

# 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 224

30 APRIL 2014

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1 [PROCEEDINGS ON 30 APRIL 2014]  
 2 [10:38] CHAIRPERSON: The Commission resumes  
 3 somewhat later than was expected because some of those  
 4 counsel who are participating in the proceedings were  
 5 caught in a major traffic jam on the highway. Lieutenant-  
 6 Colonel, you're still bound by the affirmation that you  
 7 made.  
 8 SALMON JOHANNES VERMAAK: (affirms  
 9 further).  
 10 CHAIRPERSON: Before Mr Semenya continues  
 11 with his cross-examination, I was visited in chambers this  
 12 morning by Mr Bizos who indicates that he wants to raise an  
 13 objection and I was subsequently informed by Mr Fischer  
 14 that he's also going to raise an objection, make a  
 15 submission of some kind. So we'd better deal with that  
 16 first. Mr Bizos?  
 17 MR BIZOS SC: We object to the admission  
 18 of the document of which we were informed this morning by  
 19 Mr Pretorius, the senior attorney instructing our learned  
 20 friends for the police. The reasons for our objection to  
 21 the admission of the document are the following. Today is  
 22 the 12th day on which this witness is in the witness box.  
 23 He has been cross-examined by I don't know how many of my  
 24 colleagues, including ourselves. No notice was given to us  
 25 of this document throughout the proceedings, nor was it

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1 submitted to the Commission until apparently a day or two  
 2 ago. We have not yet seen a copy of it and no explanation  
 3 has been furnished to us as to why a senior attorney, who  
 4 on the information given to us is a document which was  
 5 recorded by him at a consultation with one of the members  
 6 of the evidence leaders. So it's not something that they  
 7 had to search for, Mr Chairman, and a very strong  
 8 explanation will be necessary to be furnished, and credible  
 9 explanation, before the Commission actually admits this  
 10 document. It is going to delay the proceedings by at least  
 11 a number of days, if not a week. Why? We do not know –  
 12 CHAIRPERSON: Why is it going to delay  
 13 proceedings for that lengthy period?  
 14 MR BIZOS SC: I beg your pardon?  
 15 CHAIRPERSON: Why is it going to delay  
 16 the proceedings for that lengthy period?  
 17 MR BIZOS SC: Because all of us, Mr  
 18 Chairman, if it is a relevant document in order to try and  
 19 discredit this witness, we want an opportunity to ask him  
 20 questions, each one of us, and let me say that it may well  
 21 be that the days or a week may be hyperbole on my part, but  
 22 any time that is spent after 12 days to deal with a lengthy  
 23 document is not fair and it's not in accordance with the  
 24 administration of justice, Mr Chairman, irrespective of the  
 25 period, with respect.

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1 Now Mr Chairman, witnesses, whether they are  
 2 police officers or not, probably know that they can trust  
 3 lawyers with whom they consult. If they are to be informed  
 4 that they will give evidence, the fact that it has been  
 5 recorded has got to be brought to his notice and given an  
 6 opportunity whether he's prepared to speak to them and that  
 7 they were going to record it. We are informed, Mr  
 8 Chairman, reliably I would submit by the evidence leader,  
 9 that there was no such option available to the witness in  
 10 order to determine whether he was willing to be recorded in  
 11 what is generally regarded as confidential between attorney  
 12 and client. We are informed further, Mr Chairman –  
 13 CHAIRPERSON: I'm sorry, before you go  
 14 on, on what you were informed further, on what basis can it  
 15 be contended that an interview between one of the evidence  
 16 leaders, who is not counsel for the witness but who in fact  
 17 is counsel for what one can describe as a quasi party,  
 18 namely evidence leaders –  
 19 MR BIZOS SC: I'm sorry, Mr Chairman –  
 20 CHAIRPERSON: On what basis can it be  
 21 said that an interview between one of the evidence leaders  
 22 who is not counsel for the witness but in fact counsel for  
 23 what one can describe as a quasi party, namely the evidence  
 24 leaders as such, and the witness could be described as  
 25 quasi –

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1 MR BIZOS SC: We are informed by the  
 2 evidence leader – and let him speak for himself, Mr  
 3 Chairman – that he was there but so was Mr Pretorius. Why  
 4 was Mr Pretorius there, Mr Chairman?  
 5 CHAIRPERSON: Normally when a party's  
 6 witness is interviewed by another party or quasi party –  
 7 MR BIZOS SC: Yes.  
 8 CHAIRPERSON: - the witness's legal  
 9 representative is present, or the legal representative of  
 10 the party proposing to call the witness. Now I understand  
 11 that at the time of the interview Colonel Vermaak was still  
 12 regarded as a client of Mr Pretorius and was still a  
 13 witness whom the police were intending to call. But if  
 14 that's correct, let's take it into a litigation context, if  
 15 the defendant says I want to, my counsel wants to consult  
 16 with the plaintiff's witness and that consultation takes  
 17 place, the plaintiff is entitled to be present, or his  
 18 legal representative, during the interview. Now was Mr  
 19 Pretorius's presence not there solely because he was  
 20 representing the SAPS, and in fact as I understand it the  
 21 witness at the time, and another party or quasi party to  
 22 the Commission wished to interview the witness, if you  
 23 wanted to interview Colonel Vermaak and had requested  
 24 permission to do so I imagine Mr Pretorius would have been  
 25 present there as well. So what –

<p style="text-align: right;">Page 27645</p> <p>1 MR BIZOS SC: Yes.</p> <p>2 CHAIRPERSON: So what is the significance</p> <p>3 of Mr Pretorius's presence?</p> <p>4 MR BIZOS SC: No, Mr Chairman, it's</p> <p>5 common cause that the witnesses had made a statement way</p> <p>6 back on the 12th of December 2012, which was not consistent</p> <p>7 with the official police version. I don't know that there</p> <p>8 is any doubt about that, Mr Chairman. If the evidence</p> <p>9 leaders say that we want to interview you and you are</p> <p>10 entitled to bring your attorney with you, and the attorney</p> <p>11 does not warn the witness that I am going to record what</p> <p>12 you are saying to the evidence leader and what I have</p> <p>13 recorded will be made available and may be used in evidence</p> <p>14 against you, that is an obvious precaution which a fair</p> <p>15 practitioner would avail himself of in the particular</p> <p>16 circumstances. We are informed that that did not happen,</p> <p>17 Mr Chairman, and to ask on the 12th day after the various</p> <p>18 cross-examinations of this witness to answer questions</p> <p>19 which were recorded by Mr Pretorius, and I am sure that the</p> <p>20 reason for it is to pick up some contradiction or other</p> <p>21 which may assist the police in the version that, one of the</p> <p>22 versions that they are now putting up, it is not fair to</p> <p>23 the witness and it is not in the interests of the</p> <p>24 administration of justice, Mr Chairman.</p> <p>25 Mr Chairman, delays in a matter such as this are</p>	<p style="text-align: right;">Page 27647</p> <p>1 do we know when the interview took place?</p> <p>2 MR WESLEY: I will have a quick look.</p> <p>3 I'll be able to tell you know, Judge.</p> <p>4 CHAIRPERSON: But it was some time ago?</p> <p>5 MR WESLEY: Yes, it was some time – it</p> <p>6 was last year –</p> <p>7 CHAIRPERSON: Last year, right.</p> <p>8 MR WESLEY: September approximately, if</p> <p>9 I'm not mistaken.</p> <p>10 CHAIRPERSON: Okay, some time last year.</p> <p>11 Anyway, sorry, I'm interrupting you, Mr Bizos.</p> <p>12 MR BIZOS SC: Yes. Now Mr Chairman –</p> <p>13 CHAIRPERSON: I'm interrupting you to</p> <p>14 indicate that I'm not sure whether your submission that</p> <p>15 this was kept under wraps until the last minute is</p> <p>16 factually well-founded.</p> <p>17 MR BIZOS SC: Well, I will accept an</p> <p>18 explanation that my learned friends give, but Mr Chairman,</p> <p>19 you strictly call on us to disclose the documents which we</p> <p>20 are going to use in the cross-examination of witnesses. If</p> <p>21 this is an important document which the attorney of record</p> <p>22 had recorded, why wasn't it disclosed with the documents –</p> <p>23 CHAIRPERSON: [Microphone off, inaudible]</p> <p>24 what happened was, you know there's a bit of background</p> <p>25 here that I'm not sure if you're aware of. Originally Mr</p>
<p style="text-align: right;">Page 27646</p> <p>1 to be avoided. There has to be a very, very cogent excuse</p> <p>2 or reason given to you as to why this document was kept</p> <p>3 under wrap by the police if in fact it was relevant to the</p> <p>4 issues before the Commission –</p> <p>5 CHAIRPERSON: I must just tell you, I was</p> <p>6 informed that it wasn't kept under wraps, as you put it; it</p> <p>7 was in fact, a copy was sent to Mr Wesley some time after –</p> <p>8 I'm not quite sure how long after – the interview took</p> <p>9 place. Is that correct, Mr Wesley?</p> <p>10 MR WESLEY: Chair, I've been trying to</p> <p>11 work out. The actual typed transcript, I don't recall</p> <p>12 receiving it, but I've had a debate with Mr Pretorius; he</p> <p>13 says he sent the audio, an audio file. It may be, I don't</p> <p>14 know. He says both. I can't find it, but it could very</p> <p>15 well have happened.</p> <p>16 CHAIRPERSON: What I'm interested in is</p> <p>17 when.</p> <p>18 MR WESLEY: I don't know.</p> <p>19 CHAIRPERSON: Anyway, let's not get</p> <p>20 involved in a sideshow on that issue. The point is it</p> <p>21 doesn't appear, if that's correct, that this was kept under</p> <p>22 wraps. If a copy of the audio file, i.e. the actual</p> <p>23 soundtrack of the interview was sent to Mr Wesley and to</p> <p>24 the witness and some time after the interview took place –</p> <p>25 when did the interview take place? Do we know? Mr Wesley,</p>	<p style="text-align: right;">Page 27648</p> <p>1 Semenya was going to cross-examine the witness. It then</p> <p>2 occurred to the police after certain points had been put to</p> <p>3 them by others that it would not be appropriate for Mr</p> <p>4 Semenya, who consulted with the witness, to cross-examine</p> <p>5 him. Mr Semenya then indicated to me in chambers that he</p> <p>6 was not going to cross-examine the witness - in fact that</p> <p>7 was why the witness stood down – that they were going to</p> <p>8 get an outside counsel to cross-examine the witness. That</p> <p>9 they did. It then appeared that that counsel would only be</p> <p>10 available some time in July, August. So I then said that</p> <p>11 that was not satisfactory to keep the witness in a state of</p> <p>12 suspense for that long period, and in any event the time</p> <p>13 during which this Commission would be able to sit was</p> <p>14 running out. The witness then indicated that he was</p> <p>15 prepared to waive any rights he had to object to being</p> <p>16 cross-examined by Mr Semenya.</p> <p>17 I may say that before that waiver was made, I'm</p> <p>18 not even sure if the witness was aware of this but Mr</p> <p>19 Semenya had told me in chambers that he had no intention of</p> <p>20 cross-examining him in any way on things that were said in</p> <p>21 consultation with him, and in those circumstances, in the</p> <p>22 light of that undertaking, which I have no reason to doubt</p> <p>23 the sincerity of, and in view of the waiver made by the</p> <p>24 witness I was prepared to allow Mr Semenya to cross-</p> <p>25 examine.</p>

