VERMAAK:** Chairperson, I shall take the last one,

21 because I was 300 feet up in the air.

22 **MR BIZOS SC:** I am sorry, I did not hear it

23 or understand your answer.

24 **COLONEL VERMAAK:** I was not present –

25 **MR BIZOS SC:** What is the difference –

1 **CHAIRPERSON:** Mr Bizos, what he says is
2 he does not know whether it was deliberate or accidental
3 because he was 300 feet in the air, that is why he cannot
4 comment. Now that is his answer.

5 **MR BIZOS SC:** Yes. Well, we shall 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 **COLONEL VERMAAK:** No, I disagree.

14 -

15 **MR BIZOS SC:** Well, does that mean that
16 you do not agree that if there is a non-violent solution
17 such as for instance giving a warning, you say that that
18 does not matter if no warning was given? I am sure that you
19 do not mean that.

20 **COLONEL VERMAAK:** You asked me if I
21 agree with your statement. I disagree.
22 To me it is all about,
23 "minimum intensity with minimum damage."

24 **MR BIZOS SC:** What is your objection to
25 that?

1 **COLONEL VERMAAK:** Exactly what I am
2 saying.

3 **MR BIZOS SC:** What does it mean on the
4 facts of this case? What do you want to say to us?

5 **COLONEL VERMAAK:** If you ask me a direct
6 question, I shall answer you.

7 **MR BIZOS SC:** Yes, would it have been
8 better if there were warning shots?

9 **COLONEL VERMAAK:** It depends on
10 the circumstances. I cannot comment on the
11 situation on the ground. The people
12 that acted there, will be the ones that can answer the
13 question for you.

14 **MR BIZOS SC:** If you were there, would
15 you have insisted on giving a warning and if the warning
16 did not have the desired effect, would you have said shoot
17 in the air as warning shots before there was shooting to
18 kill?

19 **COLONEL VERMAAK:** Chairperson, all
20 depends on the circumstance. I was not at the scene,
21 thus cannot comment on what happened. I cannot
22 say what I would do in those circumstances, as I was
23 not part of the circumstances at that specific
24 time.

25 **MR BIZOS SC:** Yes, but you will agree

1 that in principle warning shots and shots in the air are

2 better options than shooting to kill?

3 **COLONEL VERMAAK:** Not necessarily,

4 Chairperson. I think the risk of "warning

5 shots in the air" is one of the reasons I took

6 the helicopter away, because if they shoot into the air, they

7 can shoot me down.

8 **[12:26]** It is dangerous and the ballistic people

9 will explain that the speed at which a bullet goes into the

10 air is also the speed at which it comes down. So where will

11 that bullet end up? So, "warning

12 shots is not always the best option.

13 **MR BIZOS SC:** Well, was there any

14 evidence of shooting at the police on the day in question?

15 **COLONEL VERMAAK:** Chairperson, I can just

16 comment on what I know and what I saw in the media.

17 I cannot speculate on what happened.

18 **MR BIZOS SC:** Can we turn to paragraph

19 96? Mr Hendricks 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 **COLONEL VERMAAK:** I agree that there were

25 shortfalls in the plan, Chairperson.

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 **COLONEL VERMAAK:** I agree,
10 Chairperson.

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 **COLONEL VERMAAK:** Chairperson, yes.

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 **COLONEL VERMAAK:** Chairperson, as far as I
24 am aware, there were negotiations with the people.

25 **MR BIZOS SC:** Yes. In conclusion of my

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 Chairperson.

6 **CHAIRPERSON:** Thank you, Mr Bizos. Ms

7 Mosebe, are you ready to cross-examine –

8 **MS MOSEBE:** Yes, Chairperson.

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 **COLONEL VERMAAK:** It is correct.

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 **COLONEL VERMAAK:** All three of us in the helicopter

1 observed it.

2 **MS MOSEBE:** And then you further

3 testified and it is 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 **COLONEL VERMAAK:** It is correct, we

8 used stun grenades and "teargas"..

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 is

13 contained in the bundle that we have 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 is 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 Mpmembe is HHH3. So there is a problem there.

23 Perhaps Ms Pillay with her knowledge of these things can

24 help us.

25 **MS PILLAY:** Chairperson, if I could ask Ms

1 Mosebe just to repeat the name slowly so that I could look
2 for it?

3 **CHAIRPERSON:** Well, it is on her list

4 [**Microphone off, inaudible**] Farmander Daniel Mkhabele, M-K-

5 H-A-B-E-L-E, and the copy that she has 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.

8 **MS PILLAY:** Chairperson, it is HHH33.

9 **MS MOSEBE:** 33.

10 **CHAIRPERSON:** 33.

11 **MS MOSEBE:** Thank you.

12 **CHAIRPERSON:** Alright. The problem has

13 disappeared. Yes, carry on.

14 **MS MOSEBE:** Thank you, Chairperson.

15 **CHAIRPERSON:** Ms Pillay to the rescue, as

16 usual.

17 **MS MOSEBE:** Yes, thank you, Chairperson.

18 I would like to refer this Commission to page 2, paragraph

19 8 thereof. I would not 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 police officer 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

1 that the police officer was already down. When the strikers see
2 me facing on them, they then start to attack me.”
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 shall start from the beginning. “As there was
6 a smoke of teargas all around and I have asked myself, I ended up
7 fell on the ground. It was the time the strikers (my
8 attackers) left 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.”
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 police Officers, 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?

22 **COLONEL VERMAAK:** Mr Chairperson, I testified
23 that the report I have sent to the
24 Provincial Commissioner on the 13th, is the one
25 where we complained about the fact that the members was

1 not equipped with gasmask. I want to make the
2 statement that if a member had his gasmask on, he would not have
3 been affected by the teargas.

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?

8 **COLONEL VERMAAK:** Chairperson, at that
9 stage I was in the air. The fact that we
10 threw teargas and stun grenades out of the helicopter
11 was to assist those under attack. It was
12 an attempt to save lives.

13 **MS MOSEBE:** Now Colonel, I would like to
14 refer you to another statement, which is the statement of
15 Constable Fanie Leonard Rikhotso. Chairperson, this is not
16 an exhibit before this Commission.

