

RealTime Transcriptions

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 219

22 APRIL 2014

PAGES 26901 TO 27069



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1 [PROCEEDINGS ON 22 APRIL 2014]
 2 [09:13] CHAIRPERSON: The Commission resumes.
 3 Colonel Merafe, you're still under oath.
 4 OMPHILE JOSEPH MERAPE: (s.u.o.)
 5 CHAIRPERSON: Mr Wesley.
 6 CROSS-EXAMINATION BY MR WESLEY (CONTD.):
 7 Thank you, Chair. If we could have – good morning, Colonel
 8 – KKK50. Chair, we did test this beforehand; it appears we
 9 have a bit of a problem.
 10 CHAIRPERSON: Can you move on to your
 11 next point and perhaps come back to this later? In fact
 12 your next point doesn't require –
 13 MR WESLEY: Ja.
 14 CHAIRPERSON: - the use of the computer
 15 as well.
 16 MR WESLEY: It takes us somewhere away,
 17 Chair, but we can move on. Can I just get an indication,
 18 Craig, how long is it going to be? Chair, we have it.
 19 CHAIRPERSON: Are we back in business?
 20 MR WESLEY: We're back in business,
 21 Chair. Now immediately I must apologise to the
 22 Commissioners; when we printed this document, the parts
 23 that I want to refer the Colonel to are in fact the notes
 24 which one finds, if one looks at the page one sees at the
 25 bottom "Notes." On this slide it says "Review 10 minutes."

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1 Those are the notes that I'm actually referring to. We
 2 didn't realise it when we printed this those notes aren't
 3 actually printed. Those notes to the best of my knowledge
 4 are notes that are introduced by the person who gives the
 5 presentation. They are used for lecture purposes.
 6 Colonel, this is a slideshow called "Crowd
 7 management for platoon members (CMPM) prepare for crowd
 8 management incidents." This document is already before the
 9 Commission as KKK50. You had a look at it?
 10 COLONEL MERAPE: That's correct,
 11 Chairperson.
 12 MR WESLEY: And I did specifically ask
 13 that you look at the electronic version so you know what
 14 I'm talking about, the notes. You did that as well?
 15 COLONEL MERAPE: That is so, Sir.
 16 MR WESLEY: Okay. If we could go to
 17 slide 16, I want to just take you through some of the
 18 comments that one finds at the bottom of the slides and get
 19 your views on them. Some of them merely need to be stated.
 20 Others you might want to expand. Slide 16. Slide 16
 21 reads, "The comment," and I'll read it, and Craig, if you
 22 can just slide down as we're going down. It says, "When we
 23 accept that crowds are mostly non-violent, that collective
 24 conflicts are a normal and constructive occurrence and that
 25 crowds have a social identity, more possibilities are

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1 opened up for the management of crowds. In support of this
 2 new understanding of crowds there needs to be," and then
 3 the zeroes that one sees should actually be bullet points,
 4 so it should read then,
 5 "Good information gathering and supply between
 6 all role-players;
 7 More comprehension and tolerance on the side of
 8 the police and the authorities;
 9 Open communication and negotiation between all
 10 parties;
 11 Joint responsibilities and binding agreements;
 12 improved media cooperation and mutual trust;
 13 A community policing approach based on the five
 14 pillars of community policing;
 15 Differentiation between the relevant parties and
 16 the roles they need to fill;
 17 A democratic balance of the relevant issues and
 18 what will be tolerated; and
 19 A view of constraint as the ultimate
 20 remediation."
 21 Do you agree with those?
 22 COLONEL MERAPE: I agree with those,
 23 Chair.
 24 MR WESLEY: And especially the last one I
 25 want to highlight; constraint, the best remedy, if I can

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1 paraphrase what that says there. So the best remedy is
 2 constraint.
 3 COLONEL MERAPE: It is correct,
 4 Chairperson.
 5 MR WESLEY: Now this is echoed, and we
 6 don't have to go there, you can just listen, I'll read it
 7 to you. This is echoed in paragraph 11.1 of Standing Order
 8 262, which reads that, "The use of force must be avoided at
 9 all costs and members deployed for the operation must
 10 display the highest degree of tolerance." That's correct?
 11 COLONEL MERAPE: It is correct,
 12 Chairperson.
 13 MR WESLEY: If we can go to slide 21, now
 14 just to put this into perspective, there's a set of stairs
 15 there. What they represent is conflict, the rise and fall
 16 of conflict. Conflict goes up, if it rises up the
 17 stairwell and it comes down the stairwell if it decreases.
 18 Slide 21, one of the comments reads, "The police are only
 19 allowed to bring the level of conflict down (their
 20 function). The participants can move up and down the
 21 stairs at any time." Do you agree with that as well?
 22 COLONEL MERAPE: I agree with that,
 23 Chair.
 24 MR WESLEY: So what it means is when you
 25 get there, we know now you've got to be tolerant, you've

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1 got to bring – you may only bring the level of conflict
 2 down, whereas the participants, whom you can't control,
 3 they can go up and down.
 4 COLONEL MERAPE: Chairperson, yes, it is
 5 the duty of the police that when the protesters are high,
 6 the police has got a duty to make an endeavour to bring
 7 them down.
 8 MR WESLEY: Thank you, Colonel. Could we
 9 go to slide 19, please? It's two back. If you can go down
 10 – well, it starts, "There are three building blocks that
 11 can be identified based upon the view that crowds are
 12 constructive." If you can go down to the third one, it's
 13 the very last line. Down a little bit more, Craig, please.
 14 The third building block is the realities of gathering.
 15 "Most gatherings remain orderly and the police usually play
 16 a significant role in provoking or forestalling disorder."
 17 Do you see that?
 18 COLONEL MERAPE: I see, Chairperson.
 19 MR WESLEY: So what the lecture was
 20 telling the students here is they must be mindful that the
 21 role of the police can have two effects; it can either
 22 provoke disorder, or it can forestall disorder, in other
 23 words prevent it.
 24 COLONEL MERAPE: I agree with that, Sir.
 25 MR WESLEY: Now we don't have to go to

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1 the transcript. Keep this on the screen; I'll read the
 2 relevant part and give you the reference. Brigadier
 3 Mkhwanazi testified in similar vein when he testified, the
 4 training that POPS receives. On day 27 at page 2900 he
 5 testified about situational appropriateness and in that
 6 testimony he said the following, Brigadier Mkhwanazi, "Yes
 7 Sir, that's correct, with legality it is where we ensure
 8 that we check if whatever we are doing is within the frame
 9 of work, or legal framework, and with the situational
 10 appropriateness we actual look to the situation, how the
 11 situation is, bit" – he means by – "ensuring that when we
 12 teach members if that if they intervene they must not
 13 create problems. They must make sure they solve the
 14 problem instead of creating a bigger problem. Actually we
 15 mustn't be the cause of a situation whereby we have an
 16 outcome that is not acceptable." Is that your approach?
 17 COLONEL MERAPE: I agree totally there
 18 with Brigadier Mkhwanazi.
 19 MR WESLEY: Could we go to slide 28,
 20 please? Now I'm going to read this to you as well. What
 21 the note reads is as follows, "The dynamics of the
 22 relationship between the police and participants become
 23 more apparent when the participants want confrontation.
 24 This happens when the participants look for provocation or
 25 think that the police are limiting their rights to

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1 demonstrate. It is definitely not the best moment to
 2 intervene. However, an angry or intolerant police official
 3 would probably intervene at this moment." You see that?
 4 COLONEL MERAPE: I see that, Chairperson.
 5 MR WESLEY: Do you agree with what is
 6 stated there?
 7 COLONEL MERAPE: Yes, I do agree with it.
 8 MR WESLEY: Now what this means is, if I
 9 can maybe try and put it into practical effect, is that
 10 when SAPS has information on a crowd control – talking
 11 SAPS, POPS, you, when you have information that a crowd
 12 wants confrontation or is looking for confrontation with
 13 the police, or like the slide says, "feeling that the
 14 police are limiting their right to demonstrate," that is
 15 not when you intervene. That's the wrong time to
 16 intervene, and somebody who does intervene at a time like
 17 that according to this can be described as an angry or
 18 intolerant police official.
 19 COLONEL MERAPE: The police, Chairperson,
 20 at all times have to study the situation and decide when
 21 and when not to intervene.
 22 MR WESLEY: Thank you, Colonel. You'll
 23 remember, and I just want to remind you again when we
 24 started this line I said to you we're using you here as the
 25 teacher to tell us things. Just thank you very much for

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1 doing that. I just want to remind you of that.
 2 Craig, could we have a look at TT5, please? I
 3 want to take you through, what I'm going to take you
 4 through now is the intelligence reports that prevailed
 5 during the week of Marikana, just so that we can have a
 6 look at the contents of those. Now TT5 is a document
 7 entitled "Relevant information inputs." If we can go to
 8 paragraph 5, please, I'm going to read 5, 6, 7 and 8 to
 9 you. I want you to listen, then I'm going to take you
 10 through some of the others. I want you to – what I'm
 11 asking you to look out for, now specific detail, but to see
 12 what SAPS was, the information that SAPS was receiving from
 13 Crime Intelligence about the crowd that they were facing.
 14 Now what paragraph 5 reads, this is now the 11th
 15 and I'm going to take it day by day. "It was reported on
 16 11 August 2012 that two people were injured during the
 17 previous night and that it was linked to the activities of
 18 AMCU members. They had an unlawful gathering on 10 August
 19 2012 at the Karee Hostel sports grounds in support of their
 20 wage demand. The gathering was not approved and was
 21 monitored by SAPS and mine security personnel. It was also
 22 reported that a group of 2 000 AMCU members were gathered
 23 at the Karee Mine Hostel and later moved to the nearby
 24 Nkaneng informal settlement and from there to the koppie.
 25 The information was reported to OIAC provincial and

<p style="text-align: right;">Page 26909</p> <p>1 national offices. Brigadier Engelbrecht also discussed 2 this with the DPC Operational Services during the same day 3 and the seriousness was explained, as well as the need for 4 police visibility.” 5 Mr Mahlangu, how would you like me to go? Shall 6 I stop after each paragraph? 7 MR MAHLANGU: The Colonel is listening to 8 this in English. 9 MR WESLEY: Alright, 6 – 10 COMMISSIONER HEMRAJ: This document is 11 not on your list. Has the witness had an opportunity to 12 look at it? 13 MR WESLEY: Yes, I gave it as a 14 supplement – 15 COMMISSIONER HEMRAJ: I see. 16 MR WESLEY: Colonel, you did have a look 17 at these documents beforehand? 18 COLONEL MERAFAE: Yes, it’s okay. 19 MR WESLEY: Thank you, Colonel. Then we 20 go to the next day. Now we’re on the 12th, that was the 21 Sunday. “During the night two security officers were 22 killed at Wonderkop whilst attending to squabbles between 23 NUM and AMCU members. Crime Intelligence reported that 24 AMCU members went through the ritual with a sangoma with 25 the belief that they could not be shot by the police or</p>	<p style="text-align: right;">Page 26911</p> <p>1 their report is there at paragraph 2.1. It reads as 2 follows, “Brigadier Engelbrecht indicated that the 3 situation is still tense. The mood at AMCU is still the 4 same. Members of AMCU indicated they will not surrender 5 their weapons as they need to defend themselves against 6 NUM.” Got that? So that’s Wednesday morning, 6 o’clock 7 that’s what they’re being told. 8 COLONEL MERAFAE: That is correct, Chair. 9 MR WESLEY: If we can then go back to 10 TT5, Craig. This document also deals with what was 11 reported on the 15th in paragraph 9. It reads, “On 2012-08- 12 15 at the PROVJOC meeting a discussion took place with 13 regard to the disarming and dispersion of the striking 14 mineworkers. Brigadier Engelbrecht held the view in favour 15 of negotiations with the group who always gather at the 16 koppie and disperse during the evening. The view was 17 further based on an analysis of the striking workers’ 18 behaviour during the incident of 13 August 2012 where the 19 police officials were killed. They were all armed with 20 different kinds of dangerous weapons. They became agitated 21 when their comfort zone was threatened and made it clear 22 that they will never surrender their weapons as they need 23 the weapons to protect themselves against NUM.” 24 If we can then go to TT4. Now TT4, these are the 25 briefing minutes of the JOC meeting of 16 August. I know</p>
<p style="text-align: right;">Page 26910</p> <p>1 mine security during the day. They were further planning 2 to set the office of NUM and the SAPS satellite police 3 station near Wonderkop alight. This information was also 4 reported and Brigadier Engelbrecht relayed it to DPC 5 Mpembe.” 6 COLONEL MERAFAE: I understand it, Chair. 7 MR WESLEY: We go then on to the 13th. 8 “During 2012-08-13 a PROVJOC with the support of the head 9 office was established at Lonmin Mine premises to deal with 10 the situation,” and then paragraph 8, “Colonel Krietsman 11 submitted the following information to NASCOM and other 12 senior officers during her visit on 2012-08-13; that the 13 issue of Lonmin Mine spilled over from the illegal strike 14 of the rock drill operators (AMCU) from Impala Platinum 15 Mine during February 2012; that the strike is all about 16 money to be made by the union and that it is political 17 driven; that AMCU used violence and intimidation to make a 18 statement that the only way to keep membership is to make 19 promises during recruitment that is not attainable.” Got 20 that? You see that? 21 COLONEL MERAFAE: I see, Chairperson. 22 MR WESLEY: Okay, now we’ve gone more or 23 less up to the 13th here. If we can then go to TT3, the 24 briefing minutes JOC meeting of 15 August 2012 at 06:00. 25 That’s what this document is. Now Crime Intelligence,</p>	<p style="text-align: right;">Page 26912</p> <p>1 you weren’t there on the 16th of August, but I’d just like 2 you to see this. 3 COLONEL MERAFAE: I agree, I wasn’t there. 4 MR WESLEY: Crime Intelligence, this is 5 now the morning of the 16th of August at 06:00, Crime 6 Intelligence, Lieutenant-Colonel Isaacs was there that day, 7 Brigadier Engelbrecht wasn’t, and this document records, 8 “Lieutenant-Colonel Isaacs informed the meeting on the 9 following; that there are currently about 3 000 mineworkers 10 who are gathered at the koppie. Many of these mineworkers 11 are in possession of dangerous weapons (spears, assegais 12 and pangas). According to information received the group 13 will decline to surrender these dangerous weapons to the 14 police. Information also indicates that the mineworkers 15 will not leave the koppie and are prepared to fight if 16 their demands are not met, which includes resisting the 17 police.” 18 If we can then go back to TT5, paragraph 10. 19 CHAIRPERSON: Someone has got a headphone 20 which is not applied to his or her head and we can hear it 21 – or it’s too loud. It makes it very difficult to follow 22 the evidence. 23 MR WESLEY: Chair, a member of the staff 24 is looking for the headphone. 25 CHAIRPERSON: Thank you.</p>

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1 MR WESLEY: Can I continue, Chair, or
 2 should we wait?
 3 CHAIRPERSON: No, carry on for the time
 4 being. We can still hear the noise, though.
 5 MR WESLEY: It seems to be coming from
 6 the corner, Chair.
 7 CHAIRPERSON: Can still hear it. It does
 8 seem to be softer now actually.
 9 [09:33] Alright, carry on, Mr Wesley, for the time being.
 10 If it gets troublesome I'll mention it again.
 11 MR WESLEY: Colonel, paragraph 10. We're
 12 dealing now still with the 16th. It says "On 2012-08-16
 13 during a PROVJOC meeting where the disarming and dispersing
 14 of the group at the koppie was discussed, Colonel Isaacs,
 15 CI representative at the PROVJOC for the day, advised that
 16 many strikers had dangerous weapons with them and informers
 17 reported they would not hand their weapons to the police
 18 and that the situation was tense." Do you see that?
 19 COLONEL MERAFE: I see that, Chairperson.
 20 MR WESLEY: And if we can then just go to
 21 the very last document on TT5, the last page of this. This
 22 is a Crime Intelligence input that was given at the JOC
 23 meeting, it actually occurred at half past 1 on the
 24 Thursday the 16th, so don't worry about the date, the time
 25 there 12 o'clock, but this is the Crime Intelligence input

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1 that occurred at the JOC meeting. What it says is the
 2 following,
 3 "1. Approximately 3 000 mineworkers are gathered
 4 at the koppie.
 5 2. Many of these mineworkers are in possession
 6 of dangerous weapons (spears, assegais and pangas).
 7 3. According to information received the group
 8 will decline to surrender these dangerous weapons to the
 9 police. Information also indicates that the mineworkers
 10 will not leave the koppie and are prepared to fight if
 11 their demands are not met, which includes resisting the
 12 police.
 13 4. The situation is currently very tense."
 14 You're up to date now on what the Intelligence
 15 reports were.
 16 COLONEL MERAFE: It is correct,
 17 Chairperson.
 18 MR WESLEY: Now having regard to these
 19 reports, they all pointed to – I'm talking about the
 20 strikers now, the people that were sitting on the koppie,
 21 or protestors, whichever word you would prefer - they
 22 indicate, if I read them, that this group was unafraid of
 23 the police.
 24 COLONEL MERAFE: That's how I understand
 25 it, Chair.

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1 MR WESLEY: And they were not afraid of
 2 confrontation, of having a confrontation with the police.
 3 COLONEL MERAFE: According to the
 4 information received yes, Chairperson.
 5 MR WESLEY: And, well you say according
 6 to the information. Do you think that the police had any
 7 reason to doubt the correctness of what they were being
 8 told by Crime Intelligence?
 9 COLONEL MERAFE: We did not doubt the
 10 information that we received, Chairperson, that they would
 11 not hand their weapons over.
 12 MR WESLEY: So what we have then on the
 13 16th of August at approximately half past 1, which is when
 14 the last report comes, that's the situation that SAPS are
 15 facing, a crowd of workers who are unafraid of
 16 confrontation with them. Do you agree?
 17 COLONEL MERAFE: It is correct, Chair.
 18 MR WESLEY: Now if I have a look at what
 19 the note said about – on slide 28 and then I have a look at
 20 the prevailing situation, is it fair to say - and is this
 21 where I need your comment - is it fair to say that by
 22 definition SAPS would have been angry and intolerant on the
 23 16th when they intervened? Do you want to go back and have
 24 a look at what was said on slide 28? Can I read it to you
 25 and then you must tell us what you think?

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1 COLONEL MERAFE: I have slide 28 with me,
 2 Chairperson. I have read it and I do understand it.
 3 MR WESLEY: Can it be said, in your view,
 4 that when SAPS then intervened on the afternoon of 16
 5 August 2012, in these circumstances that I've described
 6 according to the Crime Intelligence reports, that SAPS was
 7 being angry and intolerant?
 8 COLONEL MERAFE: According to this slide
 9 28, Chair, I would only say that it was not the appropriate
 10 time for the police to take action. Whether they were
 11 angry or what the position is I would not be able to say.
 12 MR WESLEY: We'll leave it there. You
 13 say it was not the appropriate time to intervene.
 14 COLONEL MERAFE: That the time was not
 15 appropriate for action to be launched then.
 16 MR WESLEY: Could we go to slide 31
 17 please, Craig? Now the note here reads as follows, "When
 18 the order is given to intervene, only the means necessary
 19 will be used in accordance with the law. The steps taken
 20 must be in proportion to and appropriate in the specific
 21 circumstances." And here's the part. "When the police
 22 take action the level of violence may not escalate and if
 23 this happens they should know that they have made the wrong
 24 decision or have used the wrong equipment or techniques."
 25 Do you see that?

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1 COLONEL MERAPE: I see, Chairperson.
 2 MR WESLEY: So we know, you've already
 3 classified and you've agreed SAPS must bring the level of
 4 conflict down and it mustn't go up. What it says here,
 5 it's the second part that I'm particularly interested in
 6 is, "If the violence escalates SAPS should know that
 7 they've taken a wrong decision or used the wrong equipment
 8 or techniques."
 9 COLONEL MERAPE: That is so, yes.
 10 MR WESLEY: Now we know that
 11 unfortunately – well do you agree with me that just prior
 12 to the extreme violence that we saw on the 13th where people
 13 were killed, prior to that there was no violence?
 14 COLONEL MERAPE: If you would just repeat
 15 the – so that I can understand you clearly?
 16 MR WESLEY: We know that on 13 August we
 17 have a group of protestors that's walking across the veld,
 18 we did inspection in loco, we know where it is, they were
 19 walking. We know then that there was one or two stun
 20 grenades used, there was teargas used and that was the SAPS
 21 intervention. We know that prior to that these people were
 22 just walking, the protestors. After that they turned
 23 around and there was a confrontation with the police. Do
 24 you agree with me on that?
 25 COLONEL MERAPE: I also have to explain,

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1 Sir, that on the 11th there were problems there. People
 2 were marching past Wonderkop where there was shooting that
 3 took place. We call that violence. On the 12th of August
 4 members of the security were killed, their vehicles torched
 5 and their firearms taken. We also call that violent.
 6 Information we received was that they were not killed by
 7 individuals, that they were killed by a group of people.
 8 We would then be mistaken if we say up to the 13th that
 9 nothing happened. Let us take it step by step what
 10 happened every day.
 11 CHAIRPERSON: Worse than that, on the
 12 Sunday night the 12th two people who reported for work at
 13 Karee were murdered and vehicles, I'm not sure if it was
 14 their vehicles, but vehicles were set alight. So there was
 15 also violence then.
 16 COLONEL MERAPE: That is correct,
 17 Chairperson. Chairperson has just added what I forgot.
 18 CHAIRPERSON: I think the evidence
 19 indicates that on the night of the Friday/Saturday, was the
 20 10th to the 11th when people were reporting for work for the
 21 nightshift I think it was, there was, according to
 22 information we have, there was also intimidation designed
 23 to enforce the unprotected strike. That seems to be the
 24 information we have. Are you able to confirm that?
 25 COLONEL MERAPE: That is correct,

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1 Chairperson. What I was explaining, Sir, is that those
 2 were steps that were building up to the confrontation that
 3 eventually took place.
 4 CHAIRPERSON: But are you able to confirm
 5 what I asked you about that on the night of the 10th/11th,
 6 that was Friday night, Saturday morning when people were
 7 reporting for work, attempts were being made to prevent
 8 them from going to work by intimidation?
 9 COLONEL MERAPE: That is correct,
 10 Chairperson, that was brought to our attention.
 11 CHAIRPERSON: I think what Mr Wesley is
 12 about is something different. On the 13th when this group
 13 of people who'd gone to Karee and were coming back were met
 14 at the railway line they didn't comply with General
 15 Mpmembe's request to lay down their arms and they stood up
 16 and walked away in the direction of the koppie. At that
 17 point they were not violent. They were refusing to comply
 18 with an instruction to lay down their arms but they weren't
 19 violent. And the violence as such began after the teargas
 20 and the stun grenades. I think that's Mr Wesley's point.
 21 Is that right, Mr Wesley?
 22 MR WESLEY: That's correct, Chairperson.
 23 CHAIRPERSON: That's correct, isn't it?
 24 COLONEL MERAPE: That is so, Sir. On
 25 that day yes, we can say it is so.

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1 MR WESLEY: And let's got to the 16th
 2 then, the afternoon of the 16th. By this stage you must
 3 know the first step that SAPS took in implementing their
 4 plan that afternoon was they started rolling out barbed
 5 wire, policemen were deployed, Nyalas started moving. That
 6 was the SAPS intervention. Now just before that the crowd
 7 was on the koppie, they'd been on the koppie all morning,
 8 they'd moved up and down, there was some dancing and
 9 clacking of weapons but there was no violence on the
 10 koppie.
 11 COLONEL MERAPE: It is correct, according
 12 to what we heard. There wasn't any violence, they were
 13 singing, going up the koppie and so on.
 14 MR WESLEY: Yes, yes there were threats,
 15 we know that as well. There were certain – according to
 16 evidence there were threats uttered but there was no actual
 17 violence.
 18 COLONEL MERAPE: That is correct, Chair.
 19 MR WESLEY: After SAPS intervened,
 20 started taking their actions which they intervened, the
 21 actions that they made that day -
 22 CHAIRPERSON: I think what you mean is
 23 when they started uncoiling the barbed wire.
 24 MR WESLEY: Yes.
 25 CHAIRPERSON: That was the first step in

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1 stage 3, I think.

2 MR WESLEY: Ja.

3 CHAIRPERSON: That's when the temperature

4 went up. Is that right?

5 COLONEL MERAFAE: That is so, Chair.

6 MR WESLEY: Yes, and after that there was

7 violence in that area.

8 COLONEL MERAFAE: That is so, Sir.

9 CHAIRPERSON: If we can just go back a

10 bit, as far as I can remember the plan, you'll probably

11 remember it better than I, but the plan was for the

12 previous day that the Nyalas with the wire trailers were to

13 be kept out of sight because it was thought they might

14 provoke the strikers.

15 COLONEL MERAFAE: That was the plan, Sir,

16 that the barbed wire Nyalas should not be brought to the

17 sight of the protestors because it was said it might

18 provoke them.

19 CHAIRPERSON: And then on the Thursday,

20 there were reasons, we don't have to go into the reasons at

21 the moment but on Thursday the Nyalas with the wire

22 trailers were brought out. They were brought in close

23 proximity to the strikers and exactly what had been feared

24 would happen if they were brought out happened. That is to

25 say they became angry. Is that correct, according to the

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1 information you got?

2 COLONEL MERAFAE: Yes, it is so, Chair.

3 MR WESLEY: Thank you, thank you, Colonel

4 and Chair as well. Could we go to slide 31, Craig? Oh,

5 sorry, that is slide 31. What I meant to say was now what

6 we've just read from slide 31, I think that finds, that is

7 echoed in paragraph 11.3A of Standing Order 262. We don't

8 need to go there, I'll read it to you. It's paragraph

9 11.3A of Standing Order 262. It provides in part under sub

10 A, "The purpose of offensive actions are to de-escalate

11 conflict with the minimum force to accomplish the goal and

12 therefore the success of the actions will be measured by

13 the results of the operation in terms of cost, damage to

14 property, injuries to people and loss of life." Do you

15 agree with that?