<p style="text-align: right;">Page 27649</p> <p>1 But that whole process took up a lot of time.  2 The witness, I'm reminded, was in fact advised to seek his  3 own legal representation throughout. That point was made  4 to him repeatedly and I understand it was suggested that  5 the police would even pay for that, but it never got that  6 far because the witness said he was quite happy that an  7 evidence leader should lead his evidence and he didn't want  8 legal representation, but he was advised of his rights in  9 that regard as well.  10 The point I'm making is because of the fact that  11 the witness stood down after everybody else had cross-  12 examined, for the police to get their chance to cross-  13 examine once it was sorted out he was going to go into  14 cross-examination, the documents upon which the police  15 sought to rely were only produced at a late stage, but they  16 were sent electronically I understand, I think it was on  17 Sunday. The witness was given a copy of, an electronic  18 copy of the documents and I asked him whether he'd read – I  19 think I asked him, I didn't ask him about the transcript.  20 I asked him about the complaint of misconduct which he had  21 read. But anyway, the point is he was sent a copy, as I  22 understand it. We were given copies yesterday morning.  23 The reason why the documents were forthcoming late is I  24 think clear from the narrative I've given of circumstances  25 in which it came about, that this witness's cross-</p>	<p style="text-align: right;">Page 27651</p> <p>1 MR BIZOS SC: Mr Semenya was absolutely  2 right and in accordance with the traditions of our  3 profession that if you have acted for a person you do not  4 cross-examine him, but here was an instance where the  5 attorney actually recorded a conversation with the witness.  6 I haven't heard whether he's going to say that he warned  7 the witness that he was going to record it, but this  8 document I'm sure came to Mr Semenya's notice as late as it  9 came to you and us, with respect, and the question is it's  10 too much to ask this witness that it's your choice as to  11 whether you want to claim the privilege or not. It's too  12 complicated a matter, Mr Chairman –  13 CHAIRPERSON: I'm sorry, what privilege  14 was there –  15 MR BIZOS SC: And I think with respect –  16 CHAIRPERSON: I'm sorry, Mr Bizos. What  17 privilege was there? I can understand if this was a  18 consultation between the Colonel and his legal  19 representatives, or a legal representative for him, but  20 what happened was this is a consultation between the  21 Colonel and one of the evidence leaders, who was not his  22 counsel. There was no attorney/client relationship, or  23 advocate/client relationship between them at the time, and  24 Mr Pretorius was there in his capacity as attorney for the  25 witness in order essentially to ensure that nothing</p>
<p style="text-align: right;">Page 27650</p> <p>1 examination stood over and was only to be resumed  2 yesterday. But there was apparently also, I'm reminded,  3 difficulty or trouble in regard to opening the electronic  4 version of some of the documents that were sent.  5 But anyway, that as I understand it is the basis,  6 or the reason rather for the fact that these documents were  7 only forthcoming at this comparatively late stage. But  8 anyway, but please continue with your argument. I'm sorry  9 to interrupt you, but I thought I should put those on  10 record –  11 MR BIZOS SC: Thank you, Mr Chairman.  12 CHAIRPERSON: - because they are relevant  13 in regard to some of the points you raised.  14 MR BIZOS SC: Thank you, Mr Chairman, and  15 I want to thank my learned friend Mr Semenya for his  16 original attitude that he was reluctant to cross-examine a  17 witness who was their client. It strengthens my argument  18 that his attorney did not follow his example, Mr Chairman.  19 It strengthens my argument, with respect –  20 CHAIRPERSON: Sorry, I don't follow that  21 point –  22 MR BIZOS SC: Well, let me try and  23 explain, Mr Chairman.  24 CHAIRPERSON: No, no, please explain it  25 to me.</p>	<p style="text-align: right;">Page 27652</p> <p>1 untoward happened in this consultation with someone who  2 wasn't the legal representative of the party, of the  3 witness. So I don't understand on what basis it can be  4 contended that this was a privileged occasion. If it was a  5 privileged occasion obviously it will be a totally  6 different situation, but unless you can satisfy me that  7 there is a privilege attaching to the communications which  8 were recorded, then I'm afraid I don't understand your  9 argument.  10 MR BIZOS SC: Well, with the greatest  11 respect we submit that it was a privileged occasion, Mr  12 Chairman. Whenever my attorney or even my ex-attorney is  13 recording what I am saying to someone else in respect of a  14 matter in which I am to give evidence, the occasion is a  15 privileged one, Mr Chairman.  16 CHAIRPERSON: Have you got authority for  17 that proposition?  18 MR BIZOS SC: Mr Chairman –  19 CHAIRPERSON: Because I must confess I  20 haven't seen authority –  21 [10:58] MR BIZOS SC: I haven't had an  22 opportunity. I have not had an opportunity because this  23 was sprung on us early this morning when we arrived, but I  24 am sure that with the Chairman's experience and the  25 assessors' experience –</p>

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1 CHAIRPERSON: Not assessors –

2 MR BIZOS SC: - the question of attorney

3 and client privilege –

4 CHAIRPERSON: I'm sorry to interrupt you,

5 Mr Bizos; not assessors, co-Commissioners.

6 MR BIZOS SC: Commissioner, yes. The

7 Commissioners, Mr Chairman, and you are sufficiently senior

8 in our profession –

9 CHAIRPERSON: Mr Bizos, it may be –

10 MR BIZOS SC: - to understand the

11 situation –

12 CHAIRPERSON: No –

13 MR BIZOS SC: - of the attorney and

14 client relationship –

15 CHAIRPERSON: Mr Bizos, I'm sorry to

16 interrupt you. I'm grateful for the compliments that

17 you've made to my Commissioners and even to me, although I

18 do not deserve them, but the mere fact that we are

19 experienced doesn't give us a detailed knowledge of what

20 can in some respects be a complicated branch of the law.

