

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 209

**Lukmos**  
—communications—

28 MARCH 2014

TRANSCRIPT PAGES 25781 TO 25863

1 **[PROCEEDINGS ON 28 MARCH 2014]**

2 **[09:19] CHAIRPERSON:** The Commission resumes.

3 Lieutenant Colonel, I have to remind you that you are still  
4 binded by your affirmation.

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

7 **CHAIRPERSON:** Mr Gumbi –

8 **MR GUMBI:** Thank you very much,  
9 Chairperson –

10 **CHAIRPERSON:** Are you ready to proceed  
11 with your cross-examination, or is this like Mr Bizos, is  
12 just an examination?

13 **CROSS-EXAMINATION BY MR GUMBI (CONTD.):**

14 Thank you, very much, Chairperson, I shall continue with my  
15 examination. Good morning, Lieutenant Colonel.

16 **COLONEL VERMAAK:** Morning, Sir.

17 **MR GUMBI:** Let us recap the testimony we  
18 had yesterday with you when we adjourned. Yesterday when  
19 we adjourned we were busy with this aspect of the heated  
20 debate between General Mpembe and members. You said  
21 members they were complaining and they were asking why  
22 General Mpembe took over from Lieutenant Colonel Merafe.  
23 Still remember that?

24 **CHAIRPERSON:** I am sorry, just to get  
25 clarity, we are at Roots, are we?

1 **MR GUMBI:** Yes, in his group.

2 **CHAIRPERSON:** This is the heated debate

3 at Roots in the group.

4 **MR GUMBI:** Yes, in the group.

5 **CHAIRPERSON:** On, I think it was the 5<sup>th</sup>

6 of September. Is that right?

7 **MR GUMBI:** Yes, 5<sup>th</sup> of September.

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

9 **MR GUMBI:** Yes, and General Mpembe, when

10 we adjourned you said he responded that he is a senior and

11 he does not nod instruction to take over. Still remember

12 that?

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

14 **MR GUMBI:** And you further testified that

15 members believed that Lieutenant Colonel Merafe could have

16 handled the situation better than General Mpembe did. Still

17 remember that?

18 **COLONEL VERMAAK:** Chairperson,

19 I will not be able to say what the members thought. They, there was,

20 some that expressed their dissatisfaction,

21 I cannot say that all the members felt like

22 this.

23 **MR GUMBI:** Yes, I am saying some of the

24 members. Right, would I be correct if I were to elaborate

25 a little bit on that point that members raised those

1 accusations because they believed that they worked with  
2 Lieutenant Colonel Merafe and they regarded him as an  
3 experienced POP member? I mean commander.

4 **COLONEL VERMAAK:** The members in the  
5 group called it that, yes.

6 **MR GUMBI:** Okay, do you know of any – you  
7 said, still remember when you were dealing with your  
8 shortcomings, that is exhibit OOO10, you regarded  
9 Lieutenant Colonel Merafe as an experienced POP commander  
10 in dealing with mine unrest situations. Still remember  
11 that?

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

13 **MR GUMBI:** Do you know of any mine unrest  
14 incident handled by Lieutenant Colonel Merafe which  
15 resulted to the death or injury of a police officer? Do  
16 you know?

17 **COLONEL VERMAAK:** No, I am not aware  
18 of any such incident.

19 **MR GUMBI:** Have you ever provided Air  
20 Wing support to Lieutenant Colonel Merafe on mine unrest  
21 POP situation?

22 **COLONEL VERMAAK:** It is correct. We did  
23 assist them on various occasions previously.

24 **MR GUMBI:** Let us deal with General  
25 Mpembe. Do you know of any mine unrest situation, POP

1 situation handled by General Mpembe?

2 **COLONEL VERMAAK:** Chairperson,

3 I already testified to the fact that I cannot recall

4 me being at any of the scenes where he was present.

5 **MR GUMBI:** At Roots now, you testified

6 that you play the video footage of the 13<sup>th</sup> and you review

7 and analyse it in order to ascertain this allegation that

8 members they were less equipped to confront strikers near

9 the railway line. Still remember that?

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

11 **MR GUMBI:** I wanted to carry that

12 exercise, you know, play that video footage of the 13<sup>th</sup>

13 before this Commission. What we shall do, we shall play the

14 video footage of the 13<sup>th</sup>. We shall start with Z1 and I would

15 like you to have a look at the video footage, you analyse

16 it. If you want to stop it, you stop. Where the police

17 officers are shown, then you tell the Commission your

18 observation whether the member depicted there is fully

19 equipped or less equipped.

20 **CHAIRPERSON:** Are we going to have to

21 look at the whole of Z1 or are there particular sections of

22 Z1, which you will indicate by giving us the actual

23 reading –

24 **MR GUMBI:** What I wanted to –

25 **CHAIRPERSON:** - of the video clip –

1 **MR GUMBI:** Yes, may I –

2 **CHAIRPERSON:** - so we can concentrate the

3 discussion.

4 **MR GUMBI:** Yes.

5 **CHAIRPERSON:** Because I imagine we do not

6 have to see the whole thing. You are interested in people

7 having equipment and so on, are not you?

8 **MR GUMBI:** Yes. Yes, Chairperson. What

9 I wanted, I am suggesting let us play the video footage –

10 **CHAIRPERSON:** All the footage?

11 **MR GUMBI:** Yes.

12 **CHAIRPERSON:** How long is it going to

13 take?

14 **MR GUMBI:** I do not know.

15 **CHAIRPERSON:** Just to see what equipment

16 people do have? I mean that is ridiculous. I am not going

17 to allow that. If there is something, particular you want

18 to, particular footage you want to refer to obviously you

19 have the fullest right to go ahead with that, but it is

20 totally ridiculous to expect us to sit here and watch the

21 whole thing just for particular little things that are

22 going to be picked out, a couple of minutes worth of

23 footage.

24 **MR GUMBI:** Chairperson –

25 **CHAIRPERSON:** And you have seen the –

1 **MR GUMBI:** Yes, Chairperson –

2 **CHAIRPERSON:** Have you seen the footage

3 already? Have you looked at it privately?

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

5 **CHAIRPERSON:** Sorry?

6 **COLONEL VERMAAK:** I have seen this before.

7 **CHAIRPERSON:** You have seen it, yes.

8 Alright, and now without our looking at it can you answer

9 the question Mr Gumbi is putting to you? He suggests to

10 you, well you heard what he said.

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

12 to play the whole video. The few “clips” we have, will

13 be sufficient to comment on.

14 **CHAIRPERSON:** Tell us what the commentary

15 is and if necessary we can all look at – it is an exhibit,

16 we can all look at it privately later. I am concerned about

17 time. What is your commentary? Is it in relation

18 particularly to the point that Mr Gumbi has made?

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

20 Chairperson. It is not necessary to play the complete video.

21 -

22 **COMMISSIONER HEMRAJ:** So what are your

23 observations? Now that you have seen the video on your own,

24 what are your observations about the question that is been

25 put to you?

1 **COLONEL VERMAAK:** Chairperson no, I  
2 remain with what I said regarding the people being insufficient and  
3 not being equipped properly.

4 On this video "clip" there will  
5 be a minute or two where it is clearly  
6 visible.

7 **CHAIRPERSON:** Is this right near the  
8 beginning of the clip?

9 **COLONEL VERMAAK:** I beg your pardon, Chairperson?

10 **CHAIRPERSON:** Is this right near the  
11 beginning of the clip? It is not somewhere in the middle?

12 **COLONEL VERMAAK:** Yes, that is  
13 where they started negotiating.

14 **CHAIRPERSON:** No, let us look at the first  
15 couple of minutes and see whether we can see enough for you  
16 to make the comment.

17 **MR GUMBI:** Chairperson, my difficulty, I  
18 thought about the time and how to save time on this  
19 particular aspect. My difficulty is the witness that is  
20 testifying, I cannot consult with him and analyse the video  
21 footage, then we know those aspects we are going to zoom in.

22 That is why I am compelled –

23 **CHAIRPERSON:** You do not have to analyse  
24 it.

25 **MR GUMBI:** Yes.

1 **CHAIRPERSON:** He says if we look at the  
2 first couple of minutes at the beginning we shall see enough  
3 for him to be able to comment.

4 **MR GUMBI:** Yes.

5 **CHAIRPERSON:** So let us do that and if  
6 we have looked at it for two or three minutes and we still  
7 have not seen enough then maybe we must go back to the  
8 drawing board and rethink the matter, but let us try that  
9 procedure.

10 **MR GUMBI:** Yes, but when I prepared this  
11 line of cross-examination I thought about the time,  
12 Chairperson.

13 **CHAIRPERSON:** Yes, I know you did, but I  
14 thought about it too and I made a suggestion which the  
15 witness seems to accept. Let us try it my way first to see  
16 whether we can achieve what you want to achieve.

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

18 **[VIDEO SHOWN]**

19 **COLONEL VERMAAK:** If you can go back a  
20 little bit.

21 **CHAIRPERSON:** Perhaps you can go back a  
22 bit.

23 **MR GUMBI:** Yes.

24 **CHAIRPERSON:** Is that –

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

1 **CHAIRPERSON:** - the section you had in

2 mind?

3 **COLONEL VERMAAK:** On that photo one can

4 see -

5 **CHAIRPERSON:** Perhaps zoom in a bit to

6 see it more clearly, unless the pixels take over now and

7 interfere.

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

9 **COLONEL VERMAAK:** On that photo -

10 **CHAIRPERSON:** This is 10:30 we are looking

11 at.

12 **COLONEL VERMAAK:** On that photo is NIU

13 members. Not one of them are equipped with a rifle, a

14 a R5 or a shotgun.

15 **CHAIRPERSON:** What have they got on their

16 heads?

17 **COLONEL VERMAAK:** It is a helmet.

18 **CHAIRPERSON:** It is a helmet?

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

20 **CHAIRPERSON:** I do not see anybody with a

21 shield.

22 **COLONEL VERMAAK:** No.

23 **CHAIRPERSON:** Are there shields? Surely

24 a shield is important if you are dealing with this kind of

25 operation?

1 **COLONEL VERMAAK:** It is an important part of

2 your equipment, Chairperson.

3 **CHAIRPERSON:** Is there other equipment

4 which you think they should have had –

5 **COLONEL VERMAAK:** Gas masks –

6 **CHAIRPERSON:** - which you, as a POP man, of

7 many year's experience, would have insisted on your people

8 having if you went on an operation like this?

9 **COLONEL VERMAAK:** Yes, Chairperson,

10 gasmasks, are very important.

11 **CHAIRPERSON:** Anything else?

12 **COLONEL VERMAAK:** Basically, at this

13 stage it is the gasmasks, the shields and their shotguns,

14 which they can use to fire rubber and teargas.

15 -

16 **CHAIRPERSON:** Is that what you want to

17 get on record? \_\_\_\_\_

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

19 **CHAIRPERSON:** Your point made now?

20 **MR GUMBI:** Yes, Chairperson –

21 **CHAIRPERSON:** Without having to see the

22 whole video?

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

24 **CHAIRPERSON:** Okay, so can we move on to

25 the next point then, seeing you have made this point.

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

2 **CHAIRPERSON:** I do not want to be accused

3 of having railroaded you or prevented you from putting

4 things on record that you want to put on record. You have

5 got a duty to your client; you must carry it out and I

6 must not stop you, but if this is enough as far as the video

7 is concerned, we can move on.

8 **MR GUMBI:** Thank you, Chairperson.

9 Lieutenant Colonel, that is only, these were footage you

10 analysed on the 13<sup>th</sup>? I mean at Roots when you were

11 analysing the video of the 13<sup>th</sup>.

12 **COLONEL VERMAAK:** It is this video that

13 we differed on at Roots, which

14 were later on confirmed as I have showed

15 just now.

16 **MR GUMBI:** And General Mpembe was present

17 when you carried out this exercise?

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

19 **MR GUMBI:** And Captain Thupe again was

20 present?

21 **COLONEL VERMAAK:** Just repeat the part on Captain

22 Thupe.

23 **MR GUMBI:** Was he present when you

24 carried out this exercise?

25 **COLONEL VERMAAK:** He was present.