16 COLONEL MERAFAE: I agree with that,

17 Chair.

18 MR WESLEY: Now a difficult question has

19 been asked to – well it's turned out to be a difficult

20 question, I submit it shouldn't be but I'm just going to

21 ask you the question with regard to the 13th of August. If

22 you look at – if you measure the success of the operation

23 in terms of cost, damage to properties, injuries to people

24 and loss of life, what happened on the 13th of August, would

25 you consider that a success for the police or a failure?

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1 COLONEL MERAFAE: According to me, on the

2 13th it was not a success of the police.

3 MR WESLEY: Now we've said several times

4 this morning but if you can give us your view, you weren't

5 at Marikana on the 16th, you know what happened though, was

6 what happened on the 16th a success or a failure?

7 COLONEL MERAFAE: Even that which happened

8 on the 16th, Chairperson, was not at all a success.

9 MR WESLEY: Now in the course of the

10 testimony a word has come up, the word is hybrid. Have you

11 heard testimony being delivered about hybrid, hybrid

12 operations or hybrid situations or hybrid plans? Have you

13 heard such a thing in this Commission?

14 COLONEL MERAFAE: Yes, Sir.

15 MR WESLEY: Okay, I want to just look at

16 that. In QQQ1, paragraph 4.7.10, here you're describing

17 the operations that you have taken part in the past and

18 here you say, "In 2012 I was the operational commander

19 during the strike of RDOs at Impala Platinum. In the same

20 year I was the operational commander responsible for crowd

21 management during the criminal trial arising from the death

22 of Mr Moss Phakoe, a prominent member of the ANC and

23 councillor." And then in paragraph 4.7.11 you go on to

24 explain what happened at Tlhabane in May 2012. Now keep

25 that operation or those operations in mind. What you were

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1 dealing with when you talk about the situation at Impala,

2 or the strike of the RDOs at the Impala mine, that was

3 public order policing what you were doing there.

4 COLONEL MERAFAE: It was the public order

5 policing operation, Chair.

6 MR WESLEY: And you were the operational

7 commander.

8 COLONEL MERAFAE: That is so.

9 MR WESLEY: But during those operations

10 you commanded POP, but you also commanded – during the

11 operation you had a mixed group, you also had TRT, NIU with

12 you, members from those units.

13 COLONEL MERAFAE: Yes, it is so.

14 MR WESLEY: Did you have any – we know

15 TRT, we know NIU, did you have any STF members there?

16 COLONEL MERAFAE: I did not have STF.

17 MR WESLEY: And any other members from

18 other units that we may not know?

19 COLONEL MERAFAE: Only Air Wing appeared

20 from time to time.

21 MR WESLEY: Forgive me, that's correct.

22 The Air Wing was also present. Okay, so you're commanding

23 a mixed group.

24 COLONEL MERAFAE: That's correct, Chair.

25 MR WESLEY: Now in these situations

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1 murders were committed, correct? Were there any murders?
 2 COLONEL MERAFAE: Not whilst we were
 3 operating, not whilst we were working there.
 4 MR WESLEY: Were any lives lost, being
 5 lost?
 6 COLONEL MERAFAE: There were lives lost
 7 but not during the police intervention there.
 8 MR WESLEY: Okay, no sorry. Let me just
 9 explain. What we're talking about here is you arrived as
 10 police, I'm talking about the situation that you faced,
 11 what you were seeing, what was happening, what you were
 12 sent in to deal with, that situation.
 13 COLONEL MERAFAE: Okay.
 14 MR WESLEY: So lives were being lost in
 15 the situation.
 16 COLONEL MERAFAE: No.
 17 MR WESLEY: Had anybody died prior to you
 18 getting there, before SAPS got there?
 19 COLONEL MERAFAE: There were people that
 20 were being killed, yes, during the night people that were
 21 being attacked.
 22 MR WESLEY: Okay, maybe I should assist
 23 you here. I'm just going to read it. It's QQQ2, the
 24 fourth unnumbered paragraph. What you say there about 2012
 25 is the following. "This year 2012 has been the most

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1 challenging one because it started with uprisings at Impala
 2 mine around Rustenburg, problems at Bapong Village at Brits
 3 Cluster and thus affect villages around that area.
 4 [09:53] During the uprising there has been loss of lives
 5 and damage to property. There had been chieftainship
 6 problems at Moroleng and all villages that fall under
 7 Bakgatla and later the problem escalated to the mines at
 8 that area where extensive damage was done on mining
 9 properties and some innocent people's vehicles were
 10 torched." You remember that?
 11 COLONEL MERAFAE: That I remember, yes.
 12 MR WESLEY: Now this forms part of what
 13 was going on in 2012 in your area.
 14 COLONEL MERAFAE: That is so, yes.
 15 MR WESLEY: Okay, is that separate to
 16 what you're talking about in paragraph 4.10, is that
 17 something different?
 18 COLONEL MERAFAE: There is no - they link,
 19 there is not much difference.
 20 MR WESLEY: Okay.
 21 MS BALOYI: Chairperson, just perhaps to
 22 be able to follow the cross-examination, Mr Wesley now
 23 referred to paragraph 4.10, there is no 4.10 and if he is
 24 referring to 4.7.10 it speaks specifically to a strike at
 25 Impala Mine, not what he just read from QQQ2, and I think

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1 it would help the witness, Chairperson, but certainly the
 2 legal team to follow the cross-examination if he clarifies
 3 this.
 4 CHAIRPERSON: It sounds like an objection
 5 but it is a suggestion, perhaps you can take the suggestion
 6 aboard, Mr Wesley?
 7 MR WESLEY: I can take it aboard, Chair,
 8 first of all my apologies, what I'm referring obviously to
 9 is 4.7.10 and secondly, Chair, if you have a look, -
 10 Colonel, you've heard the objection. What you say in -
 11 CHAIRPERSON: It is not an objection, it
 12 is a suggestion.
 13 MR WESLEY: Yes, let's just clarify
 14 then -
 15 CHAIRPERSON: I don't have to rule on it.
 16 MR WESLEY: What you say in the first
 17 sentence in QQQ2, the fourth paragraph, "This year, 2012
 18 has been the most challenging one because it started with
 19 uprising at Impala Mine around Rustenburg," and then you go
 20 on to describe the rest of the stuff, so we're dealing with
 21 Impala Mine and what was going on there.
 22 COLONEL MERAFAE: That is so, yes.
 23 MR WESLEY: And what I want to know, and
 24 in 4.7.10 you refer to being the operational commander
 25 during a strike of RDOs at Impala Mine.

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1 COLONEL MERAFAE: That is so.
 2 MR WESLEY: So we're talking about the
 3 same events?
 4 COLONEL MERAFAE: That is so.
 5 MR WESLEY: And at these events as you
 6 say in QQQ2, the part that I read you, "During the uprising
 7 there was loss of lives," lives were lost?
 8 COLONEL MERAFAE: That is so.
 9 MR WESLEY: Property was damaged.
 10 COLONEL MERAFAE: That is so.
 11 MR WESLEY: We know from what you stated
 12 happened at Tlhabane specifically, there were people that
 13 had armed themselves with sharp or dangerous weapons.
 14 COLONEL MERAFAE: That is so.
 15 MR WESLEY: There were incidents where
 16 those sharp and dangerous weapons were used to assault
 17 other people, other people were hurt with those weapons.
 18 COLONEL MERAFAE: Yes, it is so.
 19 MR WESLEY: Can you recall were there any
 20 incidents of intimidation?
 21 COLONEL MERAFAE: Chairperson, they were
 22 happening, but not in the presence, not during the presence
 23 of the police.
 24 MR WESLEY: No, I take that for granted,
 25 I take that for granted. There were illegal gatherings

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1 happening?
 2 COLONEL MERAPE: That is so.
 3 MR WESLEY: Unauthorised marches were
 4 happening?
 5 COLONEL MERAPE: Correct, Sir.
 6 MR WESLEY: Now with all of this going on
 7 these operations that you attended to, or situations, they
 8 remained Public Order Policing in nature?
 9 COLONEL MERAPE: That is so, Sir.
 10 MR WESLEY: And when you attended to them
 11 you applied Standing Order 262?
 12 COLONEL MERAPE: That is so.
 13 MR WESLEY: And you did that without
 14 exception?
 15 COLONEL MERAPE: Correct, Sir.
 16 MR WESLEY: Now do you know of any rule,
 17 other standing order, legislation or anything that allows
 18 you to exclude or to not apply Standing Order 262 at a
 19 situation, Public Order Policing situation?
 20 COLONEL MERAPE: No, there is none,
 21 Chair.
 22 MR WESLEY: Do you know of any such rule
 23 or order that says that, that permits the police to take
 24 some of the principles that are contained in Standing Order
 25 262 and only apply them and not the entire Standing Order

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1 262? Some of the ideas, do you know of a rule that says
 2 you can apply some ideas from Standing Order 262 but not
 3 the whole of it? Do you know of any such thing?
 4 COLONEL MERAPE: I do not understand your
 5 question so clearly, but I do not know of such a rule.
 6 MR WESLEY: Now –
 7 CHAIRPERSON: It is quite clear, is it
 8 not, that Standing Order General 262 applies even in the
 9 case of a spontaneous gathering, an unforeseen gathering, a
 10 gathering where the lives of people can be in serious
 11 danger, that all that's set out in, amongst other places,
 12 in paragraph 14 of the standing order which is headed
 13 "First member at the scene of an unforeseen spontaneous
 14 gathering," sets out what the first member has to do in
 15 subparagraph 2 and sub 5, or sub-sub 5 says, one of the
 16 things, the first thing you have to do is to "Set the
 17 higher standard of tolerance and do not use any firearms
 18 against the demonstrators, except in the case of private
 19 defence should lives be in serious danger." So quite
 20 clearly the drafters of Standing Order 262 appreciated that
 21 there will be situations where, what the Regulation of
 22 Gatherings Act envisages isn't going to happen. There
 23 isn't going to be prior notice of the meeting, of the
 24 gathering, it is going to be unforeseen, it may well be
 25 spontaneous. The lives may well be in serious danger, but

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1 262 is designed to cover situations of that kind as well,
 2 so it seems to me. Would you agree with that?
 3 COLONEL MERAPE: I agree with that,
 4 Chairperson, yes.
 5 MR WESLEY: Okay, now I mentioned the
 6 word "hybrid", it's been used to describe in relation to
 7 Marikana a situation, the operation and the plan. It has
 8 been used to describe those three things, the situation
 9 that was existing at Marikana, the operation that the
 10 police launched and the plan that was drafted. An example
 11 is Major-General Annandale, and I think he was in fact the
 12 first person to use the word, on day 86 - we needn't go
 13 there, I'll read you the part and with the Chair's
 14 assistance we'll get a translation, - well, maybe we
 15 should, otherwise we're not going to get a translation –
 16 CHAIRPERSON: It will be easier for me to
 17 give you the translation if you put it on the screen.
 18 MR WESLEY: Day 86, page 9126.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 MR WESLEY: Day 86, page 9126, 9126, line
 21 22 and following. Now what he says there, he's being
 22 cross-examined by Mr Bizos and in answer to, or his answer
 23 begins with the following, "Voorsitter, ek het in my
 24 getuienis verduidelik in 'n mate was Potch waarskynlik 'n
 25 nabetragting, maar dit was nie 'n pertinente swart analise

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1 van die omstandighede nie. Voorsitter, laat ek verder meld
 2 dat Staande Order 262 is geskryf en dit is een van die
 3 leemtes vir pertinente skadebestuur operasie," and this is
 4 the part, he says, "Hierdie was 'n hibriede situasie wat
 5 baie wyer was as net 'n Staande Order 262 beginsels." If I
 6 can give you my very rough translation, what he is saying –
 7 CHAIRPERSON: Sorry Mr Wesley, shouldn't
 8 we just go a little bit higher up on page 9126 to see what
 9 the statement was that was put by Mr Bizos that he wasn't
 10 agreeing with?
 11 MR WESLEY: We can do that -
 12 CHAIRPERSON: Mr Bizos said, "Your
 13 predecessors in the witness box said they didn't have a
 14 debriefing because the appointment of the Commission made
 15 by the President. Do you subscribe to that excuse or to
 16 that statement? I don't want to judge it as an excuse. Do
 17 you subscribe to" and then he, - oh, I see, so it is not
 18 directly relevant.
 19 MR WESLEY: It is not directly relevant –
 20 CHAIRPERSON: He then says, "Mr Chairman,
 21 in my evidence I explained that in a measure Potch was
 22 probably a hindsight, but it was not a pertinent black
 23 analysis of the circumstances. Mr Chairman, let me," –
 24 sorry, it is not black, the word "swart" is wrongly
 25 transcribed, it should be "SWOT".

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1 MR WESLEY: It should be, Chair, I agree.
 2 CHAIRPERSON: Ja, SWOT analysis. "Mr
 3 Chairman, let me further mention that Standing Order 262
 4 was written and it is one of the gaps for a pertinent
 5 damage control operation. This was a hybrid situation
 6 which was much wider than just a," this is the way he put
 7 it, "a Standing Order 262 principle. It was much wider
 8 than just a Standing Order 262 principle." That's a
 9 literal translation of what he said, but what he was saying
 10 is 262 doesn't apply by itself, it was much wider than that
 11 and it is hybrid. You say, - you've said, as I understand
 12 it, that even a situation such as I put to you unforeseen,
 13 spontaneous, not reported, lives in extreme danger, 262
 14 still applies?
 15 COLONEL MERAFAE: That is correct,
 16 Chairperson.
 17 CHAIRPERSON: Ja, well, I won't go
 18 further.
 19 MR WESLEY: That's the point, the point
 20 that the Chairman has just made is, we can cut out, later
 21 on there is Colonel Scott, we needn't go there but he
 22 testified about the plan being hybrid, but it is really the
 23 situation, what POPS are leading with, even in a sort of a
 24 hybrid situation like the General there is referring to,
 25 Standing Order 262 applies. Now if we can go to day 28,

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1 page 2918, about what Brigadier Mkhwanazi had to say and he
 2 supports, I submit, what you have to say about what
 3 Standing Order 262 does. It is day 28, 2198, up, top
 4 right. Stop there, Craig, that's it. Now -
 5 CHAIRPERSON: Which line are you
 6 referring to?
 7 MR WESLEY: 21, Chair. This is in
 8 English, so I'll read it to you, what he says there, Mr
 9 Ngalwana was busy leading Brigadier Mkhwanazi, he says and
 10 he is referring to Standing Order 262, you'll remember that
 11 there is reference in Standing Order 262 to ACCU.
 12 COLONEL MERAFAE: Yes.
 13 MR WESLEY: And what he says here, Mr
 14 Ngalwana, "So it is fair to say that ACCU is in fact POP?"
 15 Brigadier Mkhwanazi, "That's correct." Mr Ngalwana carries
 16 on to say, "Just very briefly, Brigadier, could you
 17 enlighten us with regards to the purpose of the Standing
 18 Order General 262 is?" Brigadier Mkhwanazi, "The Standing
 19 Order 262, actually it entails to how we must manage our
 20 events, activities. The crowd management issues, how we
 21 must manage them. It entails, it tells us, remember we
 22 have national instructions, we have policies, but the
 23 standing order tells us how we must manage, how we must
 24 deal with the issues of crowd management."
 25 COLONEL MERAFAE: It is correct,

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1 Chairperson.
 2 MR WESLEY: So we know what Standing
 3 Order 262 applies. Tell me in all the years that you have
 4 been in the police you received education, you went through
 5 the courses that you did; were you ever instructed on
 6 something called a hybrid operation and how you're supposed
 7 to deal with a "hybrid operation"? I mean a formal
 8 instruction, lectures and things like that?
 9 COLONEL MERAFAE: No, Chairperson, there
 10 hasn't ever been something like that.
 11 MR WESLEY: Now from a police
 12 perspective, the situation that was on the ground on the
 13 16th, 16 August, remembering you weren't there, it concerned
 14 a crowd. We'd had incidents of intimidation, lives had
 15 been lost, there were illegal marches that happened, there
 16 were illegal gatherings, people were armed with sharp
 17 weapons.
 18 CHAIRPERSON: Why do you say the marches
 19 were illegal?
 20 MR WESLEY: Unauthorised.
 21 CHAIRPERSON: Well, you don't need
 22 authority even under the act, as I understand it, to have a
 23 march.
 24 MR WESLEY: That's correct, Chairperson.
 25 CHAIRPERSON: As the document you were

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1 referring to earlier says.
 2 MR WESLEY: That's -
 3 CHAIRPERSON: People have the right to
 4 assemble and so on.
 5 MR WESLEY: It is unauthorised -
 6 CHAIRPERSON: It says there are things
 7 that have to be done, but it doesn't make the march itself
 8 illegal.
 9 MR WESLEY: Yes, Chair, what I meant to
 10 say, I beg your pardon -
 11 CHAIRPERSON: I think one must bear that
 12 point in mind and always endeavour to state the law
 13 correctly.
 14 MR WESLEY: No, I misspoke there, Chair.
 15 What happened, notice hadn't been given, so the term I used
 16 earlier was unauthorised marches. There wasn't an
 17 authority given for a march, not illegal, not an
 18 authorised -
 19 CHAIRPERSON: I don't think you need
 20 authority, is it? I suppose you can, in certain
 21 circumstances the act does provide for authority in respect
 22 of a particular march that's authorised as opposed to the
 23 one that's applied for.
 24 MR WESLEY: Yes.
 25 CHAIRPERSON: Alright, okay.

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1 MR WESLEY: No, I take the correction,
 2 Chair, but that was the situation that prevailed, that had
 3 been prevailing up to that stage. That was still a Public
 4 Order Policing, a more crowd control situation though?
 5 COLONEL MERAFAE: It is so, Chair.
 6 MR WESLEY: And Standing Order 262
 7 applied?
 8 COLONEL MERAFAE: I agree with you, Sir.
 9 MR WESLEY: Craig, could I have exhibit
 10 U, please, exhibit U? Exhibit U is the contingency plan
 11 for 10 August 2012.
 12 CHAIRPERSON: This is against the marker
 13 20 in the document, in the collection of documents which
 14 the SAPS gave us when the witness began his evidence.
 15 MR WESLEY: As it pleases, Chair. Craig,
 16 if you could go down, down, further, I'll tell you when to
 17 stop. There. You testified about this. This had been
 18 drafted, if I'm not mistaken, by your members, you
 19 instructed a member to draft this.
 20 COLONEL MERAFAE: Correct, Chairperson.
 21 MR WESLEY: Now if you could go to
 22 paragraph 2, there is the mission. Now here we are, just
 23 remind me, was this drafted on the 10th or the 11th of
 24 August? I just want to get the date correct. It is headed
 25 10 August.

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1 CHAIRPERSON: It was signed on the 10th by
 2 the witness and –
 3 COLONEL MERAFAE: It was drafted later on
 4 the 10th, ja.
 5 CHAIRPERSON: - Brigadier Seboloke.
 6 COLONEL MERAFAE: It was drafted later –
 7 CHAIRPERSON: Sorry, sorry, you and I
 8 were talking over –
 9 COLONEL MERAFAE: - on the 10th.
 10 CHAIRPERSON: It's dated the 10th at the
 11 end of the document, and you signed it, as did Brigadier
 12 Seboloke who was the acting cluster commander of the
 13 Rustenburg cluster.
 14 COLONEL MERAFAE: That is correct,
 15 Chairperson.
 16 MR WESLEY: Now what paragraph 2 reads is
 17 as follows, it says, "The Deputy Provincial Commissioner of
 18 North West Province has instructed that public order and
 19 crime prevention be maintained in the area of Marikana
 20 along the route to Eastern Platinum Mine and Western
 21 Platinum Mine before, during and after the strike.
 22 Marikana Crime Prevention and Rustenburg POP will be
 23 deployed."
 24 COLONEL MERAFAE: That is so, Sir.
 25 MR WESLEY: So the Deputy Provincial

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1 Commissioner, that was the instruction, public order must
 2 be maintained and crime prevention, it says it must also be
 3 maintained but probably be enforced would be a better word,
 4 but there are two things SAPS has to do, maintain public
 5 order and do crime prevention, is that correct?
 6 COLONEL MERAFAE: That is so, Sir.
 7 MR WESLEY: Now you've explained what
 8 crime prevention is, you said that it is the duty of -
 9 crime prevention is the basic duty of every single
 10 policeman in this country.
 11 COLONEL MERAFAE: That is so.
 12 MR WESLEY: And if I understand you, if
 13 there is a policeman standing in this room, he doesn't have
 14 to be ordered to do crime prevention; if he sees something
 15 he is going to prevent crime, he does it automatically.
 16 COLONEL MERAFAE: That is correct, yes.
 17 MR WESLEY: So when that order speaks of
 18 crime prevention there is nothing particularly significant
 19 about it because what the general, the Deputy Provincial
 20 Commissioner would be saying for SAPS members to do, they
 21 would do in any event, which is crime prevention.
 22 COLONEL MERAFAE: That is so.
 23 MR WESLEY: The thrust of that order that
 24 was given, that instruction, was the maintenance of public
 25 order, that was the important part.

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1 COLONEL MERAFAE: That is.
 2 MR WESLEY: Could we have a look at
 3 exhibit SS3? That is the amended contingency plan for 13
 4 August. If we can go down to paragraph 2. Yes Chair, I
 5 remember this, there is a page missing from this one.
 6 [10:12] CHAIRPERSON: Well, let's not waste time.
 7 Just read it to him. He signed the document, he should –
 8 MR WESLEY: I will read it, ja.
 9 Paragraph 2 reads as follows, just listen. It's very
 10 similar to what I've already read. It says, "The
 11 Provincial Commissioner of North West province has
 12 instructed that public order be maintained and crime be
 13 prevented in the area of Marikana along the route to
 14 Eastern Platinum Mine and Western Platinum Mine before,
 15 during, and after the strike. Public Order Police,
 16 Tactical Response Team, National Intervention Unit, Air
 17 Wing and VISPOL to be deployed in addition to the existing
 18 force levels." Did you hear that?
 19 COLONEL MERAFAE: I heard, Sir.
 20 MR WESLEY: The instruction again relates
 21 to public order being maintained and crime being prevented.
 22 COLONEL MERAFAE: It is so.
 23 MR WESLEY: And the important part there
 24 we know is the maintenance of public order. That's what
 25 the instruction is actually getting at.