17 **CHAIRPERSON:** Yes, it is not an exhibit,
18 but it is in your bundle.

19 **MS MOSEBE:** Yes, it is.

20 **CHAIRPERSON:** Fanie Leonard Rikhotso, is
21 it?

22 **MS MOSEBE:** Rikhotso, yes, that is
23 correct.

24 **CHAIRPERSON:** Ms Pillay, what is the next
25 exhibit number?

1 **MS PILLAY:** Chairperson, we have not used OOO15.

2 For some reason that exhibit number, I think it is entirely

3 my fault, was skipped. So if we could mark this exhibit

4 OOO15?

5 **CHAIRPERSON:** So the statement of Fanie

6 Leonard Rikhotso is exhibit OOO15.

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 an 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."

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."

25 And then paragraph 10 he says that, "I then

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 **COLONEL VERMAAK:** I saw it ,
8 Chairperson. It just come back to my circulars that
9 the riot POP members did
10 not have all their equipment and could not
11 respond properly. The fact that we used teargas,
12 and you saw that it was not just us, but
13 other members also used teargas,
14 if you are in the air
15 and you see your colleagues on the ground
16 being hacked to death, you will do anything
17 to save their lives.

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 on 13 August 2012, it is contained in
22 the bundle that we have handed to the Commissioners and to
23 the witness.

24 **CHAIRPERSON:** But that is not an exhibit,
25 so we shall have to make it exhibits.

1 **MS PILLAY:** Chairperson, it will be OOO19.

2 **CHAIRPERSON:** Yes, I thought so. OOO19.

3 **MS MOSEBE:** Yes, thank you. According

4 to –

5 **CHAIRPERSON:** So I have 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 have been given a copy, I take it, of this

9 document. It is a document that – this is what the document

10 looks like.

11 **COLONEL VERMAAK:** Well, thank you. I have

12 got him, Sir.

13 **CHAIRPERSON:** Now you have it. Now how

14 would one describe it?

15 **COLONEL VERMAAK:** Mr Chairperson, I will

16 describe it as a statement on which weapons and

17 ammunition are issued.

18 **CHAIRPERSON:** So it is a statement –

19 **MS PILLAY:** Chairperson, 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 is HHH23.

24 **CHAIRPERSON:** Alright, so the use of the

25 exhibit number OOO19 is withdrawn and we shall call this

1 HHH23, which is what it is called already.

2 **MS PILLAY:** That is correct, Chairperson, 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 is 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 is written "Total," and then it is 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 is 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

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 **COLONEL VERMAAK:** I do not deny it,
8 Chairperson. Again, I used teargas to save people's
9 lives.

10 **[12:46]** If you go and look at the steps, teargas is regarded
11 a minimum risk. Furthermore, I have to mention that
12 each riot police officer are issued with riot gear,
13 and when he is deployed it is up to him to assure that he
14 has all his gear with his,
15 one would assume they will have all the
16 equipment needed, when they are deployed.
17 I do not deny the fact that I did use
18 teargas. It is used with minimum violence and
19 to save lives.

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 Nzuza. His statement is
24 contained in the bundle that we have provided to you. I
25 would like to refer you to page 3, paragraph 10 thereof.

1 **MS PILLAY:** Chairperson, that is exhibit HHH21.

2 **CHAIRPERSON:** Yes, yes, the copy we have

3 been given is so marked. So thank you. Sorry, Ms Mosebe,

4 what paragraph are you referring to?

5 **MS MOSEBE:** Paragraph 10, Chairperson.

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

7 **MS MOSEBE:** In paragraph 10 thereof he

8 states that, "All of a sudden" – maybe let me rather start

9 from paragraph 9. He says that, "After a long debate the

10 leader of the police, General Mpembe, said that he would

11 count to 10, after which there would be trouble. We then

12 decided to sing a song and proceed to the hill. It

13 looked like the police had decided to escort us as

14 requested."

15 Paragraph 10, "All of a sudden the police

16 released teargas into the crowd, followed by stun grenades

17 and live ammunition from the ground and from a helicopter.

18 There was pandemonium with strikers running away mainly in

19 the direction of the hill. Some of the police officers were

20 among the fleeing crowd and there were violent encounters

21 with the strikers."

22 Now Colonel, it seems from this paragraph that

23 the protesters viewed the throwing of stun grenades and

24 teargas from a helicopter as the cause of the attack that

25 eventually happened. Now what is your comment on that? Is

1 that the correct order of events? Is that how you saw it?

2 **COLONEL VERMAAK:** It is negative. There is

3 video material available from Lonmin, which

4 shows that directly after the first teargas and

5 stun grenade was used, the police officers was attacked.

6 Thereafter you will see the stun grenades and teargas

7 being thrown out of the helicopter.

8 We did not shoot out of the helicopter though.

9 It might be that they confuse it with the

10 sounds of the stun grenades.

11 A stun grenade makes two loud banging noises. If you throw it

12 the first bang will go off after three seconds and then one and a

13 half second after that you will hear the second bang.

14 **MS MOSEBE:** Colonel, you further

15 testified before this Commission that when you, after

16 throwing the stun grenades and the teargas you landed the

17 helicopter, or Captain Oosthuizen landed the helicopter and

18 then you gathered a couple of members and you started to

19 pursue the protesters, or the attackers who had taken the

20 firearm. Is that correct?

21 **COLONEL VERMAAK:** It is correct. The fact that

22 I gathered the police is due to the fact that

23 I saw how a person was dragged and

24 we wanted to prevent him from being removed from the scene,

25 as it was part of a crime scene at that stage.

1 **MS MOSEBE:** And then Colonel, you then
2 mentioned this stabbing event, that the police officers
3 mentioned to you that General Mpmembe must go and lie where
4 the members are laying and so on. Now my question to you is
5 that as that was happening, did you enquire from this group
6 of gathered protesters as to why they ran away, they did not
7 render any assistance to the members who were lying dying
8 on the ground?