1 **MR GUMBI:** And what about Lieutenant

2 Colonel Merafe?

3 **COLONEL VERMAAK:** Merafe was also there.

4 **MR GUMBI:** After this exercise then your

5 group resolution or finding was that members were less

6 equipped. Is it not so?

7 **COLONEL VERMAAK:** Can you just formulate

8 the question again for me?

9 **MR GUMBI:** I am saying after you carried

10 out this exercise then the group came to a conclusion that

11 indeed the members they were less equipped before

12 confronting the group of strikers.

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

14 **CHAIRPERSON:** I take it that conclusion

15 applied not only to – are these NIU people that we see on

16 the screen here?

17 **COLONEL VERMAAK:** It is correct. The POP as

18 well, Sir.

19 **CHAIRPERSON:** POP as well. Yes, no

20 that is the point I was making. It was not only the NIU

21 people who were not properly equipped –

22 **COLONEL VERMAAK:** No.

23 **CHAIRPERSON:** - it was the POP people as

24 well.

25 **COLONEL VERMAAK:** It was, POP was there

1 also.

2 **CHAIRPERSON:** Yes, and Lieutenant Baloyi

3 of course is a POP man.

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

5 **CHAIRPERSON:** And what was Lieutenant

6 Lepaaku? Was he also POP?

7 **MR GUMBI:** Yes, he was POP.

8 **CHAIRPERSON:** Okay.

9 **MR GUMBI:** Okay, let us move on now in the

10 interest of time. Have a look at exhibit GGG3. Right, go

11 to the attendance register of the 6<sup>th</sup> of September 2012.

12 Are you in possession of that? Yes, when we analyse there

13 we see the National Commissioner is there, General Mbombo

14 was there –

15 **CHAIRPERSON:** Sorry to interrupt you, Mr

16 Gumbi. This is the 6<sup>th</sup> of September.

17 **MR GUMBI:** Yes.

18 **CHAIRPERSON:** Is there a particular

19 reason why you have chosen the 6<sup>th</sup> of September?

20 **MR GUMBI:** Yes, I am having that.

21 **CHAIRPERSON:** Alright, okay.

22 **MR GUMBI:** Yes. You see the attendance

23 register of the 6<sup>th</sup> of September, we see the National

24 Commissioner was there, Lieutenant General Mbombo was

25 there. You see that?

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

2 Chairperson.

3 **MR GUMBI:** And when you go to entry

4 number 12 we see Captain Thupe is there also again.

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

6 **MR GUMBI:** Entry number 15 we see

7 Lieutenant Colonel Merafe is also there.

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

9 **MR GUMBI:** Same applies Major General

10 Annandale and Lieutenant Scott, all of them they were

11 there.

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

13 **CHAIRPERSON:** Colonel Scott did not sign

14 his name, but so his name is written there.

15 **MR GUMBI:** Yes.

16 **CHAIRPERSON:** And General Annandale's

17 name is written there, he also did not sign his name. So

18 I am not sure that this document proves he was there on the

19 6<sup>th</sup> of September. He was supposed to be there. He may have

20 been there. Can you tell us whether he was there on the 6<sup>th</sup>

21 of September, General Annandale?

22 **COLONEL VERMAAK:** It is correct, they

23 were there, Chairperson.

24 **CHAIRPERSON:** And Scott as well?

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

1 **CHAIRPERSON:** Thank you.

2 **MR GUMBI:** Okay, let us move on,

3 Lieutenant Colonel Vermaak. Can I refer you to exhibit

4 JJJ156? Are you in possession of that document, JJJ156?

5 **CHAIRPERSON:** Sorry, before you move on

6 to that, you are not on this list of the 6<sup>th</sup> of September,

7 are you? Or have I missed you? Are you sure you were

8 there on the 6<sup>th</sup>?

9 **COLONEL VERMAAK:** I was there,

10 Chairperson, we went from there to the SABC

11 to watch at videos.

12 **CHAIRPERSON:** Your name is not on the

13 list though. Is that just an omission?

14 **COLONEL VERMAAK:** It can be possible

15 that he did not get to me,

16 Chairperson.

17 **CHAIRPERSON:** I see. Alright, anyway,

18 you tell us under oath you were there, so –

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

20 **CHAIRPERSON:** Alright.

21 **COLONEL VERMAAK:** The diary will

22 confirm it.

23 **CHAIRPERSON:** Alright.

24 **MR GUMBI:** Can I proceed, Chairperson?

25 **CHAIRPERSON:** Yes, yes, please do so. I

1 was just checking, I see on the 5<sup>th</sup> his name is in the  
2 register and he signed it, but it did not on the 6<sup>th</sup> – but he  
3 told us he was there and there is no reason to doubt his  
4 word on that, I would think.

5 **MR GUMBI:** Thank you, very much, Chairperson.

6 May I refer you to exhibit JJJ156, Lieutenant Colonel? Are  
7 you in possession of that document?

8 **COLONEL VERMAAK:** Okay.

9 **MR GUMBI:** Then it is dated 5<sup>th</sup> of  
10 September 2012.

11 **COLONEL VERMAAK:** I see it.

12 **MR GUMBI:** And it had a watermark "Draft  
13 22, 5<sup>th</sup> of September 2012." You see that?

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

15 **MR GUMBI:** So can we assume, can I assume  
16 on behalf of my clients – but before we can go to that  
17 let us go to page 18 of that document. You see that?

18 Paragraph 2, still with the facts surrounding the death of  
19 the late Warrant Officer Lepaaku and injury of Lieutenant  
20 Baloyi, it is written there –

21 **COLONEL VERMAAK:** I see it.

22 **MR GUMBI:** - if I can read it on record,  
23 paragraph 2 of page 18, "To prevent them from entering the  
24 settlement the police utilised teargas and stun grenades to  
25 channel the protesters away from their intended path.

1 Captain Thupe (TRT commander) heard Major General Mpmembe  
2 issue a command for stun and teargas, after which Warrant  
3 Officer Kuhn fired a shotgun CS grenade." You see that?

4 **COLONEL VERMAAK:** I see it,

5 Chairperson.

6 **MR GUMBI:** Then we have another document

7 again. On these allegations you must understand,

8 Lieutenant Colonel, that I am focussing on facts surrounding

9 the death of my client and injury of my clients. Let us go

10 now HHH28, see that? Are you in possession of that

11 document?

12 **COLONEL VERMAAK:** I see it.

13 **MR GUMBI:** It is also dated 5 September

14 2012. Then –

15 **CHAIRPERSON:** Is it in your list? The

16 first document. It is the very first document.

17 **[09:39] MR GUMBI:** Yes, it is dated 5 September

18 2012 and when you go to paragraph 3 of that document again,

19 page 35 of that document paragraph 3, it reads as follows –

20 I am focusing on the command, right, "To prevent them from

21 entering the settlement the police used teargas and stun

22 grenades to disperse, discouraging them from their intended

23 path." Right. "Major-General Mpmembe issued command for

24 stun and teargas after which Warrant Officer Kuhn fired

25 shotgun and CS rifle grenades," do you see that?

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

2 **MR GUMBI:** Would I be correct that

3 there is a difference between these two documents but all of

4 them they are dated 5 September 2012? The first one with

5 the water mark "Draft," Captain Thupe, his name is there

6 and General Mpembe his name is there and he is being

7 described as the person who issued a command. Do you see

8 that, it says "Draft?"

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

10 **MR GUMBI:** The second draft now, the name

11 of Captain Thupe are not there. Do you see that?

12 **COLONEL VERMAAK:** I see it,

13 Chairperson.

14 **CHAIRPERSON:** I notice that in exhibit

15 HHH15.1, which you have given us, Captain Thupe does not say

16 that General Mpembe gave the instruction, he simply says –

17 he does refer to General Mpembe having given an instruction

18 that the group is followed and monitored but he then says,

19 "While following and monitoring them the protesters changed

20 direction" – his participle is floating there but we will not

21 worry about that. "While following," I take it he means

22 "while we were following and monitoring them the protesters

23 changed direction and went straight towards the informal

24 settlement, then instruction was given for firing the

25 teargas." He does not say that General Mpembe gave the

1 instruction, although he had previously mentioned that  
2 General Mpembe had given the instruction in relation to the  
3 following and the monitoring.

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

5 **CHAIRPERSON:** But in any event, you say  
6 that they did not change direction. You were in the  
7 helicopter above and the suggestion that they changed  
8 direction and went to the informal settlement, you say is  
9 incorrect?

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

11 **CHAIRPERSON:** And you say that in fact  
12 you could not understand why teargas had been fired because  
13 there was no reason to do so.

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

15 **CHAIRPERSON:** So this story that they  
16 changed direction towards the informal settlement was not  
17 correct.

18 **COLONEL VERMAAK:** According to my observation –

19 **CHAIRPERSON:** As we see in this exhibit

20 HHH28, page 35, is that correct?

21 **COLONEL VERMAAK:** According to my observation  
22 there was no deviation in the direction they went  
23 in.

24 **MR GUMBI:** Okay, thank you, very much,

25 Lieutenant-Colonel. Then on the 6<sup>th</sup> of September 2012, I have

1 indicated to you that the attendance register, the  
2 attendance register reflects the name of General Phiyega,  
3 Mbombo, they were there to discuss this. Can we assume  
4 that they were in possession of these two reports, that is  
5 the first one, the draft dated 5 September 2012, that is  
6 JJJ156? It was a memorandum by them, a written memorandum.

7 **COLONEL VERMAAK:** Chairperson, we had a  
8 briefing by Colonels Scott and Visser.

9 Out of which document I cannot  
10 recall.

11 **CHAIRPERSON:** Do you know whether hard  
12 copies were available, the documents which Mr Gumbi  
13 referred to or whether they were simply like some other,  
14 something else previously where it was only on the laptop  
15 of Colonel Scott?

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

17 **MR GUMBI:** Yes. No, I understand,  
18 Lieutenant-Colonel. So we can say maybe they were in  
19 possession of JJJ156 or it is possible that they were in  
20 possession of HHH28, you do not know that? Do you agree  
21 with me?

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

23 **MR GUMBI:** You testified in evidence-in-  
24 chief that, I think Adv. Pillay when she was leading you in  
25 evidence-in-chief she asked you about the difference

1 between HHH28 and exhibit L as far as slide 47 is

2 concerned. Do you still remember that?

3 **COLONEL VERMAAK:** Just repeat your question,

4 please.

5 **MR GUMBI:** I am saying when Adv. Pillay was

6 leading you in evidence-in-chief she made a comparison of

7 exhibit HHH28. She referred you to page 35 of exhibit

8 HHH28, do you still remember that?

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

10 **MR GUMBI:** And she referred you to

11 exhibit L –

12 **CHAIRPERSON:** No, no, she did not, I did.

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

14 **CHAIRPERSON:** I did.

15 **MR GUMBI:** Thank you, very much for that

16 correction, Chairperson.

17 **CHAIRPERSON:** You must not blame Ms Pillay

18 for things that I did.

19 **MR GUMBI:** Yes. Thank you, very much,

20 Chairperson, for correcting me. The Chairperson also made

21 a reference to exhibit L slide 47, do you still remember

22 that?

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

24 **MR GUMBI:** Then in your evidence-in-chief

25 you testified that when you saw those two differences, then

1 you confronted Lieutenant-Colonel Scott.

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

3 **MR GUMBI:** Then when you confronted

4 Lieutenant-Colonel Scott then he informed you that you

5 cannot dictate to him how to do the presentation to be

6 presented before this Commission, is that correct?

7 **COLONEL VERMAAK:** He told me that

8 I cannot tell him where to use his equipment, and

9 I conveyed it as such to management.

10 **MR GUMBI:** Yes. What else he said? I am

11 interested in that one.

12 **COLONEL VERMAAK:** It was mostly regarding

13 the time differences on the photos,

14 it was on the one report that

15 General Mpembe gave an order and

16 on another report it was left out.

17 **MR GUMBI:** Will you agree with me,

18 Lieutenant-Colonel, if I put the following proposition to

19 you, that the information that is contained on exhibit

20 HHH28, paragraph 35 – I mean page 35 paragraph 3, deals

21 with the information surrounding the death of the late

22 Warrant Officer Lepaaku and the injury of Lieutenant

23 Baloyi, agree with me?

24 **COLONEL VERMAAK:** If I may just get it

25 up on the screen?