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1 COLONEL MERAFAE: That is so.
 2 MS BALOYI: Chairperson, it's an
 3 objection now. Mr Wesley seems to be reading into that
 4 paragraph something that is not obvious to the rest of us.
 5 Specifically he says that the important part –
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 it sounds as if he's got the wrong one because later as the
 8 situation escalated people came in from other provinces.
 9 It started I think as a cluster operation, then it became a
 10 provincial operation and after that there were units and
 11 people, sources as they're called, from other provinces.
 12 It sounded to me as if he was reading from a later document
 13 in the series and not from the one of the 10th. Am I right,
 14 Mr Wesley?
 15 MR WESLEY: Yes Chair, what I'm reading
 16 from the one from the 13th now.
 17 CHAIRPERSON: Oh well, you said the 10th
 18 actually I think.
 19 MR WESLEY: I've read the 10th. Now I've
 20 read the 13th.
 21 CHAIRPERSON: My fault. You said the
 22 13th. They put the 10th on the screen, so that's why I
 23 thought it was the 10th.
 24 MR WESLEY: Yes, we went through the –
 25 CHAIRPERSON: Okay, hang on. Ms Baloyi,

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1 are you happy now? Now you know it's the 13th and not the
 2 10th, the one that was one the screen, then I think your
 3 point falls away, doesn't it?
 4 MS BALOYI: No, Chair, it doesn't. I
 5 raised a different issue –
 6 CHAIRPERSON: Alright, well make sure I
 7 understand it. What's the different issue?
 8 MS BALOYI: Yes, I will try, Chair.
 9 CHAIRPERSON: I will try. You just do
 10 your best. I'll try.
 11 MS BALOYI: Chair, Mr Wesley reads on the
 12 document of the 13th and he reads at paragraph 2, "The
 13 mission," with the heading "Mission," and it is written,
 14 "The Provincial Commissioner of the North West province has
 15 instructed that public order be maintained and crime be
 16 prevented." He reads that, and then he says but we know –
 17 he says, "But we know that the real instruction here was
 18 the maintenance of public order." Chair, the objection
 19 that I'm raising is that that's not what the paragraph says
 20 and he seems to be reading something different from what I
 21 am reading in the paragraph.
 22 CHAIRPERSON: It does sound as if the
 23 point is well taken, Mr Wesley, don't you think?
 24 MR WESLEY: Chair, with respect I submit
 25 it isn't. We went through the order for the 10th. The

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1 order for the 10th read the "Deputy Provincial Commissioner
 2 of the North West province has instructed that public order
 3 and crime prevented be maintained." The witness went
 4 through it with me; he agreed crime prevention is not
 5 something that a policeman really needs even be ordered to
 6 do, he does it automatically. It's what, it's their bread
 7 and butter. It's their basic duty, and he agreed with me
 8 that the real thrust of that instruction from the Deputy
 9 Provincial Commissioner was the maintenance of public
 10 order. He agreed with all of that.
 11 We then went to the 13th. Now that provides that,
 12 "The Provincial Commissioner of the North West province has
 13 instructed that public order be maintained and crime be
 14 prevented." I could take the Colonel through it again.
 15 Colonel –
 16 CHAIRPERSON: Hang on. Let's see how Ms
 17 Baloyi reacts to that. Ms Baloyi, I take it one has to
 18 read the mission paragraph in the context in which we find
 19 it in the document, and what we see there is, paragraph 1.1
 20 we see the nature of the operation. There's a narrative of
 21 what has happened, various things had taken place. People
 22 were shot. There were gunshots discharged and people were
 23 killed. Then we have the risk analysis in 1.3, murder of
 24 dissenting persons to strike, damage to property,
 25 intimidation, assault, person gathering illegally – that

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1 should be "persons" I take it – acts of public violence,
 2 possession of dangerous weapons. That's the background to
 3 which we read mission. Mission says they've got to
 4 maintain public order and prevent crime. Now prima facie I
 5 would have thought in the context that means that all those
 6 things that are dealt with in the risk analysis must be
 7 prevented from happening insofar it can be done. Wouldn't
 8 that be right?
 9 MS BALOYI: Exactly my objection,
 10 Chairperson.
 11 CHAIRPERSON: Alright, so you and I are
 12 on the same point. Let's see whether Mr Wesley has now
 13 caught up with us. Mr Wesley, do you agree with that?
 14 MR WESLEY: No, Chair. The thrust of
 15 what I'm getting at is the instruction. The instruction,
 16 Chair I can clarify this with some questions. Colonel –
 17 CHAIRPERSON: Okay, this is not a very
 18 semantic debate. What was clear was public order had to be
 19 maintained –
 20 MR WESLEY: Chair –
 21 CHAIRPERSON: All those things listed in
 22 the risk analysis must if possible be prevented. Crime
 23 must be prevented.
 24 MR WESLEY: Crime must be prevented.
 25 CHAIRPERSON: These things are also

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1 crimes, they must also be prevented. So isn't it clear
 2 what it's all about? Whether you can break it up into
 3 public order or crime prevention, I mean clearly there was
 4 a risk which was set up and that, the police had to take
 5 steps as far as they could to prevent it. That's what Ms
 6 Baloyi says. Isn't she right? So shouldn't we move on?
 7 MR WESLEY: Chair, we'll move on, to save
 8 time. Chair, moving on to a new topic now, which is the
 9 Provincial Operational Response meeting of 16 May, I don't
 10 know what time you wish to take a break –
 11 CHAIRPERSON: I thought we'd take it at
 12 half past 10, unless you would like me to take it now for
 13 some reason that you prefer not to disclose?
 14 MR WESLEY: No, 10 minutes, we've got 10
 15 minutes, Chair. Colonel, you attended a Provincial
 16 Operational Response meeting on 16 May 2012. You've dealt
 17 with it in several parts of your statements. One of the
 18 documents that you were asked to look at was the letter of
 19 28 May written by Colonel Vermaak. Before we get to what
 20 you say I just want to get your comment on what he had to
 21 say. JJJ137, you have that? It's the letter of 28 May.
 22 CHAIRPERSON: Item 7 in your cross-
 23 examination bundle. Have you got it?
 24 COLONEL MERAFE: Yes, Chair.
 25 MR WESLEY: Now Colonel Vermaak here

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1 deals with the meeting, although the date that he refers to
 2 is different. He says, "This office attends on 17 May 2012
 3 a Provincial ORS conference at Potchefstroom, which was
 4 held by Brigadier Calitz. During this conference Brigadier
 5 Calitz handles the latest instructions from National ORS
 6 Head Office, the use of force during unrest situations.
 7 The following concerns were raised during the meeting by
 8 the POP units, especially by Lieutenant-Colonel Merafe.
 9 3.1, POP members are withdrawn from POP units to
 10 form parts of shifts at stations;
 11 The recourses that are available to POP to handle
 12 unrest situations are not effective enough;
 13 POP members are divided to assist at different
 14 station areas that are not unrest related."
 15 He summarises some of the difficulties he says
 16 you raised at that meeting. Is this a fair summary of what
 17 you said?
 18 COLONEL MERAFE: It is correct, yes.
 19 MR WESLEY: And then you then
 20 specifically deal with the ORS meeting in exhibit QQ2,
 21 which is your unsigned statement, in paragraphs, your
 22 unnumbered paragraphs, the third – actually it's the fifth
 23 paragraph, paragraph 5, I'll just read it to you. What you
 24 say is, "During all these challenges police management in
 25 the province and national made some interventions by

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1 providing us with additional personnel and resources.
 2 There has been several meetings held where management
 3 raised their concerns regarding the use of force during
 4 unrest situations. The issue of training of members was
 5 also raised, although due to workload and lack of personnel
 6 that was not possible. This has been communicated with
 7 Brigadier Calitz during 16 May 2012 during ORS Provincial
 8 conference held at Potchefstroom."
 9 So you then told Brigadier Calitz at that meeting
 10 some of the difficulties. In QQ3, which is your
 11 supplementary statement, in paragraph 3 you also mention it
 12 briefly. I'll read to you what you say there. You refer
 13 to the minutes, you say, "As to the minutes of Provincial
 14 Operational Response meeting of 16 May 2012 I raised my
 15 concerns about the shortage of personnel and equipment for
 16 POPS in the North West. The area has many challenges and
 17 we need sufficient personnel to be available 24 hours a
 18 day. Sometimes things would happen at night and we could
 19 not attend to them because we were working fulltime, with
 20 some members working overtime and others being absent. The
 21 problem is simply that there are too few POPS members.
 22 Equipment problems include that we are using old vehicles
 23 and that there are too few troop carriers. I'm still
 24 waiting for matters to improve to this day." Is that
 25 correct?

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1 COLONEL MERAFE: It is so, Sir.
 2 MR WESLEY: The main difficulties, the
 3 several difficulties that you mentioned, the main
 4 difficulties appear at that stage to have been shortage of
 5 personnel and shortage of equipment.
 6 COLONEL MERAFE: That is so, Sir.
 7 MR WESLEY: Now in paragraph 3 of QQQ2
 8 you mention the restructuring process. Was that the cause
 9 of most of these difficulties, what you refer to there as
 10 the restructuring process?
 11 COLONEL MERAFE: Chairperson, yes,
 12 members and some vehicles were removed from POP to
 13 stations.
 14 MR WESLEY: Okay, but this restructuring
 15 process, can you just tell us what was it? You talk about
 16 the restructuring process. You see the second sentence
 17 right at the top you say, "There have been challenges in
 18 how POP units operate in the country due to changes that
 19 was done in the police due to restructuring processes."
 20 What was that restructuring process?
 21 COLONEL MERAFE: Some members of the
 22 police were removed from certain units and taken to other
 23 units at station level in order to capacitate the station.
 24 COMMISSIONER HEMRAJ: Does that include,
 25 Colonel, the placing of POPS members at station level to

<p style="text-align: right;">Page 26949</p> <p>1 deal with the community policing model?</p> <p>2 COLONEL MERAFAE: That is correct, Chair.</p> <p>3 Yes, POPS members were taken for the duties to the</p> <p>4 stations.</p> <p>5 MR WESLEY: Okay, and you carry on, now</p> <p>6 this restructuring process that you're talking about, this</p> <p>7 is what then led to what you say there in the fourth</p> <p>8 paragraph, fourth line, led to the ineffectiveness in the</p> <p>9 way that public order incidents were policed. Is that then</p> <p>10 the result of this restructuring process?</p> <p>11 COLONEL MERAFAE: Yes, at that time after</p> <p>12 the removal of this police there were few and we could not</p> <p>13 then do the job as we used to do it.</p> <p>14 MR WESLEY: As far as Public Order</p> <p>15 Policing goes, and remember, restrict it to your cluster,</p> <p>16 that was a very serious situation for you to have?</p> <p>17 COLONEL MERAFAE: That's correct, Chair.</p> <p>18 COMMISSIONER HEMRAJ: I'm sorry to</p> <p>19 interrupt you, Mr Wesley. That restructuring took place in</p> <p>20 early 2000, thereabouts, did it not?</p> <p>21 COLONEL MERAFAE: Yes, it happened in</p> <p>22 early 2000.</p> <p>23 COMMISSIONER HEMRAJ: So POPS and your</p> <p>24 division was then labouring under this difficulty right</p> <p>25 from then?</p>	<p style="text-align: right;">Page 26951</p> <p>1 COLONEL MERAFAE: I see it, Chairperson.</p> <p>2 MR WESLEY: This was introduced by Mr</p> <p>3 Chaskalson during cross-examination of Colonel Scott and we</p> <p>4 found this document in six places on the various police</p> <p>5 hard drives. Would you accept my word for that, that's</p> <p>6 where we got it?</p> <p>7 COLONEL MERAFAE: I accept that.</p> <p>8 MR WESLEY: Now the document, the eighth</p> <p>9 document in the bundle that I gave you, did you look at</p> <p>10 that document? It's also headed minutes of the Provincial</p> <p>11 Operational Response meeting 2012-05-16 at 09:00. Did you</p> <p>12 see that document?</p> <p>13 COLONEL MERAFAE: I saw it, Chair.</p> <p>14 MR WESLEY: Chair, we need an exhibit</p> <p>15 number for this. It's the eighth document –</p> <p>16 CHAIRPERSON: Well, I expect it will be</p> <p>17 QQQ10, but we'll find out whether I was right. Unless, the</p> <p>18 question is do we call it QQQ10, that's if Ms Pillay will</p> <p>19 give us permission, or do we go back to the document which</p> <p>20 is it's twin brother, I should imagine.</p> <p>21 MR WESLEY: The name of the document is</p> <p>22 ORS meeting 2012-05-16 (2). That was the name of the</p> <p>23 document.</p> <p>24 CHAIRPERSON: It's linked to your</p> <p>25 document 6 which is JJJ113. So the question is do we call</p>
<p style="text-align: right;">Page 26950</p> <p>1 COLONEL MERAFAE: Yes, there were general</p> <p>2 changes in the whole SAPS, Chairperson, which also affected</p> <p>3 us in one or the other way.</p> <p>4 COMMISSIONER HEMRAJ: So the</p> <p>5 ineffectiveness that you talk about there must have started</p> <p>6 some time soon after the restructuring in 2000?</p> <p>7 COLONEL MERAFAE: Correct, Chairperson.</p> <p>8 COMMISSIONER HEMRAJ: Thank you.</p> <p>9 MR WESLEY: Thank you, Commissioner.</p> <p>10 Chair, I'm going to move on to another document now, so if</p> <p>11 this would be appropriate? It's almost half past.</p> <p>12 CHAIRPERSON: I was intending to take it</p> <p>13 at half past, but seeing you're moving on to a new document</p> <p>14 we'll now take the first comfort break.</p> <p>15 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>16 [10:57] CHAIRPERSON: The Commission resumes.</p> <p>17 Colonel, you're still under oath.</p> <p>18 OMPHILE JOSEPH MERAFAE: (s.u.o.)</p> <p>19 CHAIRPERSON: Mr Wesley, are you still</p> <p>20 cross-examining?</p> <p>21 CROSS-EXAMINATION BY MR WESLEY (CONTD.):</p> <p>22 I'm still going on, Chair. Colonel, you had a look at, in</p> <p>23 the bundle, it was item number 6 JJJ113, minutes of the</p> <p>24 Provincial Operational Response meeting 2012-05-16 at</p> <p>25 09:00. You saw that document? It's JJJ113.</p>	<p style="text-align: right;">Page 26952</p> <p>1 it JJJ113.1 or do we give it a QQQ-number? That's the only</p> <p>2 point.</p> <p>3 MR WESLEY: QQQ10, Chair because they</p> <p>4 actually –</p> <p>5 CHAIRPERSON: Alright.</p> <p>6 MR WESLEY: I'm going to show –</p> <p>7 CHAIRPERSON: How do I describe it? We</p> <p>8 haven't got Ms Pillay's permission yet. Ms Pillay, am I</p> <p>9 right?</p> <p>10 MS PILLAY: That's correct, Chair.</p> <p>11 CHAIRPERSON: Good, alright. QQQ10, what</p> <p>12 do I call it?</p> <p>13 MR WESLEY: Chair, the name of the</p> <p>14 document that we found, that was provided is ORS meeting</p> <p>15 2012-05-16 (2).</p> <p>16 CHAIRPERSON: I don't see that in the</p> <p>17 document, but if that's the way, that's how you found it</p> <p>18 that's how you found it.</p> <p>19 MR WESLEY: It's the electronic name of</p> <p>20 the document, Chair.</p> <p>21 CHAIRPERSON: Are there differences</p> <p>22 between it and JJJ113?</p> <p>23 MR WESLEY: There's a significant</p> <p>24 difference which I'm going to show the Colonel now. Chair,</p> <p>25 the first difference –</p>

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1 CHAIRPERSON: Okay. So I will call it,
 2 well I suppose that's enough, the description you gave us.
 3 ORS meeting 2012-05-16.
 4 MR WESLEY: Colonel, if one puts these
 5 two documents next to each other the first difference that
 6 one sees is that JJJ113 is seven pages long whereas QQQ10
 7 is eight pages long and the – well, let me start here.
 8 They both purport to be minutes of the Provincial
 9 Operational Response meeting of 16 May. Both of them say
 10 so. But there's two separate minutes here, did you know
 11 that there were two versions of the minutes of that
 12 meeting?
 13 COLONEL MERAFAE: I did not know this,
 14 Chairperson.
 15 MR WESLEY: Now the difference between
 16 the two documents, if you go to page 3 of QQQ10 you'll see
 17 at the bottom of the page it says page 3 of 8. Right
 18 there, you see on the screen, if you can go a bit down,
 19 Craig.
 20 COLONEL MERAFAE: I see, Chair.
 21 MR WESLEY: Now the last paragraph there,
 22 it reads, "Lieutenant-Colonel Merafe also mentioned that
 23 his members are still being utilised by the cluster for the
 24 crime combating strategy and that creates a shortage which
 25 also influences the regular training. Brig said he'll take

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1 this up with DPC Mpembe to discuss it with the cluster
 2 commander."
 3 COLONEL MERAFAE: I see that, Chair.
 4 MR WESLEY: That paragraph is the
 5 difference between the two documents. That paragraph does
 6 not appear in JJJ113, the paragraph where you raise that
 7 issue.
 8 CHAIRPERSON: Mr Wesley, may I ask you
 9 this. JJJ113, the first document which does not contain
 10 the paragraph to which you've now referred us, was that on
 11 the police hard drive given to the evidence leaders?
 12 MR WESLEY: Yes, Chair, we found it in
 13 six places.
 14 CHAIRPERSON: No, no, JJJ113 was on the
 15 hard drive given to the evidence leaders by the police.
 16 MR WESLEY: Yes.
 17 CHAIRPERSON: The new exhibit we're now
 18 looking at, QQQ10, was that given to the evidence leaders
 19 on the police hard drive?
 20 MR WESLEY: No, Chair, let me explain, I
 21 should have mentioned this. QQQ10 we sent a specific
 22 request to the police regarding information and documents
 23 pertaining to Lieutenant-Colonel Vermaak and Lieutenant-
 24 Colonel Merafe. What we received in return, one of the
 25 documents we asked for was the minutes of the ORS meeting,

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1 this ORS meeting. What you see as QQQ10 is what we then
 2 received. So we found JJJ113 on the SAPS hard drive and
 3 that was then introduced by Mr Chaskalson and we were given
 4 QQQ10 by the police.
 5 CHAIRPERSON: Subsequently in response to
 6 the request that you –
 7 MR WESLEY: A specific request
 8 COMMISSIONER HEMRAJ: Which is the
 9 modified document, which came first?
 10 MR WESLEY: Well, we can't tell you which
 11 came first. We can tell you that there's a difference and
 12 the difference is that paragraph pertaining to Lieutenant-
 13 Colonel Merafe.
 14 CHAIRPERSON: I take it it's a fair
 15 inference which the police may wish to rebut that the one
 16 with 2 in it, 2 in brackets at the end of the description
 17 is probably the later document.
 18 MR WESLEY: It could be, Chair.
 19 CHAIRPERSON: But it may not be correct.
 20 It may be, I mean there are two possibilities. Either this
 21 document, the paragraph omitted was regarded as unfortunate
 22 and had to be taken out or its omission was noted –
 23 MR WESLEY: And it was included.
 24 CHAIRPERSON: And it was, initiatives
 25 were taken to put it in in the second version. The fact

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1 that it's called (2) would seem to support the latter
 2 inference, but that's a matter, if the witness can't help
 3 us -
 4 MR WESLEY: Yes.
 5 CHAIRPERSON: - maybe a request can be
 6 sent to the police and they can explain to us what the true
 7 facts are.
 8 MR WESLEY: Chair, I must agree. It
 9 seems, if one looks at the two it appears that what
 10 happened was the first one was read and the omission was
 11 seen and then it was then included, this paragraph.
 12 CHAIRPERSON: Ja, well that's one
 13 inference, one of the other inferences. But we don't have
 14 to speculate, I'm sure the police will tell us. Maybe the
 15 witness knows. Colonel, this point that is being dealt
 16 with now, the fact that there are two copies of this, of
 17 the minutes of this meeting and the one copy, the one we
 18 have on the screen at the moment contains a paragraph which
 19 is not in the other and that paragraph refers specifically
 20 to what amounted to a complaint which you raised that you
 21 were having a problem because the, some of your members are
 22 still being used, were still being used by the cluster for
 23 the crime and combating strategy and that created a
 24 shortage which influenced training and so on. Now do you
 25 know whether the minute that's got that paragraph came

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1 after the minute that doesn't contain that paragraph, or
 2 was that paragraph to your knowledge omitted from a
 3 previous minute? Can you help us on that point?
 4 COLONEL MERAFAE: According to me,
 5 Chairperson, it has been corrected now because it was not
 6 inserted in the previous minutes.
 7 CHAIRPERSON: Did you notice at some
 8 later stage that this important paragraph which contained
 9 this point that you made had been omitted from the first
 10 set of minutes?
 11 COLONEL MERAFAE: It is so. It was
 12 forgotten in the previous minutes.
 13 CHAIRPERSON: Did you then take the
 14 initiative to ensure that a second minute was drafted which
 15 contained this important paragraph?
 16 COLONEL MERAFAE: That is so, Chair.
 17 MR WESLEY: Thank you, Chair. Colonel,
 18 could you explain that paragraph, the content of it, could
 19 you tell the Commissioners what exactly - remember now
 20 we're now at 16 May at this meeting - what exactly were you
 21 complaining about there, in your own words?
 22 COLONEL MERAFAE: Members of the Public
 23 Order Police were removed from the POP and taken to the
 24 strategy, crime combating strategy in Rustenburg. I was
 25 then complaining about the shortage of members that allows

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1 me not to be able to function properly. I was saying in
 2 accordance with the training of these members that I've
 3 mentioned because of the shortage they cannot do the work
 4 they are trained to do.
 5 MR WESLEY: So members, POP members, what
 6 was happening POP members, Public Order Policing members
 7 were being taken away from Public Order Policing and sent
 8 on this crime combating strategy.
 9 COLONEL MERAFAE: That is so.
 10 MR WESLEY: That leaves a shortage of
 11 personnel at Public Order Policing.
 12 COLONEL MERAFAE: Yes. The shortage of
 13 police in the Public Order Policing made our job difficult.
 14 MR WESLEY: Made it more difficult, but
 15 it had another influence, it also influenced regular
 16 training. So regular training, was it being - the
 17 influence on regular training, what was that?
 18 COLONEL MERAFAE: Training, yes, wasn't
 19 taking place because of the shortage of the members.
 20 MR WESLEY: Okay. It says here, "Brig
 21 said he'll take this up with DPC Mpembe to discuss it with
 22 cluster commander." The Brig there I take it is a
 23 reference to Brigadier Calitz, is that correct?
 24 COLONEL MERAFAE: Correct, Chair.
 25 MR WESLEY: Do you know if he did take it

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1 up with General Mpembe?
 2 COLONEL MERAFAE: I did not receive any
 3 feedback that he had spoken to him, Sir.
 4 MR WESLEY: Okay.
 5 CHAIRPERSON: Did the problem still exist
 6 by the 16th of August 2012?
 7 COLONEL MERAFAE: The problem was only
 8 solved on the 13th of August, Mr Chairman, when it was said
 9 that all the people that had been sent to the crime
 10 combating strategy should return back to the POP.
 11 CHAIRPERSON: They, if that was only said
 12 on the 13th of August they didn't have the opportunity then
 13 to have the training that would have been given in the
 14 interim, if there was any, is that right?
 15 COLONEL MERAFAE: Chair, yes. The police
 16 had undergone POP training before. The training that I
 17 refer to here, Chairperson, is in-service training where we
 18 sharpen people for expected actions.
 19 CHAIRPERSON: Had they been - you say
 20 this was said on the 13th of August. Did you get them back
 21 by the 13th of August or were they still being utilised by
 22 the cluster for the crime combating strategy?
 23 COLONEL MERAFAE: The morning of the 13th
 24 Brigadier Calitz gave the instruction that they should all
 25 come back to perform their services with us.

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1 CHAIRPERSON: Did they on the 13th?
 2 COLONEL MERAFAE: Correct, Chair, they
 3 did.
 4 COMMISSIONER HEMRAJ: But was this in
 5 effect a redeployment of them back to POPS or did they
 6 remain with the station level and only come through for
 7 that operation?
 8 COLONEL MERAFAE: They were taken for
 9 operation that was ongoing in Rustenburg, Chairperson.
 10 They were not doing POP duties, they were doing specific
 11 crime prevention services, divided into different shifts,
 12 some were working during the day and some during the night.
 13 That's when I had problems of solving crowd, when I had to
 14 manage crowds I had a problem of a shortage of policemen.
 15 COMMISSIONER HEMRAJ: And after the
 16 operation would they go back to station level then?
 17 COLONEL MERAFAE: After the operation they
 18 came back eventually to Public Order Policing.
 19 CHAIRPERSON: Were they or some of them
 20 part of the group that went to the railway line on the 13th
 21 of August?
 22 COLONEL MERAFAE: Correct, Chairperson,
 23 some of them were with us at the railway station, at the
 24 railway.
 25 CHAIRPERSON: To your knowledge did some

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1 of them or all of them remain involved in what one can call
 2 the Marikana operation till after the 16th of August?
 3 COLONEL MERAFAE: All the members of the
 4 Public Order Policing in Rustenburg remained during the
 5 Marikana. Only those who were at the satellite police
 6 station, after the death of Warrant Officer Lepaaku they
 7 went back to their station to go and arrange for the
 8 burial.
 9 CHAIRPERSON: In other words they weren't
 10 there on the 16th?
 11 COLONEL MERAFAE: The 16th, no they were
 12 not there, Chair.
 13 CHAIRPERSON: I see, but as far as the
 14 operation on the 13th is concerned the shortage to which you
 15 referred in this minute, that wasn't a problem. Is that
 16 right?
 17 COLONEL MERAFAE: It wasn't a problem on
 18 the 13th, Chairperson, that is correct.
 19 COMMISSIONER HEMRAJ: But if the shortage
 20 that you complain about here is that which came about as a
 21 result of the restructuring then this cannot have been the
 22 first time that you would have complained about it.
 23 COLONEL MERAFAE: When I made the
 24 complaint about the shortage of members, Chairperson, the
 25 province was busy with crime prevention strategies around

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1 Rustenburg. Whenever they had a shortage of members of the
 2 police they would take from the POP to fill in the
 3 vacancies they had at the different stations. These people
 4 would be on a deployment basis from month to month,
 5 Chairperson. This was from May to August.
 6 MR WESLEY: Colonel, so am I fair to say
 7 that - sorry.
 8 COMMISSIONER HEMRAJ: I'm not sure I
 9 quite understand that. The shortage that you talk about
 10 having existed for a couple of years, every time you
 11 complained was anything done about it to bring those
 12 members back from crime combating back into POPS so that
 13 you could give them the training that was required?
 14 COLONEL MERAFAE: Let me explain it this
 15 way, Chairperson. There was a restructuring, let me say a
 16 unit that had 200 members would remain with for instance
 17 105 members, that was the restructuring. Some of the
 18 members on the 200 were transferred on permanent basis to
 19 the stations. The remaining 105 that I mention, when crime
 20 would rise at particular stations they would then be taken
 21 from the remaining to fill up those vacancies.
 22 [11:17] That is why I was complaining the Public Order
 23 Police were not performing the jobs they were trained for,
 24 they were doing crime management strategy, and then I was
 25 struggling to get them whenever I had problems in managing

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1 crowds.
 2 COMMISSIONER HEMRAJ: Thank you very
 3 much, Colonel.
 4 MR WESLEY: Okay, Colonel, the second
 5 place that you are mentioned in this document is on page 5
 6 thereof, towards the middle, page 5, Craig. You'll see at
 7 the top, just above the line, there is a line through the
 8 centre of the page, the passage reads, "Lieutenant-Colonel
 9 Merafe wanted clarity on the 50 new constables that are
 10 supposed to report at the units. Feedback from HRU is
 11 awaited." Now can I first ask you, HRU, I'm taking a
 12 guess, is that Human Resources?
 13 COLONEL MERAFAE: Correct, Chair, the
 14 provincial one.
 15 MR WESLEY: Alright, could you please
 16 tell the Commissioners about these 50 new constables that
 17 were supposed to report to you? What was this about?
 18 COLONEL MERAFAE: When the Rustenburg
 19 Crime Prevention strategy was introduced, because I raised
 20 the question of a shortage of police, as to how many, with
 21 how many members can they help me, I was given the 50. Ja,
 22 I was asking as to when they would be given because the
 23 shortage still exists.
 24 MR WESLEY: How long prior to 16 May were
 25 you, if I can use the word, "promised" these 50 new

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1 constables, how long had you been waiting in other words
 2 for these 50 new constables?
 3 COLONEL MERAFAE: Two years, Chairperson.
 4 MR WESLEY: Did you get any feedback from
 5 Provincial Human Resources eventually?
 6 COLONEL MERAFAE: Yes, I was told that
 7 those people were still undergoing training. I was told
 8 that as soon as they pass out, completing their training,
 9 they would be sent to the unit.
 10 MR WESLEY: And when did they eventually
 11 arrive?
 12 COLONEL MERAFAE: They reported last
 13 month, March of this year, Chairperson.
 14 MR WESLEY: Now just to round off this
 15 point here, in paragraph 8.2 of QQQ1 - there is no trick
 16 here, Colonel, I'm trying to, what I'm actually trying to
 17 get at is when these things were fixed. In paragraph 8.2
 18 of QQQ1 which you deposed to on the 10th of April, you refer
 19 to Lieutenant-Colonel Vermaak's letter of 28 May and you
 20 then state the following, it reads, "My members who were
 21 posted to stations have since been released back to my unit
 22 following my raising my concerns. I've also been provided
 23 with additional members to beef up the strength of my
 24 unit." Now you've just explained when this happened, this
 25 is -

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1 COLONEL MERAPE: Correct, Chair.
 2 CHAIRPERSON: I see in fact it's made on
 3 the 10th of April 2014, so it was accurate to say that the
 4 members had been released back to your unit, but it was a
 5 bit misleading in the sense that we are really concerned
 6 with the situation as it existed in August 2012 and they
 7 hadn't been posted back by then.
 8 COLONEL MERAPE: That's correct.
 9 MR WESLEY: But in fairness to you, if
 10 one has regard to QQQ3 which you - that's the statement you
 11 signed on the 29th of November 2013, in the third paragraph,
 12 the very last sentence after you deal with the problems
 13 that you had with POP members, at that stage you wrote,
 14 "I'm still waiting for matters to improve to this day."
 15 COLONEL MERAPE: I was still waiting,
 16 yes.
 17 COMMISSIONER HEMRAJ: Colonel, does the
 18 current POP complement then make for an effective unit, the
 19 current complement, the number of people you have under
 20 your command in POP?
 21 COLONEL MERAPE: That's correct,
 22 Chairperson.
 23 COMMISSIONER HEMRAJ: And how many are
 24 there?
 25 COLONEL MERAPE: 188.