9 **COLONEL VERMAAK:** Are you referring to the
10 police officers or the "protester"?

11 **MS MOSEBE:** I am referring to the
12 police officers that you say that you and Captain Loest gathered
13 and you walked with them to pursue the strikers. Is that
14 correct?

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

16 **MS MOSEBE:** Yes, and then you further
17 stated that as you were coming back from pursuing the
18 strikers the police officers then reported to you that General
19 Mpmembe had given wrong instructions. Am I still correct?

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

21 **MS MOSEBE:** Yes, and then my question to
22 you is that as they were reporting that to you, why did
23 you, or rather did you at any stage of that conversation
24 enquire from them that, 'I saw you gentlemen as I was up in
25 the air, your colleagues were being attacked but I saw you

1 running away. Why did you run away?' Did you ever enquire
2 from them?

3 **COLONEL VERMAAK:** It is – before

4 I could ask them that question, they already told

5 me why they were cross at

6 General Mpembe, due to the fact that he ordered them to

7 go put their weapons in the Nyalas, when they were at the railway track.

8 **CHAIRPERSON:** The members of the police

9 service who were walking back with you, I think you said

10 there were four.

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

12 **CHAIRPERSON:** Did any of them have a

13 weapon in his hand?

14 **COLONEL VERMAAK:** Yes, they

15 had firearms on them.

16 **CHAIRPERSON:** So they had firearms?

17 **COLONEL VERMAAK:** It is correct, because

18 they went to fetch it.

19 The incident occurred. We landed,

20 tried to assist the people with first aid, and where

21 we saw police officers standing at their vehicles, I gathered them

22 and told them to come with

23 me –

24 **CHAIRPERSON:** I see. So did you assume

25 that what they were saying was at the time they did not have

1 weapons –

2 **COLONEL VERMAAK:** I did – yes –

3 **CHAIRPERSON:** But they got them and then

4 they went with you to try to –

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

6 **CHAIRPERSON:** - catch up with the person

7 who – I take it the injured striker –

8 **COLONEL VERMAAK:** Yes.

9 **CHAIRPERSON:** - who was being carried by

10 his –

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

12 **CHAIRPERSON:** Oh, I see. So was it

13 obvious to you then that if you had ask them why did not they

14 defend their colleague they would have said well, we did not

15 have weapons with which to do so. Is that why you did not

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

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

18 I did, and when they informed me, I presumed that is why

19 they did not acted.

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. The rifles.

24 Either the R5 or the shotgun.

25 **COMMISSIONER HEMRAJ:** So they would still

1 have been in possession of their 9mms?

2 **COLONEL VERMAAK:** They were in possession of

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 did not 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 **COLONEL VERMAAK:** Chairperson, if I recall

16 I said at the railway track, the majority did not have

17 rifles on them. I do not

18 know when those weapons were

19 fired.

20 **MS MOSEBE:** Chairperson, that is our

21 questions, thank you.

22 **CHAIRPERSON:** So you have 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

1 firearms from vehicles –

2 **COLONEL VERMAAK:** Negative, Chairperson –

3 **CHAIRPERSON:** - or is it just an

4 allegation that they made to you –

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

6 **CHAIRPERSON:** - which may or may not be

7 true?

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

9 **CHAIRPERSON:** So it is an allegation they

10 made which may or may not be true?

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

12 **CHAIRPERSON:** I see. Mr Gumbi, you are

13 next, but it is 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 am in your hands.

16 **MR GUMBI:** We can start after lunch,

17 Chairperson.

18 **CHAIRPERSON:** We will take the lunch

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

20 been very successful in the past, but let us 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

1 representatives of SERI who were explaining the
2 difficulties they have in relation to tomorrow. Lieutenant-
3 Colonel, I must remind you that you are still binded by your
4 affirmation of the day before yesterday.

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

6 **CHAIRPERSON:** Mr Gumbi, you were going to
7 commence your cross-examination.

8 **COLONEL VERMAAK:** (continue
9 affirmation)

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 did not 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?

1 **MR GUMBI:** Yes, I did make those
2 arrangements yesterday but I must confess, Chairperson,
3 that I did not confirm it now.

4 **CHAIRPERSON:** Well, I do not know whether
5 you are going to get to that video clip today anyway. It
6 looks as if you have a lot of material to cover but let us
7 ask, just in case. Is the operator here? Can the operator
8 confirm? Do you confirm that you are 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 are not starting
16 immediately with the video clip, are you?

17 **MR GUMBI:** I am going to do that
18 immediately.

19 **CHAIRPERSON:** I think it is 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.

1 **MR GUMBI:** Yes, Chairperson, we shall 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 do not think it is 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 is 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 did not have any

1 disciplinary action or step ever taken against him. He had
2 two medals in the SAPS, two loyal medals, it is for 10 years
3 and it is for 20 years and I am 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 is 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 any 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.

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 is 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 is 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 are going to
20 mention later? Anyway presumably the intimidation or
21 alleged intimidation to which you refer is not something
22 that the Lieutenant-Colonel knows about, so it cannot be
23 covered in your cross-examination. If your client is going
24 to say something about that when he gives evidence, it is
25 not in the statement that he filed as far as I can – so you

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 are not – we are not part
6 of the litigation.

7 **MR GUMBI:** Yes.

8 **CHAIRPERSON:** So things may be on record
9 somewhere else but they are not on record before us.

10 **MR GUMBI:** Yes, yes.

11 **CHAIRPERSON:** But in any event I do not
12 think it concerns the Lieutenant-Colonel –

13 **MR GUMBI:** Yes.

14 **CHAIRPERSON:** So presumably it will not 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 am telling you, all
20 I am telling you is, you are going to have to supplement the
21 statement you filed on his behalf in order to deal with
22 that and I do not know the details of it, I do not know who
23 the senior police officials are who allegedly intimidated
24 him. If they have already testified – have they? You
25 do not need to tell me now who they are but have they

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 is no-one to whom

7 you could have put the matter in cross-examination.

8 **MR GUMBI:** We shall –

9 **CHAIRPERSON:** Anyway, we shall get there

10 when we get there. Let us get on with this witness's cross-

11 examination at the moment.