21 May I make a suggestion? In view of the fact

22 that we've lost a lot of time this morning because of the

23 traffic jam to which I referred, it sounds as if Mr Semenya

24 won't be able to finish his cross-examination today. It

25 also may well be that he has enough material to cross-

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1 examine for the rest of the day, because we understood he

2 was going to finish either at the end of yesterday or

3 reasonably early in today's sitting, so travel arrangements

4 were made on the basis that we would not sit beyond 1

5 o'clock, which can't be changed now. I think the travel

6 arrangements have just been communicated to me by my cell

7 phone, which I shouldn't have had on, but Mr Semenya, if

8 you are going to cross-examine on other material until 1

9 o'clock then, and this transcript you're not going to

10 touch, then it seems to me the sensible way for us to

11 proceed is to allow Mr Semenya to carry on now.

12 We're adjourning today until the 8th of May

13 because apart from Friday, which is a day when it's

14 pointless to come back after the holiday tomorrow, the

15 chambers are either not available or, the chamber is

16 actually not available to us on Monday and it won't be

17 available in any event on Tuesday on Wednesday because the

18 whole area is going to be used for the election, so we're

19 resuming on the 8th. That gives you ample time, apart from

20 the time you will spend considering how you are going to

21 cast your vote, if you're going to, to do research on this

22 matter and you can resume the argument with full citation

23 of authority on Thursday morning. That seems to be the

24 practical sensible way, and if any of the other parties

25 want to assist us with their submissions on the point

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1 they'll have the opportunity also. I don't think that

2 that's an offer you can decline, Mr Bizos.

3 MR BIZOS SC: I have been informed,

4 because I obviously discussed this with the persons that

5 have cross-examined the witness, they are in support of the

6 application that the document should be excluded and I am

7 sure that it is a matter of some importance and as time-

8 consuming as it may be, I would accept the suggestion made

9 by you, Mr Chairman.

10 CHAIRPERSON: Thank you. So on that

11 basis then Mr Semenya, you will continue your cross-

12 examination but you will keep away from the document today

13 and you will only deal with it once we've finished dealing

14 with this matter, and of course you will obviously also

15 have an opportunity to look at the law and make submissions

16 on the matter insofar as you consider it necessary. In the

17 meanwhile of course Mr Bizos will have an opportunity to

18 study the transcript, as I did last night, and there may be

19 something in it which I didn't notice, but I must confess I

20 was surprised that there's any concern about what's in the

21 transcript, but as I say, there may be something that, the

22 full significance of which I didn't appreciate. But you

23 may feel that many of your fears will be allayed when

24 you've actually had the opportunity to peruse the

25 transcript, but that's a matter which we don't have to go

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1 into now. So Mr Semenya, can you proceed with your cross-

2 examination?

3 MR WESLEY: Chair –

4 CHAIRPERSON: Mr Wesley?

5 MR WESLEY: Yes, Chair, maybe just place

6 two facts on record which might assist the parties with

7 their argument. I've gone through my emails now and I can

8 now confirm the transcript, the draft transcript – I call

9 it a draft – was sent to the evidence leaders on the 28th of

10 October 2013, the typed document. The voice, the sound

11 recording was, there was an attempt to send that on the 8th

12 of November, but that failed because the file was too large

13 to be delivered. So that's the position. We received the

14 transcript on 28th of October. We never followed up for the

15 sound recording, the actual voice recordings.

16 CHAIRPERSON: That's helpful. So I think

17 the wraps under which it was allegedly kept appear to have

18 disappeared like the morning mist –

19 MR BIZOS SC: [Microphone off, inaudible]

20 information, Mr Chairman.

21 CHAIRPERSON: Yes, right, anyway, I did

22 remind you, you're bound by your affirmation some time ago,

23 but just in case you forgot, I'm reminding you again. Mr

24 Semenya.

25 MR SEMENYA SC: Thank you, Chair, and I

<p style="text-align: right;">Page 27657</p> <p>1 must thank the Commissioners for the indulgence I was 2 granted this morning. 3 CHAIRPERSON: It was not only you, but a 4 number of the others were all caught in what sounds like 5 the mother and father of traffic jams that you people were 6 caught in, but I'm glad you finally escaped and got here 7 safely. 8 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.): 9 Colonel, yesterday when we stopped we were dealing with the 10 prospects whether the cordon and search could have been 11 successful. You remember? 12 COLONEL VERMAAK: That's correct. 13 MR SEMENYA SC: And I said, I had put it 14 to you that the facts as we know them, the most militant 15 part of the crowd would have spent their night at koppie 3. 16 So your cordon and search of the hostels would not have 17 proved fruitful. 18 COLONEL VERMAAK: Chair, I don't think 19 there's any proof that it will not be successful. 20 MR SEMENYA SC: If the object of the 21 cordon and search was to take the arms from those who were 22 bearing them, they would have been at koppie 3. What 23 proof – 24 CHAIRPERSON: I'm sorry, they would have 25 been at?</p>	<p style="text-align: right;">Page 27659</p> <p>1 CHAIRPERSON: But we don't have to 2 interrupt the cross-examination now on that point. 3 MS LEWIS: I'm just not sure that the 4 allegation that Mr X makes is as broad as what Mr Semenya 5 has put it. 6 CHAIRPERSON: If you've got the statement 7 then perhaps you can refer to the passage you say is not as 8 broad as the proposition put by Mr Semenya. 9 MS LEWIS: I'll look for it, Mr Chair. 10 CHAIRPERSON: Mr Semenya, can you do 11 something else while Ms Lewis is looking? It depends how 12 long she's going to take. 13 MS LEWIS: Mr Chair, I suggest then that 14 we carry on. I don't have it immediately to hand. 15 CHAIRPERSON: My recollection was there 16 was some evidence about people being on koppie 3 with their 17 weapons. My impression was it wasn't everybody. 18 MS LEWIS: Ja. 19 CHAIRPERSON: And the evidence also seems 20 to indicate that some of the people went home every day 21 with their weapons and brought them back the next morning, 22 and some people even went home for lunch carrying their 23 weapons and came back after lunch. They took a lunch break 24 in the course of this gathering. So that seems to be the 25 evidence, but anyway – yes, Ms Pillay?</p>
<p style="text-align: right;">Page 27658</p> <p>1 MR SEMENYA SC: At koppie 3. 2 CHAIRPERSON: At koppie 3? 3 MR SEMENYA SC: Yes. 4 CHAIRPERSON: Well, that's on the 5 assumption that what Mr X says is correct, which may or may 6 not be so, but of course if they found, unless all the arms 7 were stored on koppie 3 they might still have found some 8 arms in the hostels or in the shacks in the informal 9 settlement. But anyway, that's a matter that you can take 10 further if you wish. 11 MR SEMENYA SC: Do you agree at least, 12 Colonel, that – 13 CHAIRPERSON: Before you ask him what he 14 agrees with, I see Ms Lewis has turned on her microphone, 15 she wants to say something. 16 MS LEWIS: Chair, I'm sorry, for the 17 benefit of all the parties would it be possible to have the 18 relevant paragraph of Mr X's statement be put up so that we 19 could all remember precisely what – 20 CHAIRPERSON: I don't think we need do it 21 now. As far as I can recall it's in the supplementary 22 statement, which isn't so very long, but if necessary I'm 23 sure Mr Semenya can find it and if he can't I'll look at my 24 copy and see if I can find it. 25 MS LEWIS: I'm just –</p>	<p style="text-align: right;">Page 27660</p> <p>1 MS PILLAY: Chair, just to understand, 2 because there seems to have been a slight change between 3 the questioning yesterday and the questioning this 4 morning – 5 CHAIRPERSON: [Microphone off, inaudible] 6 today's questioning. 7 MS PILLAY: Yesterday the proposition was 8 put that the people stayed over at koppie 3 overnight. 9 This morning it was put that the armed group stayed over on 10 the koppie, koppie 3. 11 CHAIRPERSON: Whether they stayed with or 12 without their arms is a matter that Mr – yes, Ms Hemraj 13 just told me that she has particular recollection of what 14 Mr X says in this regard and perhaps you can tell us and 15 then we can shorten the debate and get on with the cross- 16 examination. But I take it, never mind what you said 17 yesterday; I'm interested in what you said today. 18 MR SEMENYA SC: May I tidy that so that 19 it does not create any confusion? At no point are we 20 holding that 3 000 people were sleeping at koppie 3. We 21 have always talked about the "makarapas" which Mr Noki was 22 the leader, and those are the ones Mr X says, "We were 23 sleeping at koppie 3" in his statement, and he's saying "We 24 chose koppie 3 for various strategic reasons. It was out 25 of access, we couldn't be seen," and we dealt with this</p>