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1 COMMISSIONER HEMRAJ: As compared to
 2 August 2012?
 3 COLONEL MERAPE: As compared to August
 4 2012 where I had 150, I have enough for now.
 5 CHAIRPERSON: Did you say 115 or a 150,
 6 one, one five or one five oh?
 7 COLONEL MERAPE: 150, Chairperson,
 8 including people that are doing administration.
 9 CHAIRPERSON: One five oh, including
 10 administrative staff?
 11 COLONEL MERAPE: Yes, we had the 150,
 12 Chairperson, before I received the new members, that is 41
 13 new members.
 14 MR WESLEY: If we could go back to QQQ10,
 15 it is the minute of the ORS meeting. Colonel, you'll see
 16 at the top, the first part, the first page of it, in fact
 17 it is page 2, if you can go down, Craig? There is - it is
 18 the start of the conference. It reads, what's written
 19 there, I want to read it and then just ask you to comment
 20 on a couple of things that are stated there and I want to
 21 read it for the record. It reads, "Brigadier Calitz
 22 explained the reason for the meeting. He gave feedback on
 23 the meeting he had with the head office and PC regarding
 24 the use of force. Brigadier Calitz said the use of rubber
 25 is becoming a huge problem and Lieutenant-General Mawela

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1 signed a letter and it was distributed to all whereby he
 2 said the use of rubber must stop immediately. Brigadier
 3 Calitz gave feedback from the PC regarding the use of
 4 rubber. He said the PC wanted to know about the policy and
 5 guidelines of crowd management, whether has it changed or
 6 not. Brigadier Calitz explained that the use of force can
 7 result into an investigation.
 8 He then asked the unit commanders if they had a
 9 parade to ask and inspect members if they still have rubber
 10 and they must hand them back to POP Potchefstroom
 11 Logistics. Brigadier Calitz gave an instruction after
 12 receiving the instruction from National, all unit
 13 commanders send a certificate to his office stating they
 14 have complied with the instruction. He mentioned that
 15 rounds must be stored in the safe at Potchefstroom POP."
 16 Now just, I'm going to ask you just a couple of
 17 questions, but I want to clarify something. There is
 18 reference here to a letter by Lieutenant-General Mawela.
 19 We will be having a look at it later but it is before this
 20 Commission already. Chair, it is exhibit T, it is the
 21 letter by Lieutenant-General Mawela dated 20 December 2011
 22 regarding the use of rubber bullets.
 23 Colonel, if you can just listen, it says in
 24 paragraph 5, the instruction is, "The use of rubber rounds
 25 in shotguns must be stopped with immediate effect." Now I

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1 just want to orientate you, that's 20 December 2011, the
 2 use of rubber rounds in shotguns must stop with immediate
 3 effect. So rubber rounds and shotguns were withdrawn, the
 4 use of them was withdrawn on that day. That letter, that
 5 was subsequently replaced by what became exhibit S before
 6 this Commission, and that was an instruction issued by
 7 General Phiyega on 20 July 2012. In paragraph 2.2.3 of
 8 that, "Shotgun rubber rounds, blue and white rounds are
 9 again permitted," and do you confirm that letter? Do you
 10 know that exhibit S, what I'm referring to there, the
 11 letter by General Phiyega?
 12 COLONEL MERAPE: I do, Sir, I do know.
 13 MR WESLEY: Now that was the instruction
 14 that existed at the time of Marikana.
 15 COLONEL MERAPE: Correct, Chairperson.
 16 MR WESLEY: Okay, we're going to return
 17 to that now-now, but if we can just go back to what's
 18 written here, QQQ10, "First of all Brigadier Calitz
 19 explained the reason for the meeting." What was the reason
 20 for the meeting, this ORS meeting? What was the reason for
 21 it?
 22 COLONEL MERAPE: The meeting was intended
 23 to bring together all the unit commanders of the province
 24 to check whether we maintain the same standards throughout
 25 the province and also to look at how our operations were

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1 going about in the province. This is a meeting that is
 2 held from time to time to share knowledge and good
 3 practice, yes.
 4 MR WESLEY: Now it goes on to read that,
 5 "Brigadier Calitz said the use of rubber is becoming a huge
 6 problem." Explain that, what was the huge problem?
 7 COLONEL MERAFA: Chairperson, in other
 8 instances police used too much rubber and that this would
 9 result in people being injured as a result of the use of
 10 rubber. There were instances where there was too much
 11 rubber being used and there were complaints about this and
 12 which was showing the lack of command and control. These
 13 were some of the things that were being discussed.
 14 COMMISSIONER HEMRAJ: These were
 15 incidents that must have preceded the letter in exhibit T
 16 dated 20 December 2011?
 17 COLONEL MERAFA: Correct, Chairperson.
 18 MR WESLEY: In the next sentence
 19 reference is made to PC, is that Provincial Commissioner?
 20 COLONEL MERAFA: Correct, Chair.
 21 MR WESLEY: Brigadier Calitz then gives
 22 feedback from the PC and he mentions that she wanted to
 23 know if the policy and guidelines of crowd management had
 24 changed. We'll read the sentence, "Brigadier Calitz gave
 25 feedback from the PC regarding use of rubber. He said the

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1 PC wanted to know about the policy and guidelines of crowd
 2 management, whether has it changed or not."
 3 COLONEL MERAFA: I take it that is what
 4 Brigadier Calitz was saying and that is why it is written
 5 like that.
 6 MR WESLEY: Okay, you don't know anything
 7 more about that?
 8 COLONEL MERAFA: The discussion between
 9 Brigadier Calitz and the PC, I didn't really take much note
 10 of it.
 11 MR WESLEY: From the next couple of
 12 sentences that we've got here we know that Brigadier Calitz
 13 then gave an instruction that unit commanders are to have a
 14 parade and to ask and inspect the members to see whether
 15 they have rubber bullets and if they do they must hand it
 16 back to POP, and then they've got to send a certificate
 17 through to his office saying they have complied with that
 18 instruction, is that correct?
 19 COLONEL MERAFA: That is so.
 20 MR WESLEY: Was this implemented?
 21 COLONEL MERAFA: I don't remember.
 22 MR WESLEY: Okay, Colonel, I want to move
 23 on then to Tlhabane, so that we can explain to the
 24 Commissioners –
 25 CHAIRPERSON: Before you move on, in the

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1 later document, the minutes of the Public Order Police
 2 Conference of the 29th of May 2012 at the Manhattan Hotel,
 3 Pretoria, I can't remember what the exhibit number of that
 4 is, is it an exhibit yet? I think it is.
 5 MR WESLEY: Chair, I'll get you the
 6 exhibit number now.
 7 CHAIRPERSON: Yes, it is QQQ4.
 8 MR WESLEY: Ja.
 9 CHAIRPERSON: QQQ4, there this point is
 10 raised again in a way which I think is relevant in the
 11 present context. Firstly on page 3 we see the acting
 12 National Commissioner General Mkhwanazi speaks about the
 13 need to manage crowds properly and there is a passage in
 14 red type, "Commanders on the ground must do an inspection
 15 on the rounds members are carrying." So it sounds as if
 16 that is an instruction that the acting National
 17 Commissioner had given by the end of May 2012 and then on
 18 the next page, - no, a few pages further on there is a
 19 statement by General Mpembe who says that the North West
 20 province has now done away with rubber. Were you at that
 21 meeting?
 22 COLONEL MERAFA: I was present, Chair.
 23 CHAIRPERSON: Can you remember General
 24 Mpembe dealing with that matter of rubber in the North
 25 West?

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1 COLONEL MERAFA: I remember this thing
 2 mentioned, Chairperson, that there was too much use of
 3 rubber. This was after the Ficksburg incident, the Tatane
 4 incident.
 5 CHAIRPERSON: Yes, if you look at the
 6 foot of page 4, on the top of page 5 of that exhibit, have
 7 you got it in front of you? What is said there is,
 8 "General Mpembe mentioned the DPC needs to give an account
 9 on what happens in provinces, relook at the opening of
 10 certain units," and then he goes on to say on the next page
 11 the following, firstly he says, "Teargas is not effective."
 12 That has also been put in red type, and then he says two
 13 sentences later, "NW has stopped using rubber." So there
 14 he said that, in other words by the 29th of May he stated at
 15 this, effectively a National Conference, that North West
 16 had stopped using . That was correct, I take it?
 17 COLONEL MERAFA: It is so, Chairperson,
 18 but I'd like to say the rubbers that are being mentioned
 19 here, some that were withdrawn, amongst others birdshot
 20 rubber, AAA number 5s, those were the rubbers that were
 21 mentioned not to be used again. The reduced rubber was
 22 blue and the white ones, these had not been taken away.
 23 CHAIRPERSON: And what acting National
 24 Commissioner Mkhwanazi had said on the third page of this
 25 document about commanders on the ground being required to

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1 do inspections on the round members are carrying, was that
 2 being implemented in the North West province?
 3 COLONEL MERAFAE: Yes, that was done,
 4 Chairperson, because we had to account as to how many
 5 rounds a member has been issued with.
 6 CHAIRPERSON: Thank you. Perhaps you can
 7 explain to us what is meant by Lieutenant-Colonel Wepener,
 8 if you look at paragraph 5.4 of these minutes.
 9 [11:37] MR WESLEY: Chair, might I interject?
 10 After we've dealt with Tlhabane, this meeting that you
 11 referred to happened a week after Tlhabane and I intend to
 12 go through that in detail.
 13 CHAIRPERSON: Alright, sorry if I'm
 14 interrupting the flow and the plan of your cross-
 15 examination, I apologise.
 16 MR WESLEY: No problem, Chair, we've done
 17 – Colonel, you know where we are now, we've done 16 May and
 18 we've gone through the meeting, the ORS meeting. Now the
 19 next important event is a week later, approximately a week
 20 later, the 22nd of May and that's Tlhabane and the minute
 21 that the Chair is referring is about a meeting that
 22 happened about a week after that.
 23 COLONEL MERAFAE: Okay.
 24 MR WESLEY: So let's just go back,
 25 quickly look at Tlhabane and I think it's only fair to you

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1 that you can explain exactly what happened at Tlhabane and
 2 how it happened and we do have some pictures that will
 3 assist you. But you deal with this in paragraph 6 of
 4 exhibit QQQ2, in paragraph 9 of exhibit GGG15 and in
 5 paragraph 2 of QQQ3. My first question to you is the
 6 importance of Tlhabane, what is important about Tlhabane
 7 that you wanted to tell them, the Commissioners?
 8 COLONEL MERAFAE: What is important here
 9 was to demonstrate how we managed to control the crowd
 10 there.
 11 MR WESLEY: Okay, in order to save time I
 12 don't intend reading the references I've given to you but
 13 you have read them, it's paragraph 6 of QQQ2, paragraph 9
 14 of GGG15 and paragraph 2 of QQQ3. Apart from that is there
 15 anything else that you can think of adding before we go to
 16 the photographs, that you want to add to what you've
 17 written in those paragraphs?
 18 COLONEL MERAFAE: I also want to explain
 19 that though there was a shortage of members and equipment
 20 we managed to control and maintain public order on the day
 21 in question.
 22 MR WESLEY: Okay, now there's a set of
 23 photographs I want to refer you to. The incident occurred
 24 mid-morning – Craig, do you have the photographs? Can you
 25 just indicate?

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1 COMMISSIONER HEMRAJ: Is this item 12 in
 2 your bundle, Mr Wesley?
 3 MR WESLEY: Yes, thank you, Commissioner.
 4 Okay, Craig's got them, he's going to put them up now.
 5 CHAIRPERSON: Actually it looks like item
 6 13. Item 12 according to my bundle says duplication number
 7 7. So item 13. So what we'll do is we'll mark this – how
 8 many pages are there?
 9 MR WESLEY: Chair, the photographs run
 10 from 3009 through to 4112, but that's not consecutive.
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 MR WESLEY: Chair, I'm just going to have
 13 count them quickly.
 14 CHAIRPERSON: [Microphone off, inaudible]
 15 instead of counting them all.
 16 MR WESLEY: Chair, unfortunately they're
 17 not consecutive. 59. There's people that count quicker
 18 than I do.
 19 CHAIRPERSON: We'll call them QQQ11.1 to
 20 59 and they are photographs of incidents, this is the
 21 Tlhabane thing, is it? What's the date of that?
 22 MR WESLEY: 22nd of May 2012.
 23 MS PILLAY: Chair, in keeping with our
 24 previous numbering of photographs may I suggest we state
 25 QQQ11 point and then whatever the number of the photograph

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1 is?
 2 CHAIRPERSON: Yes, yes, yes QQQ11.1 –
 3 MS PILLAY: No, it will be for example
 4 11.3023 so that we know which photograph it referred to,
 5 instead of renumbering the photographs.
 6 CHAIRPERSON: Oh, I see, so you want me
 7 to call them QQQ11.1 –
 8 MS PILLAY: QQQ1.3009 to 4 –
 9 CHAIRPERSON: .3009 –
 10 MS PILLAY: - to 4012.
 11 CHAIRPERSON: To 4012. Alright, so it's
 12 QQQ, so this series of photographs –
 13 MS PILLAY: Sorry, it's 4112, I
 14 apologise, Chair.
 15 CHAIRPERSON: 4112. This series of
 16 photographs will be QQQ11.3009 to 4112, but some of the
 17 numbers are missing and that's not sinister, it's just
 18 because of the selection. Is that right, Mr Wesley?
 19 MR WESLEY: Absolutely, Chair.
 20 CHAIRPERSON: And there'll be no
 21 substitutions in the series.
 22 MR WESLEY: No, Chair. Colonel,
 23 photographs 3009 up to 3038 give a general idea of the
 24 events. If we can quickly fly through them and you can
 25 just tell the Chair what it is that we're looking at. If

<p style="text-align: right;">Page 26977</p> <p>1 we can really go through this quickly, what do you see 2 there? 3 COLONEL MERAFAE: Protestors were marching 4 along the road and they were stopped by the police, as 5 appears on the photo. 6 MR WESLEY: And the next photograph? 7 COLONEL MERAFAE: Walking along the road 8 towards Tlhabane. They have passed the township, Raleng is 9 the section of the township. 10 MR WESLEY: Okay, could we get then to – 11 the next photographs up to 3038, you and I went through 12 them this morning, it shows crowds converging on a point. 13 Could we go to 3038? That's a wide view and the next one, 14 forgive me, 3039. Now am I correct, I'm going to use my 15 laser pointer and I'm going to point behind the Chair on 16 the screen, what we have here is the following; where I'm 17 indicating on the photograph coming from the right-hand 18 side in the middle of the photograph there is a darkish 19 line running through some trees on the right-hand side. 20 That, if one zooms in, are people, if one follows the line 21 one gets to a lightish patch just before a large tree, that 22 is in fact a road and what we have here is people on the 23 road in that vicinity. We have got meeting at a right 24 angle an intersection which is more or less in the middle 25 of the photograph, it is in an area where one can see a</p>	<p style="text-align: right;">Page 26979</p> <p>1 direction in which they were going. 2 MR WESLEY: Which is towards the 3 intersection in the middle of the photograph. 4 COLONEL MERAFAE: That where I'm 5 indicating now is the bigger crowd. That's where the 6 police stopped them at that intersection. 7 MR WESLEY: Indicating a line diagonally 8 in front of the direction of travel of the crowd. 9 COLONEL MERAFAE: As I'm indicating, 10 Chairperson, there is a railway line going across there. 11 The police vehicles, the majority of them were parked there 12 where I'm indicating. Those two which I'm indicating are 13 Nyalas. Whilst we were dispersing them, the smoke you see 14 there is teargas smoke. They broke into groups and ran 15 along the railway line. 16 MR WESLEY: If I can just stop you there. 17 You're indicating along the railway line. Can I just 18 point? I have another pointer. 19 COLONEL MERAFAE: Yes. 20 MR WESLEY: On the right-hand side where 21 I'm pointing one can see what are the coaches, white 22 coaches just behind what appears to be a train. That is on 23 the railway line. 24 COLONEL MERAFAE: That is so, Sir. 25 MR WESLEY: That train was stationary.</p>
<p style="text-align: right;">Page 26978</p> <p>1 large plume of smoke rising. At that intersection, which 2 is a four-way intersection, coming from the right of the 3 photograph towards the bottom left, diagonally across the 4 photograph there's in fact a railway line. And then the 5 road leads on into an industrial area which is just beyond 6 the railway line. Is that correct? 7 COLONEL MERAFAE: Correct, Chairperson. 8 MR WESLEY: Now I'm going to indicate, 9 because I only have one pointer today - in fact not. I 10 want you to, I'm going to hand you the pointer, would you 11 please just indicate where SAPS was positioned, where the 12 crowds were coming from. 13 CHAIRPERSON: Would you then put into 14 words what he's showing because I have to turn my back on 15 my microphone to look at the screen. 16 MR WESLEY: I'll do so, Chair. 17 CHAIRPERSON: So it'll be easier if you 18 offer commentary if you don't mind. 19 MR WESLEY: I'll do the narrative. 20 COLONEL MERAFAE: Where I'm pointing, 21 Chairperson, that's where the crowd was moving. 22 MR WESLEY: That's from a position on the 23 middle right of the photograph towards more or less the 24 middle of the photograph on a road. 25 COLONEL MERAFAE: Yes, I'm showing the</p>	<p style="text-align: right;">Page 26980</p> <p>1 COLONEL MERAFAE: Yes, it had been 2 stationary there for some time. 3 MR WESLEY: If one follows – 4 CHAIRPERSON: The coaches are part of the 5 train, the coaches are behind the engine. 6 MR WESLEY: As it pleases, Chair. If one 7 follows the line of direction of the railway line that runs 8 more or less diagonally from the right to the left of the 9 photograph. Now earlier you indicated Nyalas, are the 10 Nyalas that you indicated the ones I'm pointing now? 11 COLONEL MERAFAE: That's correct, Chair. 12 MR WESLEY: Now these Nyalas are just 13 above the railway line to the left of the picture. Craig, 14 could you zoom in on that one there? That's fine. The top 15 of the two Nyalas, Colonel, you can confirm the front end 16 of that Nyala is at an angle and appears to be disappearing 17 into the ground. 18 COLONEL MERAFAE: That is so, Chair. 19 MR WESLEY: Now in your statement you 20 refer to a Nyala getting stuck in a ditch. Is that in fact 21 the Nyala that you're referring to? 22 COLONEL MERAFAE: That is the one I 23 referred to, Chair. 24 MR WESLEY: Craig, can you zoom out a 25 little bit? Stop there. Now one can see the railway line</p>

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1 clearer on the picture, it's running from the right-hand
 2 side to the left-hand side, diagonally down. One can see
 3 on the intersection a large number of people, which I'm
 4 indicating, by the large plume of smoke as well. Is that
 5 correct, Colonel?
 6 COLONEL MERAFAE: Correct, Chairperson.
 7 MR WESLEY: Now just below the two Nyalas
 8 that you're referred to earlier there is a bunch of bushes.
 9 On the near side of the railway line one can see
 10 individuals in that area as well along the path.
 11 COLONEL MERAFAE: Correct, Chairperson.
 12 MR WESLEY: Now what was happening here?
 13 COLONEL MERAFAE: Immediately the Nyala
 14 fell into the ditch some of the protestors ran towards it.
 15 That is why I send the second Nyala, the one below to stop
 16 the people from proceeding towards that one in the ditch.
 17 MR WESLEY: Now you've mentioned in your
 18 statements TRT and firing R5 rounds, where did that occur?
 19 COLONEL MERAFAE: As time went on, when we
 20 realised that we were running out of teargas and rubber,
 21 that's when I asked for back-up from the other station. I
 22 also asked the TRT to come. It was about in 15 minutes
 23 time the TRT had arrived.
 24 MR WESLEY: They arrived, where did they
 25 go? And remember specifically I'm referring to the TRT

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1 firing with the R5 rifles, where did that occur?
 2 COLONEL MERAFAE: In that region where I'm
 3 now pointing.
 4 MR WESLEY: You're indicating the area
 5 surrounding the Nyala on the left of the picture, which is
 6 in a ditch.
 7 COLONEL MERAFAE: That is so, Chair.
 8 MR WESLEY: Where were the TRT situated?
 9 Use the Nyala that's in the ditch as a reference.
 10 COLONEL MERAFAE: That is the Nyala in the
 11 ditch, the TRT members were in that region that I'm
 12 indicating now.
 13 MR WESLEY: So that is an area to the
 14 right, in the small field to the right of the Nyala that's
 15 in a ditch.
 16 COLONEL MERAFAE: Not only the Nyala in
 17 the ditch, Chairperson, together with members of my police
 18 who were inside that vehicle. I was scared, Chairperson,
 19 that we may lose members if they were burned inside the
 20 Nyala and the Nyala can be replaced but not members.
 21 CHAIRPERSON: What you appear to indicate
 22 was a line of TRT people stretching from the Nyala in the
 23 ditch, as you call it, to the intersection, more or less
 24 parallel with the road.
 25 MR WESLEY: That's correct, Chair.