1 **MR GUMBI:** You can put up HHH28, page 35,  
2 paragraph 3.

3 **CHAIRPERSON:** I think the reference to  
4 Lieutenant Lepaaku and indeed Lieutenant Monene is in die  
5 last paragraph on the screen.

6 **MR GUMBI:** Chairperson, I am dealing with  
7 the information, what transpired before attack.

8 **CHAIRPERSON:** Yes, yes, I know. I am just  
9 pointing out to him that the reference to two members of  
10 the police died at the scene, the one died at the scene, it  
11 changed later.

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

13 **CHAIRPERSON:** One died at the scene and  
14 one died in hospital later.

15 **MR GUMBI:** Yes.

16 **CHAIRPERSON:** That is a reference to  
17 Lieutenants Monene and Lepaaku.

18 **MR GUMBI:** Yes.

19 **CHAIRPERSON:** And then a bit further down  
20 I think, not on the screen but there is a passage or  
21 reference somewhere to the fact that Lieutenant Baloyi was  
22 injured.

23 **MR GUMBI:** Yes, I understand that,  
24 Chairperson. My question is focusing –

25 **CHAIRPERSON:** It looks as if the witness

1 does not have the whole document but I do not think he is unduly  
2 prejudiced because it is on the screen.

3 **MR GUMBI:** Yes, Chairperson. Let us  
4 focus on the facts dealing with what transpired before they  
5 were attacked. So those facts that are contained on page  
6 35, on page 35 paragraph 3 of exhibit HHH28 –

7 **CHAIRPERSON:** They are not necessarily  
8 facts, they are alleged facts, are they not?

9 **MR GUMBI:** Alleged facts, yes.

10 **CHAIRPERSON:** And they were facts, some  
11 of them were facts or alleged facts which were not persisted  
12 in by the police.

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

14 **CHAIRPERSON:** Which did not find their way  
15 into the final presentation document. This is just a  
16 draft.

17 **MR GUMBI:** That is a draft, Chairperson, I  
18 agree. Do you see that?

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

20 **MR GUMBI:** You will agree with me those  
21 facts are important.

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

23 **MR GUMBI:** Then the information, you will  
24 agree with me when I put to you that the information  
25 surrounding the death of the police officer or injury of

1 the police officer is important information and is no-one  
2 authorised to tamper with that information. Will you agree

3 with me as a police officer?

4 **COLONEL VERMAAK:** I could not hear your question

5 clearly, could you just repeat it, please?

6 **CHAIRPERSON:** What do you mean by

7 tampered with? Allegations were made, incorporated into an

8 early draft and subsequently modified to some extent in

9 relation to the command by Major-General Mpembe. Is that –

10 but what exactly do you mean by the word “tampered?”

11 **MR GUMBI:** If we can maybe try and expand

12 on that one. Let us deal with exhibit HHH28, maybe let us

13 deal with exhibit – let us start with 156, the first draft.

14 **COMMISSIONER HEMRAJ:** Before you do that,

15 Ms Pillay are there only two versions of this narrative or

16 are there more on the hard drive that was downloaded? I

17 seem to think there might be more than two versions.

18 **MS PILLAY:** Commissioner Hemraj, I know

19 that the two exhibits are a draft of the narrative and the

20 final version but I am not sure if on the hard drive there

21 are earlier drafts of the narrative. Mr Chaskalson says

22 that none of the drafts were on the hard drive and if there

23 are drafts, it is on the extended hard drive which we

24 eventually received.

25 **COMMISSIONER HEMRAJ:** [Microphone off,

1 ***inaudible*** – was downloaded eventually.

2 **MS PILLAY:** That is right.

3 **CHAIRPERSON:** The police archive,

4 effectively. There was the hard drive which the police

5 made available, which was supposed to contain all the

6 important documents. The later, after Lieutenant-Colonel

7 Scott made his computer available, the police archive

8 became available which indicated another, other material

9 documents that had not been included in the police hard

10 drive for some or other reason. Now, does the police

11 archive contain other drafts apart from the two that we

12 have discussed?

13 **MS PILLAY:** We shall look into it and revert

14 to you on that.

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

16 Chairperson.

17 **MS PILLAY:** Chairperson, just to add a final

18 point on HHH28, this is the final narrative, not

19 necessarily a further draft of exhibit L because the two

20 documents are completely separate documents.

21 **MR GUMBI:** Thank you, very much, Adv. Pillay,

22 for clarifying that.

23 **CHAIRPERSON:** Of course to help Mr Gumbi,

24 Mr Gumbi is establishing a pattern, as I understand it –

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

1 **CHAIRPERSON:** - or trying to establish a  
2 pattern.

3 **MR GUMBI:** Yes.

4 **CHAIRPERSON:** And he is going to, once  
5 he is got all the relevant facts on record or the relevant  
6 allegations that were recorded on the various drafts, on  
7 record –

8 **MR GUMBI:** Yes.

9 **CHAIRPERSON:** - then he will be able, at  
10 the end of the day, to put up an argument for which he is  
11 endeavouring to lay the groundwork at the moment, is that –  
12 it is the groundwork at the moment, is that right?

13 **MR GUMBI:** Yes, Chairperson. Let us deal  
14 with the first draft so that we shall see the pattern, how the  
15 information surrounding the death of the late Warrant  
16 Officer Lepaaku and injury of Lieutenant Baloyi was  
17 handled. The first draft is a draft dated 5 September  
18 2012. It is saying Captain Thupe heard Major-General Mpembe  
19 issuing command for stun grenade and teargas, after which  
20 Warrant Officer Kuhn fired shotgun CS rifle grenade," do  
21 you see that?

22 **COLONEL VERMAAK:** I see it.

23 **MR GUMBI:** Second draft, we have another  
24 draft again – I wouldn't say the second draft or a second  
25 draft, let us say the report, the document, let us call it a

1 document, HHH28 –

2 **MS PILLAY:** Chairperson, just to emphasise that

3 HHH28 is not a draft, it is the final document.

4 **MR GUMBI:** Yes. Thank you, very much, Adv.

5 Pillay, that is what I saying, to say that document –

6 **CHAIRPERSON:** That is –

7 **MR GUMBI:** Yes.

8 **CHAIRPERSON:** - is partly correct because

9 the final version of course is L and the narrative in L,

10 is not it?

11 **MR CHASKALSON SC:** No, Chairperson.

12 There are two separate documents. L is a PowerPoint

13 presentation. The narrative is a text document that goes

14 with L and that is what the people presenting L would use

15 to speak to L. So it is not a version of L, it is a document

16 to be used alongside L.

17 **CHAIRPERSON:** I see. I see, because

18 there is some, quite a lot of narrative of course in L, but

19 you say the narrative we are now busy with is effectively

20 supplementary material to be used in conjunction with L.

21 Is that what you are saying?

22 **MR CHASKALSON SC:** Yes, Chairperson.

23 **COMMISSIONER HEMRAJ:** Not all of this

24 narrative makes its way into exhibit L.

25 **MR CHASKALSON SC:** And conversely, there

1 is some narrative in exhibit L or some material in exhibit

2 L that is not in these narratives.

3 **COMMISSIONER HEMRAJ:** Yes.

4 **MR GUMBI:** Oh, thank you, very much. Let us

5 move on. Document dated 5 September 2012, HHH28, when you

6 compare the two, the name of Captain Thupe is not there and

7 General Mpembe is still considered as the person who issued

8 command on that day, do you see that?

9 **COLONEL VERMAAK:** I see it.

10 **MR GUMBI:** Then again exhibit L, you

11 do not see any name of General Mpembe whatever there, do you

12 see that again? Slide 45, if we can put up exhibit L and

13 then slide no. 47, 47. It is not there. General Mpembe,

14 any allegation of command is not there, you see that?

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

16 **MR GUMBI:** Let us move on now then, if I

17 can wrap up this aspect, then we had exhibit L that was

18 presented before this Commission around October 2012, the

19 one I referred to, exhibit – slide number 47 dealing with

20 circumstances surrounding the death of the late Warrant

21 Officer Lepaaku and injury of Lieutenant Baloyi. Let us

22 move on, based on that pattern. You testified that on the

23 21st of January 2013, you had a meeting with the National

24 Commissioner, do you still remember that?

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

1 **MR GUMBI:** In that meeting you presented  
2 exhibit triple zero 10, that is the information note you  
3 compiled.

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

5 **CHAIRPERSON:** I think we called it triple  
6 O, 10.

7 **MR GUMBI:** Yes, triple O10.

8 **CHAIRPERSON:** I was hauled over the coals  
9 when I referred to it as triple zero, the document, the  
10 exhibits in that series as triple zero. I got into big  
11 trouble, so let us not carry on with that. Mr Chaskalson  
12 did seem to indicate he wanted to say something, I do not  
13 know whether –

14 **MR GUMBI:** Yes.

15 **CHAIRPERSON:** - I misinterpreted it. Is  
16 there something you wanted to say, Mr Chaskalson, at this  
17 point?

18 **MR CHASKALSON SC:** Yes, Chairperson.

19 There are several other versions of the memorandum or  
20 drafts of the memorandum that are on Lieutenant-Colonel  
21 Scott's hard drive that I do not think have been entered as  
22 exhibits yet. The two that we have looked at are a draft  
23 of the 9<sup>th</sup>, of the 5<sup>th</sup> of September and the final version of  
24 the 7<sup>th</sup> of November. On the hard drive there are also  
25 drafts on the 11<sup>th</sup> of September, the 12<sup>th</sup> of September, the

1 18<sup>th</sup> of September and the 30<sup>th</sup> of October.

2 **CHAIRPERSON:** Perhaps –

3 **MR CHASKALSON SC:** I cannot, I cannot

4 confirm whether these are different documents because it

5 may be that it was just the same document saved on a

6 different day. I have not done a comparison.

7 **CHAIRPERSON:** If Mr – I take it Mr Gumbi

8 is going to be going on with his cross-examination till the

9 first comfort break.

10 **MR GUMBI:** Yes.

11 **CHAIRPERSON:** So it may be helpful, while

12 the rest of us are being comforted, if he has a look at

13 those documents on perhaps your computer, Mr Chaskalson,

14 and if there is some material in it he wants to use then

15 he will be able to do so.

16 **MR GUMBI:** Yes, I would like to compare

17 those documents, Chairperson, because we are using only

18 these three documents for our cross-examination –

19 **CHAIRPERSON:** If it relates to the point

20 he is busy with.

21 **MR GUMBI:** Yes, yes, Chairperson, I will

22 do that but we can proceed with our cross-examination in

23 the meantime. Lieutenant-Colonel, we were busy dealing

24 with this aspect of OOO10, the information note you

25 presented to the National Commissioner on the 21st January

1 2013, do you still remember?

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

3 **MR GUMBI:** And you further testified that

4 General Mbombo was present also again.

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

6 **MR GUMBI:** Let us go to page 16. I am

7 interested to, facts or information surrounding the death

8 of my client and injury of my client. Page 16. If you go

9 down there below, number 3, go down there where it begins

10 with "On the incident of the 13<sup>th</sup> August 2012," do you see

11 that?

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

13 **MR GUMBI:** Can I read those with the beg

14 of the – with the leave of the Chairperson can I read that

15 information on record?

16 **CHAIRPERSON:** Yes, you may.

17 **[09:59] MR GUMBI:** Thank you, very much. It reads as

18 follows, General. "On the incident of 13 August 2012,

19 Monday, the allegations by members that Major-General

20 Mpembe gave instruction that the members must leave their

21 firearms in the Nyalas, on the videos it could show clearly

22 the members that were standing on the railway line track" –

23 let me read it as it is – "on the railway track did not

24 have proper riot gear with them. Due to the incident prior

25 to this day it was reckless not to take it into

1 consideration. The members were not properly in line,  
2 followed the group and why not with the armoured vehicles.  
3 The instruction of Major-General Mpembe that teargas and  
4 stun grenades must be thrown triggered the assault in the  
5 SAPS. Major-General Mpembe denied at Roots that he was not  
6 aware who gave instruction but after Captain Thupe from TRT  
7 Rustenburg said that he was next to the General when the  
8 question was, the instruction was given, only after that  
9 Major-General Mpembe acknowledged that it was him. Major-  
10 General Mpembe was also confronted by POP members why he  
11 took charge at unrest scene while the senior POP commander  
12 (Lieutenant-Colonel Merafe) was on the scene and it is  
13 against standing order 262." Do you see that?