<p style="text-align: right;">Page 27661</p> <p>1 thing in the application for the in-camera hearing.</p> <p>2 CHAIRPERSON: Alright, I think Ms Lewis</p> <p>3 would like you – and I think she's not alone in this – give</p> <p>4 us the paragraph number of Mr X's second statement in which</p> <p>5 that appears.</p> <p>6 MS PILLAY: Chair, it's LLL26, paragraph</p> <p>7 21.</p> <p>8 CHAIRPERSON: Triple L?</p> <p>9 MS PILLAY: LLL26, paragraph 21.</p> <p>10 CHAIRPERSON: There we are, and now we're</p> <p>11 going to see it on the screen, so all debate on the matter</p> <p>12 – we now see the passage that's relied on, and I think the</p> <p>13 submission put by Mr, well not the submission, the</p> <p>14 proposition put by Mr Semenya does accord with that</p> <p>15 statement. As I say, whether it's correct or not is a</p> <p>16 matter that can only be decided once Mr X has been cross-</p> <p>17 examined, but it's premature to go further into that</p> <p>18 matter.</p> <p>19 MR SEMENYA SC: The point, Colonel, I'm</p> <p>20 making I if that is found to be correct you would see that</p> <p>21 the group that was the makarapas were sleeping in koppie 3</p> <p>22 from the 11th already.</p> <p>23 COLONEL VERMAAK: Chair, yes. I also see</p> <p>24 that was according to Mr X only 50 people out of more or</p> <p>25 less 3 000.</p>	<p style="text-align: right;">Page 27663</p> <p>1 particular day, did you?</p> <p>2 COLONEL VERMAAK: No, I make the proposal</p> <p>3 that they must consider it.</p> <p>4 MR SEMENYA SC: In your proposal you did</p> <p>5 not specify any particular day in which in your judgment</p> <p>6 would have been the appropriate day for the cordon and</p> <p>7 search?</p> <p>8 COLONEL VERMAAK: I've made the proposal</p> <p>9 that they must consider my proposal. I explained to them</p> <p>10 why I'm saying so and at no stage there was a question put</p> <p>11 to me when did I think will be the best day to do it. As I</p> <p>12 already have mentioned previously Colonel Scott at one</p> <p>13 stage informed me that they have a plan and the plan is in</p> <p>14 place.</p> <p>15 MR SEMENYA SC: No, but that's –</p> <p>16 CHAIRPERSON: But do I understand your</p> <p>17 evidence from yesterday correctly that your proposal, as I</p> <p>18 understood you, was the cordon and search should be done</p> <p>19 first? You didn't say when it was to be done because that</p> <p>20 depended on when the tactical option was to be implemented,</p> <p>21 but your evidence of yesterday, as I understood it – and if</p> <p>22 I'm wrong you must please correct me – was that whenever</p> <p>23 the tactical option was implemented the first stage should</p> <p>24 be a cordon and search?</p> <p>25 COLONEL VERMAAK: That is correct, Chair.</p>
<p style="text-align: right;">Page 27662</p> <p>1 MR SEMENYA SC: Which 50 people?</p> <p>2 CHAIRPERSON: He said in the statement,</p> <p>3 about the middle, "Each time the larger group of the</p> <p>4 makarapas left the koppie for a mission, a group of about</p> <p>5 50 makarapas remained behind with the inyangas to protect</p> <p>6 and preserve the koppie," and then he goes on, "The</p> <p>7 makarapas and two inyangas permanently stayed and slept at</p> <p>8 the koppie." That's the passage the witness is referring</p> <p>9 to. His interpretation may not be entirely correct but</p> <p>10 that's a matter you can take up further with him.</p> <p>11 MR SEMENYA SC: He's wrong, but anyway,</p> <p>12 I'm interested in the inputs that you as an experienced POP</p> <p>13 member was making in the JOCCOM. I'm correct to have</p> <p>14 understood your evidence that you did not specify any</p> <p>15 particular day when that cordon and search was to happen?</p> <p>16 COLONEL VERMAAK: No, I didn't. I</p> <p>17 mentioned, I make a proposal that they must first consider</p> <p>18 a cordon and search before they are doing an encirclement</p> <p>19 because why I have already started warning them from the</p> <p>20 Sunday that this people will fight until they die. I've</p> <p>21 received Mr X's statement yesterday, I go through it last</p> <p>22 night and in several passages he also mentioned the same</p> <p>23 thing that I warned the senior members of.</p> <p>24 MR SEMENYA SC: My question is very</p> <p>25 narrow. In your proposal you did not mention any</p>	<p style="text-align: right;">Page 27664</p> <p>1 CHAIRPERSON: Is that the correct</p> <p>2 position?</p> <p>3 COLONEL VERMAAK: That is correct.</p> <p>4 COMMISSIONER HEMRAJ: And the cordon and</p> <p>5 search that you envisaged was in relation to the hostels</p> <p>6 only?</p> <p>7 COLONEL VERMAAK: That is correct, to</p> <p>8 start with your first steps with cordon and search, Chair,</p> <p>9 and as I said out of experience you will get a lot of</p> <p>10 dangerous weapons. Later after the Marikana incident, if I</p> <p>11 recall it correctly, it was around in September the police</p> <p>12 did a cordon and search and they have big successes</p> <p>13 removing dangerous weapons.</p> <p>14 CHAIRPERSON: Now you say a cordon and</p> <p>15 search to be done on the hostels. Was it only the hostels</p> <p>16 or did it also include the shacks in the informal</p> <p>17 settlement?</p> <p>18 COLONEL VERMAAK: Chair, the –</p> <p>19 CHAIRPERSON: A number of the workers had</p> <p>20 availed themselves of this so-called living-out allowance</p> <p>21 and were living in shacks in rather squalor –</p> <p>22 COLONEL VERMAAK: It was –</p> <p>23 CHAIRPERSON: - undignified circumstances</p> <p>24 in Nkaneng.</p> <p>25 COLONEL VERMAAK: It was built houses</p>

<p style="text-align: right;">Page 27665</p> <p>1 close to Marikana self, next to I think the shaft where the 2 first incident at the 13th happened where the policemen were 3 attacked. 4 COMMISSIONER HEMRAJ: At the time you 5 made the proposal you had no idea what proportion of the 6 strikers lived in the hostels as opposed to in the various 7 settlements around? 8 COLONEL VERMAAK: No. No, Chair. 9 COMMISSIONER HEMRAJ: Thank you. 10 CHAIRPERSON: All I'm interest in is was 11 your proposal in relation to a cordon and search, was that 12 only intended to cover cordoning off of the hostels and a 13 search in the hostels, or did it also include a search of 14 some, the shacks in the informal settlement? 15 COLONEL VERMAAK: At that stage it was 16 only included at the hostels, Chair. 17 CHAIRPERSON: I see. Thank you. 18 MR SEMENYA SC: Of course, Colonel, I'm 19 putting these questions to you with the stated position of 20 the SAPS that you did not make any suggestions in the 21 JOCCOM as a matter of fact. 22 COLONEL VERMAAK: Chair, I believe 23 Colonel Isaacs can maybe confirm that because why on my 24 input that this people is very dangerous he also give an 25 input that the CIG didn't have specific information at that</p>	<p style="text-align: right;">Page 27667</p> <p>1 during the morning and also then on the 15th and the 16th of 2 the morning. 3 CHAIRPERSON: So you didn't give it at a 4 JOCCOM meeting on the 14th, the Tuesday? 5 COLONEL VERMAAK: No, Chair. 6 CHAIRPERSON: But you gave it outside a 7 JOCCOM meeting to General Annandale – 8 COLONEL VERMAAK: To General Annandale – 9 CHAIRPERSON: - on the Tuesday, and the 10 evidence was he arrived later in the morning I think, and 11 you repeated it, you say, on the 15th and 16th? 12 COLONEL VERMAAK: That's correct. 13 CHAIRPERSON: Thank you. 14 MR SEMENYA SC: You do make the 15 distinction between talking to General Annandale and making 16 contribution in a JOCCOM meeting. You do have that 17 distinction in mind? 18 COLONEL VERMAAK: That is correct. 19 MR SEMENYA SC: And you're not referring 20 to conversations that you would have had with any of the 21 members outside of the JOCCOM meeting? 22 COLONEL VERMAAK: I have mentioned it to 23 the JOCCOM chairperson – 24 MR SEMENYA SC: No, no – 25 COLONEL VERMAAK: - at the 15th and the</p>
<p style="text-align: right;">Page 27666</p> <p>1 stage and they are very dangerous and they will fight 2 according to his information until they die. 3 MR SEMENYA SC: But you do accept even 4 the manuscript notes by Adv Moolman and Brigadier Pretorius 5 do not reflect what you say were your contributions in 6 those JOCCOM meetings? 7 COLONEL VERMAAK: Are you – 8 MR SEMENYA SC: Do you accept that? 9 COLONEL VERMAAK: Chair, are you 10 referring to which date? 11 MR SEMENYA SC: The 15th and 16th. 12 COLONEL VERMAAK: No Chair, I also have a 13 witness, Sergeant Brown from TRT in Klerksdorp who will 14 come and testify that I did make the suggestion and also 15 that I did again say that the people will not surrender, 16 they will not give in their dangerous weapons and they will 17 fight until they die due to the rituals that they went 18 through. 19 MR SEMENYA SC: Okay – 20 CHAIRPERSON: I'm sorry, Mr Semenya, if I 21 can ask, this information you gave that you mentioned now, 22 at the JOCCOM, was that on the Tuesday morning? Was that 23 given on the Tuesday morning? 24 [11:18] COLONEL VERMAAK: Chair, I gave it to 25 Brigadier – ag, General Annandale when he arrived there</p>	<p style="text-align: right;">Page 27668</p> <p>1 16th. I did not discuss it outside with any other police 2 officer. 3 MR SEMENYA SC: No, no, no, I want to 4 tidy this up. It is one thing to discuss a matter with 5 General Annandale. It is another to discuss the matter 6 with Brigadier Calitz, but quite different to make 7 submissions in a JOCCOM meeting. That distinction you 8 appreciate? 9 COLONEL VERMAAK: That's correct, Chair. 10 I've said that I talked to General Annandale outside the 11 JOC, not during a JOC meeting. The 15th and the 16th at the 12 JOC meeting I mention it specifically. 13 MR SEMENYA SC: Okay, and you're saying 14 your suggestion was that the cordon and search as a 15 tactical option must be the first one to be undertaken? 16 COLONEL VERMAAK: That is correct, Chair. 17 MR SEMENYA SC: And the only basis of 18 intelligence you had was the previous history of previous 19 operations where this was done? 20 COLONEL VERMAAK: That is correct, Chair. 21 MR SEMENYA SC: Okay. Now Colonel, 22 surely in the previous instances when that was taken as a 23 tactic there was intelligence supporting the prospects of 24 that yielding a positive outcome, was there not? 25 COLONEL VERMAAK: No, Chair. It was</p>