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1 COMMISSIONER HEMRAJ: Colonel, did you
 2 have members under your command who were not inside the
 3 Nyala, on the field itself?
 4 COLONEL MERAFAE: Correct, Chairperson.
 5 COMMISSIONER HEMRAJ: Where would they be
 6 on this photograph?
 7 COLONEL MERAFAE: As I'm now indicating,
 8 in that region, those were members of the POP. They did
 9 not run away from that because we had gasmasks and so on.
 10 By the time that Nyala fell into the ditch the members that
 11 were there were being stoned. I could not remove them to
 12 go to protect the Nyala because there was an attack taking
 13 place on them.
 14 COMMISSIONER HEMRAJ: So the area you've
 15 indicated is a cross roads in the centre of the picture.
 16 COLONEL MERAFAE: Correct, Chairperson,
 17 they did not stop across that road, we stopped them just
 18 there as I'm indicating now.
 19 MR WESLEY: Craig, could we go to 3041,
 20 that might assist. 3042, try the next one, 3042. Yes,
 21 that one. Let me just orientate you on this picture. The
 22 railway line is the line running from the top of the
 23 picture down to the bottom left, from more or less the
 24 middle of the top of the page to the bottom of the left.
 25 The road that the protestors were approaching from is

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1 indicated at the intersection, it's a road coming in from
 2 the picture on the left-hand side. One can see that road
 3 then crosses the railway line and reaches an intersection
 4 where one can see a white Nyala. One can see further up
 5 the road to the right of that white Nyala towards the top
 6 of the page a second Nyala, and to the right of that there
 7 is a Nyala whose nose is in a ditch. One can faintly see
 8 the outline of a ditch as a lighter area, a lighter line
 9 just to the right of the Nyala in the ditch. Do you see
 10 that, Colonel?
 11 COLONEL MERAFAE: I see, Chairperson, yes.
 12 MR WESLEY: Do you want to explain what
 13 happened, maybe – does this assist you?
 14 COLONEL MERAFAE: It does help me, yes,
 15 Sir, it explains. At this stage the people were scattered
 16 all over the place mainly because of the teargas that was
 17 used and the rubber that was shot at them.
 18 MR WESLEY: Okay, and the firing by your
 19 TRT members, from where did they shoot? Can you see that
 20 area on this photograph?
 21 COLONEL MERAFAE: As I'm now indicating
 22 from that region they were shooting in that direction.
 23 MR WESLEY: You're indicating the area
 24 which is below the Nyala in the ditch towards the bottom
 25 right-hand corner of the photograph where you can see a

<p style="text-align: right;">Page 26985</p> <p>1 large shadow, which I assume is part of the aeroplane which 2 was obstructing the view of the camera. So they were 3 shooting from that sort of blocked off area in the 4 direction of the Nyala in the ditch. Is that correct? 5 COLONEL MERAFAE: That is correct, 6 Chairperson. 7 MR WESLEY: Okay. 8 CHAIRPERSON: [Microphone off, inaudible] 9 there appears to be an electric light bulb and there are 10 three people standing near it in the road. As far as I 11 could see you indicated with the pointer a line effectively 12 stretching from the Nyala in the ditch to that spot to 13 which I refer. 14 MR WESLEY: Is this the area – 15 COLONEL MERAFAE: Correct, Chair. 16 MR WESLEY: - that is just at the corner 17 of the shaded area on the right-hand side, one can see some 18 members on a lighter area which is probably a road and you 19 can see some - I can count three individuals standing 20 there. Would those be the TRT, or the area where the TRT 21 were? 22 COLONEL MERAFAE: That is the area I'm 23 referring to, Chairperson. 24 [11:56] MR WESLEY: Colonel, I don't want to - 25 you've had a look at the photographs. Are there any other</p>	<p style="text-align: right;">Page 26987</p> <p>1 enlighten the Commissioners what is an IRIS report, I-R-I- 2 S. 3 COLONEL MERAFAE: It's a system that we 4 fit with an action of our members, Chairperson, the 5 incidents as they are happening, yes. It's a reporting 6 mechanism that reports, reporting mechanism of the POP, of 7 the POP operations. 8 CHAIRPERSON: Mr Wesley, when you reach a 9 suitable stage will you let me know so that we can take the 10 adjournment? 11 MR WESLEY: It's suitable, Chair. 12 CHAIRPERSON: Take the tea adjournment 13 now. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [12:22] CHAIRPERSON: The Commission resumes. 16 Colonel, you're still under oath. 17 OMPHILE JOSEPH MERAFAE: (s.u.o.) 18 CHAIRPERSON: Mr Wesley. 19 COMMISSIONER HEMRAJ: Mr Wesley, before 20 you leave that point, can I just ask something please. 21 Colonel, the incident on the 22nd, the photographs that 22 we've been looking at, where was this crowd proceeding to, 23 or where did they appear to be proceeding to? 24 COLONEL MERAFAE: They were going to the 25 Tlhabane Court. The intention was to have a suspect</p>
<p style="text-align: right;">Page 26986</p> <p>1 photographs that you wish to draw the Commission's 2 attention to specifically? 3 COLONEL MERAFAE: We can possibly go to 4 other photos and which would, might make your questions 5 relevant. 6 MR WESLEY: I've actually got what the, 7 you've explained the situation. But are there any of the 8 photographs that you've seen, that you specifically, you 9 would like to refer to? I'm not going to refer to any 10 further photographs. 11 COLONEL MERAFAE: No, I'm fine, Sir, I'm 12 fine. 13 MR WESLEY: Okay. Now could you just 14 remind the Commissioners what is an Iris report? I-R-I-S. 15 COMMISSIONER HEMRAJ: I'm sorry to 16 interrupt you, Mr Wesley, may I just ask one question 17 before that. When you say there was an attack on the 18 Nyala, how close did they get to the Nyala? 19 COLONEL MERAFAE: Chair, they were about 20 five metres approaching the Nyala. Some of the members, 21 some of my members tried to shoot them with rubber, which 22 did not have much of an effect on them. When there was 23 sound of the real guns, the R5s, they retreated. 24 COMMISSIONER HEMRAJ: Thank you. 25 MR WESLEY: Colonel, I asked you just to</p>	<p style="text-align: right;">Page 26988</p> <p>1 released, a person who was charged with murder. 2 COMMISSIONER HEMRAJ: And what measures, 3 POPS measures did you put into place to stop them from 4 proceeding? 5 COLONEL MERAFAE: We blocked them and to 6 disperse them. 7 COMMISSIONER HEMRAJ: Blocked with them 8 with vehicles? 9 COLONEL MERAFAE: Whilst I was addressing 10 them, talking to them, they started stoning us. That is 11 when we brought the armoured vehicles as a protection 12 measure. 13 COMMISSIONER HEMRAJ: And what provoked 14 the stoning? 15 COLONEL MERAFAE: I really do not know. I 16 think they got angry for my stopping them from going ahead 17 with what they had intended doing. 18 COMMISSIONER HEMRAJ: Thank you, Colonel. 19 Sorry to interrupt you, Mr Wesley. 20 CROSS-EXAMINATION BY MR WESLEY (CONTD.): 21 Thank you, Commissioner, thank you, that's quite alright. 22 Colonel, I asked you about an IRIS report. The 11th 23 document in your, in the bundle is an IRIS report. Do you 24 have it? 25 COLONEL MERAFAE: I do have it, Sir.</p>

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1 MR WESLEY: It's document number 11.
 2 CHAIRPERSON: Is that going to be an
 3 exhibit now?
 4 MR WESLEY: It must be given an exhibit
 5 number, Chair.
 6 CHAIRPERSON: If I can find my pen. That
 7 will be QQQ12. How do I describe it?
 8 MR WESLEY: Chair, IRIS report for
 9 Tlhabane -
 10 CHAIRPERSON: Incident.
 11 MR WESLEY: Tlhabane incident.
 12 CHAIRPERSON: On what date?
 13 MR WESLEY: On 22 May 2012.
 14 CHAIRPERSON: Alright, so exhibit QQQ12
 15 will be the IRIS report for the Tlhabane incident on the
 16 22nd of May 2012.
 17 COMMISSIONER HEMRAJ: The time next to
 18 the day is 06:00?
 19 MR WESLEY: Yes, Commissioner, that is,
 20 I'm going to ask the witness now about this. Colonel, this
 21 is the IRIS report concerning the incident at Tlhabane.
 22 Now the first thing, in the top line you see incident
 23 registration information system production, then there's a
 24 date which is 2013-11-26, 26 November 2013. Can you tell
 25 us when was this report filed?

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1 COLONEL MERAFAE: It was done on the 22nd
 2 05-2012. After registering information on the system,
 3 Chairperson, it will give you, when you look for that it
 4 will give you the date on which you want it. The date
 5 appearing, the 26-11-2013 was the day on which it was
 6 sought, that is why this date appears there.
 7 MR WESLEY: Alright, then did you file
 8 this report?
 9 COLONEL MERAFAE: It was done by
 10 Lieutenant Tsupego from Information Systems.
 11 MR WESLEY: Okay. To save time, I don't
 12 intend reading the entire IRIS report into the record, but
 13 if you can go, it consists of six pages, the fourth page,
 14 the third - no, no, no, I beg your pardon, the - yes, the
 15 fourth page. I just want to show you there the text of
 16 incident occurrence, what has taken place, it reads "Sitrep
 17 15:20, the workers dispersed without any further incident."
 18 And then it says, "The following ammunition were used by
 19 members," then there's a list of members against which
 20 various numbers of rubber rounds are listed. Do you see
 21 that?
 22 COLONEL MERAFAE: I see, Chair.
 23 MR WESLEY: And if you go over to the
 24 next page you'll see that list continues. There rubber
 25 stoppers are mentioned, there's a mention there of hand

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1 grenades, what is that?
 2 COLONEL MERAFAE: Actually that's the stun
 3 grenades which is being thrown, in Setswana it's a hand
 4 grenade.
 5 MR WESLEY: Yes, but it's not the lethal
 6 military hand grenade that we're thinking?
 7 COLONEL MERAFAE: No, it's not the M26
 8 grenade.
 9 MR WESLEY: You'll see there they refer
 10 to CF canister, CS grenades, rubber rounds and then on the
 11 next page -
 12 CHAIRPERSON: Sorry, before you get to
 13 the next page, I see earlier on there's a reference to what
 14 was used and there's mention of reduced rubber, so I take
 15 it the rubber rounds referred to are what is known as
 16 reduced rubber. What exactly it meant by the expression
 17 "reduced rubber"?
 18 COLONEL MERAFAE: Chairperson, it's the
 19 rubber bullet that, which it's power has been reduced not
 20 to cause injuries to people.
 21 CHAIRPERSON: Is that what is being
 22 described earlier as rubber balls?
 23 COLONEL MERAFAE: That's correct,
 24 Chairperson, that's correct, rubber balls.
 25 CHAIRPERSON: Sorry, I interrupted you,

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1 Mr Wesley, you were now going to go to the members who used
 2 R5 rifle and PX firearms.
 3 MR WESLEY: Yes, Chair, but if I can just
 4 ask a follow-up question. The colour of these reduced
 5 rubber rounds, what colour is it, the balls?
 6 COLONEL MERAFAE: We have blue and white
 7 ones.
 8 MR WESLEY: Blue and white, and if we
 9 look at a blue and a white ball that comes from a reduced
 10 rubber round, are all blue and white rubber rounds reduced
 11 rounds?
 12 COLONEL MERAFAE: Yes, Sir, both of them,
 13 the blue and the white are both reduced. But their
 14 strength is not equal. The blue one is stronger than the
 15 white one. It's lighter if you use this light one, it's
 16 light like paper.
 17 MR WESLEY: Okay. No, I do understand
 18 it, thank you. Then the very last page, just for the
 19 record the fifth-last sentence reads "The following members
 20 used R5 rifle and PX firearm to disperse the people."
 21 There is the name of members and then it appears from this
 22 that three members used R5 rifles and one member used a PX.
 23 Now PX is a handgun, that's your sidearm, is that correct?
 24 COLONEL MERAFAE: That's correct,
 25 Chairperson.

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1 CHAIRPERSON: Is that a 9 millimetre?
 2 MR WESLEY: 9 millimetre.
 3 COLONEL MERAPE: It's a 9 millimetre
 4 pistol.
 5 MR WESLEY: So in total we've got 11 R5
 6 rounds that were fired and two 9 millimetre rounds.
 7 COLONEL MERAPE: Correct, Chair.
 8 MR WESLEY: Now you have read what
 9 Lieutenant-Colonel Vermaak said in his letter of the 22nd of
 10 May, which is exhibit JJJ137. I don't want to spend too
 11 much time on it. You've read his letter where he describes
 12 what happens. Is there anything that you disagree with in
 13 his letter, JJJ137, that you can think of, where you think
 14 where he was patently incorrect?
 15 COLONEL MERAPE: I am not against his
 16 letter, Chairperson, but there is this point. Live
 17 ammunition used on the ground will hit the chopper flying
 18 on top.
 19 MR MAHLANGU: What he said in English
 20 there.
 21 COLONEL MERAPE: I don't agree with him
 22 where he says live ammunition fired on the ground will hit
 23 the chopper up there, I don't agree with that.
 24 MR WESLEY: Okay, I can place that into
 25 perspective and you'll correct me if I'm wrong. You say

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1 that the members shot into the ground. Lieutenant-Colonel
 2 Vermaak says they shot into the ground and some into the
 3 air and he says that the ones in the air could have hit a
 4 chopper, but you disagree; you say the members shot into
 5 the ground, the live rounds?
 6 COLONEL MERAPE: My instructions, the
 7 people who were working under my instructions were told
 8 that, yes. I knew they were using live ammunition which
 9 can cause death, Chairperson. They were shooting in
 10 accordance with instructions, they were shooting with
 11 instructions command and control. That was coming from me
 12 as the operational commander, Chairperson, that's how I
 13 instructed them.
 14 MR WESLEY: No, I accept that. Did you
 15 see the members actually shooting?
 16 COLONEL MERAPE: Correct, Chairperson. I
 17 told them to do that.
 18 MR WESLEY: Okay, and your observation
 19 was that they shot into the ground?
 20 COLONEL MERAPE: Definitely, I was
 21 looking at them, as I was looking at them, telling them to
 22 stop it and to do it.
 23 MR WESLEY: Okay. Now, Colonel, what
 24 lessons did you learn from the incident at Tlhabane on the
 25 22nd of May? What did you learn?

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1 COLONEL MERAPE: The lesson that I learn
 2 at Tlhabane is that in the POPS if you don't have
 3 sufficient members you would at the end of the day, we'll
 4 have to use other means which could at the end of the day
 5 endanger the lives of people.
 6 MR WESLEY: Colonel, you've very
 7 effectively in one sentence summarised three points which I
 8 wanted to make. I think what you've stated is - I must
 9 agree with it; I was going to mention the following but
 10 you've summarised them all in one sentence. The first
 11 thing I was going to suggest is that the standard non-
 12 lethal Public Order Policing methods for crowd control did
 13 not always work on crowds in the Rustenburg area. The non-
 14 lethal methods, they didn't always work on crowds in the
 15 area.
 16 COLONEL MERAPE: Just repeat the
 17 question, Sir. You're confusing me a bit.
 18 MR WESLEY: Alright, the first lesson I
 19 was going to suggest might have been learnt is that - okay,
 20 start here; we know POPS used non-lethal methods.
 21 COLONEL MERAPE: That is correct, Chair.
 22 MR WESLEY: Okay. What I was suggesting
 23 is that one lesson that could be learnt is that those non-
 24 lethal methods that POPS used don't always work in subduing
 25 a crowd.

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1 COLONEL MERAPE: No, I disagree with you
 2 there, Sir.
 3 MR WESLEY: Okay, but -
 4 CHAIRPERSON: It is clear they used, your
 5 people used rubber, teargas and stun grenades, that wasn't
 6 enough to disperse the crowd, which is why the members
 7 whose names are listed here had to use, three of them had
 8 to use R5 rounds, in fact a total of 11 rounds which were
 9 fired in the ground, you said, and one of them, Constable
 10 Petlane had to use his pistol and had fired two rounds. So
 11 that would have been lethal force if it had struck any of
 12 the people. But because they fired in the ground it didn't
 13 hit people, but it was lethal force that was being used.
 14 The non-lethal force, namely the rubber, the teargas and
 15 the stun grenades didn't do the trick. It wasn't enough to
 16 disperse the crowd. That's the point counsel's putting to
 17 you. It sounds right to me. Do you agree with that?
 18 COLONEL MERAPE: Chairperson, why I don't
 19 agree with counsel is, for the reason why we had to at the
 20 end of the day use the lethal weapons shooting to the
 21 ground, we had mentioned that we had run out of less lethal
 22 means. If we had them we would have engaged these people
 23 until we succeeded. The problem is yes, we ran out of -
 24 CHAIRPERSON: The problem was you were
 25 engaging them with the non-lethal force, teargas, rubber

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1 balls, stun grenades, and it wasn't, the crowd weren't
 2 dispersing, isn't that so? I mean you might have gone on
 3 from now until kingdom come firing rubber, teargas and stun
 4 grenades, isn't it? They might still be there. I mean you
 5 realise I'm exaggerating but the fact is quite a lot, as it
 6 appears from this report, there were quite a lot of rounds
 7 of teargas and stun grenades and rubber, it didn't seem to
 8 have any effect. I mean, isn't that right?
 9 COLONEL MERAFAE: Chairperson -
 10 CHAIRPERSON: What do you say to that?
 11 COLONEL MERAFAE: The use of lethal method
 12 was directed at a Nyala that was trapped, falling on the
 13 ground. It was not directed at dispersing the whole group
 14 of people. That is why I am saying we could not manage,
 15 I'm saying [inaudible] the people did disperse. Only the
 16 few that were coming towards the police who were in the
 17 Nyala, that is the people the force was directed to. So
 18 the less lethal method was a success on the day given the
 19 number of the participant. Less lethal ammunition was
 20 successful taking the number of the people that were there
 21 on the day, Mr Chairperson.
 22 COMMISSIONER HEMRAJ: But if you're
 23 talking about the attack directed towards the Nyala, if
 24 each of your POPS members had a 9 millimetre on him what
 25 was the need for the TRT and the R5s if you were in fact

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1 just going to shoot into the ground?
 2 COLONEL MERAFAE: Chairperson, I said we
 3 were stretched throughout the place, meaning if the members
 4 of the POPS would take out their firearms and started
 5 shooting more members would have approached. I have for
 6 reasons, because of being less resourced on the day the
 7 members I had on that day were not sufficient.
 8 CHAIRPERSON: You see if you look at,
 9 it's something we've looked at already, exhibit QQQ4, the
 10 minutes of the Public Order Police Conference on the 29th of
 11 May at the Manhattan Hotel in Pretoria, there we see a
 12 passage I put to you before that General Mpembe said that,
 13 in fact it's in red type, that teargas wasn't effective.
 14 What do you say about that?
 15 COLONEL MERAFAE: I agree with him,
 16 Chairperson.
 17 COMMISSIONER HEMRAJ: Can I just enquire,
 18 Colonel, how it is that the non-lethal methods that you
 19 employed at the cross roads when the stoning started, how
 20 did that, what did you do that assisted you in dispersing
 21 that crowd? Because as I understood it the crowd only
 22 dispersed when the R5s were shot into the ground.
 23 COLONEL MERAFAE: Chairperson, the less
 24 lethal ammunition, like the ammunition such as rubber, CS,
 25 stun grenade, did make an impact on dispersing the crowd.

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1 Whilst we were dispersing the crowd some others then
 2 started proceeding in the direction of the Nyala that had
 3 fallen into the ditch. The less lethal ammunition was
 4 successful to a great extent.
 5 COMMISSIONER HEMRAJ: So you called for
 6 the backup of the TRT when the approach towards the Nyala
 7 started?
 8 COLONEL MERAFAE: When the Nyala was
 9 approached and I realised I was rather stretched with that
 10 and I was fearing for the worst, Chairperson.
 11 COMMISSIONER HEMRAJ: And it took 15
 12 minutes for them to arrive?
 13 [12:42] COLONEL MERAFAE: They were there in 15
 14 minutes, yes.
 15 COMMISSIONER HEMRAJ: Thank you.
 16 MR WESLEY: Colonel, the next lesson
 17 which I would suggest may have been learned is that there
 18 are times when even an experienced SAPS Public Order
 19 Policing commander such as yourself would find it necessary
 20 to order members to fire live ammunition at crowd control
 21 operations.
 22 COLONEL MERAFAE: I would say, yes,
 23 because it did happen on the day. It can happen,
 24 Chairperson, when lives are in danger, this is being used
 25 to protect, to save lives.

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1 MR WESLEY: I accept that, and the third
 2 lesson, and here Colonel Vermaak - well, I'll put it to you
 3 this way; he refers in his letter, he says this incident
 4 could end in tragedy if a helicopter was hit or a marcher
 5 was killed by an R5 round, but the lesson that I want to
 6 put to you is that the next time, we know that nobody was
 7 injured here or killed with live ammunition, but the lesson
 8 to be learned is that next time somebody might get killed
 9 or injured as a result of the use of live ammunition.
 10 COLONEL MERAFAE: It is so, yes.
 11 MR WESLEY: Now you were there, the crowd
 12 at Tlhabane was approximately five times more than at
 13 Marikana. At Marikana we've mentioned the figure of
 14 approximately 3 000 members, at Tlhabane you've spoken of
 15 15 000 members. You saw the protestors at both incidents,
 16 you saw the type of protestors and what they were doing.
 17 COLONEL MERAFAE: It is so.
 18 MR WESLEY: If I talk about the militancy
 19 of the crowd, how militant they were, do you understand
 20 what I'm referring to?
 21 COLONEL MERAFAE: Yes, I do understand
 22 what you're saying.
 23 MR WESLEY: Okay, as regards to
 24 militancy, was the crowd at Tlhabane as militant as the
 25 crowd at Marikana or more militant? Can you compare the

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1 two for the Commission?
 2 COLONEL MERAFAE: The two scenarios are
 3 not the same, Chairperson, the Marikana and the Tlhabane
 4 one. What I did was, I did not allow in Tlhabane the
 5 protestors to be in contact with the police. They were a
 6 distance away to allow us to operate and to make the
 7 decisions as to what to do whilst they were a distance
 8 away. These were the differences.
 9 MR WESLEY: No, I understand that but I'm
 10 talking about the actual, the nature of the crowd
 11 themselves. I asked you about militancy, if I say were
 12 they militant or not, willing to fight maybe is another
 13 way, scary perhaps? Describe the two crowds.
 14 COLONEL MERAFAE: Ja, I would say, no, the
 15 people at Tlhabane were less militant.
 16 MR WESLEY: Okay, than the people at
 17 Marikana?
 18 COLONEL MERAFAE: Correct, Chair.
 19 COMMISSIONER HEMRAJ: Although according
 20 to the IRIS report two members of the police were injured
 21 by stones, as well as some of the vehicles were damaged?
 22 COLONEL MERAFAE: Yes, Chairperson,
 23 earlier on whilst they were proceeding towards the area
 24 they were attacked and stones were thrown. They were
 25 driving in a van which was stoned.

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1 MR WESLEY: Okay, thank you, Colonel.
 2 Now that's 22 May. We move on then, approximately a week
 3 later you have the POP National Conference of 28 and 29 May
 4 2012.
 5 CHAIRPERSON: Correct, Chair.
 6 MR WESLEY: A week after Tlhabane, that's
 7 exhibit QQQ4, have you got that?
 8 COLONEL MERAFAE: I've got it.
 9 MR WESLEY: Now you've mentioned in the
 10 unsigned statement, you say in paragraph 7 Major-General
 11 Mpembe was there. Who else from the North West province
 12 attended this conference? Apart from yourself, who was
 13 there, and Major-General Mpembe?
 14 COLONEL MERAFAE: The unit commander of
 15 Mafikeng, Colonel Masilo and Colonel Tlangase and Colonel
 16 Saunders as well.
 17 MR WESLEY: Colonel Saunders?
 18 COLONEL MERAFAE: Yes, Colonel Saunders
 19 from North West, at the ORS offices.
 20 MR WESLEY: You've got QQQ4 there in
 21 front of you. Can you go to page 1 - we must spend a bit
 22 of time on this. Okay, we're going to look on the screen.
 23 "We begin with the opening and welcome General Mawela as
 24 well as Brigadier Gibson welcomes everybody." Then there
 25 is a prayer meeting. Alright, let's go and look at the

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1 following, "General Mawela made mention of incidents
 2 happening across the country with regards to protests and
 3 demonstrations. Social networks should also be monitored
 4 by Intelligence." One of the incidents that he spoke of,
 5 was Tlhabane one of them, those incidents that he is
 6 talking about there? Can you remember?
 7 COLONEL MERAFAE: Are you telling me or
 8 asking me, Sir?
 9 MR WESLEY: I'm asking you.
 10 COLONEL MERAFAE: I'm not sure because he
 11 wasn't specific.
 12 MR WESLEY: Alright, the very first
 13 question I should have actually asked, just remind us,
 14 General Mawela at that stage, who was he? What position
 15 did he hold?
 16 COLONEL MERAFAE: Divisional Commissioner
 17 ORS at National level.
 18 MR WESLEY: Then he carries on and he
 19 says here - we've touched on this already - "The police
 20 need to change the manner in which they deal with
 21 protestors. Police officers are not wearing proper gear,
 22 lack of commander control, there is no record of planning
 23 for marches taking place. Provinces need to take control
 24 of their planning. There must always be a JOC for any
 25 operation. Police are in charge of protests, not the Metro

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1 Police."
 2 Now excluding the comment about the Metro Police,
 3 which we're really not concerned with, those difficulties
 4 that are mentioned there, some of them are even on the
 5 original minute printed in red. Those were existing at the
 6 time, those were problems that existed within POP, Public
 7 Order Policing.
 8 COLONEL MERAFAE: He said nationally,
 9 Chairperson, meaning we have nine provinces that each have
 10 POPS in the provinces, it is possible, yes.
 11 MR WESLEY: So he is referring there to
 12 national POPS?
 13 COLONEL MERAFAE: All over the country,
 14 yes, he was referring to.
 15 MR WESLEY: The whole of POPS?
 16 COLONEL MERAFAE: Yes.
 17 MR WESLEY: Okay, Colonel, if we can
 18 maybe just agree here, as we're going through this
 19 document, if you see something that's written that was said
 20 by somebody here that you say is absolutely incorrect, will
 21 you point that out to me?
 22 COLONEL MERAFAE: I do not remember, I was
 23 in that meeting, I don't remember anything that was not
 24 correct. I would have raised an objection had it been
 25 said.

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1 MR WESLEY: Okay, so if there is no
 2 objection in the minute we can accept that what they state
 3 here, they state it and you didn't object to it.
 4 COLONEL MERAPE: It was stated, yes, it
 5 is so, Chairperson.
 6 MR WESLEY: Yes, the minute carries on,
 7 then it says on the same page, "Brigadier Gibson also made
 8 mention of a few incidents, a protest taking place and we
 9 should learn from them." Can you recall what those
 10 incidents were?
 11 COLONEL MERAPE: There was an incident
 12 that I have mentioned, the one in Ficksburg which had
 13 passed. There were also in Mpumalanga service delivery
 14 strikes in which people were injured, in Gauteng, North
 15 West, that is in Rustenburg, and also in Cape Town, it was
 16 happening all over, Chairperson.
 17 MR WESLEY: Yes, it was happening all
 18 over the country, I accept that.
 19 COLONEL MERAPE: Yes.
 20 MR WESLEY: Did Brigadier Gibson say what
 21 lessons must be learned? I see he says we should learn
 22 lessons. Did he tell you what lessons we must learn?
 23 COLONEL MERAPE: The lessons that we were
 24 to learn, that we as Public Order Policing, that we have to
 25 know that we deal with people and not animals, people that

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1 have rights as well, that is when we deal with them we have
 2 got to know that we do the right things at all times, yes.
 3 MR WESLEY: Okay, if we go over to the
 4 next page, page 2 of this document, there is reference to
 5 the DNC operations, General Masemola, is that the Deputy
 6 National Commissioner Operations, DNC Operations, is that
 7 what it means?
 8 COLONEL MERAPE: By then, yes.
 9 MR WESLEY: Ja.
 10 COLONEL MERAPE: He is now the Provincial
 11 Commissioner of the Limpopo province.
 12 MR WESLEY: Thank you. No, I accept
 13 that, I'm actually referring to what they were at this
 14 point in time.
 15 COLONEL MERAPE: Correct.
 16 MR WESLEY: Now he says, he welcomes
 17 members and then he says, "Members must come up with
 18 solutions." I take it from this that the senior SAPS
 19 management were looking to people like yourself to try and
 20 help them to come up with solutions to the problems that
 21 they were facing.
 22 COLONEL MERAPE: That's correct.
 23 MR WESLEY: He goes on, he says,
 24 "Acknowledge that some mistakes happened with the
 25 restructuring but they need to be corrected." You've

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1 spoken about the restructuring and the effect, is that what
 2 he is talking about, what you've already explained to us?
 3 COLONEL MERAPE: Yes.
 4 MR WESLEY: Now he says the following -
 5 and I'm going to read three sentences to you and then just
 6 point something out to you and we'll ask you a question.
 7 He says, "All units need to be nationalised as agreed in
 8 the management forum. Legal Services must work through the
 9 policies. Units to be resourced in terms of finance,
 10 personnel training, etcetera, once they have been
 11 nationalised." So what he is saying here is that all the
 12 units must be nationalised and -
 13 CHAIRPERSON: What I understand that to
 14 mean, - how was this going to work, you're talking about
 15 POP units I think. Now have they been nationalised?
 16 COLONEL MERAPE: Presently they are not
 17 nationalised, Chairperson, they work on the instructions of
 18 the provinces. The only unit that is national is the
 19 Pretoria unit.
 20 CHAIRPERSON: So they haven't been
 21 nationalised yet?
 22 COLONEL MERAPE: Not yet, Chairperson.
 23 CHAIRPERSON: So it doesn't really matter
 24 what he meant by saying they're going to be nationalised,
 25 because it is not relevant for our purposes. Is that -

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1 that hadn't happened by August 2012 and it hasn't happened
 2 yet, is that right?
 3 COLONEL MERAPE: Yes, Chair, it has not
 4 happened yet. We're still waiting for, they manage the
 5 finances.
 6 CHAIRPERSON: Has there been any
 7 indication as to when it is likely to happen?
 8 COLONEL MERAPE: Chairperson, I don't
 9 know, I have no idea.
 10 MR WESLEY: You see, Colonel, the chair
 11 has actually hit the nail on the head there, which I wanted
 12 to point out to you. What this general is saying - and
 13 please understand, I'm pointing this out in sympathy to
 14 your position and the position others like you find
 15 yourselves in. What he says here is, "All units are to be
 16 nationalised," now you've just said they're still not, but
 17 he carries on and he says, "Units to be resourced in terms
 18 of finance, personnel training once they've been
 19 nationalised." So in other words you're only going to get
 20 your resources after nationalisation and you're still
 21 waiting for nationalisation.
 22 COLONEL MERAPE: Those are his words,
 23 Chairperson, that we have to work the same, that if
 24 resources, that it would be better to run the POP if the
 25 resources came from the National office. We agreed with

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1 him, yes.