12 **MR GUMBI:** Thank you, 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 is 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

1 strikers near the railway line, the information about
2 strikers performing rituals with sangomas, 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 sangomas 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 **COLONEL VERMAAK:** Chairperson, no, I agree
14 that information was supposed to be conveyed to the
15 members during a briefing.

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 **COLONEL VERMAAK:** It is correct.

24 **MR GUMBI:** Furthermore, on this aspect of
25 intelligence gathering before POP intervention, there is a

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 **COLONEL VERMAAK:** Correct.

9 **MR GUMBI:** So did you know about this
10 fact on the 11th of August 2012, Lieutenant?

11 **COLONEL VERMAAK:** It is negative,
12 Chairperson.

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 **COLONEL VERMAAK:** It was important
19 information, yes.

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 situational
25 appropriateness. Baloyi's version is that even if you

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 **COLONEL VERMAAK:** It is the correct
6 procedure, yes.

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 am 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 did not 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 is correct, Chairperson.

25 If the police office, if the police knew about this

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 **COLONEL VERMAAK:** It is correct.

18 **MR GUMBI:** And an operational commander,

19 when he has a dialogue – I am 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,

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 **COLONEL VERMAAK:** It is negative,
6 Chairperson. It depends on how big the operation is,
7 that is why you have commanders in charge of sections and
8 groups. You discuss it with them and they
9 then have to convey it back to the members and
10 instruct the members on what to do.

11 **MR GUMBI:** Okay, let us 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 22nd 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 **COLONEL VERMAAK:** It is correct.

23 **MR GUMBI:** - his members in that manner?

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

25 **MR GUMBI:** On the 13th of August again,

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 have
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 is 70 members of the police service.

18 **MR GUMBI:** Yes, of the 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

1 with him on that?

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

3 **[14:25] MR GUMBI:** And it is his contention

4 again, Lieutenant, that when General Mpembe, because they

5 were outnumbered there at the railway line, when he was

6 busy conducting negotiations with these strikers he was

7 supposed to call for a backup. Do you agree with him that

8 how would the POP operate? When you are outnumbered by

9 strikers you delay them, you call for more backup and on

10 the 13th that did not happen.

11 **COLONEL VERMAAK:** Chairperson, it is not

12 possible to have a one on one relationship with the crowd.

13 The circumstances will establish

14 how many man power you will need to do the

15 task. During a normal peaceful march,

16 those police officers would have been enough to handle

17 the situation.

18 **MR GUMBI:** Okay. General Mpembe, will

19 you regard him as an experienced POP negotiator?

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

21 **MR GUMBI:** You are an experienced POP

22 negotiator?

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

24 **MR GUMBI:** And you were available on that

25 particular day, the 13th, to render any negotiation with

1 those strikers.

2 **COLONEL VERMAAK:** I was there as commander

3 of the Air Wing, but, yes, I was available.

4 **MR GUMBI:** Okay. The version of General

5 Mpembe again near the railway line on the 13th that when

6 General Mpembe took a decision to escort miners, strikers

7 from the railway line on their way to the hill, he was

8 supposed to inform the members that he has made a decision

9 to escort, loud and clear, and he was supposed to tell the

10 members that the police will escort strikers from which

11 point to which point and what is expected from them as

12 members while escorting the strikers to point A to point B

13 and on the 13th that did not happen. Do you agree with him

14 on that?

15 **COLONEL VERMAAK:** Chairperson, I think

16 the circumstances made it impossible for him to

17 communicate directly with the members.

18 I think he would have discussed it with the

19 sections commanders and the group commanders.

20 That would have been the correct procedure and they

21 would then convey to the members under their command what

22 was expected from them.

23 **COMMISSIONER HEMRAJ:** But Colonel, would

24 an order to escort require it to be conveyed in detail what

25 they were expected to be doing?

1 **COLONEL VERMAAK:** They will have to
2 know in which direction they
3 have to escort the people and would also need a distance and place to where
4 these people would have to be escorted to.

5 **MR GUMBI:** You did have a look at the
6 video of the 13th while you were at Roots analysing what
7 transpired, did you?

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

9 **MR GUMBI:** But we do not see General
10 Mpembe on the 13th near the railway line informing the
11 strikers that now the police have taken a decision to
12 escort you, we are escorting you. We do not see him.

13 **COLONEL VERMAAK:** Chairperson, I cannot
14 comment on the conversations as I

15 was not there myself. I can also not recall if
16 I hear such conversations on the video recordings,
17 he did not speak in English or Afrikaans

18 with them, so if he spoke to them in another
19 language, it might be
20 possible.

21 **MR GUMBI:** The issues of tactical
22 communication is one of the issues that Brigadier
23 Mkhwanazi, who is a POP member, testified about in this
24 Commission. Let us have a look on that issue. While you
25 were above, circling above these, when you observed these

1 strikers with General Mpembe near the railway line, were
2 you communicating with General Mpembe over the radio?

3 **COLONEL VERMAAK:** Chairperson, I testified that
4 we were sent to Marikana to attend to another
5 complaint we received. On our way there, we
6 saw the group of people sitting next to the
7 railway track and gave it through to the JOC. On our
8 arrival back at the JOC, Brigadier
9 Seboloke instructed us to assist. After we arrived
10 it was seconds before the incident occurred,
11 so before there could be any communication between
12 the helicopter and the people on the ground,
13 the incident occurred.

14 **MR GUMBI:** Okay but were you in touch
15 with the JOC, you, Lieutenant?

16 **COLONEL VERMAAK:** Yes, we were
17 in radio communication with the JOC.

18 **MR GUMBI:** So General Mpembe was in touch
19 with the JOC.

20 **COLONEL VERMAAK:** As far as I am aware,
21 yes.

22 **MR GUMBI:** So let me probe the decision.

23 If General Mpembe was communicating with the JOC and what
24 General Mpembe communicated to the JOC, was it conveyed to
25 you?