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

15 **MR GUMBI:** And this document was  
16 presented to the National Commissioner and to General  
17 Mbombo.

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

19 Chairperson.

20 **MR GUMBI:** When you presented this  
21 information before the National Commissioner, any  
22 undertaking from the National Commissioner to probe this  
23 allegation further on the 21<sup>st</sup> January 2013? Was there any  
24 undertaking?

25 **CHAIRPERSON:** Sorry, you dropped your

1 voice. I did not hear the last sentence. Could you repeat

2 the question –

3 **MR GUMBI:** Yes, I am saying –

4 **CHAIRPERSON:** - a little bit louder,

5 please?

6 **MR GUMBI:** Yes, Chairperson, thank you, . I am

7 saying on the 21<sup>st</sup> January 2013 when you presented this

8 information in black and white before the National

9 Commissioner, was there any undertaking from the National

10 Commissioner to prove this allegation further?

11 **COLONEL VERMAAK:** The

12 National Commissioner gave no undertaking

13 regarding any aspect I mentioned in the report.

14 They did meet before I was

15 called into the meeting – there were no direct undertaking

16 towards me. We discussed the document and I

17 was excused.

18 **MR GUMBI:** Yes, but you will agree with

19 me, Lieutenant-Colonel, that information surrounding the

20 death of the police officers, especially the police

21 officers on duty, is crucial information, is important

22 information that needs to be investigated. You are an

23 experienced POP commander and a police officer. Do you

24 agree with me?

25 **COLONEL VERMAAK:** Mr Chairperson, may

1 I just request him to talk closer

2 to the microphone, his words gets lost and then

3 I cannot hear his questions properly.

4 **MR GUMBI:** I do apologise for that,

5 Lieutenant-Colonel, I will do that. I am saying the

6 information regarding the death of the police officer,

7 especially when he is killed in the line of duty or he is

8 injured in the line of duty, is important information to be

9 investigated thoroughly. You will agree with me.

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

11 **CHAIRPERSON:** I am sorry – [microphone

12 off, inaudible] – very soft.

13 **MR GUMBI:** Yes.

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

15 **MR GUMBI:** I will do that, Chairperson.

16 Up to date, Lieutenant-Colonel Merafe, I mean Lieutenant-

17 Colonel Vermaak, have you ever been summoned to appear

18 before any internal inquiry probing this incident of the

19 13th of August 2012?

20 **COLONEL VERMAAK:** No.

21 **MR GUMBI:** Despite the fact that you were

22 an eye witness, you saw this incident from the helicopter.

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

24 **MR GUMBI:** You know the National

25 Commissioner, when she was testifying before this

1 Commission, we cross-examined her on behalf of our client  
2 and we presented crucial information, especially on this  
3 critical aspect of police killing in South Africa and the  
4 high level of stress in the SAPS. So I wanted to move from  
5 that basis, then she did not dispute whatever material we  
6 presented before this Commission on this aspect. Let us  
7 move again. What I wanted to do, I wanted to compare her  
8 testimony before this Commission in relation to exhibit  
9 OOO10. In that respect, Lieutenant-Colonel, can I refer  
10 you to exhibit, to the statement she presented before this  
11 Commission. If you can be in position of exhibit FFF2 and  
12 FFF3, the statement of the National Commissioner presented  
13 before this Commission.

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

15 **MR GUMBI:** And what we will do, we will  
16 compare this information note you presented before her on  
17 the 21<sup>st</sup> of January 2013. Right, go to the last page of  
18 FFF2, the statement of the 7<sup>th</sup> of March 2013, page 9.

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

20 **MR GUMBI:** You see there it is dated 7  
21 March 2013. Then it was commissioned – it is not  
22 commissioned, this one, do you see that?

23 **COLONEL VERMAAK:** I see.

24 **MR GUMBI:** We have another one, FFF2  
25 again and this one is commissioned if you go to page 9 of

1 that statement.

2 **COMMISSIONER HEMRAJ:** Mr Gumbi, my copy

3 of this exhibit FFF2 has a page 10 where a commissioner of

4 oaths have signed. Do you perhaps not have that page in

5 yours?

6 **MS PILLAY:** Commissioner Hemraj, I think

7 the first statement Mr Gumbi was referring to is actually

8 FFF2A.

9 **COMMISSIONER HEMRAJ:** I see.

10 **MR GUMBI:** Yes, 2A. I do apologise, yes.

11 We have got a signed version and an unsigned version but both

12 of them –

13 **MS PILLAY:** 2A is not commissioned.

14 **MR GUMBI:** Is not commissioned, yes. The

15 other one is commissioned but also it is dated 7 March 2013.

16 Do you see that, Lieutenant-Colonel? Then it was

17 commissioned by the Deputy National Commissioner, do you

18 see that, Lieutenant?

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

20 **MR GUMBI:** Then the meeting you had

21 wherein you presented OOO10 was on the 21<sup>st</sup> of March 2013,

22 do you see that?

23 **COLONEL VERMAAK:** It is correct. 21<sup>st</sup> of

24 January.

25 **MR GUMBI:** I mean 21<sup>st</sup> of January 2013.

1 Right, when you go through these two statements, when you  
2 check the incident of the 13<sup>th</sup> of August 2012 there is no  
3 indication in her statement as presented to this Commission  
4 that on the 21<sup>st</sup> of January 2013 I had a meeting with  
5 Colonel, Lieutenant-Colonel Vermaak, he presented me with  
6 this information about the incident of the 13<sup>th</sup> of March  
7 2013. It is not there. We are dealing with statements  
8 alone. Do you see that?

9 **COLONEL VERMAAK:** I see.

10 **MR GUMBI:** Both statements, the  
11 commissioned statement and un-commissioned statement, she  
12 does not deal with this aspect, yet she was in possession of  
13 your information note and you had a meeting with her on the  
14 13<sup>th</sup>, on the 21<sup>st</sup> of January 2013. Do you see that?

15 **COLONEL VERMAAK:** I see it.

16 **MR GUMBI:** Let us assume that maybe she  
17 made a mistake by not including this information in her  
18 statement but she testified –

19 **CHAIRPERSON:** Why would she have made a  
20 mistake? It was hearsay.

21 **MR GUMBI:** Yes –

22 **CHAIRPERSON:** She did not have to put in  
23 all the hearsay reports that she had heard over the period.

24 In paragraph 12, I think it is paragraph 12 of both of the statements  
25 or all the statements, there are a whole, we had – Mr

1 Burger took us through them in his very detailed focused  
2 cross-examination but paragraph 12 I think was the same in all  
3 of them, she was simply reporting that she was told that  
4 there had been trouble at Marikana, that people had been  
5 killed in the week before the 13<sup>th</sup> of August and that on the  
6 13th there had been further deaths, five deaths including  
7 two police officers. That is all she said. It was not  
8 incumbent upon her to give any of the details of what  
9 happened. That would have been hearsay. That would in any  
10 event have been dealt with by other evidence before the  
11 Commission from people who could give direct evidence. So  
12 on what basis are you contending that she made a mistake or  
13 may have made a mistake in not including that hearsay  
14 material in her various, the various versions of her  
15 statement?

16 **MR GUMBI:** I was still proceeding with my  
17 line of cross-examination, Chairperson, having rendered –

18 **CHAIRPERSON:** I know you are proceeding  
19 with your cross-examination –

20 **MR GUMBI:** Yes.

21 **CHAIRPERSON:** - but I am seeking clarity  
22 on what basis you are putting to the witness that the  
23 National Commissioner may have made a mistake. I think  
24 it is necessary that we understand that and the witness  
25 understands that, so that we get an answer to it which can

1 help us.

2 **MR GUMBI:** Fair enough, Chairperson. Let

3 me rephrase my question.

4 **CHAIRPERSON:** Yes, I think –

5 **MR GUMBI:** I will try as much as I can to

6 stick to the facts relevant to my clients. Fair enough,

7 Lieutenant-Colonel, that information is not there. Let us

8 move again to her testimony before this Commission, the

9 National Commissioner.

10 **COLONEL VERMAAK:** I confirm that those

11 information was not part of the statement,

12 but I cannot comment as to why it was not

13 included.

14 **MR GUMBI:** Fair enough, I accept that,

15 Lieutenant-Colonel. Her testimony before this Commission,

16 she never canvassed this aspect, even omitting the meeting

17 she had with you. It was never ever canvassed to say I had

18 a meeting with Lieutenant-Colonel Vermaak, he gave me

19 further information about the incident of the 13<sup>th</sup>, maybe

20 I am investigating it, I will provide further reports on it.

21 She never said that in this Commission.

22 **COLONEL VERMAAK:** I have to accept what

23 you say, Chairperson.

24 **MR GUMBI:** I am saying do not you find it –

25 if I can pursue that, my line of cross-examination again,

1 Chairperson, on that aspect – do not you find it very  
2 strange –  
3 **CHAIRPERSON:** No – no, Mr Gumbi, we have  
4 had this point often before. What this witness finds  
5 strange or does not find strange is of really no concern to  
6 the Commission. I can understand you may wish to argue at  
7 some point that it is strange, that it is a matter which  
8 merits the attention of the Commission and consideration by  
9 the Commission, but whether this witness finds it strange  
10 or not does not really take it any further. This is a  
11 ruling I have given repeatedly in respect of  
12 questions asked by all, by a number of the counsel here and  
13 I do not think I should depart from the principle underlying  
14 that ruling in respect of the question you have just asked.

15 **MR GUMBI:** I accept your ruling,  
16 Chairperson. Let us deal with another senior police officer  
17 who was present again who testified before this Commission,  
18 Chairperson. You've said General Mbombo was there when you  
19 presented this document before the National Commissioner.

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

21 **MR GUMBI:** And again the statement of  
22 General Mbombo presented before this Commission, he does not  
23 say we had a meeting with Lieutenant-Colonel Vermaak, he  
24 provided us with this information about the incident of the  
25 13<sup>th</sup> of August 2012, she does not say that.

1 **COLONEL VERMAAK:** I hear what you are saying,

2 Chairperson.

3 **MR GUMBI:** This includes her testimony

4 before this Commission, she never dealt with this aspect.

5 **COLONEL VERMAAK:** I hear you..

6 **MR GUMBI:** To round off this aspect,

7 Lieutenant-Colonel, as a police officer I hope you will

8 assist me. I am not arguing the law with you but I am trying

9 to tell you what the law is. According to the Police

10 Service Amendment Act are you aware that the National

11 Commissioner is empowered to initiate inquiry if a member

12 is killed in the line of duty or injured in the line of

13 duty?

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

15 **MR GUMBI:** And when General Mbombo

16 testified before this Commission she made mention that she

17 appointed General Mpembe, I mean General Mpembe to

18 investigate this. That was her testimony.

19 **COLONEL VERMAAK:** If she stated

20 it like that, I cannot comment on it.

21 **MR GUMBI:** Yes, and we know for a fact

22 that on the 13<sup>th</sup> – on the 5<sup>th</sup> of September 2012 at Roots

23 members accused General Mpembe of having issued command on

24 the 13<sup>th</sup> of August 2012.

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

1 Chairperson.

2 **MR GUMBI:** And yet General Mpembe is

3 appointed to investigate himself.

4 **COLONEL VERMAAK:** Unfortunately,

5 I cannot comment on any decisions made by my

6 Provincial Commissioner as to why she appointed people to do an

7 investigation.

8 **MR GUMBI:** Okay. These information notes

9 00010, do you know whether it was shared among the

10 commanders who were involved in the operation of the 13th of

11 August 2012, do you have knowledge of that?

12 **COLONEL VERMAAK:** Incorrect. The only people

13 that had copies was the

14 the people part of the meeting on the specific day,

15 I handed it to the legal team of the police afterwards,

16 and again brought it under their attention that it was

17 a report I compiled.