2 MR WESLEY: And he carries on, he

3 mentions, "The day-to-day running of units will be under

4 the Provincial Head." Then he makes mention, he says, "The

5 primary function of units is crowd management." So at the

6 National Conference General Masemola is pointing out that

7 the primary function of units - and here he is referring to

8 POP units - is crowd management. That just reinforces what

9 you were saying is that POPS were not being used for the

10 primary function?

11 COLONEL MERAFAE: Correct, Chairperson.

12 MR WESLEY: And National management were

13 aware of this?

14 COLONEL MERAFAE: Correct, Chair.

15 MR WESLEY: Now he says in the next

16 sentence, "Management also needs to take control." Which

17 management was he referring to there?

18 COLONEL MERAFAE: I take it he was

19 referring to the high-level management at National and at

20 Provincial level.

21 MR WESLEY: So he wasn't happy with the

22 management being exercised by that level then, the level of

23 control of management being exercised there?

24 COLONEL MERAFAE: That question is why the

25 general - I wouldn't want to get into it because he was

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1 talking about my seniors.

2 MR WESLEY: I'll move on to the next one

3 then, Colonel. He then carries on and he says, "POP

4 members must undergo training and stick to Public Order

5 Policing as their primary function." Now we've just dealt

6 with training - rather Public Order Policing as the primary

7 function, but he was also obviously concerned about

8 training, POP members not undergoing training, and he is

9 telling you POP members must undergo training.

10 COLONEL MERAFAE: It is so, Chairperson, I

11 agree that POP training has to be done on a regular basis.

12 The result is if a member of POP does not undergo the

13 necessary training he doesn't become as sharp as it is

14 necessary.

15 MR WESLEY: Yes.

16 CHAIRPERSON: Sorry to interrupt, what is

17 OCT training?

18 COLONEL MERAFAE: It is Operational

19 Commanders Training.

20 CHAIRPERSON: Oh, I see, this is a

21 different topic that's going to be dealt with after we've

22 taken the lunch adjournment.

23 COLONEL MERAFAE: Okay.

24 CHAIRPERSON: Does that meet with your

25 approval, Mr Wesley?

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1 MR WESLEY: Absolutely, Chair.

2 CHAIRPERSON: We'll take the lunch

3 adjournment. Let's try to get back at quarter to 2.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [14:00] CHAIRPERSON: The Commission resumes.

6 Colonel, you're still under oath.

7 OMPHILE JOSEPH MERAFAE: (s.u.o.)

8 CHAIRPERSON: Mr Wesley.

9 CROSS-EXAMINATION BY MR WESLEY (CONTD.):

10 Colonel, we were dealing - I just want to get there -

11 General Masemola, you'd spoken about, well I'll explain to

12 you, he says -

13 CHAIRPERSON: You left off with the

14 training point of the members and I think you had dealt

15 with the sentence POP members who must undergo training

16 accepted public order policing as their primary function

17 and that was roughly the point that you'd reached, I think,

18 before we adjourned.

19 MR WESLEY: Then we discussed the use of

20 force needs to be discussed at length, that's the next

21 part. At this point in time still this tells me that

22 lengthy discussions according to General Masemola still had

23 to be had about the use of force. So that issue wasn't

24 clarified yet.

25 COLONEL MERAFAE: Chairperson, there was

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1 in the past some letters written in connection with the use

2 of force and this discussion was about members do not

3 really understand what is being said. For instance there

4 was that letter written by Brigadier Gibson and thereafter

5 a letter written by Lieutenant-General Masemola, signed by

6 the Commissioner, which also had to do with the use of

7 force.

8 CHAIRPERSON: I see that Brigadier Gibson

9 is reported to have said the stakes need to be rectified

10 and members must stop having a lax attitude. Was he

11 talking about the use of force in that context or was he

12 talking about something else?

13 COLONEL MERAFAE: It was during the time

14 that we were discussing the use of force, Chairperson,

15 during that time.

16 MR WESLEY: Well, let's just clarify

17 this. What lax attitude was he talking about with regard

18 to the use of force? What was the problem exactly there?

19 COLONEL MERAFAE: That certain members of

20 the police were not acting correctly in accordance with

21 rules when they have to use force. Sometimes they use

22 force that is not necessary, force that is more than is

23 required.

24 MR WESLEY: Now just on the previous

25 page, you've already touched on this, he also said OCT

<p style="text-align: right;">Page 27013</p> <p>1 course doesn't give members proper training to deal with 2 protest action. Brigadier Mkhwanazi testified about OCT 3 and that's the operational commander's training course, 4 that's the course that a commander must go on, well a 5 person must go on to become a commander. 6 COLONEL MERAPE: Correct, Chairperson. 7 MR WESLEY: And his concern is that 8 doesn't actually give them proper training to deal with 9 protest actions. So there's something wrong with the OCT 10 course according to him. Drastically wrong if I can say 11 so. 12 CHAIRPERSON: Well, it's either that or 13 that people who have done the OCT course mustn't be in 14 control of crowd management incidents because they haven't 15 got the training. In words there's nothing wrong with 16 their training for other purposes but the sting of it, I 17 would have thought is the next sentence. Having said that 18 the OCT course doesn't give members the proper training to 19 deal with protest action, he then went on to say, the 20 General, trained people at unit commander level must be – 21 presumable must be trained in respect of POP matters, must 22 be in control of crowd management incidents and everyone 23 must be competent, especially at ground level. Is my 24 understanding correct, Colonel? 25 COLONEL MERAPE: That's correct,</p>	<p style="text-align: right;">Page 27015</p> <p>1 their members. Members need to have proper gear. Public 2 Order Policing units need to be established on how they 3 must be resourced and commanded. There must be command 4 structures in place. Members need to focus when dealing 5 with protest actions. Commanders must deploy competent 6 members." 7 Now he lists several difficulties there. Are 8 there any that you can say - rather than go through each 9 one, are there any that you can identify as being where he 10 says it was a problem but you disagree, you say it wasn't a 11 problem, or do you agree with what he says there? 12 COLONEL MERAPE: I agree with Lieutenant- 13 General Mkhwanazi. 14 MR WESLEY: Now if we go to pages 4 and 5 15 we then see what General Mpembe had to say. General 16 Mpembe, he says on page 4, I'm going to break this up into 17 bits, he says first of all POP posts were taken by TRT. 18 Can you explain that, what was happening there? 19 COLONEL MERAPE: Chairperson, this is 20 very difficult. In the provinces, I should mention the 21 North West, members who were trained members of the POP 22 sent to the province started, established the TRT unit 23 instead of coming to the Public Order Policing. 24 Let me repeat it, Chairperson. There are certain 25 numbers of vacant posts in the POP. Members are recruited</p>
<p style="text-align: right;">Page 27014</p> <p>1 Chairperson, that is true. 2 MR WESLEY: Just to round off that point, 3 if we take that to the logical conclusion, what he was 4 saying -and please understand I'm not disparaging you - 5 what he's saying is that incompetent people were in charge 6 in some places. 7 COLONEL MERAPE: Chairperson, yes, it so. 8 That is why there was the inconsistency about how to apply 9 force in certain areas, that some members who have not 10 undergone the operational commanders course training were 11 taking decisions which were wrong. 12 MR WESLEY: If we go over to the next 13 page, no lesser person at that stage than the acting 14 National Commissioner, General Mkhwanazi, now he had the 15 following to say - I'll read it to you. General Mkhwanazi 16 mentioned that, "The police are under scrutiny and 17 therefore need to manage crowds properly. Incidents of 18 crowd management need to be managed correctly by skilled 19 members. Members need to know the distance in which to 20 shoot rubber rounds. Members need to know the proper 21 procedures when dealing with crowds. The decision to 22 withdraw short guns," which should be shotguns, "shotguns 23 was to avoid incidents like that in the Free State. 24 Commanders on the ground must do an inspection on the 25 rounds members are carrying. Commanders need to control</p>	<p style="text-align: right;">Page 27016</p> <p>1 from the college. When they pass out they then go to the 2 units. Coincidentally, when those members were coming to 3 us this other unit was started, the Tactical Response Team, 4 the TRT. What General Mpembe was trying to explain here 5 was that those people who were to fill the posts vacant in 6 the POP were then absorbed in the TRT. 7 MR WESLEY: Okay now I see what you're 8 saying. He goes on to say that Nyalas do not function, 9 only 12 in the province and some of them are not in working 10 order. 11 COLONEL MERAPE: Those are problems that 12 we have in the province, Chairperson, yes. Hence when the 13 meeting started there was talk of nationalisation of the 14 POP so that the national officer finances the provinces 15 because the provinces could not maintain the armoured 16 vehicles belonging to the POP. 17 MR WESLEY: He mentioned something - 18 sorry, Mr Mahlangu - about being too expensive. 19 COLONEL MERAPE: That the maintenance 20 thereof when they are damaged costs a lot of money and that 21 the budget allocated to POP was insufficient to fix those 22 vehicles. 23 MR WESLEY: Okay, so POP didn't have the 24 funds to repair the Nyalas and maintain – 25 COLONEL MERAPE: Money allocated from</p>

<p style="text-align: right;">Page 27017</p> <p>1 provincial budget to POP were insufficient.</p> <p>2 MR WESLEY: Okay, he mentions as well, he</p> <p>3 says, "The JOC issue has been rectified in the province."</p> <p>4 Now to cut a long story short, Lieutenant-Colonel Vermaak</p> <p>5 testified about a JOC issue, is that the same thing about</p> <p>6 having a mobile JOC, or was he talking about something else</p> <p>7 here?</p> <p>8 COLONEL MERAFAE: Chairperson, there was</p> <p>9 an incident where there was no mobile JOC established. As</p> <p>10 I said there was a JOC, a permanent JOC but the mobile one</p> <p>11 is the one that has got to be established where the</p> <p>12 incident is taking place.</p> <p>13 MR WESLEY: Okay, so that had been</p> <p>14 rectified. How had that been rectified?</p> <p>15 COLONEL MERAFAE: Province has purchased a</p> <p>16 mobile JOC which has got fixed radios inside and space</p> <p>17 inside sufficient to put on maps and so on.</p> <p>18 COMMISSIONER HEMRAJ: Does that relate</p> <p>19 also to the delay that's sometimes caused in establishing a</p> <p>20 JOC?</p> <p>21 COLONEL MERAFAE: It helps in bringing in</p> <p>22 the mobile JOC; it's easy for us to bring it to where the</p> <p>23 problem is, Chairperson.</p> <p>24 MR WESLEY: Let me just round off that</p> <p>25 point. This mobile JOC, where is it kept? Is there one or</p>	<p style="text-align: right;">Page 27019</p> <p>1 this.</p> <p>2 COLONEL MERAFAE: I think there is a way</p> <p>3 around it, yes. Right now we have water cannons where we</p> <p>4 can mix certain chemicals, gases that would make it more</p> <p>5 effective than the original teargas. This is what - police</p> <p>6 management made means after discovering the, witnessing the</p> <p>7 teargas.</p> <p>8 CHAIRPERSON: Was that after August 2012?</p> <p>9 COLONEL MERAFAE: Yes, Chairperson, the</p> <p>10 water cannons were bought in 2012, 2010 actually.</p> <p>11 MR WESLEY: When did they start being</p> <p>12 used? Just explain this to me again. Sorry I didn't</p> <p>13 understand. How do the water cannons work with teargas?</p> <p>14 Explain that to me.</p> <p>15 COLONEL MERAFAE: In the water cannons,</p> <p>16 Chairperson, there are mixtures of teargas colour that you</p> <p>17 mix with the water which becomes more effective when it is</p> <p>18 sprayed to the people. I take it that police management</p> <p>19 realised after the ineffective of teargas that they came up</p> <p>20 with this new idea.</p> <p>21 MR WESLEY: So it's something - you're</p> <p>22 talking about you add teargas, I don't know if it's a</p> <p>23 liquid or powder or whatever, to the water and then the</p> <p>24 water cannon sprays that.</p> <p>25 COLONEL MERAFAE: It's mixed in the water,</p>
<p style="text-align: right;">Page 27018</p> <p>1 more. Let's start there; how many -</p> <p>2 COLONEL MERAFAE: We have one in</p> <p>3 Rustenburg, we have one in Potchefstroom. Each and every</p> <p>4 area has one.</p> <p>5 MR WESLEY: Okay, and then how do you</p> <p>6 decide where it goes, if it has to go somewhere? Who makes</p> <p>7 that decision?</p> <p>8 COLONEL MERAFAE: As an operational</p> <p>9 commander, where the need arises I will call it then I will</p> <p>10 get it.</p> <p>11 MR WESLEY: Okay, he carries on, he says</p> <p>12 - and this is in red in the original minute - "Teargas is</p> <p>13 not effective." Was that experienced, teargas was not</p> <p>14 effective? General Mpembe says so, do you agree?</p> <p>15 COLONEL MERAFAE: It depends, Chairperson,</p> <p>16 there are instances where it works, but recently people</p> <p>17 have got a plan B for teargas, using blankets which makes</p> <p>18 it ineffective.</p> <p>19 MR WESLEY: Okay, so with the use of</p> <p>20 blankets protestors are finding a way around the teargas.</p> <p>21 COLONEL MERAFAE: Yes, they come to know,</p> <p>22 Chairperson, they water these blankets, put on water so</p> <p>23 that it absorbs the effect of the teargas.</p> <p>24 MR WESLEY: And senior SAPS management</p> <p>25 knew this on 28th and 29th of May already, 2012, they knew</p>	<p style="text-align: right;">Page 27020</p> <p>1 it comes out in the form of water but when it touches you</p> <p>2 you'll have that effect, you'll feel something that - it</p> <p>3 makes you aware of the fact that it's time to go back.</p> <p>4 MR WESLEY: SAPS didn't have that</p> <p>5 capability at Marikana. When did SAPS have that</p> <p>6 capability? When did you start doing that?</p> <p>7 COLONEL MERAFAE: Chairperson, in the</p> <p>8 province we have got a water cannon which is in Rustenburg</p> <p>9 in my unit. It was there.</p> <p>10 MR WESLEY: But you didn't use teargas in</p> <p>11 the water cannon.</p> <p>12 COLONEL MERAFAE: It depends on the</p> <p>13 operator of that water cannon. Instructions are given by</p> <p>14 the operational commander to the operator of the water</p> <p>15 cannon as to what it is to be used. And then the operator</p> <p>16 himself will have to mix as per the instruction of the</p> <p>17 operational commander. He mixes what is necessary, if</p> <p>18 there is none, then he would use water. If he says gas</p> <p>19 then he presses a button which gas, that water would then</p> <p>20 mixed with a little bit of gas. The blue colour is also</p> <p>21 mixed into the water and if it becomes necessary he places</p> <p>22 the blue colour which then sprays the water that has got</p> <p>23 the colour blue. All these are being controlled by the</p> <p>24 operational commander on the day.</p> <p>25 MR WESLEY: So if the operational</p>

<p style="text-align: right;">Page 27021</p> <p>1 commander on the 16th of August had wanted to use teargas in 2 the water cannons, SAPS had the ability then already then 3 to do it? 4 COLONEL MERAFAE: Correct, Chairperson. 5 The operators are trained which buttons to use for which 6 purpose, for which force you want it to apply. Water is 7 there, gas cylinders are filled in with certain mixtures 8 that you need to apply, they are there. 9 MR WESLEY: And the operational 10 commander, he had to give them an order to say I want you 11 to use this. I'll tell you why I'm asking this, we know 12 the North West water cannon shot blue water, so they would 13 have been instructed then to shoot water that's blue. 14 COLONEL MERAFAE: Correct, Chairperson. 15 MR WESLEY: But you know that they didn't 16 shoot any teargas, any CF gas in the water. 17 COLONEL MERAFAE: If they wanted they 18 would have instructed the operator to do it. 19 MR WESLEY: So one of the questions – I'm 20 sorry, we haven't heard this before, that SAPS had this 21 ability. We should be asking SAPS why the water cannon 22 didn't fire teargas that day. 23 COLONEL MERAFAE: I think they will 24 respond to that, Chairperson. 25 COMMISSIONER HEMRAJ: The alternatives to</p>	<p style="text-align: right;">Page 27023</p> <p>1 for crowd management." I take that that's a lieutenant- 2 colonel from the EC, the Eastern Cape, and he says there's 3 no crowd management taking place. Was that restricted to 4 the Eastern Cape as far as you know? 5 COLONEL MERAFAE: He says in the area that 6 no crowd management training is taking place for crowd 7 management in their area. 8 MR WESLEY: Okay. Then on the same page, 9 Brigadier Woodman had a few things to say. Who was he? 10 COLONEL MERAFAE: Brigadier Woodman is the 11 provincial head ORS Gauteng. 12 MR WESLEY: That one, now he had to say, 13 "Not all members are fully equipped with gear and that 14 capacity is also a problem." Do you know what he was 15 talking about, not all members are fully equipped with 16 gear? 17 COLONEL MERAFAE: He was talking about 18 their province, Chairperson. 19 MR WESLEY: Their province, but what was 20 the problem? 21 COLONEL MERAFAE: He was mentioning that 22 in their province they have a shortage of equipment used in 23 crowd management. 24 MR WESLEY: Did you have the problem 25 here? Here, he says, we're now in Gauteng, in the North</p>
<p style="text-align: right;">Page 27022</p> <p>1 just spraying water, had they been used at all in your 2 province prior to August of 2012? 3 [14:20] COLONEL MERAFAE: Chairperson, yes, 4 wherever I was with my members I give different 5 instructions to use all three available. It easier, 6 Chairperson, whereas we use the coloured water and people 7 get arrested we are able to link them with the crowd. 8 CHAIRPERSON: Do you know whether 9 Brigadier Calitz was aware of this? 10 COLONEL MERAFAE: I don't, Chairperson. 11 Brigadier Calitz worked in the province. We on the ground 12 have been given instructions how to play about with these 13 things. Whether he knows, I don't know. 14 MR WESLEY: Brigadier Calitz is, well 15 Public Order Policing falls under his command in the 16 province. Is that not correct? 17 COLONEL MERAFAE: That is so, Chair. 18 MR WESLEY: The chances are he should 19 know about it? 20 COLONEL MERAFAE: That I don't know 21 whether he has that knowledge or not. 22 MR WESLEY: Okay. We'll have to direct a 23 question. Okay, let's carry on with the minute. There's a 24 note on page 5, it says "Lieutenant-Colonel Vryver," V-R-Y- 25 V-E-R, "from EC, no crowd management training taking place</p>	<p style="text-align: right;">Page 27024</p> <p>1 West was the problem, did the problem also exist there? 2 COLONEL MERAFAE: I'm going to talk about 3 my province, my unit, Chairperson. I did not have any such 4 shortage. I'm talking about my unit, referring to 5 Rustenburg. 6 MR WESLEY: Okay. There's one very 7 cryptic note that I want to refer you to. It's on page 7. 8 Brigadier Modisane, who is he? 9 COLONEL MERAFAE: Brigadier Modisane, 10 provincial head ORS Western Cape. 11 MR WESLEY: Okay. He said, he mentioned 12 that "We need to go back to POP was." What was he talking 13 about? 14 COLONEL MERAFAE: At the beginning of POP, 15 Chairperson, POP was controlled from the National office. 16 They had sufficient people to take charge of any operation 17 they are given. They had resources, vehicles and other 18 equipment that was sufficient for the job. What he was 19 saying here is go back to the basics, do what you have been 20 doing before the restructuring took place in the police. 21 MR WESLEY: Then the, on pages 8 to 9 22 there was reference here to a presentation by Lieutenant- 23 Colonel Wepener. Who is he? Can you remember, Lieutenant- 24 Colonel Wepener right at the bottom, there at 5.4. 25 COLONEL MERAFAE: Okay, ja Lieutenant-</p>

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1 Colonel Wepener was a, he's a trainer in ORS.
 2 MR WESLEY: A trainer in ORS?
 3 COLONEL MERAFAE: He's a trainer, yes.
 4 MR WESLEY: Alright, now next to him the
 5 following is recorded. "It was agreed that the double
 6 rubber blue can be used as long as the people are trained."
 7 What's a double rubber blue?
 8 COLONEL MERAFAE: The reduced rubber that
 9 we are using.
 10 MR WESLEY: Okay.
 11 COLONEL MERAFAE: At POP.
 12 MR WESLEY: "Brigadier Gibson mentioned
 13 that members trained must sign a certificate so that they
 14 suffer the consequences if they didn't, if they don't use
 15 it properly. DNC Masemola said a letter will be sent out
 16 in this regard". Let's look at that. What is this
 17 certificate that he's talking about here?
 18 COLONEL MERAFAE: I think it's a document
 19 where one binds himself that he is trained, he knows, so
 20 that if he does something out of order he can be held
 21 liable for his action.
 22 MR WESLEY: So if I understand correctly
 23 the police management wanted individual members to sign a
 24 certificate which would make them personally responsible
 25 for the consequences of the use of rubber bullets?

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1 COLONEL MERAFAE: Chairperson, in the
 2 record of each and every member with the police, 96 members
 3 it is, it's mentioned that Merafe did this, that proof of
 4 every member, it's an individual member's action like, the
 5 noncompliance to instructions is the responsibly of each
 6 member. I think this was a reminder that we, when we
 7 attend courses we can daily register, attendance registers.
 8 When we finish a course we are given certificates that says
 9 we are competent.
 10 MR WESLEY: Okay. Colonel, we've gone
 11 through these minutes now for the meeting, the POP
 12 Manhattan Hotel meeting, and I want to ask you if you agree
 13 with me that the picture that is painted from these minutes
 14 is that Public Order Policing at that moment in time was in
 15 a situation of grave turmoil, if you understand that term.
 16 Would you agree with me?
 17 COLONEL MERAFAE: I understand where you
 18 speak of a situation but what was the other word?
 19 MR WESLEY: Okay, POPS was in a bad
 20 situation at that stage.
 21 COLONEL MERAFAE: Yes, it is so, because
 22 of the reasons that were brought forward about things that
 23 were there.
 24 MR WESLEY: Alright. Now I want to move
 25 on. There was another meeting that you then attended -

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1 CHAIRPERSON: Before you go on to the
 2 other meeting, there was one thing I want to ask about and
 3 that is, in the section on the way forward, one of the
 4 points made is that, it deals with information, or
 5 intelligence units, it's called "Reestablishment of
 6 information units to be looked into." It's the fifth
 7 bullet point under the heading "Way forward." He's talking
 8 about information units, are they referring actually to
 9 intelligence units, units that gather information,
 10 intelligence?
 11 COLONEL MERAFAE: Chairperson, we have the
 12 intelligence units, they were speaking inside the POP that
 13 information offices should be active to, for them to gather
 14 information, nationalise it and for the job to go on.
 15 CHAIRPERSON: Now he talks about
 16 reestablishment of information units to be looked into, the
 17 way it's put. So does that mean that before the
 18 restructuring took place there were information units as
 19 part of each POP section?
 20 COLONEL MERAFAE: Correct, Chairperson,
 21 there is a section for information in every POP unit.
 22 After restructuring some members were taken away and then,
 23 after restructuring some members were removed or taken
 24 away, as a result we had a shortage of members and
 25 resources for the smooth running of the office.

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1 CHAIRPERSON: So has that now happened?
 2 What General Masemola said must be looked into, has that
 3 taken place since this meeting, the minutes which we're
 4 looking at?
 5 COLONEL MERAFAE: Chairperson, yes, we are
 6 busy bringing up that information office, though we're
 7 still running short of the necessary resources to bring
 8 everything together.
 9 CHAIRPERSON: So it hasn't really
 10 happened yet?
 11 COLONEL MERAFAE: Not as yet, it's not -
 12 CHAIRPERSON: It certainly hadn't
 13 happened by August 2012?
 14 COLONEL MERAFAE: It wasn't that active,
 15 Chairperson.
 16 CHAIRPERSON: Yes, thank you.
 17 MR MAHLANGU: Chairperson, could I ask Mr
 18 Mabunda just for a few minutes, I have a nagging headache.
 19 CHAIRPERSON: Certainly.
 20 MR MAHLANGU: Thank you, Chair.
 21 MR WESLEY: Alright, Colonel, in -
 22 COMMISSIONER HEMRAJ: Sorry, Mr Wesley,
 23 just before you move on. Does your experience say that
 24 the, from a practical point of view that the
 25 nationalisation of the units is a good idea?