1 **COLONEL VERMAAK:** I was in the JOC
2 when General Mpembe requested the
3 services of an interpreter,
4 as the people did not understand him. It is where we
5 were instructed to assist with air support. The time since
6 we were airborne, until we reached the scene,
7 was a very short distance, so we
8 had no need to
9 communicate with the JOC.

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 **COLONEL VERMAAK:** As I said, on the way
16 to the scene, there were no communication
17 observed on the radio.

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

22 **MS PILLAY:** Chairperson, I am sure it is easily
23 accessible.

24 **MR GUMBI:** Yes.

25 **MS PILLAY:** It is just exhibit Z1 -

1 **MR GUMBI:** Yes.

2 **MS PILLAY:** - that has to be played.

3 **CHAIRPERSON:** It is 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 are going to

11 have to give us more precise details than that.

12 **MS PILLAY:** Chairperson, it is the scene at the

13 railway line which is just –

14 **MR GUMBI:** It is the scene at the railway

15 line, yes, after address of Mpembe.

16 **CHAIRPERSON:** Now we are 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 is line – how does one describe this place on

24 the video?

25 **[VIDEO IS SHOWN]**

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 is 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 the strikers who are armed. Did you see it?

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

18 **MR GUMBI:** That was a POP member?

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

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

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

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

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

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

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

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 **COLONEL VERMAAK:** It is correct.

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 am not suggesting that
14 there was an instruction, I am just saying is it possible
15 that you can instruct your member to form this police line
16 – I do not know whether it is a police line.

17 **COLONEL VERMAAK:** Chairperson, the ideal

18 is to act as a section and
19 not be alone in front of a crowd.

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 **COLONEL VERMAAK:** Chairperson, I do not
24 where the rest of the people were. You cannot
25 see on the video of there were any police with him,

1 but is he was standing there alone,

2 it would not be correct procedure.

3 **MR GUMBI:** Okay. When you analyse this,

4 that video footage, you saw he is a POP member, he is 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 **COLONEL VERMAAK:** It is correct, especially

15 in the light of the events the previous day,

16 where the people just ignore it and walked away,

17 one would definitely have to seriously look

18 at protecting the police in such a

19 situation.

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. I have it.

1 **MR GUMBI:** Yes, okay. General Mpmembe, he
2 said the police must form the police line behind the
3 strikers after this incident, then that is 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 protest – 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 **COLONEL VERMAAK:** Chairperson, no. Out of
10 experience I would rather let the people
11 in the armoured vehicles escort the people, especially
12 in these circumstances where they were armed,
13 and did not give any cooperation from their side.

14 **MR GUMBI:** Yes. The evidence adduced
15 before this Commission is that when we cross-examined
16 General Mpmembe, 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 **COLONEL VERMAAK:** I cannot
20 comment on that. I was not there, so I have
21 to accept what is held before the Commission.

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

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 **COLONEL VERMAAK:** In normal
5 circumstances where it is a peaceful protests,
6 you will have your members make sure that order is maintained
7 and secondly to assure that the protestors are
8 exercising their right to protest without any
9 interference from the outside,
10 but in these circumstances
11 I believe that more
12 caution was needed.

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 hill?

20 **COLONEL VERMAAK:** Chairperson, no. That was
21 one of the points that I criticized in my circulars,
22 the fact that the members did not have their
23 full riot gear with them. One can clearly see
24 where the members are standing at the railway track,
25 they did not have gasmasks, nor

1 shields with them. It is important
2 when you expect resistance
3 to put a line behind them of members equipped with
4 shield.

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 is an officer
11 who was properly briefed to do that, or he acted on his
12 own?

13 **COLONEL VERMAAK:** I cannot comment
14 on that, as I do not know what the
15 circumstances were at that
16 stage.

17 **MR GUMBI:** Okay. Let us deal with this
18 question of vehicle information, vehicle formation.
19 According to Lieutenant Baloyi, he is an experienced POP, as
20 I have 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

1 instruction of vehicle formation when General Mpembe took a
2 decision to escort. What is your comment on that?

3 **COLONEL VERMAAK:** On what I observed,
4 your statement is correct.

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 **COLONEL VERMAAK:** Yes, we did
19 see a vehicle moving around.

20 **MR GUMBI:** Did you see Lieutenant Baloyi
21 or did you see any police officer alighting from that
22 Nyala?

23 **COLONEL VERMAAK:** No, it is negative,
24 Chairperson. We concentrated on the group that
25 were walking.

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 **COLONEL VERMAAK:** It is correct.

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 Mpofo'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 is page 40, it is 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
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?

1 I do not 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 do not you just read it out now? Let us 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 are going
18 to take some time to find it, it is 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 shall save time ultimately by
21 taking it now, I shall take it now.

22 **MR GUMBI:** Yes, Chairperson, if we can do
23 that because –

24 **CHAIRPERSON:** Alright, we shall take the tea
25 adjournment. It is now five to three, let us try to be back

1 by ten past.

2 **MR GUMBI:** Thank you very much,

3 Chairperson.

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

5 **[15:12] CHAIRPERSON:** You are still binded by

6 your affirmation

7 **COLONEL VERMAAK:** (Continue

8 affirmation).

9 **CHAIRPERSON:** Mr Gumbi, are you ready

10 now? Do you have 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 us 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 Mpofu, "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 Mpofu, "Oh yes,

24 there was a helicopter, General." What is your comment on

25 this allegation?

1 **COLONEL VERMAAK:** Chairperson, no, the
2 first teargas and stun grenades were used by the members on the
3 ground. I think there is video material that can
4 proof it.

5 **MR GUMBI:** So that this information is
6 incorrect?

7 **COLONEL VERMAAK:** Yes, it is correct, this
8 information is incorrect.

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 **COLONEL VERMAAK:** It is correct.

16 **MR GUMBI:** And you further testified that
17 you saw police officers running away.

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

19 **MR GUMBI:** Would you agree with me if I –
20 yes.

21 **COLONEL VERMAAK:** It is correct, after
22 the teargas and stun grenades were fired,
23 the strikers turned around and the police ran
24 away from them.

25 **MR GUMBI:** Yes. Will you agree with me,

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 is another possibility.