18 **MR GUMBI:** Okay. Can we also assume that

19 General Mpembe was in possession of this document before he

20 took the stand before this Commission?

21 **COLONEL VERMAAK:** I cannot make

22 any conclusions on that.

23 **MR GUMBI:** Let me move on to another

24 aspect. I am not going to continue deliberating on this

25 aspect. I think I have made my point and it is up to the

1 Commission to decide on it. When we were cross-examining  
2 General Mpembe before this Commission we presented  
3 information that is an extract from the pocket book,  
4 statement of police officers who were there on the 13<sup>th</sup> of  
5 August 2012, some of them they fingered him as a person who  
6 issued instruction on that day. In that regard if I can  
7 refer you to those exhibits we presented, I think they are  
8 in your file, you have read it. Not all of them have  
9 mentioned General Mpembe as a person who issued command on  
10 the 13<sup>th</sup> but some of them they said General Mpembe, some of  
11 them they are saying the command was issued. We have got the  
12 statement of Captain Thupe, we have an extract from  
13 Constable Mathavha's pocket book, that is exhibit HHH24,  
14 we have HHH29, the statement of Constable Joseph  
15 Sekgweleya. We have HHH30, the statement of Constable  
16 Mguye. We have the statement of Constable Mahume, HHH31.  
17 We also have a statement of Warrant Officer Mkhabele,  
18 HHH33. We have also a statement of Tawana, HHH37.  
19 **[10:19]** All those documents, we made use of all those  
20 documents to confront General Mpembe during our cross-  
21 examination. At Roots on the 5<sup>th</sup> of September 2012, were  
22 you in possession of this information when you discuss  
23 about the incident of the 13<sup>th</sup>?  
24 **COLONEL VERMAAK:** I was part of  
25 that meeting

1 **MR GUMBI:** I beg your pardon, Lieutenant

2 Colonel? I did not get the answer.

3 **COLONEL VERMAAK:** I cannot hear your

4 question, Mr Chairperson.

5 **MR GUMBI:** I am saying all those documents

6 we used when we were cross-examining General Mpembe, when

7 you were at Roots were you in possession of all this

8 information I refer you to, the statement, extract from

9 this pocketbook?

10 **COLONEL VERMAAK:** I had the information

11 at my disposal on which I testified in front of the Commission.

12 Each member had his or her own version of

13 the events. My version of the events was

14 mentioned in my statement, as well as in my report.

15 **MR GUMBI:** So will I be correct that when

16 you compiled OOO10, your information notes, when you

17 presented all this information before the National

18 Commissioner you also did not have, you were not in

19 possession of this information?

20 **COLONEL VERMAAK:** Chairperson no, I had

21 no documentation to my proposal when I compiled

22 that report of the 13<sup>th</sup>. I did not have

23 access to any of the members' statements. I also did not

24 request any member's statement, as I respect the fact

25 that it is his or her own version of events and they

1 will testify thereto in front of the Commission.

2 **MR GUMBI:** When did you become aware

3 about the existence of these statements and pocketbook from

4 the members who were involved in the operation of the 13<sup>th</sup>

5 August 2012?

6 **COLONEL VERMAAK:** I saw the statements for the

7 first time after you made the file

8 available to me.

9 **MR GUMBI:** Chairperson, I see it is 20

10 past 10 now. I think I am about to round off –

11 **CHAIRPERSON:** We are supposed to go on

12 until half past 10, but –

13 **MR GUMBI:** Yes.

14 **CHAIRPERSON:** - if you would like me to

15 take the comfort break at this stage so you can look at

16 those extra documents that Mr Chaskalson is going to show

17 you on the police archive –

18 **MR GUMBI:** Yes, yes, Chairperson.

19 **CHAIRPERSON:** - and it would be

20 convenient for you if we took the comfort break now, I

21 will –

22 **MR GUMBI:** Yes, so that we shall have a look

23 at it.

24 **CHAIRPERSON:** - accede to your request.

25 **MR GUMBI:** Yes, thank you, very much,

1 Chairperson.

2 **CHAIRPERSON:** We shall take the comfort

3 break now. Let us try to be back in quarter of an hour.

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

5 **[11:26] CHAIRPERSON:** - break than we had

6 intended because Mr Gumbi, after seeing the documents that

7 were on the computer, earlier drafts of the narrative,

8 decided to put them in as exhibits and the evidence

9 leaders, I understand Ms Pillay actually assisted him in

10 having copies made of the relevant documents and she is

11 given us copies of them and they have been marked in

12 anticipation OOO19.1, OOO19.2, OOO19.3, OOO19.4. The first

13 document is, OOO19.1 has a computer – how would one

14 describe this document, Ms Pillay?

15 **MS PILLAY:** Chairperson, it is the list of

16 properties.

17 **CHAIRPERSON:** List of properties, I see.

18 And then part of –

19 **MS PILLAY:** Just before the –

20 **CHAIRPERSON:** Explain to us what they are

21 and then I shall just write them in my book as –

22 **MS PILLAY:** Chairperson, OOO19.1 is the

23 properties of, I believe it is the folder from Colonel

24 Scott's hard drive.

25 **CHAIRPERSON:** So will I call it

1 properties in folder from Colonel Scott's hard drive. Is

2 that right?

3 **MR CHASKALSON SC:** Chairperson, can I

4 just correct that? I have taken from Colonel Scott's hard

5 drive and Colonel Visser's hard drive all of the drafts of

6 the memorandum that I could find and put them into one

7 directory. Sometimes they have the same file name but have

8 been saved on a later date, changed and saved on a later

9 date. So I then created separate – for instance if one

10 goes into the 6 September directory there one will find a

11 file which has the same name, Memorandum 2012-09-05, which

12 was actually saved again on the 6<sup>th</sup> of September after it

13 had been amended again. So the subdirectories are there to

14 accommodate files with the same file name which were saved

15 on different dates and after they had been amended.

16 **CHAIRPERSON:** Alright, okay.

17 **MR CHASKALSON SC:** But this, all of the

18 documents here were taken either from Colonel Visser's hard

19 drive or from Colonel Scott's hard drive.

20 **CHAIRPERSON:** Alright, so it sounds to me

21 the sensible way to do it is OOO19.1 is extract from draft

22 memo, we shall just call it memo, is it? Draft memo, draft

23 narrative, draft narrative and can I say as at 5/9/2012?

24 That is the first one.

25 **MS PILLAY:** Chairperson, if I can just explain

1 the bundles before we mark it, just to make it –

2 **CHAIRPERSON:** Sorry?

3 **MS PILLAY:** If I can just explain the

4 bundles before we mark it, just to make sense of them.

5 **CHAIRPERSON:** Yes, alright.

6 **MS PILLAY:** The first bundle, 19.1 is

7 what you see the list of memoranda that you see on the

8 first property stage.

9 **CHAIRPERSON:** Yes.

10 **MS PILLAY:** The second one, 19.2 is – and

11 you will see at the top there that is the file properties for

12 Visser copy, so the file, the sub-file called Visser copies

13 is what is in 19.2, and the third, 19.3 is the 6<sup>th</sup> of

14 September. So if you look at the first bundle, if you look

15 at 19.1, the first stage –

16 **CHAIRPERSON:** Yes.

17 **MS PILLAY:** - where you see 6<sup>th</sup> of

18 September, that is 19.3, and 19.4 is the 17<sup>th</sup> of September.

19 **CHAIRPERSON:** I see. Alright, well

20 you have described them for us, so I think I do not have to

21 repeat that and that will be on record explaining what

22 these exhibits are, that is 00019.1 to 00019.4. Thank you

23 very much for assisting in that regard. Mr Gumbi, your

24 housekeeping has been done; your exhibits have been marked.

25 Check that the witness – I have to remind you that you are still

1 binded by your affirmation.

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

3 Chairperson.

4 **CHAIRPERSON:** Mr Gumbi, I take it the

5 witness does have copies as well, has he? You have?

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

7 **CHAIRPERSON:** Right, Mr Gumbi, proceed

8 with your cross-examination.

9 **CROSS-EXAMINATION BY MR GUMBI (CONTD.):**

10 Thank you, very much, Chairperson. Lieutenant, let us deal

11 with the first, with exhibit OOO19.1. Are you in

12 possession of that?

13 **CHAIRPERSON:** Yes, you referred to the

14 witness as lieutenant. He did not take exception, but I so

15 on his behalf.

16 **MR GUMBI:** I do apologise.

17 **CHAIRPERSON:** Please get his rank right.

18 **MR GUMBI:** I do apologise, Chairperson.

19 Are you in possession of that document?

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

21 **MR GUMBI:** Then let us go to properties,

22 properties there it is written 2012-09-05 9:55. You see

23 that?

24 **COLONEL VERMAAK:** I see it.

25 **MR GUMBI:** Then when you go to attached

1 page, that is page 17, and you go to paragraph 3 there, you  
2 see that?

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

4 We have just been handed a fifth document, which is part of  
5 the series, which has been marked OOO19.5 and I ask Ms  
6 Pillay to shortly describe it for us for the purposes of  
7 the record, then you can proceed with your questioning.

8 **MR GUMBI:** Yes, thank you very much,  
9 Chairperson.

10 **MS PILLAY:** Chairperson, the fifth, 19.5 is the  
11 21st of September file. It is the excerpt from the 21<sup>st</sup> of  
12 September file.

13 **CHAIRPERSON:** Thank you.

14 **MR SEMENYA SC:** Chairperson, we really feel  
15 excluded. We do not have the documents you are having at  
16 all.

17 **MR MPOFU:** We also feel excluded.

18 **CHAIRPERSON:** The documents which have  
19 been handed in, obviously we have not got copies for the  
20 various parties, but we will have them made available  
21 either later today or by Tuesday.

22 **MS PILLAY:** Chairperson, the copies will be  
23 here in a few seconds.

24 **CHAIRPERSON:** They will be here in a few  
25 seconds. Well, I do not know about a few seconds. That is

1 probably overoptimistic, but they will be here before the  
2 close of business today and so certainly, if there is to be  
3 further cross-examination on this material the other  
4 parties will be in possession of copies and of course Mr  
5 Semenya will be able to re-examine if he wishes to do so on  
6 these documents as well.

7 **MR MPOFU:** Thank you, Chairperson, for  
8 now I think we can survive with using the screen.

9 **MR GUMBI:** Thank you, very much, Chairperson.

10 **CHAIRPERSON:** Yes well, you have been  
11 appearing for survivors from the beginning of the  
12 Commission. You are now one of them yourself.

13 **MR MPOFU:** [Microphone off, inaudible]

14 **MR GUMBI:** Thank you, very much, Chairperson.

15 Lieutenant-Colonel, I refer you to that property with the  
16 date 2012-09-05, then you see the time there is 9:55. You  
17 see that?

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

19 **MR GUMBI:** And you go there the next  
20 page, page 17 attached to that properties, then you go to  
21 the third paragraph there. You see that? Third paragraph  
22 starts with the sentence, "On their way to the hill."  
23 You see that?

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

25 **MR GUMBI:** Can I read it for record?

1 Reads as follows, "On their way to the hill they changed  
2 direction towards the village. To prevent them from  
3 entering the village a command was given of gas grenade.  
4 Then Warrant-Officer Kuhn confirmed the command to Captain  
5 Thupe and the teargas was used to disperse the group and  
6 prevent them from entering the village." That was the  
7 version of the SAPS around that time, that is the 5<sup>th</sup> of  
8 September 2012, 9:55. You see that?

9 **COLONEL VERMAAK:** I see it.

10 **MR GUMBI:** Then again, when you move on,  
11 the next document, that is October, it is 30 October 2012,  
12 you see that? Go to the page relevant to that properties,  
13 to that property. When you go to paragraph 2, it reads as  
14 follows, "To prevent them from entering the settlement the  
15 police utilised teargas and stun grenade to channel the  
16 protesters away from their intended path. Captain Thupe  
17 heard General Mpmembe issue the command for stun and  
18 teargas, after which Warrant-Officer Kuhn fired a shotgun  
19 CS rifle grenade." You see that?