<p style="text-align: right;">Page 27669</p> <p>1 faction fights and immediately after the faction fights we 2 normally did the cordon and search to remove any dangerous 3 weapons. 4 MR SEMENYA SC: No, but there surely must 5 have been intelligence that tells you that the weapons are 6 in the hostels, the people are in the hostel this time of 7 the hour, no? 8 COLONEL VERMAAK: Chair, it was obvious 9 that those weapons were in the hostels because why those 10 people were fighting in the hostels. 11 MR SEMENYA SC: So you had dependable 12 intelligence to tell you that the cordon and search would 13 be successful if done. 14 COLONEL VERMAAK: Yes, the belief was so, 15 Chair. 16 MR SEMENYA SC: Now let me share with you 17 what, if the evidence of Mr X is to be accepted, indicates. 18 Firstly all the people in the makarapas were told no cell 19 phones here except one member. That intelligence you 20 didn't have, right? 21 COLONEL VERMAAK: No, I haven't got it. 22 I said I only got this statement yesterday afternoon at 23 half past 4. 24 MR SEMENYA SC: No, when I say "you" I'm 25 referring to the police in JOCCOM when you were discussing</p>	<p style="text-align: right;">Page 27671</p> <p>1 information, any intelligence as regards what Mr Semenya 2 put to you that there were a group of people on the koppie 3 without access to cell phones except for one person? Did 4 you hear that? 5 COLONEL VERMAAK: Chairperson, no. 6 COMMISSIONER HEMRAJ: Thank you. 7 COLONEL VERMAAK: CIG said they haven't 8 got any information. 9 MR SEMENYA SC: Precisely, Colonel, and 10 we now know through the evidence that Mr Twala was killed 11 precisely because he had a cell phone on him with airtime. 12 Was all this information known to you as the police in the 13 JOCCOM? 14 COLONEL VERMAAK: No. 15 MR SEMENYA SC: And in fact the evidence 16 is it was very difficult to penetrate that group of people 17 to find reliable information about their doings and their 18 thoughts. 19 COLONEL VERMAAK: That's correct. 20 MR SEMENYA SC: In fact it makes me ask 21 the question; your criticism that there was inadequate 22 intelligence, is it through any neglect on the part of the 23 police, you'd contend? 24 COLONEL VERMAAK: No, I never said the 25 police neglect it. I said that was a part of the problem</p>
<p style="text-align: right;">Page 27670</p> <p>1 the possibility of a cordon and search. I'm saying that 2 information was not available, was there? 3 COLONEL VERMAAK: Chair, if I can make an 4 example, Mr Semenya asked a question before we end the day 5 that the operation could have backfire if the hostel was 6 searched. Referring to that, if you are driving a motor 7 vehicle and somebody heard that there's something wrong 8 with that vehicle, say for instance a mechanic, and he's 9 telling you as the owner of that vehicle there's something 10 seriously wrong with that vehicle, you must take it to the 11 garage, and if you didn't do it and your vehicle break down 12 then it is your responsibility. But the fact that you have 13 been warned that it could happen, that is what you must 14 take in consideration and that is more or less the same 15 what was here. I could see things is going wrong. I take 16 it upon me to mention it from the Sunday. I sent a BBM to 17 Brigadier Garnett in the, at National JOC. What more is 18 being expected from me? If they did not listen to the 19 information that I've given them, I cannot stand for the 20 actions that took place afterwards. 21 MR SEMENYA SC: That's your answer to my 22 question? 23 COLONEL VERMAAK: That's correct, Chair. 24 COMMISSIONER HEMRAJ: Colonel, when you 25 were there at the JOCCOM meeting did you hear any</p>	<p style="text-align: right;">Page 27672</p> <p>1 that was experienced there. 2 MR SEMENYA SC: You see that's my 3 difficulty. There's some equivocation there, or a 4 contradiction as I see it. Whilst contending that there is 5 inadequate intelligence during the period of the operation, 6 you insist it is premised on inadequate intelligence that a 7 cordon and search and seizure of weapons should happen on 8 the basis of inadequate intelligence. 9 COLONEL VERMAAK: Chair, what information 10 that they had for the Thursday, I wasn't aware of any other 11 information they had and the outcome of that operation was 12 not very nice. 13 MR SEMENYA SC: Is that an answer to the 14 question I asked you? 15 COLONEL VERMAAK: That's correct, Chair. 16 MR SEMENYA SC: Okay. Before I omit to 17 make, to put this to you; you do know the evidence of 18 Colonel Merafe is in relation to the events of the 13th that 19 you took an R5 from one of the members. You're aware of 20 that evidence? 21 COLONEL VERMAAK: I have heard about it. 22 MR SEMENYA SC: And your comment and 23 reaction to it? 24 COLONEL VERMAAK: That is also not true. 25 MR SEMENYA SC: Are you aware of any</p>