5 **COLONEL VERMAAK:** Chairperson, yes. In the line
6 they were placed behind the strikers,
7 and the incident taking place,
8 there were definitely not sufficient police in numbers.

9 **MR GUMBI:** Another possibility is that
10 they ran away, it is 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 **COLONEL VERMAAK:** It is correct, it can be
15 like that.

16 **CHAIRPERSON:** If they did not 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

1 that they were armed and they were there, should have
2 defended their colleague, is another matter but you are
3 suggesting that another possibility is that they ran away
4 because they were not aware there was going to be a
5 confrontation, is that right?

6 **MR GUMBI:** They ran away because they
7 were attacked, that is why –

8 **CHAIRPERSON:** They ran away because they
9 were attacked –

10 **MR GUMBI:** Yes, it is 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 **COLONEL VERMAAK:** It is correct.

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

1 individual or a unit or is it the responsibility of an
2 operational commander?

3 **COLONEL VERMAAK:** It is the
4 responsibility, Mr Chairperson, of each
5 POP member to know what gear he needs.

6 Especially in these
7 circumstances where they were exposed to the crowd,
8 it is the responsibility of both the member and the
9 section commander to assure that all members had the
10 correct gear with them.

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 **COLONEL VERMAAK:** It is correct.

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?

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

2 Chairperson.

3 **CHAIRPERSON:** So if he is deployed

4 somewhere he should take his riot shield with him?

5 **COLONEL VERMAAK:** If you are

6 deployed it is your responsibility to take with you the

7 gear issued to you.

8 **COMMISSIONER HEMRAJ:** Would it not have

9 been obvious on parade before they left their home units

10 that they did not have all the equipment with them?

11 **COLONEL VERMAAK:** Chairperson, there it is

12 the responsibility of the group commander,

13 because he has to issue

14 a SAP15 and a issuing certificate – he has to complete and

15 check, he has

16 hand in these

17 documentation so that they know who were deployed and

18 what ammunition and weapons they were issued with.

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.

1 **MR GUMBI:** GGG16.

2 **CHAIRPERSON:** What passage is it?

3 **MR GUMBI:** It is 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 store man 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 **COLONEL VERMAAK:** I see it.

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 **COLONEL VERMAAK:** Chairperson, it is

21 not clear to what store he is referring to.

22 I do not know if it was at his own unit or at

23 POP Rustenburg, but as far as I know there were no

24 storeroom or safe at the JOC where they

25 could issue weapons.

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 is
9 not clear actually, it could have been at the mine as well.

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

11 In normal circumstances, they
12 do not keep so much shotguns at a police station.

13 They mostly have 9 millimetre,

14 R5 and R1 rifles at police stations. The

15 shotguns are mostly used by the Public Order

16 Police.

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

1 **MR GUMBI:** Okay. Thank you, very much,
2 Chairperson. Let us 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 have 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 us 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 **COLONEL VERMAAK:** Chairperson, each
14 member issued with a shotgun gets a strap with it filled
15 with ammunition. It takes
16 20 rounds and then members are also issued
17 with additional rounds. It is
18 unclear to me why, POP members or any unit
19 will deploy without the necessary equipment.

20 **MR GUMBI:** Okay. Let us 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

1 observed about General Mpembe that he was in the state of

2 shock. Do you still remember that?

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

4 **MR GUMBI:** And you further said that you

5 observed that he had lost control of the members.

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

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 **COLONEL VERMAAK:** Mr Chairperson, after

12 such an incident the first thing to do is to get all

13 the members together, make sure all the members are

14 accounted for and assure there is no further

15 injuries. In this instance where

16 three of your

17 police officers were injured, of which two were

18 fatal, it is important to make sure that your members remain calm,

19 General Mpembe was in shock.

20 He ran between the people and said,

21 my members were shot dead, my members were shot dead.

22 It was clear that he had no control

23 over his members. They were just standing around,

24 everyone was shocked, and it was then when

25 Captain Loest and myself tried to get the

1 members together.

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 **COLONEL VERMAAK:** No, I did not ask them.

9 While we were walking back they

10 informed me of that.

11 **MR GUMBI:** Yes.

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

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 **COLONEL VERMAAK:** I will not be

22 able to comment on that. I am not

23 aware at what stage the order was issued, Mr

24 Chairperson.

25 **MR GUMBI:** These instructions again if we

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 **COLONEL VERMAAK:** Chairperson, no, I did
8 not query it at that stage.

9 We concentrated on getting the members together,
10 to calm them down and to make sure that no other members were injured,
11 we also assisted the forensic expert, Colonel Botha.

12 I briefed

13 Brigadiers Van Zyl en Calitz, as well as the
14 Generals that arrived later on.

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 **COLONEL VERMAAK:** I have no knowledge
21 on that.

22 **MR GUMBI:** The JOC, were they aware about
23 that?

24 **COLONEL VERMAAK:** I will have no
25 knowledge on that.

1 **MR GUMBI:** In your experience as an
2 operational commander, Lieutenant-Colonel, have you ever
3 had the situation like this wherein you will find an
4 operational commander, if indeed happened, wherein you will
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] COLONEL VERMAAK:** As I have told you,
9 it depends on the circumstances. If it is a peaceful protest,
10 with no information on any resistance anticipated,
11 and you can see that the people are peacefully,
12 you can talk to the individuals,
13 and you then tell the members to leave there weapons in
14 the vehicles, then you will have some
15 some members to walk with the crowd,
16 for various reasons, as I explained.

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 do not 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 **COLONEL VERMAAK:** If it is true that

1 he gave the instruction, I will say it was the wrong
2 decision.

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.

7 **COLONEL VERMAAK:** Mr Chairperson, no
8 in those circumstances, if you look at the
9 circumstances –

10 **MR NGALWANA:** There is no evidence that
11 General Mpmembe issued such an instruction because of the
12 situational appropriateness, or at all.

13 **CHAIRPERSON:** What he said about
14 situational appropriateness was he decided to allow the
15 strikers to proceed to the hill under escort and not to
16 disarm them there by the railway line because he was afraid
17 that you had 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.