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

21 **MR GUMBI:** So it was the version of the  
22 SAPS on the 30<sup>th</sup> of October 2012 at about 10. Then we move  
23 to the next properties, property again is dated 2012-09-18,  
24 18<sup>th</sup> of September 2012 at 9:24. Are you in possession of  
25 it? 9:24.

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

2 **MR GUMBI:** It reads as follows, "To

3 prevent them from entering settlement the police utilised

4 teargas and stun grenade to disperse, discouraging them

5 from their intended path. Major-General Mpembe issued a

6 command for stun grenade and teargas, after which Warrant-

7 Officer Kuhn fired shotgun and CS rifle grenade." You see

8 that?

9 **COLONEL VERMAAK:** I see it,

10 Chairperson.

11 **MR GUMBI:** That was the version of the

12 SAPS on the 18<sup>th</sup> of September, around 9:24. Let us move to

13 the next property. September, it is written as follows, the

14 date, 12 September, 12:49. 12:49. Are you in

15 possession of that page?

16 **COLONEL VERMAAK:** I have it in front of me.

17 **MR GUMBI:** Go to page 3, I mean to

18 paragraph 2. It reads as follows, "To prevent them from

19 entering the settlement the police utilised teargas, stun

20 grenade to disperse, discouraging them from their intended

21 path. Captain Thupe (TRT commander) heard Major-General

22 Mpembe issue a command for stun and teargas, after which

23 Warrant-Officer Kuhn fired a shotgun CS and rifle grenade.

24 Do you see that?

25 **COLONEL VERMAAK:** I see it,

1 Chairperson.

2 **MR GUMBI:** So that was the version of

3 SAPS on the 12<sup>th</sup> of September 2012, 12:49. Let us move to

4 the next property again. On the 5<sup>th</sup> of September, 2012-09-

5 05, that is the 5<sup>th</sup> of September 2012 around 20:22 –

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

7 **MR GUMBI:** Go to paragraph 2 again. Let

8 me read that paragraph on record. “To prevent them from

9 entering the settlement the police utilised teargas and

10 stun grenade to channel the protesters away from their

11 intended path. Captain Thupe (TRT commander) heard Major-

12 General Mpembe issue a command for stun grenade and

13 teargas, after which Warrant-Officer Kuhn fired the

14 shotgun, CS rifle grenade.” That was the version of SAPS

15 on the 5<sup>th</sup> of September 2012, around 20:22, dealing with

16 this aspect surrounding the death of the late Warrant

17 Officer Lepaaku and injury of Lieutenant Baloyi. You see

18 that?

19 **COLONEL VERMAAK:** I see it.

20 **MR GUMBI:** Let us move to another

21 exhibit, that is OOO19.2. Are you in possession of that

22 document, Lieutenant-Colonel?

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

24 **MR GUMBI:** It is for October 2012. Let us

25 start with that one, the properties written 2012-10-17,

1 16:48. Do you see that?

2 **COLONEL VERMAAK:** I see it,

3 Chairperson.

4 **MS PILLAY:** 16:48 is the last page in

5 this bundle.

6 **MR GUMBI:** Yes, it is the last page.

7 Yes, the last page, thank you very much, Adv. Pillay. You

8 are in possession of that page? Page 26 of 22 –

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

10 **MR GUMBI:** Paragraph 2, I think let me

11 read it on record. "To prevent them from entering the

12 settlement the police used teargas and stun grenade to

13 disperse, discouraging them from their intended path.

14 Major-General Mpembe issued a command for stun grenade and

15 teargas, after which Warrant-Officer Kuhn fire a shotgun,

16 CS rifle grenade." You see that?

17 **COLONEL VERMAAK:** I see it.

18 **MR GUMBI:** So we accept – okay, that was

19 the version of the SAPS on the 17<sup>th</sup> of October 2012 at

20 16:48. Let us move to another one, the next properties.

21 It is written 2012-10-15. The timeframe there is 11:42. So

22 it is the 15<sup>th</sup> of October 2012.

23 **MS PILLAY:** It is the second-last page of

24 19.2.

25 **MR GUMBI:** Second page of – yes.

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

2 **MR GUMBI:** Chairperson, I am a little bit

3 confused here.

4 **MS PILLAY:** No, it is 11:42, it is the next

5 page.

6 **MR GUMBI:** 11:42 according to my bundle,

7 yes, I am in possession of it. 11:42, then the next page is

8 20:45 and in this bundle I have the other one, 13:23. I

9 do not know whether, Adv. Pillay, you are in possession of

10 the same document.

11 **MS PILLAY:** 13.3 is the first page of

12 this bundle.

13 **MR GUMBI:** Okay, let me leave that one,

14 Chairperson. I will fix it. Let me deal with the

15 information that is at my disposal. I do apologise for

16 this minor mistake, Lieutenant-Colonel. Let us focus, let

17 us take the SAPS version as it was on the 8th of October

18 2012. Go to 2012-10-08, 13:23. Are you in possession of

19 that document?

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

21 **MR GUMBI:** It is page 32 of 107, is

22 written there at the bottom. 13, 32 of 107. You see?

23 Then when you go to paragraph 3, it is written, "To prevent

24 them from entering the settlement the police utilised

25 teargas and stun grenade to disperse, discouraging them

1 away from their intended path. Major-General Mpembe issued  
2 a command for stun grenade and teargas, after which  
3 Warrant-Officer Kuhn fired the shotgun, CS rifle grenade.”  
4 You see that?

5 **COLONEL VERMAAK:** I see it.

6 **MR GUMBI:** That is SAPS version on the 8<sup>th</sup>  
7 of October 2012 at about 13:23. Let us go to another  
8 property again. Again on that same day, 2012-10-08, 20:45,  
9 that is the 8<sup>th</sup> of October 2012, it is quarter to 9, 20:45,  
10 you go to paragraph 3 again.

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

12 **MR GUMBI:** Can I read it for record. “To  
13 prevent them from entering the settlement the police  
14 utilised teargas and stun grenade to disperse, discouraging  
15 them from their intended path. Major-General Mpembe issued  
16 a command for stun and teargas, after which Warrant-Officer  
17 Kuhn fired the shotgun, CS rifle grenade.” You see that?

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

19 **MR GUMBI:** That is OOO19.2. Can you move  
20 on again to another document, OOO19.3.

21 **COMMISSIONER HEMRAJ:** Mr Gumbi, is it not  
22 clear from these documents that after a certain date the  
23 information about Captain Thupe is omitted from all of the  
24 following versions?

25 **[11:45]** Is that not the position?

1 **MR GUMBI:** Yes, we shall deal with that,  
2 Commissioner, when we go through these records. Let us deal  
3 with this one first then we shall go to 19.4. Are you in  
4 possession of OOO19.3?

5 **COLONEL VERMAAK:** I have it, Chairperson.

6 **MR GUMBI:** You go to page 20 there, page  
7 20 of 66, paragraph 3 is written, "To prevent them from  
8 entering the settlement the police utilised teargas, stun  
9 grenades to disperse, discouraging them from their intended  
10 path. Captain Thupe, TRT commander, heard Major-General  
11 Mpembe issue a command for stun grenades and teargas after  
12 which one Warrant Officer Kuhn fired a shotgun rifle  
13 grenade." Do you see that?

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

15 **MR GUMBI:** So when you compare the two,  
16 let us start with 19.2, the previous one I referred to, this  
17 one is dated the 6<sup>th</sup> of September 2012, 13:45 is the version  
18 of the SAPS, "Captain Thupe, TRT commander, heard General  
19 Mpembe issue a command." That was the 6<sup>th</sup> of September  
20 2012, do you see that?

21 **COLONEL VERMAAK:** I see him.

22 **MS PILLAY:** Chairperson, maybe just to assist  
23 Mr Gumbi, the change comes in from the 17<sup>th</sup> of September at  
24 16H00, which is OOO19.4. That is when the reference to  
25 Captain Thupe is removed from all of the documents.

1 **MR GUMBI:** Yes, I was heading towards  
2 that, Chairperson, that is why I wanted to fill out this  
3 one, then I will move to OOO19.4. Let us deal with these  
4 two documents first. The version of the SAPS, 6<sup>th</sup> of  
5 September 2012 the name of Captain Thupe, TRT commander  
6 from Rustenburg, he heard General Mpembe issue a command,  
7 teargas, after which Warrant Officer Kuhn fired shotgun CS  
8 rifle grenade, the version of the SAPS during that time.  
9 Then when you go to the version of the SAPS on the 10<sup>th</sup> of  
10 October 2012, I mean on the 8<sup>th</sup> of October 2012, 20:45 –  
11 objection?

12 **MR SEMENYA SC:** Chairperson, will it become  
13 apparent at a certain point what this document has to do  
14 with this witness?

15 **CHAIRPERSON:** Yes, I was – thought that I  
16 could foresee what questions were going to be asked by Mr  
17 Gumbi flowing from these documents but if he does not ask  
18 those questions I will, because I can see there are things  
19 that the witness may be able to help us on in respect of  
20 some at least of the documents, but I was initially shared,  
21 I initially shared your concern but then it struck me that  
22 – I must always assume counsel has a reason for asking  
23 questions but when it occurred to me what the questions  
24 might be, I thought if he does not sketch plan them I shall ask  
25 them so I think we must be patient. Mr Gumbi, I understand

1 he is got a case to put, it is important that he be given  
2 full opportunity to put it. I suspect his clients may be  
3 present too and it is important that they see that he is  
4 given ample opportunity. So there is not another cross-  
5 examiner who will take over after he is finished today, so  
6 he may as well use the time available to satisfy himself  
7 and his clients that he is doing full justice to his case.

8 **MR GUMBI:** Thank you, very much,  
9 Chairperson. I was busy dealing with these aspects,  
10 comparing the two documents, the version of the SAPS on the  
11 6<sup>th</sup> of September 2012 with regard to the version of the SAPS  
12 on the 8<sup>th</sup> of October 2012. I pointed out, Lieutenant-  
13 Colonel, that the name of Captain Thupe is removed from  
14 this document, you see that?

15 **COLONEL VERMAAK:** I see it,  
16 Chairperson.

17 **MR GUMBI:** Can I go to OOO19.4 again so  
18 that you can put all these exhibits on record. Are you in  
19 possession of that document, Lieutenant-Colonel?

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

21 **MR GUMBI:** The version of the SAPS on –  
22 it is written, if I can read the properties firstly, 2012-  
23 09-17 at 16H00. That is the 17<sup>th</sup> of September 2012. You go  
24 to page 29 of 102, you go to paragraph 2. It reads as  
25 follows about the incident of the 13<sup>th</sup> of August 2012, "To

1 prevent them from entering the settlement, the police  
2 utilised teargas and stun grenades to disperse,  
3 discouraging them from their intended path. Major-General  
4 Mpembe issued a command for stun grenades and teargas,  
5 after which Warrant Officer Kuhn fired a shotgun CS rifle  
6 grenade." Do you see that?

7 **COLONEL VERMAAK:** I see it.

8 **MR GUMBI:** The same applies when you see,  
9 if I can refer you to OOO19.5, let us finish it and read  
10 all, the content of all these exhibits on record. The  
11 version of the SAPS, 21<sup>st</sup> September 2012 at around 13:30, if  
12 you read the properties, 2012-09-21, 13:30. Go to page  
13 29/102. You go to paragraph 2 of that document, are you in  
14 possession of it?

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

16 **MR GUMBI:** Let me read the content of  
17 that paragraph on record, "To prevent them from entering  
18 the settlement, the police utilised teargas and stun  
19 grenades to disperse, discouraging them from their intended  
20 path. Major-General Mpembe issued a command for stun  
21 grenades and teargas, after which Warrant Officer Kuhn  
22 fired a shotgun CS rifle grenade." Do you see that?

23 **COLONEL VERMAAK:** I see it, yes.

24 **MR GUMBI:** So based on this document,  
25 Warrant Officer – I mean Lieutenant-Colonel Vermaak, you

1 testified before this Commission that you identify some of  
2 the difference between the version of the 5 of September  
3 2012, 5 September 2012 *vis-à-vis* the version of the SAPS as  
4 far as exhibit L slide 47 is concerned.

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

6 **MR GUMBI:** Based on that then you  
7 confronted Lieutenant-Colonel Scott.