<p style="text-align: right;">Page 27673</p> <p>1 reason, now that you know Colonel Merafe as well as you 2 told us, why he would just fabricate that? 3 COLONEL VERMAAK: Chair, if you read 4 through the statements of the members who gave their 5 statements on the 14th, nowhere did any of those members who 6 was with me said that I took any firearm from them. 7 MR SEMENYA SC: Ja, but you told us we 8 shouldn't believe them. So why should we believe them on 9 this one? 10 COLONEL VERMAAK: I said, didn't say you 11 shouldn't believe them. 12 MR SEMENYA SC: You said they were 13 inaccurate when they said you gave several commands to them 14 to shoot, you said that's inaccurate. 15 MS PILLAY: Chair, just an objection – 16 MR SEMENYA SC: For instance – 17 MS PILLAY: Just an objection. The 18 witness has indicated very clearly that he couldn't 19 identify either Sekgweleya or Mguye. He was clear that 20 there were members of the TRT that were with him, but he's 21 unable to say whether the two members were either 22 Sekgweleya or Mguye for that matter. 23 CHAIRPERSON: He also didn't say that 24 everything they said was untrue. So the point he's making 25 is that they didn't mention, none of the people there</p>	<p style="text-align: right;">Page 27675</p> <p>1 before us nobody came forward and said I have any firearms 2 in my hands. I don't know where Colonel Merafe was when he 3 saw me with the R5 because why if I remember correctly he 4 and one of the colonels of Phokeng was taking the other 5 injured person by vehicle to the clinic. So I don't know 6 when and where he saw me with that R5. 7 MR SEMENYA SC: And we're going to argue 8 that the probabilities are very slim that you'd see 9 somebody with an R5 from the helicopter, land without a 10 firearm on you and chase on foot after them. You must have 11 had confidence of chasing after that R5 people. 12 COLONEL VERMAAK: I've explained that I 13 had members who has been trained, I believe been trained 14 correctly, and then therefore I didn't see the necessary 15 that I must have a firearm with me. I never book out a R5. 16 Only when I had specific information and where there is a 17 specific operation I will book out my 9 millimetre pistol 18 and that's why I said the members that was Captain Loest 19 getting together to go with me were people who were armed. 20 MR SEMENYA SC: So this is how you saw it 21 play out; you would run after somebody with an R5 and you 22 will command those TRT members to shoot if the necessity 23 arose? That's how you saw it play out? 24 COLONEL VERMAAK: Chair, I didn't gave 25 instruction to members –</p>
<p style="text-align: right;">Page 27674</p> <p>1 mentioned he had a firearm and that's the point of argument 2 really which can be argued at the end. I don't know that 3 we need spend much more time on it, Mr Semenya. 4 But there's another point that concerns me. I 5 understood you to say, Mr Semenya – if I misheard you, 6 please correct me – why would Merafe fabricate that. It 7 doesn't follow, the fact that he says it, which we know he 8 did, the fact that according to this witness he was 9 mistaken doesn't mean - if the witness is correct on that 10 it doesn't mean that Merafe fabricated it. There is 11 another possible inference. So you can't put it as 12 strongly as you did, if I heard you correctly. Perhaps we 13 can revisit that topic from a slightly different angle 14 without taking objections from Ms Pillay or from me. 15 MR SEMENYA SC: Colonel, you have heard 16 the point raised by the Chair, that there may – are you 17 alive to any reason why Colonel Merafe may be mistaken on 18 the point? 19 COLONEL VERMAAK: Chair, I cannot – 20 MR SEMENYA SC: Of so obvious a nature as 21 to say that he saw you have an R5 in your hand at the 22 riverside. 23 COLONEL VERMAAK: Chair, I don't know why 24 he was telling that because why I never had an R5 in my 25 hands. According to the witnesses that the police put</p>	<p style="text-align: right;">Page 27676</p> <p>1 MR SEMENYA SC: No, no, no, I – 2 COLONEL VERMAAK: I only gave instruction 3 to a member. 4 MR SEMENYA SC: No, no, no, before that 5 instruction, I'm saying was this how you contemplated this 6 to unfold? 7 COLONEL VERMAAK: I do have the trust in 8 the policemen who was going with me. If needed they will 9 be able to protect our lives. 10 MR SEMENYA SC: I know, but I'm asking 11 how you contemplated this to unfold. You were going to 12 chase without a firearm on you and if the need arise you'd 13 instruct these TRT members to shoot? 14 COLONEL VERMAAK: If the need arise, as 15 it was, I gave the instruction to one member. 16 CHAIRPERSON: You haven't answered the 17 question. The question related to something anterior to 18 what you've just said, relates to how you saw the situation 19 developing, what you thought was going to happen or might 20 happen. What Mr Semenya is putting to you is before you 21 actually went with this group of people towards the river 22 and over it, did you envisage that a situation might happen 23 where it would be necessary for shots to be fired from the 24 side of your group because of the behaviour of the people 25 on the other side of the river, and you yourself didn't</p>

<p style="text-align: right;">Page 27677</p> <p>1 have a firearm, you say, so did you envisage that if that 2 situation arose you would have to or be able to give an 3 instruction to one or more of those with you – 4 COLONEL VERMAAK: That is correct. 5 CHAIRPERSON: - to fire. That's your 6 question, Mr Semenya? 7 COLONEL VERMAAK: That's correct, Chair. 8 CHAIRPERSON: And the answer is yes. 9 COLONEL VERMAAK: That's correct, Chair. 10 COMMISSIONER HEMRAJ: Whilst we're at the 11 river on the 13th can you just assist me with something? 12 You say that there was just one striker from across the 13 stream shooting with an R5. 14 COLONEL VERMAAK: That's correct, Chair. 15 COMMISSIONER HEMRAJ: Because your 16 statement and your evidence-in-chief make mention of 17 shooting with an R5 and – you say presumably a shotgun in 18 your statement, but in your evidence-in-chief you speak of 19 both. Would you like to clarify that? 20 COLONEL VERMAAK: Chair, yes, we heard 21 some shots. We could only saw the person with the R5, but 22 from experience the shots that was in between I could make 23 out that is of a shotgun and with rubber bullets. It 24 wasn't make such a loud sound as it was made by the R5. 25 COMMISSIONER HEMRAJ: And how many shots</p>	<p style="text-align: right;">Page 27679</p> <p>1 the following shortcomings were identified." The first, 2 you say, "Members don't have commanders with experience in 3 charge at unrest scenes." This is absolutely no reference 4 to Marikana. Am I right? 5 COLONEL VERMAAK: No, this was written 6 after Marikana. 7 MR SEMENYA SC: No, I'm saying this 8 criticism does not relate to the operation in Marikana. 9 COLONEL VERMAAK: It did relate to it. 10 MR SEMENYA SC: It did? 11 CHAIRPERSON: He said Lonmin, Amplats, 12 and Impala, so it refers as I understand it to unrest at 13 the three mines, Lonmin Mine, the Amplats Mine, and the 14 Impala Mine. So it does include Marikana. Is that right? 15 COLONEL VERMAAK: That's correct, Chair. 16 MR SEMENYA SC: Well Chair, I'm trying to 17 tidy up and see whether this Lonmin relates also to the 18 events of August 2012. Are you saying this criticism is 19 valid to the events of August 2012 in Marikana? 20 CHAIRPERSON: It must do. If you look at 21 11.7, look at 11.4 and 11.7, he refers in terms to Marikana 22 - in one case Marikana (Lonmin), the other case 23 Marikana/Lonmin, so quite clearly when he's talking about 24 Lonmin in this document read as a whole, he's referring to 25 Lonmin. But it may well be a helpful exercise to isolate</p>
<p style="text-align: right;">Page 27678</p> <p>1 were fired from the other side with the R5? 2 COLONEL VERMAAK: Chair, I cannot tell 3 you. I cannot remember precisely. I just heard it, but 4 what I specifically saw was the member with the R5 who was 5 shooting at us. 6 COMMISSIONER HEMRAJ: Thank you, Colonel. 7 CHAIRPERSON: You say the member with the 8 R5 were shooting at you. I think you mean the member of 9 the group, the striker. 10 COLONEL VERMAAK: The striker, yes. 11 CHAIRPERSON: The striker. He was a 12 member of the group of strikers, but in the context in 13 which we use the word "member" here we – 14 COLONEL VERMAAK: It's a policeman. 15 CHAIRPERSON: - normally mean a member of 16 the police service. 17 COLONEL VERMAAK: Ja. 18 CHAIRPERSON: Which is not what you meant 19 to say? 20 COLONEL VERMAAK: That's correct, Chair. 21 MR SEMENYA SC: Can I invite you to look 22 at exhibit HHH68, which is your, the document dated 12 23 December 2012. In particular can we go to that paragraph 24 11? I want us to deal with the issues that you say there. 25 It reads, "During the unrest at Lonmin, Amplats and Impala,</p>	<p style="text-align: right;">Page 27680</p> <p>1 the comments made insofar as they relate to Lonmin/Marikana 2 and don't relate to Amplats and Impala, which was not 3 covered by our terms of reference. 4 MR SEMENYA SC: I'm attempting to do 5 that, Chair. Now your evidence is that criticism covers 6 the Marikana incident during August 2012? 7 COLONEL VERMAAK: That's correct. 8 MR SEMENYA SC: Did I understand you 9 correctly when we started this cross-examination that 10 Brigadier Calitz is a POP commander of immense experience? 11 Is that what you said? 12 COLONEL VERMAAK: That's correct. 13 MR SEMENYA SC: And that you said so is 14 Colonel Merafe? 15 COLONEL VERMAAK: That is correct. 16 MR SEMENYA SC: So is Colonel Pitsi. 17 COLONEL VERMAAK: That's correct. 18 MR SEMENYA SC: How then do you say that 19 that event the commanders do not have the experience in 20 unrest situations? 21 [11:38] COLONEL VERMAAK: Chair, they were not 22 the only commanders. You get section commanders, you get 23 platoon commanders. So that includes those members, 24 referring to commanders. So I didn't only refer to Colonel 25 Merafe or Pitsi or Brigadier Calitz. I said there</p>