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 Mpmembe
25 issued instruction –

1 **CHAIRPERSON:** So we have 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 is no direct evidence at all, in fact the
9 Colonel said that he certainly saw nothing of the kind and
10 did not 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 had retrieved them earlier,
14 but he never saw that. So that is hearsay. It may be true,
15 it may not be true, but you cannot put questions on the
16 basis that that is what happened. It was never put to
17 General Mpmembe previously and as I say your client does not
18 mention it in his statement either.

19 **MR GUMBI:** I do understand that,
20 Chairperson, that is why my question, the way I phrase it, I
21 said if, although we are still probing this aspect, if
22 indeed that is what happened, then I wanted to seek an
23 opinion to Lieutenant Colonel as an experienced POP. We
24 do not know whether it indeed happened, we do not know the –

25 **CHAIRPERSON:** He is answered –

1 **MR GUMBI:** - of this Commission -

2 **CHAIRPERSON:** I think he has answered your

3 question. He said that if it happened it would not have

4 been an appropriate order, and would not have been an

5 appropriate application of the doctrine of situational

6 appropriateness. That is what I understood his evidence to

7 be. I think you have made that point. I suggest you move on

8 to the next point.

9 **MR GUMBI:** Thank you, 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 -

16 **CHAIRPERSON:** I am sorry, what instruction

17 is this now?

18 **MR GUMBI:** To fire teargas and stun

19 grenade.

20 **CHAIRPERSON:** Well, that is also a

21 controversial question, is it not? 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

1 to his statement does not know who gave him the instruction.

2 The Colonel was present at Roots when there was a
3 discussion about this, but you certainly cannot put a
4 question based on the acceptance of the allegation that
5 General Mpembe gave the instruction because that is a
6 controversial matter at the moment.

7 **MR GUMBI:** Yes, Chairperson, I do
8 understand that. The reason why I am posing this question,
9 Lieutenant Colonel, he is the first police officer who
10 arrived there who was not there, and –

11 **CHAIRPERSON:** I know that. You can ask
12 him questions about the alleged instruction, provided –

13 **MR GUMBI:** Yes.

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 is the only
17 point I am putting to you.

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 am working on
21 allegation. You must understand me, Lieutenant Colonel,
22 I am working on the 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 –

1 **CHAIRPERSON:** No, no, no, wait. I do not
2 think that is right either. Lieutenant Colonel, were you
3 told when you were at the scene that – sorry, I shall phrase
4 it again. Were you told when you were at the scene on the
5 13th that General Mpmembe had given this instruction in
6 relation to teargas and stun grenades?

7 **COLONEL VERMAAK:** Negative, Chairperson.

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 did not 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 **COLONEL VERMAAK:** No Chairperson, it

16 was the last thing I thought about.

17 At that stage I was concerned about the members and the

18 safety of the General, as well as providing the

19 necessary assistance as the Air Wing

20 Commander.

21 -

22 **MR GUMBI:** Thank you, very much, Lieutenant

23 Colonel. You removed General Mpmembe from the scene. On

24 this allegation did he say anything about it?

25 **CHAIRPERSON:** Sorry, what allegation are

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 Mpmembe
9 reacted at all to the allegation about threats? As far as
10 my understanding of the evidence is the General did not know
11 there were threats. Threats had not 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 Mpmembe 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 Mpmembe on that one?

19 **COLONEL VERMAAK:** No, not at all.

20 **MR GUMBI:** Okay. After you removed

21 General Mpmembe from the scene you remained behind with
22 members who were involved in that operation, not so?

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

24 **CHAIRPERSON:** Did you discuss with them
25 what had transpired before?

1 **COLONEL VERMAAK:** Chairperson, I just
2 explained that I did not do it, and I also
3 gave the reasons as to why I did not have time to consult with
4 the members.

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

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 **COLONEL VERMAAK:** It is correct.

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 **COLONEL VERMAAK:** I beg your pardon, just
24 repeat your question.

25 **MR GUMBI:** I am saying ordinary members of

1 POP, TRT and NIU who were there –

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

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 **COLONEL VERMAAK:** Not all the members.

7 It was basically the commanders and some

8 individuals that were instructed to attend the

9 conference.

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 **COLONEL VERMAAK:** It is correct.

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 **COLONEL VERMAAK:** It is correct, standing

22 order 262.

23 **MR GUMBI:** I mean 262. Thank you, for that

24 correction, Lieutenant Colonel. And it is Lieutenant

25 Colonel Merafe who approached you and you did not go to him?

1 **COLONEL VERMAAK:** It is correct, he came

2 to me while I was busy getting some

3 coffee.

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 **COLONEL VERMAAK:** It is correct.

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 **COLONEL VERMAAK:** Negative. He was not

13 there. He took Lieutenant

14 Baloyi – no, not Baloyi, Lepaaku to the

15 hospital.

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 **COLONEL VERMAAK:** No, he did not tell me that.

22 He told me he was unhappy that

23 General Mpembe took over from him and that

24 General Mpembe ignored all his

25 suggestions.

1 **MR GUMBI:** And he did not deal with this
2 aspect. Okay, let us move on. Let us focus now on this
3 debate you had with General Mpmembe about what – not General
4 Mpmembe, with General Mpmembe, including all the members that
5 were involved in that operation of the 13th. That
6 discussion, who was leading this discussion? Was Mpmembe or
7 was it you or was it Merafe?

8 **COLONEL VERMAAK:** Initially,
9 General Mpmembe, was the senior, and he had to take the initiative
10 but due to the fact that we did not really make any
11 progress, I made the suggestion
12 that we had to start at the beginning from
13 where it started at the bridge.

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 Mpmembe
18 intercepted those strikers, then you said General Mpmembe
19 was angry when you suggested that, that discussion should
20 continue in that fashion?

21 **COLONEL VERMAAK:** Yes, he was unhappy
22 after I made the remark that
23 Colonel Merafe came to me and told me that
24 he was appalled.

25 **MR GUMBI:** What about other members?