<p style="text-align: right;">Page 27029</p> <p>1 COLONEL MERAPE: Very good idea.</p> <p>2 MR WESLEY: Colonel, why?</p> <p>3 COLONEL MERAPE: We shall be having</p> <p>4 enough staff.</p> <p>5 CHAIRPERSON: You must turn your</p> <p>6 microphone on.</p> <p>7 COLONEL MERAPE: We shall be having</p> <p>8 enough staff, to be more effective and deals with crowd in</p> <p>9 an orderly manner.</p> <p>10 MR MABUNDA: As he has said it in</p> <p>11 English, the resources.</p> <p>12 COLONEL MERAPE: And maintain public</p> <p>13 order at the end of the day.</p> <p>14 MR WESLEY: Colonel, in QQQ2, paragraph 8</p> <p>15 you mentioned very briefly a meeting that you attended on -</p> <p>16 not paragraph 8, the eighth paragraph - on 30 May, I'll</p> <p>17 read to you what you state. You say, "On 30 May 2012 there</p> <p>18 was a meeting held at Phokeng Police Station where the</p> <p>19 Provincial Commissioner of North West, Lieutenant-General</p> <p>20 Mbombo, Deputy Provincial Commissioners Major-General</p> <p>21 Mpembe, Naidoo and Molefe and Tsumane were present to</p> <p>22 discuss the implementation of provincial integrated crime</p> <p>23 combating strategy at Rustenburg. I raised the issue of</p> <p>24 shortage of personnel with provincial management at that</p> <p>25 point in time and they promised to give me additional 50</p>	<p style="text-align: right;">Page 27031</p> <p>1 August 2012 at 06:00AM I reported on duty at Lonmin JOC</p> <p>2 where upon arrival Brigadier Calitz briefed myself and</p> <p>3 other officers about the current situation. At 07:30 the</p> <p>4 Provincial Commissioner of North West, Lieutenant-General</p> <p>5 Mbombo, Major-General Naidoo, Major-General Mpembe,</p> <p>6 Brigadier Seboloke, Lieutenant-Colonel Masiza and myself</p> <p>7 went to Lonmin offices for a meeting with Lonmin security</p> <p>8 and management about the current situation at Wonderkop. I</p> <p>9 was questioned about why we did not disperse people when</p> <p>10 they were embarking on an unlawful march and my respond,"</p> <p>11 which should be response, "was that the situation did not</p> <p>12 allow my members to do that. I also highlighted the issue</p> <p>13 that there were no damage to properties, no-one was</p> <p>14 intimidated and although there was obstruction to traffic</p> <p>15 flow members applied situational appropriateness. The</p> <p>16 police management assured Lonmin management that they will</p> <p>17 do their best to restore public order around Marikana</p> <p>18 policing area. The Provincial Commissioner herself</p> <p>19 emphasised that we must not allow people to do as they wish</p> <p>20 by embarking on unlawful activities such as stopping other</p> <p>21 people from going to work, marching unlawfully armed with</p> <p>22 dangerous weapons." That's the paragraph.</p> <p>23 Now I want to ask you who requested this meeting?</p> <p>24 Who asked for this meeting to be held, that you had, with</p> <p>25 Lonmin? Did you ask Lonmin or did Lonmin ask the police?</p>
<p style="text-align: right;">Page 27030</p> <p>1 members to be effective. They will also look into the</p> <p>2 issue of resources." So at this meeting you raised the 50</p> <p>3 additional constables, is that the 50 that you previously</p> <p>4 testified about?</p> <p>5 COLONEL MERAPE: That is so.</p> <p>6 MR WESLEY: And the resources that you're</p> <p>7 talking about here?</p> <p>8 COLONEL MERAPE: Resources, I refer to</p> <p>9 the vehicles.</p> <p>10 MR WESLEY: The vehicles?</p> <p>11 COLONEL MERAPE: Ja.</p> <p>12 MR WESLEY: I don't have the minute of</p> <p>13 this meeting, is there anything about this meeting that</p> <p>14 occurred there that the Commission should know about?</p> <p>15 COLONEL MERAPE: Well, as we are</p> <p>16 answering the questions, it covers everything which has</p> <p>17 been discussed in that meeting.</p> <p>18 MR WESLEY: Alright. Colonel, let's turn</p> <p>19 to what actually happened then on the 13th of August.</p> <p>20 Paragraph 11 of QQQ2, now in this paragraph, would you like</p> <p>21 me to read it to you, just to refresh your memory maybe?</p> <p>22 COLONEL MERAPE: You can read it to me,</p> <p>23 Sir.</p> <p>24 MR WESLEY: Okay. You state the</p> <p>25 following, it's the 11th paragraph, "On Monday the 13th</p>	<p style="text-align: right;">Page 27032</p> <p>1 COLONEL MERAPE: I was only invited that</p> <p>2 I should go to the meeting, I didn't question them -</p> <p>3 MR WESLEY: Alright.</p> <p>4 COLONEL MERAPE: - or organised the</p> <p>5 meeting itself.</p> <p>6 MR WESLEY: Did anybody explain to you</p> <p>7 the reason why you were going to have a meeting with them?</p> <p>8 COLONEL MERAPE: Well, as a junior member</p> <p>9 whenever I get some instruction I had to go without</p> <p>10 questioning the authority.</p> <p>11 MR WESLEY: It's not about questioning</p> <p>12 authority. I'm wondering if on the way there anybody said</p> <p>13 why you were having this meeting?</p> <p>14 COLONEL MERAPE: Well, on the way it was</p> <p>15 difficult to ask the question.</p> <p>16 MR WESLEY: Okay.</p> <p>17 COLONEL MERAPE: But I wanted to go and</p> <p>18 listen on my own -</p> <p>19 MR WESLEY: Okay.</p> <p>20 COLONEL MERAPE: - why is the meeting</p> <p>21 being called upon.</p> <p>22 MR WESLEY: Okay. Now can you remember</p> <p>23 who from Lonmin security and management attended the</p> <p>24 meeting? Can you remember who was there?</p> <p>25 COLONEL MERAPE: Chair, I only knew the</p>

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1 police with whom I accompanied. Maybe it has been
 2 disclosed by my seniors who were there but I didn't go
 3 deeper to question who were the members of, from the
 4 Lonmin.
 5 [14:39] MR WESLEY: The short answer is, you
 6 can't give me the names of the people?
 7 COLONEL MERAFAE: I can't give you the
 8 names but if I see them I can point them to you.
 9 MR WESLEY: I might ask you to do that.
 10 Now is it normal in your experience for SAPS to go to a
 11 meeting and to be questioned for example by Lonmin here,
 12 why aren't you dispersing these people? Does this happen
 13 every day? Is it normal or is this something that never
 14 happened to you before?
 15 COLONEL MERAFAE: In my experience of 27
 16 years service in the POP I've been asked many questions by
 17 the people with whom I work or under whom I work, so it
 18 wasn't unusual for me to be questioned.
 19 MR WESLEY: Your answer was with regard
 20 to people that you work with. I'm talking about not SAPS
 21 members, by private companies.
 22 COLONEL MERAFAE: I don't take it as
 23 something that is surprising. I'm referring to anybody,
 24 that is the churches and the other companies, I'm not
 25 surprising when they question me.

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1 MR WESLEY: Alright, now I understand.
 2 Now your answer, you've recorded what you told Lonmin you
 3 could and couldn't do and what you were going to do.
 4 COLONEL MERAFAE: That is correct so, but
 5 not only Lonmin, as well as my boss who were there, they
 6 wanted to know what is going on. I also explained it to
 7 them.
 8 MR WESLEY: Okay, so in explaining to
 9 Lonmin, your bosses are also there and they're hearing what
 10 you're saying, so you're telling Lonmin and you're telling
 11 your bosses why you haven't done what Lonmin had demanded
 12 you do, you were explaining this to them?
 13 MS BALOYI: No, Chairperson, objection,
 14 that's not what the witness said. Mr Wesley cannot
 15 paraphrase and put it the way that he wants it to be,
 16 that's not what the witness said. The witness's answer is
 17 that, I gave an explanation, Lonmin and my superiors wanted
 18 to know what was happening and I gave an explanation.
 19 MR WESLEY: I'm quite happy with that,
 20 Chair. Now Lonmin hear your explanation, your superiors
 21 hear your explanation.
 22 COLONEL MERAFAE: That is so, Chair.
 23 MR WESLEY: Your chief superior there was
 24 the Provincial Commissioner?
 25 COLONEL MERAFAE: That is so, Chair.

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1 MR WESLEY: Now having heard your
 2 explanation the Provincial Commissioner then emphasised
 3 that we must not allow people to do as they wish by
 4 embarking on unlawful activities such as stopping other
 5 people from going to work, marching unlawfully with
 6 dangerous weapons. That's what she said. So after you've
 7 explained why you didn't take action the Provincial
 8 Commissioner said this.
 9 COLONEL MERAFAE: Chair, that is correct,
 10 yes, just to cut it short as you put it.
 11 MR WESLEY: Alright.
 12 COMMISSIONER HEMRAJ: Isn't there a
 13 sentence in between, the police management assured Lonmin
 14 management that they would do their best to -
 15 MR WESLEY: Yes, thank you, Commissioner,
 16 in fact that - I should have pointed out, before the
 17 Commissioner even said that, what you write here is, "The
 18 police management ensured," now does that mean, what you
 19 actually meant to write there was "assured"?
 20 CHAIRPERSON: That should be assured.
 21 MR WESLEY: Is that correct, assured?
 22 COLONEL MERAFAE: Assured.
 23 MR WESLEY: Assured, yes. Lonmin
 24 management, they will do their best to restore public order
 25 around Marikana policing area, that's what the management

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1 said, police management?
 2 COLONEL MERAFAE: Repeat yourself, Chair.
 3 MR WESLEY: You write here, "The police
 4 management assured Lonmin management that they will do
 5 their best to restore public order around Marikana policing
 6 area."
 7 COLONEL MERAFAE: As a part of police
 8 management who went to Lonmin we really assured them that
 9 we will do our best.
 10 MR WESLEY: Okay, and then after that had
 11 been said - let me just ask this specifically. You say
 12 here "police management", was that a single person or one
 13 or more people who spoke? Who was it that actually gave
 14 this assurance?
 15 COLONEL MERAFAE: The person who spoke
 16 there is the PC, the PC, she was speaking on our behalf
 17 being the organiser.
 18 MR WESLEY: Alright, so now we know that
 19 after you've said what you've said the Provincial
 20 Commissioner said these things. Thank you.
 21 CHAIRPERSON: I have a question about
 22 that. What you said that no-one was intimidated, there was
 23 no damage to property and so on, were you referring to what
 24 had happened on the Friday, the 10th?
 25 COLONEL MERAFAE: That is so, Chair.

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1 CHAIRPERSON: On the Friday the 10th as
 2 far as I understand it, dangerous weapons weren't carried
 3 and there was no, no-one was assaulted, no-one was
 4 intimidated and no property was damaged, is that correct?
 5 COLONEL MERAFAE: That is so, Chair.
 6 CHAIRPERSON: After that other incidents
 7 happened that we know about.
 8 COLONEL MERAFAE: That is so, Chair.
 9 CHAIRPERSON: And there was now a public
 10 order problem because people were carrying dangerous
 11 weapons and public order was being disturbed, is that
 12 correct?
 13 COLONEL MERAFAE: That is correct, Chair.
 14 CHAIRPERSON: Hence the assurance which
 15 the police gave to Lonmin and what the Provincial
 16 Commissioner said, is that a correct interpretation of what
 17 happened?
 18 COLONEL MERAFAE: It is so, Chair.
 19 MR WESLEY: Then the 12th paragraph of
 20 exhibit QQ2, probably the easiest way, if you don't mind,
 21 I'll read it again and then we know where we are. "After
 22 the meeting with mine management the police went back to
 23 JOC where the Provincial Commissioner instructed Major-
 24 General Mpembe to lead the operation and make sure that
 25 public order is maintained. We went and briefed our

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1 members about the situation and posted them to patrol the
 2 area. At about 13:00 we received a call from security at
 3 Karee Hostel that a group of plus-minus 200 men armed with
 4 sharp pipes, pangas and sticks were marching from Karee
 5 Hostel to Wonderkop Hill where others are waiting for them.
 6 Major-General Mpembe, Colonel Diole, Lieutenant-Colonel
 7 Tsiloane and other officers and members of POP Rustenburg,
 8 POP Mpumalanga, POP Gauteng, TRT North West, National
 9 Interventional Unit, attended the complaint.
 10 We were driving in a convoy to the direction of
 11 the marchers. When we were about to reach them we saw two
 12 men moving towards their direction and we stopped and
 13 searched them. We found two firearms in their possession
 14 and took them to Marikana Police Station for questioning.
 15 We then proceeded to the group that was marching alongside
 16 way the railway crossing to Marikana Hill."
 17 I would like to just ask you a couple of
 18 questions about that. You mentioned here a briefing that
 19 you gave to your members. What was that briefing?
 20 COLONEL MERAFAE: In the morning my
 21 members who come from the satellite Klipgat gave a briefing
 22 about the situation that was ongoing at Marikana, that
 23 there were some people who were stopping the other people
 24 to get to work and there were some other people who have
 25 been killed. There were some other people who were

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1 carrying, walking and carrying some dangerous weapons in
 2 the street, so it is how I briefed them that they should go
 3 and stop them and then whenever they meet any people who
 4 are operating not under the law they should block them.
 5 MS BALOYI: Chairperson, the witness also
 6 said that he briefed them to go and patrol the area.
 7 CHAIRPERSON: Thank you.
 8 COLONEL MERAFAE: Ja, and to patrol also,
 9 thank you.
 10 MR WESLEY: Okay, now the group that went
 11 and attended the scene - I'm going to refer to the scene,
 12 it is the scene next to the railway line - that was a mixed
 13 group of POP from various units, but it included, why I say
 14 mixed is that it has got North West TRT and it has got
 15 members of the NIU, so it is a mixed group.
 16 COLONEL MERAFAE: It is so, Chair.
 17 MR WESLEY: Okay, now Standing Order 262,
 18 if you can grab that, it is SS2. Okay, paragraph 11,
 19 subparagraph 6, it is on page 9 of this document. Now
 20 you've got a mixed group of TRT, NIU and POP, but this
 21 paragraph reads, "All members involved in the actions must
 22 form part of the unified command structure consisting of
 23 sections, platoons, or companies. Members not working in
 24 sections may not be deployed." And then it says, "All
 25 visible policing members deployed for such purposes must be

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1 trained in the management of crowds." Do you see that?
 2 COLONEL MERAFAE: I see that, Chair.
 3 MR WESLEY: My first question is, when it
 4 says there all visible policing members, what is a visible
 5 policing member?
 6 COLONEL MERAFAE: That is the members of
 7 the police whom you can see in their uniform, that they are
 8 operational. They are called visible because they are
 9 wearing the uniform, that one can be seen that they are
 10 police, members of the force.
 11 MR WESLEY: Okay, they're visible
 12 policing members because you can see them in their uniform,
 13 now I understand that. Now the visible policing members
 14 that attended the scene then on the 13th, that included NIU
 15 and TRT, they also had uniforms on?
 16 COLONEL MERAFAE: That is so, Chair.
 17 MR WESLEY: Are they all trained in the
 18 management of crowds, TRT and NIU?
 19 COLONEL MERAFAE: Chair, I won't be able
 20 to answer that question because before we go to that place
 21 I didn't check them as to whether all of them have
 22 undergone the same training or not, but what I know is that
 23 the National Intervention police, they are all trained
 24 before they go there.
 25 MR WESLEY: So are you quite satisfied

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1 that all the NIU were trained in Public Order Policing?
 2 COLONEL MERAFAE: Chair, I don't say all
 3 of them, I say some of them have been trained.
 4 MR WESLEY: And the TRT you can't say?
 5 COLONEL MERAFAE: Well, as far as the TRT,
 6 by then they were not trained at all.
 7 MR WESLEY: Well, immediately there is a
 8 problem then. This standing order - let me ask you this
 9 before I explain the problem to you. This is a standing
 10 order. Now it is an instruction, it is an order that must
 11 be obeyed, isn't that correct?
 12 COLONEL MERAFAE: That is so, Chair.
 13 MR WESLEY: You can't decide what part of
 14 this order you're going to obey and what part you're not
 15 going to obey, and when I say "you" I mean a policeman. A
 16 policeman cannot decide I'll do this and I won't do that.
 17 COLONEL MERAFAE: That is so, Chair.
 18 MR WESLEY: And this order specifically
 19 said that the people that you sent to that crowd, that
 20 scene to go and intercept the crowd or go on an operation
 21 with them or whatever, this order says that they had to be
 22 trained in crowd management.
 23 COLONEL MERAFAE: I agree with the order,
 24 Chair.
 25 MR WESLEY: But not all of the visible

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1 policing members who did go to the scene were so trained?
 2 COLONEL MERAFAE: That is so, Chair.
 3 MR WESLEY: So from the outset this order
 4 was being disobeyed?
 5 COLONEL MERAFAE: You will understand that
 6 myself being Merafe was not the overall commander. There
 7 were some generals, brigadiers and the colonels, they were
 8 also there.
 9 MR WESLEY: No, I accept that, I'm not
 10 pointing a finger at you personally.
 11 COLONEL MERAFAE: Okay.
 12 MR WESLEY: Not you personally.
 13 COLONEL MERAFAE: Oh, no, I thought you
 14 said me personally.
 15 MR WESLEY: Above you -
 16 COLONEL MERAFAE: I thought you were just
 17 saying that it is personal.
 18 MR WESLEY: No, no, no, I'm not singling
 19 you out for special treatment here, I promise you. I know
 20 that above you there were full colonels, there were
 21 brigadiers and several generals. The point is, with all of
 22 them there still, from the start when you left the JOC with
 23 General Mpembe in charge, off to go and intercept that
 24 crowd, with POP members as well as TRT and NIU members,
 25 that part of Standing Order 262 was already being

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1 disobeyed.
 2 COLONEL MERAFAE: I agree, Chair.
 3 MR WESLEY: I just want to ask you, there
 4 is a very good reason why you only sent trained, or Public
 5 Order policemen that are trained in crowd management to
 6 cater for or to attend to crowd management situations and
 7 that's because, and I'll go through them one by one, you
 8 need to have special training to manage crowds.
 9 COLONEL MERAFAE: That is so, Chair.
 10 MR WESLEY: The POP people that go to
 11 crowds, they're given special equipment to deal with
 12 crowds.
 13 COLONEL MERAFAE: That is so, Chair.
 14 MR WESLEY: And that special training and
 15 that special equipment that you need to deal with crowds
 16 properly, the NIU and the TRT don't necessarily have them.
 17 COLONEL MERAFAE: That is so, Chair.
 18 MR WESLEY: And when I say not
 19 necessarily, I mean it might be that a TRT member may have
 20 a shield for instance in the back of his van, but it is not
 21 something that he is normally issued with. I'm just using
 22 that as an example.
 23 COLONEL MERAFAE: I agree, Chair.
 24 MR WESLEY: And do you agree with me as
 25 well it is highly undesirable to send policemen and women

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1 to go and perform crowd management work or to engage with
 2 the crowd when they don't have the training and they don't
 3 have the equipment?
 4 COLONEL MERAFAE: That is the truth,
 5 Chair.
 6 MR WESLEY: Let's go on, then the 13th
 7 paragraph in exhibit QQ2 -
 8 CHAIRPERSON: It occurs to me, Mr Wesley,
 9 that it might be appropriate for us to take the tea
 10 adjournment before you move on to the 13th paragraph, so we
 11 will take the tea adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [15:17] MR WESLEY: Thank you Chair. Chair, I
 14 have placed on your bench and distributed just a copy of
 15 section 9 of the Regulation of Gatherings Act. I've given
 16 the Colonel as well one. There are some issues which we'll
 17 be addressing. I gave it to him this morning already and
 18 he has read it. I don't know if we will be able to get to
 19 those today, but he has a copy with him. I've also
 20 distributed some copies amongst the parties here.
 21 CHAIRPERSON: I don't think we have to
 22 make it an exhibit.
 23 MR WESLEY: No, Chair.
 24 CHAIRPERSON: It's just section 9 of the
 25 act?

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1 MR WESLEY: Yes, if I refer to the act I
 2 refer to –
 3 CHAIRPERSON: Yes, yes, I understand.
 4 It's easier to refer to it if people have got a copy in
 5 front of them. But it's not necessary to make an exhibit.
 6 MR BIZOS SC: For the purposes of record
 7 could we quote on top of the heading the year and the name
 8 of the act.
 9 MR WESLEY: It's the Regulation of
 10 Gatherings Act, 1993, Act 205 of 1993. Colonel, we're
 11 carrying on with what happened on 13 August 2012 at, what I
 12 refer to the scene by the railway line. Now you deal with
 13 it further in paragraph, the 13th paragraph of QQQ2 and in
 14 paragraph 5.13 of QQQ1. For my purposes I'm going to refer
 15 to parts of what you said in either paragraph. I
 16 understand how you explained you wanted them to be read.
 17 The first issue I want to just address with you -
 18 we'll go through it issue by issue - is command. In QQQ2
 19 paragraph 13 you say inter alia "The group was stopped by
 20 Major-General Mpembe who was the senior police officer who
 21 took charge of his combined police unit and started
 22 negotiations with the group," and in QQQ1 at paragraph 5.13
 23 you say, "I then said to Major-General Mpembe that as the
 24 senior POP commander I am taking control and that we should
 25 disperse and disarm the marchers. Major-General Mpembe

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1 refused that we disarm the marchers and said that he did
 2 not want another Tatane incident and he ordered that we
 3 escort the strikers to the koppie."
 4 Now we know that Major-General Mpembe, by the
 5 time he arrived at the scene he had already been appointed
 6 as the commander of the JOC - these are his words. Also he
 7 was the overall commander and at that stage Brigadier
 8 Calitz was the operational commander.
 9 COLONEL MERAFFE: That is so, Chair.
 10 MR WESLEY: Now it's been said many times
 11 that Standing Order 262 requires that the senior POP member
 12 must take command. The actual paragraphs, if you can have
 13 a look at exhibit SS2, it's paragraph 7, subparagraph 3C.
 14 Standing Order 262, exhibit SS2. 7.3Cm you see that, now
 15 this in respect, that section there applies to authorised
 16 marches, "The ACCU takes operational command and VISPOL
 17 assist in the policing of the event," and I'll say it
 18 again, the ACCU, when I say ACCU that's POP.
 19 COLONEL MERAFFE: That is so, Chair.
 20 MR WESLEY: This section applies to
 21 authorised marches or gatherings. For unauthorised marches
 22 or gatherings one must have a look at paragraph 14 sub 2,
 23 that block, go down Craig, down one. This sets out the
 24 steps that have to be followed and step 2, says, requires
 25 at an unauthorised march that somebody must "set up a

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1 mobile JOC and notify ACCU who will take operational
 2 command on arrival."
 3 COLONEL MERAFFE: That is so, Chair.
 4 MR WESLEY: So whether it's authorised or
 5 unauthorised, when the POP commander arrives, the senior
 6 POP commander, he must take control?
 7 COLONEL MERAFFE: That is so, Chair.
 8 MR WESLEY: And you were the senior POP
 9 commander at the scene there and that is why you told the
 10 General you were taking over, you're taking command?
 11 COLONEL MERAFFE: Yes.
 12 MR WESLEY: And he refused, that's your
 13 word, he refused?
 14 COLONEL MERAFFE: He refused, yes.
 15 MR WESLEY: And to state the obvious, in
 16 refusing to cede or to acknowledge your operational command
 17 at the scene he was acting contrary to Standing Order 262?
 18 COLONEL MERAFFE: That is so, Chair.
 19 MR WESLEY: If we can now look at
 20 equipment, specifically POP equipment that you had at the
 21 scene. We now know about the command. Equipment, in QQQ2
 22 you've explained how you arrived and went to the members.
 23 There's a part then that you say, "By that time members of
 24 different units were on the left-hand side of the group
 25 along the railway and in front and in the rear." So if we

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1 picture in our minds you're standing facing the group on
 2 the road, you have the group, the crowd in front of you,
 3 you've got members on the left-hand side, you've got
 4 members here with you in front of the group and there's
 5 members behind.
 6 COLONEL MERAFFE: That is so, Chair, but
 7 those who were behind, those who came by Nyala.
 8 MR WESLEY: Yes, yes, that's quite
 9 correct. One can in fact see that on exhibit Z, which I'll
 10 referring you to. Now as far as equipment goes, Brigadier
 11 Mkhwanazi testified on day 27 at page 2869, day 27 page
 12 2869. Sorry Craig, that's 87, you've got 87, I'm in 27 and
 13 it's page 2869. Thank you. On the right-hand side, there
 14 we go, from line 23 onwards. If we go down, now he's being
 15 led by Mr Ngalwana and the question he's put to him,
 16 "Brigadier, perhaps for purposes of the record you might
 17 want to read in the equipment listed in 5.3.1.1," and
 18 Brigadier Mkhwanazi goes on, he says, "Okay, thank you. I
 19 will go through, you say 5.3.1.1, the use and maintenance
 20 of equipment. The equipment we are referring to is" - and
 21 please listen here - "helmet, gasmask and filter, body
 22 armour, tonfa, shield, shotgun, double-bore rubber rounds,
 23 pepper spray, teargas, CS, CS rifle grenade, 40 millimetre
 24 CS rounds, stun grenade, pyrotechnics, we have smoke
 25 grenade flares and 40 millimetre grenade launcher." Mr