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

9 **MR GUMBI:** You know our concern,  
10 Lieutenant-Colonel Vermaak, is that it is clear when one is  
11 analysing this document that the information surrounding  
12 the death of the late Warrant Officer Lepaaku and injury of  
13 Lieutenant Baloyi, someone in the South African Police  
14 Services tampered with. Do you agree with me after  
15 undergoing this exercise?

16 **COLONEL VERMAAK:** Chairperson, no, I cannot  
17 comment –

18 **CHAIRPERSON:** Before you ask the  
19 question, Mr Semenya wants to say something.

20 **MR SEMENYA SC:** Well, we could not  
21 understand what the question is. What is tampering?

22 **CHAIRPERSON:** Yes. The point raised by  
23 Mr Semenya I think deserves an answer. What exactly do you  
24 mean by tamper?

25 **MR GUMBI:** If I can rephrase my question

1 -

2 **CHAIRPERSON:** I think you should.

3 **MR GUMBI:** Someone removed certain  
4 information. Do you agree with me?

5 **COLONEL VERMAAK:** If one look at the  
6 documentation we have now, there is  
7 a name removed from the documentation.

8 **MR GUMBI:** And when you check  
9 against exhibit L, I have dealt with that one that was  
10 presented in this Commission as far as October 2012 is  
11 concerned, you do not see any name of anyone there on slide  
12 47. Do you see that? Exhibit L, slide 47, you do not see  
13 any name there. General Mphembe's name there, do you see  
14 it? I do not see it.

15 **CHAIRPERSON:** I do not think you need to ask  
16 a question like that because the answer is self-evident,  
17 is not it?

18 **MR GUMBI:** Yes.

19 **CHAIRPERSON:** We all see the name is not  
20 there, so what is the question from which you hope to  
21 extract some information from the witness to assist us?

22 **MR GUMBI:** Fair enough, Chairperson. So  
23 if I can move on from this in trying to wrap up my cross-  
24 examination, when you met the National Commissioner on the  
25 21<sup>st</sup> of January 2013, did you raise this with her that you

1 identified these differences?

2 **COLONEL VERMAAK:** I discussed the

3 problems with them, point by point,

4 Chairperson.

5 **MR GUMBI:** No, but it does not address my

6 question. I am saying if you can allow me, Lieutenant-

7 Colonel, to put my question. 21<sup>st</sup> of January 2013, you met

8 the National Commissioner, nê, do you agree with me? It is

9 on record. It is also on record that before you met the

10 National Commissioner on the 21<sup>st</sup> of January 2014 you

11 confronted Lieutenant-Colonel Scott when you identified

12 these differences between exhibit L as far as slide 47 is

13 concerned *vis-à-vis* the information, the report, earlier

14 version of what happened.

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

16 **MR GUMBI:** So when you met the National

17 Commissioner on the 21<sup>st</sup> of January 2013, did you inform her

18 that, I confronted Lieutenant-Colonel Scott and I asked him

19 about these differences between exhibit L and the earlier

20 version of the incident of the 2013, of August 2012? Did

21 you inform her?

22 **COLONEL VERMAAK:** Chairperson, if I can

23 just be given a moment to get my

24 information notes, please.

25 **MR GUMBI:** Thank you, very much. It should

1 be on –

2 **CHAIRPERSON:** Your information note is

3 00010 and you deal on page 17 with the alleged

4 acknowledgement by General Mpembe that he gave the

5 instruction, but I do not see any reference there to a

6 discussion with Colonel Scott. Am I correct?

7 **MR GUMBI:** Yes.

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

9 was not part of this document. I concentrated

10 on the operational shortcomings,

11 and the administrative aspects part of the operational service,

12 Chairperson.

13 **MR GUMBI:** Yes, I accept that maybe you

14 did not include it in this document but did you convey it to

15 the National Commissioner maybe verbally to say, I noted

16 these differences, I confronted Lieutenant-Colonel Scott?

17 Did you inform her?

18 **COLONEL VERMAAK:** We discussed some factors that

19 was not part of this document, especially regarding

20 the argument I had with

21 General Mpembe, in order to give the National

22 Commissioner some background on that.

23 I was not sure if all the information was

24 conveyed to her –

25 and it was one of the reasons why I compiled this document

1 and made it available to the National Commissioner, due to  
2 the fact that I was not aware of which information she had  
3 to her disposal.

4 **MR GUMBI:** In conclusion, Lieutenant-  
5 Colonel, do you have knowledge whether these drafts I  
6 presented before this Commission was ever-ever shared with  
7 operational commanders who were involved in the operation  
8 of the 13<sup>th</sup> of August 2012?

9 **COLONEL VERMAAK:** Mr Chairperson, I  
10 am not aware that this document was presented  
11 to any operational commander for comment or  
12 inputs.

13 **MR GUMBI:** Thank you, very much, Chairperson,  
14 that will be our cross-examination on behalf of –

15 **CHAIRPERSON:** No more questions?

16 **MR GUMBI:** - the late Warrant Officer  
17 Lepaaku and Lieutenant Baloyi.

18 **CHAIRPERSON:** There are no more  
19 questions?

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

21 **CHAIRPERSON:** Thank you. I would like to ask  
22 you a couple of questions, if I may, on this matter while  
23 we are busy with it. You were present in the group on the  
24 5th of September when this topic was discussed, is that  
25 correct??

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

2 **CHAIRPERSON:** And who was keeping notes?

3 Was Colonel Visser present or –

4 **COLONEL VERMAAK:** Chairperson, in the

5 group that was broken up, there were no notes taken.

6 **CHAIRPERSON:** Yes?

7 **COLONEL VERMAAK:** After we adjourned,

8 General Mpembe went to Colonel Visser and Colonel Scott,

9 and talked to them about it. I also went

10 to them and mentioned

11 the argument to them, as well as to what it was about,

12 so that they had knowledge about it,

13 especially in the light that the assumption was made that Mpembe

14 gave the order for the teargas,

15 because up to that day,

16 nobody took any responsibility

17 for that instruction,

18 until that day when Captain Thupe made the allegation

19 at the meeting. I mentioned it to them and

20 withdrew myself from any further discussions.

21 **CHAIRPERSON:** What time did that

22 discussion take place? Well, there were two discussions,

23 were not there? First of all, you broke away, there was a

24 breakaway group and thereafter there was a report or

25 reports, there were reports to Colonels Visser and Scott,

1 but what time did the breakaway group take place?

2 **COLONEL VERMAAK:** Just after teatime,

3 in the region of half past ten,

4 we met and the discussions did not

5 last an hour before we broke up. The General

6 went to Colonel Scott and them, so if I have to

7 give a timeline, it was between teatime and

8 lunchtime that it occurred, Chairperson.

9 **CHAIRPERSON:** Well, the reason I asked

10 you the question is, if one looks at exhibit OOO19.1 one

11 sees a note at the top of the first page, "Date modified

12 2012/09/05" and then "09:55." So that appears to indicate

13 that that, this page, page – no, no, I understand those

14 were the notes which emanate from the evidence leaders but

15 I take it they are accurate.

16 **MR CHASKALSON SC:** They are accurate,

17 Chairperson, but I think I know where your questioning is

18 going and I think both for the witness and the Commission

19 and Mr Gumbi and his client it may be important that I have

20 just discovered elsewhere on Captain Visser's, Colonel

21 Visser's hard drive what is like an earlier draft of this

22 memorandum which was dated the 30th of –

23 **CHAIRPERSON:** August.

24 **MR CHASKALSON SC:** 30<sup>th</sup> of August, last

25 saved 2<sup>nd</sup> of September, and the version in the document that

1 you are looking at now, the gas grenade version –

2 **CHAIRPERSON:** Yes.

3 **MR CHASKALSON SC:** - is from that

4 document and I think it nods to be put before the

5 Commission. I just was not aware of it when we prepared

6 this bundle earlier. Can I arrange for a copy of the

7 relevant pages to be produced?

8 **CHAIRPERSON:** Yes. Well, if it reads the

9 same then we can accept for the moment that that is what it

10 says.

11 **MR CHASKALSON SC:** Chairperson, it is a

12 different, it is not the same sort of a format.

13 **[12:05]** What it is, is, what it appears to be is Colonel

14 Visser's early notes giving rise to what became a draft of

15 the narrative. So I think the parties should see this

16 document.

17 **CHAIRPERSON:** Perhaps you can read it

18 into the record quickly.

19 **MR CHASKALSON SC:** Yes.

20 **CHAIRPERSON:** We can get the copies

21 later, but if you can read it into the record quickly?

22 **MR CHASKALSON SC:** Chairperson, the

23 document is entitled "Preparation for the Inquiry, 2012-08-

24 10 until 2012-08-16 2000," and that is the file name. The

25 front page says "Memorandum," and it says, "Enquiries

1 Colonel Visser, telephone," Colonel Visser's telephone  
2 number is given, date 2012-08-30. The date on which it was  
3 saved, or this version of the document was saved was the 2<sup>nd</sup>  
4 of September.

5 The relevant passage from this document appears  
6 on page 16 and it is a series of bullet points. The first  
7 says, "A decision was taken to disarm and disperse the  
8 group before they could reach the hill where a big group  
9 was already gathered."

10 Next bullet point – sorry, when I say the first  
11 bullet point, it is the first bullet point that I am quoting.  
12 There is a whole series that come before that that are not  
13 necessarily relevant. "Major-General Mpembe indicated to  
14 them they will not be allowed to join the group at the  
15 hill and must surrender their weapons."

16 Next bullet point, "The group refused and burst  
17 through the police line, continuing to the hill."

18 Next bullet point, "Realising that a violent  
19 confrontation will take place if the persons are disarmed  
20 and arrested since they were armed with firearms and  
21 dangerous weapons, including pangas, knopkieries, assegais,  
22 knives, etcetera, they were allowed to proceed."

23 Next bullet point, "Major-General Mpembe then  
24 give instruction to let the group proceed to the hill but  
25 to follow behind them and prevent them entering an informal

1 settlement to the left of their route to the hill to  
2 prevent incidents of looting and endangering innocent  
3 lives.”  
4 Next bullet point, “On their way to the hill  
5 they changed direction towards the village.”  
6 Next bullet point, and this is the key, “To  
7 prevent them from entering the village a command was given  
8 of gas grenade.”  
9 Next bullet point, “Warrant-Officer Kuhn  
10 confirmed the command to Captain Thupe and teargas was used  
11 to disperse the group and prevent them from entering the  
12 village.”  
13 Next bullet point, “The group dispersed in all  
14 directions and during this three police officials were  
15 attacked.”  
16 So that wording that one sees in this document on  
17 the screen now, the morning of 5 September, is in this  
18 earlier draft dated 30 August, but saved on 2 September.  
19 **CHAIRPERSON:** I take it you cannot throw  
20 any light on that. I thought that, the impression I got  
21 from the document we had, was that, that was what was said in  
22 the breakaway group, but can you answer that? Was this  
23 what we now hear, what we now see here on the screen, which  
24 we see in the earlier document that we had been handed –  
25 **COLONEL VERMAAK:** It is –

1 **CHAIRPERSON:** "To prevent them from  
2 entering the village a command was given of 'gas grenade.'  
3 Warrant-Officer Kuhn confirmed the command to Captain Thupe  
4 and teargas was used to disperse the group." Was anything  
5 of that kind said at the breakaway group –

6 **COLONEL VERMAAK:** It was put that way to the  
7 group that broke away, Chairperson. I just had a look in my  
8 diary. I made the note just after 10, so it  
9 is –

10 **CHAIRPERSON:** Can you read that for us,  
11 please?

12 **COLONEL VERMAAK:** "General Mpembe  
13 met with PC and other role-players. 'Faceless, illegal march,'  
14 Merafe the General said nobody said he  
15 was to take over. He threatens that he is going to make an intimidation  
16 charge when I informed him of the threat. Captain Thupe  
17 confirmed that General Mpembe gave the instruction for the stun grenade  
18 and CS to be used. General Mpembe denies it."