1 **COLONEL VERMAAK:** After the conversation,
2 some of the other members started to participate, as I already
3 testified, Captain Thupe said that the
4 General was the one giving the instructions. The video camera operators
5 confronted General Mpembe, because he did not obey the standing
6 orders as was expected from him as a
7 senior officer.

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 **COLONEL VERMAAK:** No, negative. He was
13 not threatened by all the members.

14 **MR GUMBI:** Yes.

15 **COLONEL VERMAAK:** It is was just the
16 people that was a at specific incidents that were
17 discussed.

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 **COLONEL VERMAAK:** No, you are wrong,
24 Mr Chairperson.

25 **MR GUMBI:** Yes?

1 **COLONEL VERMAAK:** General Mpembe wanted
2 to know who was the members that made the threats,
3 I replied that I do not know him and he then threatened
4 to open a case against me.

5 **MR GUMBI:** Okay, the debate about
6 instruction to leave shotgun behind, you had a debate about
7 that at Roots?

8 **COLONEL VERMAAK:** At that stage?
9 Are you referring to the meeting of the group?

10 **MR GUMBI:** Yes, the meeting of the group.

11 **COLONEL VERMAAK:** There was a conversation
12 about that, it is correct.

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 **COLONEL VERMAAK:** No, it is negative. He only
18 confirmed that General Mpembe was next
19 to him when the instruction was given that the teargas and
20 stun grenade had to be used.

21 **MR GUMBI:** Okay, we know for a fact that
22 Lieutenant Colonel Seloane 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?

1 **COLONEL VERMAAK:** I know him, yes. We met
2 there for the first
3 time.

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 did not
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, is it not?

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

20 I –

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 is quite a thick pack of
25 documents, right near the end just before Lieutenant

1 Baloyi's own statement, which is the next document I think,
2 it is 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 is altogether 38 people
5 and let us go through that. Let us look at that quickly to
6 see whether the lieutenant to whom Mr Gumbi is referring is
7 listed there. No, Mr Gumbi, I do not see the name.

8 **MR GUMBI:** Chairperson, if I can maybe
9 try to canvass this aspect properly. Let us start with
10 Lieutenant Colonel Seloane, that is operational commander
11 for Pretoria POP. I am trying to check his name here. I
12 think I must have seen it here.

13 **CHAIRPERSON:** I do not see it, I am 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 are looking at a
21 different thing at the moment, 2 of 41. This should be
22 somewhere, the pages are not numbered but it is somewhere in
23 the late 30s, this –

24 **MR GUMBI:** I am looking at the attendance
25 register, you know, where it is –

1 **CHAIRPERSON:** Yes, I am just pointing out

2 it is not on the screen.

3 **MR GUMBI:** Yes. If you go, the

4 attendance register of the 27th –

5 **CHAIRPERSON:** Yes, we are 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 am 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 do not

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 –

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 shall re-canvass it. In the
7 meantime let me –

8 **CHAIRPERSON:** Move on to your next point.

9 **MR GUMBI:** Yes.

10 **CHAIRPERSON:** You have four minutes
11 before we adjourn, so see what you can do with those four
12 minutes.

13 **MR GUMBI:** Okay, Chairperson. Thank you,
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 **COLONEL VERMAAK:** I shall not say that everyone was
20 there. I was just part of those that was called up.

21 is. I think if one looks at the SAP15s, and look at the call
22 up instructions, we will know who were all there, but
23 I cannot recall who were there.

24 **MR GUMBI:** Yes, you cannot even confirm
25 whether the members, ordinary members they were there who

1 were involved in the operation of the 13th?

2 **COLONEL VERMAAK:** I mentioned that

3 some of the petty officers were present.

4 **COMMISSIONER HEMRAJ:** But everyone that

5 was there, Colonel, would have signed that attendance

6 register?

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

8 **MR GUMBI:** The video of the 13th of August

9 2012 near the railway line, it is your testimony that you

10 played that video, nê?

11 **COLONEL VERMAAK:** I played the video, yes.

12 **MR GUMBI:** All the members they were

13 there.

14 **COLONEL VERMAAK:** Yes, I saw the video.

15 **CHAIRPERSON:** Yes, we have 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 Mpembe 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 did not understand him to

24 say that – we have seen the video. There is no suggestion on

25 the video that there was a complaint about Major General

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 **COLONEL VERMAAK:** It is correct, it is now
5 the –

6 **CHAIRPERSON:** Raised at Roots, was it?

7 **COLONEL VERMAAK:** It is –

8 **CHAIRPERSON:** Raised at Roots?

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

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 had not complied
15 with standing order 262 and how –

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

17 **CHAIRPERSON:** - and here he, the most
18 senior officer there on the scene, and he was not even
19 complying with the standing order. This was the point that
20 was raised.

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

22 **CHAIRPERSON:** It must have got a bit
23 unpleasant, that session.

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

25 **CHAIRPERSON:** And how did he react to the

1 allegation that he had not complied with the standing order?

2 Did he lose his temper?

3 **COLONEL VERMAAK:** At that stage,

4 Chairperson, we were already arguing

5 and I decided not to participate any

6 longer.

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 **COLONEL VERMAAK:** I just –

13 **CHAIRPERSON:** - and keep your mouth shut?

14 **COLONEL VERMAAK:** I just kept quiet.

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 Mpenbe was

18 further accused of taking over from Colonel Merafe, in that

19 heated debate?

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

21 **MR GUMBI:** And General Mpenbe, he said

22 he is a senior police officer and he does not need permission

23 from anyone to take over?

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

25 **MR GUMBI:** Chairperson, I see it is 4

1 o'clock. Maybe if we can proceed tomorrow.

2 **CHAIRPERSON:** Yes, it sounds like a sensible

3 suggestion, Mr Gumbi. Let us try to start as promptly as we

4 can after 9 o'clock tomorrow morning –

5 **MR GUMBI:** Yes, Chairperson.

6 **CHAIRPERSON:** - when you will resume your

7 cross-examination and some of the ducks that you did not

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 shall take the

12 adjournment until tomorrow.

13 **[COMMISSION ADJOURNED]**