<p style="text-align: right;">Page 27681</p> <p>1 "commanders." That included your section commanders and 2 your platoon commanders. 3 MR SEMENYA SC: Ja, okay. Which 4 commanders are you referring to? Give us the names so that 5 we can just test the correctness of your criticism? 6 COLONEL VERMAAK: In the first place a 7 TRT member don't have – 8 MR SEMENYA SC: You can complete. You 9 can complete, Colonel. 10 COLONEL VERMAAK: They don't have the 11 necessary experience to handle unrest. They are not 12 trained for it and they are not supposed to be utilised 13 during crowd management incidents. 14 MR SEMENYA SC: Can you give us names of 15 POP commanders who do not have experience in unrest 16 situations? 17 COLONEL VERMAAK: Chair, I think if the 18 police can go and withdraw all the section and platoon 19 commanders' history about their training and that, the 20 experience that they have, I specifically also said at mine 21 unrest, so not very much of people in other provinces are 22 exposed in such a way that the North West Public Order, and 23 specifically the Rustenburg Public Order Police is exposed 24 to, and the experience that they also have on mine unrest. 25 MR SEMENYA SC: Colonel, can you give us</p>	<p style="text-align: right;">Page 27683</p> <p>1 there were POP commanders from province X or province Y who 2 didn't seem to know what was going on, didn't seem to have 3 the necessary experience, that would be helpful. If you 4 can't give that information then obviously of course the 5 point will fall away. 6 COLONEL VERMAAK: That's correct, Chair. 7 If you can take people that's coming from Natal, they 8 haven't got the same problems at mines as we had here in 9 the North West province. I think the only two provinces 10 that really have, or three provinces is Limpopo, Gauteng, 11 and the Free State, who also have got problems with mines. 12 I'm not aware of any other province who have the problems 13 with mines specifically. 14 MR SEMENYA SC: I'm surprised, Colonel. 15 Are you telling the PC North West about lack of experience 16 of POP members in Natal? Is that your answer? 17 COLONEL VERMAAK: Chair, you must look at 18 the letter and why I wrote that letter, and if you will see 19 at one stage I said it's not to criticism individuals, it's 20 to assist the police. 21 MR SEMENYA SC: In North West? 22 COLONEL VERMAAK: Well, I'm in North West 23 and I wrote it to the PC, that's correct, Chair. 24 MR SEMENYA SC: That's why I'm going 25 back. Are you saying you are bringing it to the attention</p>
<p style="text-align: right;">Page 27682</p> <p>1 names of POP commanders with no experience in unrest 2 scenes? 3 COLONEL VERMAAK: Chair, there was people 4 from the whole country. How can you expect from me to give 5 you names? There was over 700 policemen deployed. 6 MR SEMENYA SC: You cannot make a 7 criticism that somebody does not have an experience if you 8 don't know them. Please give us the names of the 9 commanders you say are POP commanders without experience 10 and who are managing in South Africa unrest-related issues. 11 COLONEL VERMAAK: Chair, I think then the 12 police must, as I said, get the 15th, see who was the 13 commanders, because I haven't got names. 14 CHAIRPERSON: I'm sorry to interrupt you, 15 Colonel. Is this not the way to approach it? I understand 16 your point that people came from other provinces. They 17 didn't come from the whole country. They didn't come from 18 the Western Cape as far as I understand. I don't think 19 they came from the Northern Cape either, but they came from 20 various provinces. Now are you able to be more specific 21 than you've been up to now in respect of POP commanders who 22 you say did not have the necessary experience or training? 23 Experience I suppose would be more accurate. Not 24 necessarily by giving names, because you presumably don't 25 know the names, but if you can say as far as you were aware</p>	<p style="text-align: right;">Page 27684</p> <p>1 of the PC in North West that there are POP commanders in 2 KZN who don't have experience in unrest – 3 COLONEL VERMAAK: No, Chair, I'm not 4 specifically name provinces. It was a overall letter just 5 to give assistance to the Provincial Commissioner. 6 MR SEMENYA SC: Just have a look at 11.1 7 there. Firstly it doesn't talk about in the mine areas, 8 but that aside, that aside; are you saying there are POP 9 commanders in the North West, which has mines, who do not 10 have experience in unrest scenes? 11 COLONEL VERMAAK: Chair, you're referring 12 to paragraph 11.1, or 11? 13 CHAIRPERSON: He asked you about 11.1. 14 COLONEL VERMAAK: 11.1 – 15 CHAIRPERSON: Now if I can just ask you a 16 few questions to get clarity in my mind before Mr Semenya 17 continues. 11.1 of course is a rather broad 18 generalisation, but I understood you to say by way of 19 explaining it that there were POP commanders from provinces 20 that didn't have the same kind of problems that are 21 encountered in the North West and they wouldn't therefore 22 have the experience. Is that right? 23 COLONEL VERMAAK: That's right, Chair. 24 CHAIRPERSON: That's what you meant. In 25 other words the advice you were giving the Provincial</p>

<p style="text-align: right;">Page 27685</p> <p>1 Commissioner, if I can put it in my words – if I'm wrong  2 you must please correct me – was in future when we have  3 this kind of problem and you have to get reinforcements  4 from other provinces, try to get reinforcements from  5 provinces where they have similar problems so that the  6 people who come will be able to deal with them. Don't get  7 people from provinces who haven't got that experience as  8 they won't be much good. Is that –  9 COLONEL VERMAAK: That is –  10 CHAIRPERSON: - in my language what  11 you're saying?  12 COLONEL VERMAAK: That is correct, Chair.  13 CHAIRPERSON: Alright.  14 MR SEMENYA SC: But Colonel, okay, which  15 POP commanders displayed lack of experience to you in  16 Marikana, from other provinces?  17 COLONEL VERMAAK: Chair, if you go back  18 to the 13th and you look at what happened there –  19 MR SEMENYA SC: Which of the POP  20 commanders on the 13th were coming from provinces other than  21 the North West?  22 COLONEL VERMAAK: I haven't got the list  23 with me, but there was other people who was coming from  24 other provinces.  25 COMMISSIONER HEMRAJ: Sorry to interrupt</p>	<p style="text-align: right;">Page 27687</p> <p>1 So I didn't say only North West.  2 CHAIRPERSON: You said as far as you knew  3 there was mine-related unrest in Limpopo, Gauteng, and the  4 Free State. You seem to think there wasn't mine-related  5 unrest in Natal; I don't know whether that's correct or  6 not, but anyway, that's what you said, and equally the  7 Eastern Cape. There may be unrest of other kinds, but not  8 mine-related. Is that what you're saying?  9 COLONEL VERMAAK: That is correct, Chair.  10 COMMISSIONER HEMRAJ: There's another  11 point. This criticism you say is peculiar to section  12 commanders and platoon commanders.  13 COLONEL VERMAAK: I didn't say the  14 officers, and I didn't say that the people I know didn't  15 have the necessary experience. As I said, I work a long  16 time with Brigadier Calitz and Colonel Merafe, and also  17 Colonel Pitsi. So I never mentioned their names.  18 COMMISSIONER HEMRAJ: Yes. These  19 platoons and sections which would have come from other  20 areas without this unrest experience, these commanders,  21 section commanders, platoon commanders, would be carrying  22 out or relaying orders from senior commanders in the North  23 West?  24 COLONEL VERMAAK: No, not necessarily,  25 Chair. They were normally put under command of their own</p>
<p style="text-align: right;">Page 27686</p> <p>1 you. Do I understand that the criticism is purely on the  2 basis of where they come from and therefore they might not  3 have experience with mine-related unrest?  4 COLONEL VERMAAK: That is correct, Chair.  5 COMMISSIONER HEMRAJ: There's nothing  6 that you observed –  7 COLONEL VERMAAK: No.  8 COMMISSIONER HEMRAJ: - that led you to  9 that conclusion?  10 COLONEL VERMAAK: No. No, that is what I  11 said is the experience that the people have in mine unrest  12 is total a difficult situation where you have say a strike  13 on service deliveries.  14 MR SEMENYA SC: Let me have the benefit  15 of your reasoning then. Your expert opinion, or your  16 experienced opinion is that only POP members in North West  17 can be used in North West, where the mines are? Is that  18 the logic I must follow from your evidence?  19 COLONEL VERMAAK: No, I didn't say that.  20 I have –  21 MR SEMENYA SC: No, I'm just trying to  22 see if you –  23 COLONEL VERMAAK: I said to you, Chair,  24 that I said the people from Gauteng also have experience.  25 I said the people from the Free State also have experience.</p>	<p style="text-align: right;">Page 27688</p> <p>1 people.  2 COMMISSIONER HEMRAJ: So they would be  3 acting in a big operation like Marikana independently of  4 Brigadier Calitz's orders?  5 COLONEL VERMAAK: That's in their own  6 unit sections, that's correct, Chair. They all fall under  7 the overall commander.  8 COMMISSIONER HEMRAJ: Yes.  9 COLONEL VERMAAK: But they're not  10 splitting them up and say six of this members from the  11 North West and six of KwaZulu-Natal, they're going to make  12 up one section now, to share the experience. So the  13 sections stayed with the units that is reporting here for  14 this, for the duties.  15 COMMISSIONER HEMRAJ: So in a dispersal  16 action, if Brigadier Calitz had to give an order to  17 disperse, that order would come down the line to the  18 section commanders and the platoon commanders, right?  19 COLONEL VERMAAK: Under normal  20 circumstances, yes, that will follow the line from the  21 operational commander to the platoon and section  22 commanders, Chair.  23 CHAIRPERSON: Look, I don't want to get  24 involved too much in the detail. I'm not sure how much you  25 know about it, but take a practical example, what happened</p>