19 **CHAIRPERSON:** That is not the same as  
20 this, you see. What this is, that the command was given of  
21 gas grenade, no mention of stun grenades, just gas grenade,  
22 and then it goes on, "Warrant-Officer Kuhn confirmed the  
23 command to Captain Thupe and teargas was used to disperse  
24 the group to prevent them from entering the village."  
25 Now, you will remember you said to us that Captain

1 Thupe had said that he was next to General Mpembe. Now  
2 according to the evidence we have General Mpembe was on the  
3 far right, that is facing the hill, and Kuhn was on the  
4 far left and if of course, Thupe was standing next to Mpembe  
5 and Kuhn was able to communicate with Thupe there is no  
6 reason why he could not have communicated with Mpembe.

7 So the indications are that this piece of  
8 information which we have in what one can call the first  
9 draft appears to indicate that Thupe was not near Mpembe,  
10 but was indeed close to Kuhn, and when the command was  
11 given, which was only a gas grenade and not a stun grenade?  
12 Kuhn confirmed it to Thupe. But anyway, you cannot throw  
13 any light on that?

14 **COLONEL VERMAAK:** No, I cannot –

15 **CHAIRPERSON:** And it would appear that  
16 Colonel Visser may be able to help us on that.

17 **COLONEL VERMAAK:** It might be possible.

18 **CHAIRPERSON:** But what then happened of  
19 course was we have seen various changes and Captain Thupe  
20 then is mentioned at some stage as having said that he  
21 heard Major-General Mpembe give the command for stun and  
22 teargas, after which one shotgun CS rifle grenade, that is  
23 teargas, was fired by Kuhn. No-one else seems to have  
24 responded to the command, which is in itself interesting,  
25 but thereafter for some reason whoever drafted this

1 document considered it might be wise to leave Thupe's name  
2 out of it so that it is stated directly that is what General  
3 Mpmembe said. But anyway, these are matters that you cannot  
4 help us on.

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

6 **CHAIRPERSON:** Right, now then the other  
7 thing I want to ask you about, seeing we are dealing with  
8 this –

9 **MR MPOFU:** Chairperson, just maybe could  
10 I make a suggestion that this new document, so that it is in  
11 the same place as the others, would be 19.1A or something  
12 like that?

13 **MS PILLAY:** Chairperson, I think it should be  
14 19.6, OOO19.6.

15 **MR MPOFU:** Okay, thank you.

16 **CHAIRPERSON:** OOO19.6. Had you described  
17 the document for us, please? For the record, it is –

18 **MS PILLAY:** Chairperson, it is an extract from  
19 the draft of the narrative dated 30th of August.

20 **CHAIRPERSON:** From the computer of  
21 Colonel Visser and saved on the 2<sup>nd</sup> of September. Is that  
22 right? Am I right?

23 **MS PILLAY :** An extract from the document  
24 prepared by Colonel Visser, dated 30<sup>th</sup> of August.

25 **CHAIRPERSON:** And then saved on the 2<sup>nd</sup> of

1 September. Is that right?

2 **MS PILLAY:** Saved on the 2<sup>nd</sup> of September.

3 **CHAIRPERSON:** Alright, thank you.

4 Anyway, thank you for that suggestion, Mr Mpofu. As you

5 see it is been adopted. The other point I want to raise

6 with you at this point is the question of what you said in

7 your information note and compared with what you said in

8 your affidavit, which is LLL8. In your earlier statement,

9 which is GGG17, you did not mention what had happened at

10 Roots. You mentioned it, however, in your affidavit which

11 was handed in when you gave evidence before us, which is

12 LLL8. That is an affidavit which you made on the 21<sup>st</sup> of

13 January this year and in that statement is, the passage

14 that I want to refer you to is at the foot of the

15 penultimate page, the page that is, or actually no, it is the

16 anti-penultimate page. The pages are not numbered. The

17 last page is just the attestation certificate. The

18 penultimate page is a continuation of paragraph 12 and paragraph 13,

19 but the passage that is relevant is the passage at the foot

20 of the anti-penultimate page. It is more or less in the

21 middle of paragraph 12.

22 Having dealt with the intimidation case that was

23 going to be opened against you and your decision not to

24 make any further inputs because the General would take them

25 in a hostile way, you then say, "The question regarding

1 the teargas and stun grenades were discussed, as well as who  
2 gave the order. Captain Thupe got up  
3 and told the general that he was the one that gave  
4 the orders. The general  
5 denied it initially. Three weeks after the  
6 incident, he then indicated that  
7 it could possibly be him, but that he cannot recall  
8 such. The matter regarding the members that was  
9 was deployed near the group came up," and the question  
10 of their equipment, and so on.  
11 So what you say in your affidavit of the, which  
12 was put before this Commission, of the 21<sup>st</sup> of January this  
13 year, it does not coincide with what you say in your  
14 information notes, which is exhibit OOO10 at page 17  
15 because there you say, let me read that to remind  
16 everybody, at the top of the page, "The instruction from  
17 Major-General Mpembe that a teargas and stun grenade must  
18 be thrown, trigger" – I take it you mean triggered – "the  
19 assault in this," it should be on, "the SAPS. Major-  
20 General Mpembe denied at Roots that he was not aware who  
21 gave the instruction, but after Captain Thupe from TRT  
22 Rustenburg said he was next to the General when the  
23 instruction was given, only after that Major-General Mpembe  
24 acknowledged that it was him."  
25 So, there is a difference. According to your

1 information, although admittedly it looks like there is  
2 something wrong with the syntax because the sentence gets a  
3 bit out of line, but what you say there is that Major-  
4 General Mpembe acknowledged that he was the one who gave  
5 the instruction, whereas in your affidavits before us you  
6 say he initially denied it, but subsequently conceded he  
7 might possibly have given it but he could not remember it.  
8 Now, there is a difference between those two statements,  
9 is not there?

10 **COLONEL VERMAAK:** As how I put it there,  
11 Chairperson, he first denied it and  
12 after Captain Thupe confronted him directly,  
13 there was a conversation between Kuhn and General Mpembe  
14 and then General Mpembe confirmed that  
15 he gave the instruction, although he cannot  
16 recall it.

17 **CHAIRPERSON:** Well, that is the point. So  
18 he did not acknowledge it. At first, he denied it  
19 emphatically, and then according to you he later said well,  
20 it could be so but he could not remember it, but that is  
21 certainly not an acknowledgement that he gave the  
22 instruction. There is a difference between saying I cannot  
23 remember and saying I definitely did not do it. Isn't that  
24 so?

25 **COLONEL VERMAAK:** Yes, I agree it

1 is –

2 **CHAIRPERSON:** And from what you now tell

3 us it appears that what you say in your affidavits is the

4 correct version –

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

6 **CHAIRPERSON:** - and what is in the

7 information note is incorrect.

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

9 **CHAIRPERSON:** Yes, now I must tell you

10 that Major-General Mpembe's version of this exchange

11 between Captain Thupe and himself at Roots differs from

12 yours. What he says is that, he denied it, and that he gave

13 the instruction. He says Captain Thupe then stood up and

14 said, "General, you gave the instruction," and he denied it

15 and then he asked Thupe, you know, why he said it, or

16 pressed him on the matter.

17 **COLONEL VERMAAK:** It is –

18 **CHAIRPERSON:** And Thupe said well, he

19 did not hear it himself but he was told by somebody else and

20 he could not remember – yes, he heard it being said that it

21 was General Mpembe who had given the instruction, but that he

22 himself was not able to confirm it. In other words he was

23 saying it was hearsay, and that is where the matter was

24 left. So that, and I must also tell you that General

25 Mpembe made notes also at, or according to his evidence

1 gave notes at Roots in the session and he produced his  
2 diary and his notes were in accordance with what he told  
3 us. So it does look as if – you have read us your  
4 contemporaneous notes, which of course does not address this  
5 matter. It does look actually as if your recollection of  
6 what exactly happened at Roots may not be entirely accurate  
7 and clear. How would you respond to that?

8 **COLONEL VERMAAK:** Mr Chairperson,  
9 no, there was an argument between  
10 Captain Thupe and General Mpenbe, where  
11 W/O Kuhn also gave his comment at one stage.  
12 General Mpenbe asked Captain Thupe,  
13 “Where were I?” He then told him that he was  
14 next to him. He heard the General giving the order.  
15 I did not participate in that conversation,  
16 as I was not on the ground and could not hear it myself,  
17 it was quite an argument, and it was quite a dispute from  
18 the beginning as to why the teargas  
19 was fired, and Captain  
20 Thupe got up at that meeting and said that it was  
21 the General that gave the order and he was next to him  
22 when I gave the order. Kuhn even asked him if he  
23 understood correctly, after the order was given. That is their  
24 version of events on that particular day. I did not  
25 participate as I

1 was not there. I told them that I cannot participate,

2 as I was not there myself.

3 **CHAIRPERSON:** Yes, you see the interesting

4 thing - of course you cannot help us on it - is the original

5 information which Colonel Visser got, but anyway, that is a

6 matter that we cannot, we must not waste time taking up with

7 you because you cannot assist us.

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

9 just add one last aspect to the chronology that may help.

10 Now that I have known what file I am looking for, files called

11 "Preparation for the Inquiry," I have found an earlier draft

12 on the 30<sup>th</sup> of, dated 30<sup>th</sup> of August, again saved on the 31<sup>st</sup>

13 of August, which says nothing about the 13<sup>th</sup>, nothing at all.

14 So it seems that this information relating to what happened

15 on the 13<sup>th</sup> was conveyed to Colonel Visser somewhere between

16 the 31<sup>st</sup> of August and the 2<sup>nd</sup> of September.

17 **CHAIRPERSON:** These are matters we shall

18 obviously have to take up with him because it is obviously

19 quite an important matter. Alright, well I just wanted to

20 deal with that matter, following up from Mr Gumbi, while it

21 was all fresh in my memory, and I understand that Mr

22 Ntsebeza, who is going to be the next cross-examiner, is not

23 here today and to be fair it was anticipated that Mr Gumbi

24 would be busy the whole morning, because that was his

25 predictions, but he did not realise that I was going to cut

1 him as short as I did, and Mr Mpofu indicated to me that he  
2 might be able to use up the available time, but he then  
3 came to see me later and said on reflection he thought he would have  
4 been overconfident and he would like to withdraw his offer to  
5 cross-examine today.

6 So, we are going to have to adjourn now, but before  
7 we do that I want to say that I have received this morning  
8 the police's further replying affidavit in the in-camera  
9 application, which I take it has been made available to the  
10 other parties. If it has not, I am sure it will be before  
11 much longer. So we shall be in a position to deal with the  
12 in-camera application on Tuesday when we resume.

13 On Monday we are having the seminar in the  
14 afternoon. Well, it is the first of the seminars we are  
15 holding in relation to phase 2. The topic I understand is  
16 going to be "Collective bargaining in the Platinum  
17 industry." Therefore, the Commission will not be sitting. The  
18 seminar starts at 3 o'clock in the afternoon. I gather  
19 it is premises on the University of Wits Campus and there is  
20 a main room and there is an overflow room as well. It looks  
21 as if roughly the same number of people who can attend in  
22 this chamber will be able to attend there.

23 But we will resume the Commission itself on  
24 Tuesday morning at 9 o'clock and we will deal with the in-  
25 camera application, the resumption of the argument. I

1 understand that some of the opposing parties wish to  
2 supplement their earlier submissions in the light of the  
3 affidavits that have been produced and thereafter Mr  
4 Semenya will reply and we will then proceed with your  
5 evidence –

6 **COLONEL VERMAAK:** Thank you.

7 **CHAIRPERSON:** - and if Mr Ntsebeza is  
8 here to cross-examine you he will do so, and if he is not,  
9 someone else will. However, you are excused until – well,  
10 debate as to how long the argument will take on  
11 Tuesday. The optimistic - or pessimistic, whichever way  
12 you look at it – assumption is it will be teatime, and the  
13 pessimistic or optimistic assumption is it will be  
14 lunchtime. But, would you be on standby for round about  
15 teatime to come through, if necessary –

16 **COLONEL VERMAAK:** It is correct, I shall –

17 **CHAIRPERSON:** - to resume your evidence.

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

19 **CHAIRPERSON:** On that note then, we will  
20 adjourn until – the Commission itself will adjourn until  
21 Tuesday morning at 9 o'clock.

22 **[COMMISSION ADJOURNED]**