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1 Ngalwana, "I see there is no mention of an R5 or pistol in
 2 that list. Is there any reason for that?" Brigadier
 3 Mkhwanazi, "Yes that's correct, Advocate. The reason is
 4 that the R5, the 9 millimetre is actually being given
 5 during basic training. Members already are equipped. They
 6 know about it, unless maybe if they go for advanced
 7 training on that position." Mr Ngalwana, "What is the
 8 primary weapon for a POPS person?" Brigadier Mkhwanazi,
 9 "In Public Order Policing members are actually equipped
 10 mostly with a shotgun, hence it actually demands more that
 11 we actually take action with our less lethal technique if
 12 we do something. Shotgun is the main firearm or rifle that
 13 is being utilised".
 14 Okay, so there's two things we learn from what
 15 Brigadier Mkhwanazi says, he gives us a list of specialist
 16 equipment peculiar to POPS, Public Order Policing. You
 17 heard that, helmet, etcetera? That's public order policing
 18 equipment.
 19 COLONEL MERAFAE: That is so, Chair.
 20 MR WESLEY: And then he says the primary
 21 weapon for a POPS person is the shotgun.
 22 COLONEL MERAFAE: That is so, Chair.
 23 MR WESLEY: Now we know that members of
 24 the TRT from North West and the NIU were at the scene.
 25 They didn't have this specialist equipment. Let's leave

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1 the shotgun aside.
 2 COLONEL MERAFAE: That is so, Chair, they
 3 didn't have them.
 4 MR WESLEY: Okay, now Colonel, I can take
 5 you through the video, it's exhibit Z1. We can go though
 6 it second by second, or because we probably won't be able
 7 to finish by today, we'll have some minutes in the morning.
 8 Can I ask that you look at it this evening and I'm going to
 9 give you, I'll give you specific times to look at. If you
 10 look at the video, in total I'm going to ask you to look at
 11 15 minutes, it's the 15 minute part of the clip and I'll
 12 give you the exact times to looked at. I looked at it and
 13 what I did was in looking at it I started trying to count
 14 the number of shotguns that I could see in the video clip
 15 and the total that I came to, that I can say there is a
 16 shotgun was 11. Now there's a possibility, in the clip you
 17 are going to see the Nyala that you referred to, that was
 18 at the back of the crowd. You're going to see possibly two
 19 more shotguns being held by members there but they are some
 20 distance away from the camera and it's not clear. If you
 21 could, for the sake of argument, have a look tonight and
 22 see if you disagree but it does appear to me there were
 23 only 11, possibly 13 at most at the scene, shotguns amongst
 24 all the members. Does that accord with your recollection?
 25 COLONEL MERAFAE: Chair, I can say that I

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1 agree with you, if you count them, it's that number. They
 2 took their weapons, some of the members, after it has been
 3 mentioned that we don't want Tatane's incident some of the
 4 members they took their weapons and placed them into the
 5 car. So I can agree. If you have calculated the number up
 6 to 13, I will agree with you that that is the total of the
 7 weapons.
 8 MR WESLEY: Yes, you're quite correct and
 9 you do in fact say that - I'm just looking for the, it's
 10 paragraph 5.13 of QQQ1, what you say is the following, to
 11 help you, you say, "As a result of Major-General Mpembe
 12 saying that we would not disarm the marchers some members
 13 retreated away from the strikers and some went to put their
 14 weapons in their vehicles. Others kept their weapons with
 15 them."
 16 COLONEL MERAFAE: That is so, Chair.
 17 MR WESLEY: So this happened after
 18 General Mpembe says we are not going to disarm them.
 19 COLONEL MERAFAE: That is so, Chair.
 20 MR WESLEY: If you have a look at the
 21 clip, you're going to notice that occurs fairly late, when
 22 I think it happens. Before that even I can only count 11,
 23 maybe 13 at the most.
 24 CHAIRPERSON: Are you saying that's
 25 before General Mpembe gave this instruction that he wasn't

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1 going to disarm the strikers?
 2 MR WESLEY: Before the time that I can -
 3 CHAIRPERSON: So that the putting of
 4 weapons into vehicles, which would have reduced the number
 5 of weapons in the hands of the members -
 6 MR WESLEY: That's the point.
 7 CHAIRPERSON: - took place after the
 8 section of the video where you counted -
 9 MR WESLEY: 11, possibly 13.
 10 CHAIRPERSON: Ja. I understand the point
 11 that you made. Do you still agree with what Counsel's
 12 putting to you?
 13 COLONEL MERAFAE: I'm still on my way to
 14 say that the police, they went to put their weapons into
 15 the vehicle after Mpembe said that he doesn't want Tatane
 16 incident to happen here.
 17 MR WESLEY: Okay.
 18 COLONEL MERAFAE: Only that time.
 19 CHAIRPERSON: What Mr Wesley is saying to
 20 you is before that time, he looked at the video and he
 21 looked to see how many people had shotguns in their hands
 22 and he counted 11, but he's prepared to say there may have
 23 been another two. But he says that counting was done
 24 before the mention was made by General Mpembe of the Tatane
 25 incident and before you can see people putting weapons into

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1 vehicle. Is that right, Mr Wesley, have I got it right?
 2 MR WESLEY: As it pleases, Chair.
 3 COLONEL MERAFAE: Chair, these are two
 4 versions here; seeing is believing.
 5 MR WESLEY: Okay.
 6 COLONEL MERAFAE: The best is that I
 7 should also to go and see on my own, it is then that I'll
 8 give either the confirmation or not.
 9 MR WESLEY: Okay.
 10 CHAIRPERSON: Before Mr Wesley proceeds,
 11 can I ask you this. How many police members were on the
 12 scene? My impression is about 70, but do you know the
 13 exact number?
 14 COLONEL MERAFAE: Roughly 70. It could be
 15 that number.
 16 CHAIRPERSON: So there should have been
 17 about 70 shotguns?
 18 COLONEL MERAFAE: No, they were mixed
 19 together with the TRT.
 20 CHAIRPERSON: Okay.
 21 COLONEL MERAFAE: It could not be 70
 22 shotguns.
 23 CHAIRPERSON: No, I asked the question
 24 badly. Can you tell us how many TRT people were there?
 25 The TRT people wouldn't have had shotguns, would they?

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1 COLONEL MERAFAE: The TRT, Chair, members
 2 they don't have the shotguns.
 3 CHAIRPERSON: Alright, how many people
 4 were there according to Brigadier Mkhwanazi who should have
 5 been carrying shotguns? In other words how many shotguns
 6 should have been on the scene?
 7 COLONEL MERAFAE: Chair, I'll first go and
 8 verify. I don't want to give a wrong number.
 9 COMMISSIONER HEMRAJ: Mr Wesley, at what
 10 point –
 11 COLONEL MERAFAE: And how many police are
 12 being there.
 13 COMMISSIONER HEMRAJ: Mr Wesley, what
 14 point on the video are you using as a reference for General
 15 Mpembe saying that he does not want another Tatane
 16 incident?
 17 MR WESLEY: I'm going to, I'll get the -
 18 my note here doesn't actually identify it, but there's a
 19 point where the video breaks and he has a discussion with
 20 members. I'll point it out to the Colonel and I'll show
 21 him the moment that I suspect is that moment. He can agree
 22 or he can disagree.
 23 COMMISSIONER HEMRAJ: Because it's not
 24 specifically heard, him saying that –
 25 MR WESLEY: No.

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1 COMMISSIONER HEMRAJ: So one has to
 2 infer.
 3 MR WESLEY: One has to infer and –
 4 COMMISSIONER HEMRAJ: And that's why I
 5 wanted to know which point you were using as that
 6 reference.
 7 MR WESLEY: No, I can't take you to a
 8 second and I can say that's the second. We will have to
 9 infer looking at the video. But Colonel, let me help you,
 10 exhibit L slide 44, we know exhibit L is the SAPS
 11 presentation and according to that presentation in total
 12 there was 70 members that went to that scene. 70 SAPS
 13 members in total.
 14 COLONEL MERAFAE: I agree with you.
 15 MR WESLEY: So the Chair is quite correct
 16 in his recollection.
 17 COLONEL MERAFAE: I agree with you.
 18 MR WESLEY: Are you able to estimate an
 19 approximate number of Public Order Policing members that
 20 may have been there?
 21 COLONEL MERAFAE: Chair, I say that I want
 22 first of all to go and verify, to give precisely the
 23 number.
 24 MR WESLEY: Okay. If you could check and
 25 let me know tomorrow.

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1 COLONEL MERAFAE: There's no problem.
 2 CHAIRPERSON: Before we move on, the POP
 3 people should have had shotguns, is that correct?
 4 COLONEL MERAFAE: Yes, all POP they must
 5 be.
 6 CHAIRPERSON: I think the precise, the
 7 unit of POP people, eight of them, there's normally one R5
 8 and the rest have shotguns, is that right?
 9 COLONEL MERAFAE: That is so, Chair.
 10 CHAIRPERSON: Alright, and then the NIU
 11 people, what weapons would they have had, R5s or shotguns?
 12 COLONEL MERAFAE: Both shotguns and R5s.
 13 CHAIRPERSON: The TRT people I take it
 14 would also –
 15 COLONEL MERAFAE: R5s only.
 16 CHAIRPERSON: R5s only. Alright. You'll
 17 come tomorrow and tell us how many TRT people there were,
 18 how many NIU people and how many POP people and then we can
 19 work out approximately how many shotguns should have been
 20 there, is that correct?
 21 [15:37] COLONEL MERAFAE: That is so, Chair.
 22 MR WESLEY: Okay, Colonel, now according
 23 to Lieutenant Baloyi, exhibit GGG16 in paragraph 2 and you
 24 don't need to go there, I'll tell you what he says. He
 25 says that he came to Marikana from Pretoria on 13 August

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1 with 22 POPS members. Would you accept that he is correct
 2 when he says that?
 3 COLONEL MERAPE: Yes, I accept that,
 4 Chair.
 5 CHAIRPERSON: But isn't he going to check
 6 tonight and then you don't have to ask him if he agrees
 7 with what people said, he is going to give us precise
 8 details tomorrow, isn't that a sensible way of treating it?
 9 MR WESLEY: Yes, Chair, but this goes to
 10 a separate point, I'm going to make another point with
 11 this.
 12 CHAIRPERSON: I'm sorry.
 13 MR WESLEY: He carries on in paragraph 3
 14 to say the following, he says that, "Captain Makukule and I
 15 agreed it was a Crowd Management situation and therefore we
 16 needed shotguns and rubber rounds. We then proceeded to a
 17 storeroom where we were issued with 12 shotguns without
 18 rounds as the storeman for rubber rounds was not around.
 19 We then distributed shotguns amongst members and I was in
 20 possession of a shotgun NRAM8686. I received four rounds
 21 from Warrant Officer Moachi who brought along some rubber
 22 rounds." So to go back, I've counted 11, possibly 13, if
 23 all Lieutenant Baloyi's members took their shotguns there
 24 are 12 there that we have, it seems to tally with what I
 25 counted, but the point I want to make here is the

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1 ammunition. They received 12 shotguns but they didn't
 2 receive ammunition. What they did was, they had to use
 3 ammunition, to distribute ammunition that they'd brought
 4 with them from Gauteng, did you know that?
 5 CHAIRPERSON: Well, you put that as a
 6 fact, I mean that's what Lieutenant Baloyi said. He may be
 7 right, he may be wrong. According to Lieutenant Baloyi
 8 that's the case.
 9 MR WESLEY: Yes, do you have any
 10 knowledge of these allegations?
 11 COLONEL MERAPE: No, I don't have any
 12 knowledge as far as that is concerned because he has found
 13 us at the scene, that is the arrival by Baloyi and his
 14 colleagues.
 15 MR WESLEY: Okay, now if you have a look
 16 at exhibit Z1, in fact I'm going to ask that you just stay
 17 behind for 15 minutes after this so that we can go through
 18 it together. You're going to see, - you won't see any
 19 shields. Now some of the members that we do see in the
 20 scene have got helmets on, some of them appear to be, in
 21 fact the majority appear at least to have bulletproof vests
 22 on and then what in the army is known as webbing, it is
 23 canvas strapping in which you attach things, those pockets
 24 and what not. Some of the members may have had the things,
 25 the other equipment that we're referring to, pepper spray,

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1 teargas, stun grenades, pyrotechnics, smoke grenades, can
 2 you remember how they were equipped with those items on the
 3 day, the POP members? Did they have full pouches with all
 4 this stuff in or what was the position?
 5 COLONEL MERAPE: Well, as far as the
 6 members of Rustenburg, they had the bag which contained the
 7 shields and the other apparatus, they were given, it was
 8 handed over to them. Those weapons they handed over to the
 9 members, the equipment, but they cannot use them on their
 10 own, they have to be commanded because sometimes you find
 11 that people are armed with the assegais and so forth.
 12 MR WESLEY: Yes, well, that's the point.
 13 I think you see where I'm going, but at the scene next to
 14 the railway line where you are by the crowd, there are no
 15 shields.
 16 COLONEL MERAPE: 12 of the members that I
 17 paraded were Lonmin officers from my satellite unit, I
 18 personally checked their equipment. They were having
 19 shields, helmets, tonfas and [inaudible]. So I can say
 20 that because I inspected them. The rest of the team that I
 21 found there I couldn't pick everybody and do the parade at
 22 the scene of the incidents.
 23 MR WESLEY: I understand you may have
 24 paraded them, but I'm talking at the actual scene, remember
 25 where we are. You're on the road, you have the crowd in

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1 front of you and you have a Nyala with SAPS members at the
 2 rear of the crowd, you have members on your left hand side
 3 by the railway line, you have members behind you. From Z1
 4 we cannot see any shields amongst those members. Where
 5 were the shields?
 6 COLONEL MERAPE: Still inside their
 7 vehicles.
 8 MR WESLEY: Now you're going to do the
 9 count about shotguns, we will go through that process,
 10 there may be less, there may be more that you can find and
 11 see at the scene, but the real point I want to make is, not
 12 all the members had shotguns, all POP members and, I'm
 13 talking standing at the scene, and none of them had
 14 shields.
 15 COLONEL MERAPE: Chair, this process of
 16 the intervention of the POP, there is this that says
 17 members should not display their firearm, they should not
 18 show that they are aggrieved, they shouldn't provoke the
 19 situation by displaying other things that they're supposed
 20 not to display. It could be the reason why they didn't
 21 display it as they arrived at the scene, because they have
 22 to get some instructions, the process of negotiation was
 23 still ongoing, thus they did not display their weapons.
 24 COMMISSIONER HEMRAJ: Would they have to
 25 wait for a command from their commander to arm themselves

<p style="text-align: right;">Page 27061</p> <p>1 with the shields?</p> <p>2 COLONEL MERAPE: Definitely and it</p> <p>3 depends on the situation, whether the stones are being</p> <p>4 thrown at them, because the shield is to prevent the stone,</p> <p>5 you can't prevent assegai and any sharp thing with a</p> <p>6 shield. It is going to protrude because that shield, it is</p> <p>7 a plastic, it is not iron made shield.</p> <p>8 MR WESLEY: Colonel, at the scene, we</p> <p>9 know that you've testified already and you state in your</p> <p>10 statements what decisions you would have made on that day.</p> <p>11 With not all POP members having shotguns, we're going to</p> <p>12 work out the number, and none of them having their shields</p> <p>13 with them, were you actually in a position to launch any</p> <p>14 operation against that crowd at the scene?</p> <p>15 COLONEL MERAPE: We as the POP police, as</p> <p>16 we arrived at the scene we are not going to attack the</p> <p>17 people, we deal on the situation. So it does not mean that</p> <p>18 of us should be armed by then, because we are going to</p> <p>19 manage the situation, those people, we are not at war at</p> <p>20 that moment. Ja, the Operational Commander should give an</p> <p>21 instruction that such a person should have three rubbers</p> <p>22 and so forth. We are not there to kill people, that's how</p> <p>23 we operate, it is just to disperse them.</p> <p>24 COMMISSIONER HEMRAJ: So if you were to</p> <p>25 give the command for a dispersal operation you would expect</p>	<p style="text-align: right;">Page 27063</p> <p>1 standing there ready, it is not necessarily that the</p> <p>2 members should go back to the kraal in order to arm</p> <p>3 themselves.</p> <p>4 MR WESLEY: I'm trying to understand, so</p> <p>5 some members would stay where they are, others would go and</p> <p>6 get, you mentioned the figure eight shields, if you needed</p> <p>7 eight shields and then come back to the scene to execute</p> <p>8 the order. I'm trying to understand how things would</p> <p>9 actually work.</p> <p>10 COLONEL MERAPE: First of all I would</p> <p>11 talk to the strikers and say, now that you don't want to</p> <p>12 listen to the police, I will be addressing them, we are</p> <p>13 going to disperse you. I also mentioned to them that I'll</p> <p>14 give you the time in order to be dispersed. At that moment</p> <p>15 also that I'll give also the instruction to my colleagues,</p> <p>16 to my members to go and get ready. That is to get the</p> <p>17 weapons for themselves, to arm themselves.</p> <p>18 MR WESLEY: With whatever was</p> <p>19 appropriate?</p> <p>20 COLONEL MERAPE: Yes, to the</p> <p>21 circumstances.</p> <p>22 MR WESLEY: Okay, now you have, - well,</p> <p>23 right at the beginning I pointed out to you that what I</p> <p>24 called was a conflict or a discrepancy between the two</p> <p>25 statements, exactly what you had in mind at the scene, you</p>
<p style="text-align: right;">Page 27062</p> <p>1 that each of the members would go and pick up their</p> <p>2 shotguns and their shields so ordered?</p> <p>3 COLONEL MERAPE: That is so, Chair, it</p> <p>4 only depends on the situation, maybe I need eight or four,</p> <p>5 it will depend on the circumstances. So we have got what</p> <p>6 we call the stun grenade which, just to threaten the people</p> <p>7 with it, to scare the people, - which is not like rubber,</p> <p>8 it is less effective than rubber, then we will go to</p> <p>9 rubber. It is called, that process is called gradual</p> <p>10 police response during the Crowd Management.</p> <p>11 MR WESLEY: Now, I'm going to get to what</p> <p>12 you had in your mind what should be done on the day, but</p> <p>13 let us take for example, you wanted to disperse and disarm</p> <p>14 them, that was your decision and you were in charge. For</p> <p>15 that to be carried out your members would first have to go</p> <p>16 back to the vehicles and get whatever other equipment they</p> <p>17 needed, including shields and then come back to the scene</p> <p>18 in order to execute whatever operation it is that you've</p> <p>19 ordered.</p> <p>20 COLONEL MERAPE: It was not about us</p> <p>21 withdrawing from the operation to go and get our shields</p> <p>22 somewhere else. Those that were standing there, then we</p> <p>23 start with the instruction because I will have warned the</p> <p>24 people about the force that is going to be applied on them.</p> <p>25 He also said that there were some other members who were</p>	<p style="text-align: right;">Page 27064</p> <p>1 had in mind, in QQQ2, paragraph 13 you say, "Myself and</p> <p>2 other officers suggested that we disarm the people there</p> <p>3 because we have cornered them," and then in QQQ1 at</p> <p>4 paragraph 13.5, you say, "I then said to Major-General</p> <p>5 Mpmembe that as the senior POP commander I'm taking control</p> <p>6 and that we should disperse and disarm the marchers." Now</p> <p>7 please remind me, what did you think, what was in your</p> <p>8 mind, what should happen there?</p> <p>9 COLONEL MERAPE: It will depend on how</p> <p>10 this is unfolding, like I explained earlier on. There is a</p> <p>11 process to be followed, both sides, that is my members will</p> <p>12 get time to get ready as well warning the strikers so that</p> <p>13 they should know what is going to take place. So as far as</p> <p>14 I am concerned my statement, there is nothing wrong, a</p> <p>15 discrepancy between the two of them, as he has explained at</p> <p>16 the last note.</p> <p>17 MR WESLEY: Okay.</p> <p>18 COLONEL MERAPE: I imagine much more in</p> <p>19 one statement and then the other statement, it was not</p> <p>20 mentioned in the other statement. That is the difference.</p> <p>21 MR WESLEY: Your plan what you had in</p> <p>22 mind, if you follow the process that you described, in</p> <p>23 order for it to be effective it required, it would have</p> <p>24 required that the crowd stayed where they were in that spot</p> <p>25 while you were, - you're giving them time and your members</p>

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1 are off to go and get shields and shotguns and whatever.
 2 For your plan to work they would have to stay where they
 3 are.
 4 COLONEL MERAFAE: They are sort of bottled
 5 up with members at their left flank, members at front of
 6 them, members at the rear, on the other side there were
 7 some bushes like, those people would have, according to me
 8 stayed there because it was not about members of the police
 9 moving away from the scene going elsewhere where they
 10 cannot be seen. The members were at the proximity of that
 11 place, they were just there, it was not about [inaudible]
 12 that needed more than five minutes to do [inaudible].
 13 COMMISSIONER HEMRAJ: But, Colonel, what
 14 is the exact warning that you would have given?
 15 COLONEL MERAFAE: The exact warning that I
 16 would have given them will be, now that you are not
 17 following what we request, a request is made, I am ordering
 18 you to put down those weapons that you have. If you don't
 19 do it I'm going to use force in order to take them from you
 20 and in the process I'm going to disperse you, using first
 21 CS, stun grenades, rubber, I will explain those processes
 22 to them and they will understand what is coming to them.
 23 Some of them might have before that feel how rubber is and
 24 they would have chosen to voluntarily put them down. That
 25 is what I was thinking.

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1 MR WESLEY: Colonel, while this is all
 2 going on, we know for a fact that there was a way out form
 3 that scene, a route that they could follow and that was
 4 through the bushes that were to the left of the crowd
 5 facing you or to your right. We know that because they
 6 followed that.
 7 COLONEL MERAFAE: Even though they were
 8 having that it means we were channelling them, they would
 9 gone to one direction where they will be easily manageable
 10 from my perspective. We should manage the situation, we
 11 didn't go there for war, ours was just to give them a
 12 chance so that they can disperse on that moment.
 13 MR WESLEY: Colonel, yes, let me just
 14 explain, I'm not being hypocritical here, but I see, let me
 15 call it a fault, in SAPS' thinking and it occurred again on
 16 the 16th. Let me explain to you what I see as the fault.
 17 On 16 August, there has been various testimony about what
 18 happened that day and what the police expected.
 19 [15:57] And having listened, I sat and listened to the
 20 testimonies that had been given, one thing is apparent, is
 21 that SAPS, for the SAPS plan to work on the 16th the crowd
 22 would have had to stay on the koppie, and SAPS didn't
 23 anticipate that they would actually come off the koppie and
 24 go moving around to the small kraal. So they didn't
 25 anticipate that this crowd would move from where they were,

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1 and it strikes me that on the 13th SAPS didn't anticipate
 2 either that that crowd would stand up and simply walk
 3 across the veld away from where they were.
 4 MS BALOYI: Chairperson, unless my
 5 recollection of the evidence given so far is incorrect, and
 6 I stand subject to correction, my recollection of the
 7 evidence about the 16th is that SAPS anticipated that when
 8 they started rolling out the barbed wire some members or
 9 some of the gathered protestors would start dispersing.
 10 MR WESLEY: Dispersing, I accept that.
 11 CHAIRPERSON: That's correct, she's quite
 12 correct. The warning was going to be given thereafter, but
 13 it wasn't anticipated that the, what was called the front
 14 group would stay together and come to the small kraal. In
 15 fact remember the evidence was that Brigadier Calitz was
 16 going to go through that entrance in that, through that
 17 passage by the small kraal and expected to find the people
 18 beyond that and he was then going to address them and give
 19 them the warnings and so on, and they never reached that
 20 stage. So the question, I think you're right, it isn't
 21 precisely formulated but perhaps if we can give Mr Wesley a
 22 chance to reformulate it your objection won't have to be
 23 repeated.
 24 MR WESLEY: Colonel, let me rephrase; on
 25 the 16th it was anticipated that some members might

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1 disperse, and in fact some did, away from the koppie, they
 2 did. What wasn't anticipated was that a group of the crowd
 3 would come around to the small kraal, but the exact
 4 movements and how many of them, that's not the point. I'm
 5 concerned here that there appears to be a problem with your
 6 training, that for your operations to work, whatever plan
 7 it may be, you need the object, the crowd to stay in one
 8 place, but if that crowd before you start the operation or
 9 while you're starting the operation moves somewhere else,
 10 there is a breakdown. Can you help me with that, is that a
 11 real difficulty or am I imagining this as a problem?
 12 COLONEL MERAFAE: I think you think so, it
 13 is the way of your thinking. They voluntarily stop and sit
 14 down there by the road. They were not, you know, pushed to
 15 that very same corner where they were when we approached
 16 them. It was a road, they were walking on the road. We
 17 came from the front, the Nyala came there very far from
 18 them, then they decided, because they see us here, they
 19 sort of kneeled down there and start now listening to what
 20 we're saying. It is not about us saying you are
 21 channelled, then all of you must be here, you are in this
 22 little corner. That is why when they could not agree with
 23 General Mpembe they voluntarily walked through these bushes
 24 there, so we did not corner them.
 25 MR WESLEY: I'm not saying you cornered

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1 them, but if you wanted to disperse and disarm them there
2 at that scene were you thinking that they would stay at the
3 scene or did you anticipate that they might get up and move
4 across the veld?

5 COLONEL MERAPE: Well, I knew that some
6 of them they will decide to go, they could stand up and go
7 away.

8 MR WESLEY: And if all of them stood up
9 and went away?

10 COLONEL MERAPE: It would have been good;
11 we would have dealt with the situation now because they are
12 going away now.

13 CHAIRPERSON: Mr Wesley, perhaps you can
14 continue with this point on the morrow?

15 MR WESLEY: Thank you, Chair.

16 CHAIRPERSON: We'll adjourn now until 9
17 o'clock tomorrow.

18 [COMMISSION ADJOURNED]

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