<p style="text-align: right;">Page 27689</p> <p>1 at scene 2 on the 16th, Brigadier Calitz was there. I'm not  2 sure how much command and control he exercised and I'm not  3 sure how clearly any command that he gave found its way  4 down the line. I mean you were in fact the eye-in-the-sky  5 and we've, a lot of that evidence has been dealt with  6 already and we don't have to go over it again, but it's not  7 necessarily a reflection on Brigadier Calitz, that's  8 another issue we won't go into now, but certainly the  9 section commanders who were operating in the vicinity of  10 koppie 2, I'm not sure how much experience they had of  11 being in charge of unrest scenes, but that's a broader  12 issue which we don't have to go into. But as a general  13 proposition can a man say whether what happened at scene 2  14 illustrates the point you're making, or does it not  15 illustrate the point you're making?</p> <p>16 MR SEMENYA SC: No, but Colonel, being in  17 the sky –</p> <p>18 CHAIRPERSON: Let him answer him question  19 first, Mr Semenya.</p> <p>20 MR SEMENYA SC: Sorry.</p> <p>21 CHAIRPERSON: Then you'll have  22 opportunity to ask yours. Have you got any comment on the  23 question I asked you?</p> <p>24 COLONEL VERMAAK: Chair, yes. I did not  25 know what sort of instructions was given by the commanders</p>	<p style="text-align: right;">Page 27691</p> <p>1 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):  2 Thank you, Chair. Colonel, on the 13th of August 2012 the  3 POP people who were deployed outside of the North West were  4 POP members from Pretoria, POP Johannesburg, POP East Rand,  5 POP KwaMhlanga, and the NIU from Pretoria. Now which ones  6 were you referring to that were coming from other  7 provinces?</p> <p>8 COLONEL VERMAAK: I don't know where's  9 KwaMhlanga, if you maybe can help me.</p> <p>10 MR SEMENYA SC: It's Mpumalanga.</p> <p>11 COLONEL VERMAAK: Okay.</p> <p>12 MR SEMENYA SC: Which ones were you  13 referring to, to be –</p> <p>14 COLONEL VERMAAK: I've said –</p> <p>15 MR SEMENYA SC: - coming from provinces  16 that do not have –</p> <p>17 COLONEL VERMAAK: Chair, I've said –</p> <p>18 MS PILLAY: Chair, just so that we're all  19 on the same page, if Mr Semenya could just indicate to us  20 where we find this evidence so we can all follow it, where  21 the POP units came from?</p> <p>22 MR SEMENYA SC: I'll give a statement.  23 I've just consulted with the JOC. I can give you a list of  24 the provinces from where –</p> <p>25 CHAIRPERSON: It's somewhere in the</p>
<p style="text-align: right;">Page 27690</p> <p>1 on the ground and the situation was not a normal situation  2 at that stage. So I will not be aware of the instructions  3 that was given by specific commanders on the ground as I  4 have that on the 13th.</p> <p>5 MR SEMENYA SC: Nor can you make a  6 criticism about how they behaved in relation to scene 2,  7 which is what, the scenario described by the Chair.</p> <p>8 COLONEL VERMAAK: Chair, you must look to  9 the whole picture. From the 13th onwards up to until  10 December there were a lot of incidents in and around  11 Marikana where people gathered together. In Nkaneng there  12 was incidents where police have to disperse group of people  13 and at that specific incidents I observe some faults that  14 the policemen made and that is why I worried about that and  15 I, that is why I brought it under the attention of the  16 Provincial Commissioner.</p> <p>17 CHAIRPERSON: On this note I think we can  18 take the tea adjournment and we'll resume this topic, if Mr  19 Semenya wishes to persist in it, after tea.</p> <p>20 [COMMISSION ADJOURNS COMMISSION RESUMES]  21 [12:21] CHAIRPERSON: The Commission resumes.  22 Colonel, you're still bound by the affirmation.</p> <p>23 SALMON JOHANNES VERMAAK: (affirms  24 further)</p> <p>25 CHAIRPERSON: Mr Semenya.</p>	<p style="text-align: right;">Page 27692</p> <p>1 record.</p> <p>2 MR SEMENYA SC: It is in the record, yes.</p> <p>3 CHAIRPERSON: I think we can carry on in  4 the meanwhile. The document sets it out – I'm inclined to  5 think we can rely on Mr Semenya on that, and it's an  6 exhibit. No, I understand that, Ms Pillay wants to know  7 which exhibit it is, but I'm afraid - I think let him carry  8 on and if it turns out that he's wrong you can deal with it  9 in re-examination. But the question was which of those, if  10 he's correct in saying where those various POP units came  11 from, which are the ones that you say would be covered by  12 your criticism?</p> <p>13 COLONEL VERMAAK: Chair, at the 13th the  14 only people that I maybe can think of is KwaMhlanga. The  15 other people of Gauteng –</p> <p>16 MR SEMENYA SC: No, there are mines in  17 Mpumalanga. What do you mean? They've got coal mines all  18 over the place there.</p> <p>19 COLONEL VERMAAK: No, that's correct, but  20 have you ever seen on the news that there's any problems?</p> <p>21 MR SEMENYA SC: Sorry?</p> <p>22 COLONEL VERMAAK: There's never ever that  23 I can remember that they are exposed to the same strikes as  24 we have here in the North West province.</p> <p>25 CHAIRPERSON: The point was it isn't just</p>

<p style="text-align: right;">Page 27693</p> <p>1 provinces where there are mines, it's provinces, as I 2 understood his evidence, where there is mine unrest of the 3 nature of the mine unrest experienced in the North West, 4 and his answer is that that's not his understanding of what 5 happens in Mpumalanga. 6 COLONEL VERMAAK: That's correct, Chair. 7 CHAIRPERSON: Whether all the coal 8 mineworkers in Mpumalanga all act entirely properly as 9 officers and gentlemen entirely I'm not sure, but that's 10 his impression and it's certainly mine as well. 11 MR SEMENYA SC: Okay, tell us, Colonel, 12 as a POP section commander in a mine unrest situation what 13 tactically do you do different than any other section POP 14 commander? 15 COLONEL VERMAAK: In the first place if 16 you can just go back what we sit with in Marikana, all this 17 serious dangerous weapons that the people have, the people 18 that have been killed for how many days, that is not a 19 normal thing that you see with service delivery. So you 20 must prepare for that sort of situations and you must have 21 preferably experience of that. 22 MR SEMENYA SC: Colonel, what tactically 23 does a section commander do differently, whether they are 24 from a mine unrest environment or a non-mine unrest 25 environment?</p>	<p style="text-align: right;">Page 27695</p> <p>1 during unrest? 2 COLONEL VERMAAK: Chair, I stay with my 3 answer. 4 MR SEMENYA SC: Okay. Let us look at 5 what you have at 11.2. You say, "Commanders don't know or 6 have the legislation" – 7 CHAIRPERSON: Could we have it back on 8 the screen, please? 11.2, "Members don't have commanders 9 with experience" – sorry, that's 1. 11.2, "Commanders 10 don't know or have the legislation under what they can 11 act." Now to which commanders were you referring? 12 COLONEL VERMAAK: Chair, that we have 13 experience through the time that there is, and I've write 14 it in some of my letters, the different standards that 15 there is. At one stage they want to act against people who 16 is marching illegally. The next time they leave the people 17 to march – 18 CHAIRPERSON: No, that's 11.3. We're 19 busy with 11.2. Here you're dealing with commanders, in 20 the plural, who either didn't know the legislation under 21 which they could act, or didn't have copies of it available 22 to them. That's the point made in 11.2 and I think Mr 23 Semenya wants to know who the commanders were to whom you 24 were referring. 25 COLONEL VERMAAK: Chair, I've mentioned</p>
<p style="text-align: right;">Page 27694</p> <p>1 COLONEL VERMAAK: Chair, it depends from 2 situation to situation. The training is more or less to 3 all the POP members, but it depends on decisions of 4 commanders how they're going to approach it. 5 MR SEMENYA SC: No, no, no, I want to 6 understand this criticism that you are mentioning here. I 7 want to know what a section commander in North West does 8 that is different to that a section commander would do in 9 KwaZulu-Natal. 10 COLONEL VERMAAK: Experience. 11 MR SEMENYA SC: What in the experience do 12 they do differently? If they have 10 years' experience, 13 they have 10 years' experience the other way, what 14 difference in their experience is there? 15 COLONEL VERMAAK: Chair, throughout South 16 Africa we are challenged with different situations. The 17 people for instance in Gauteng who have very big marches, 18 they are exposed, they have experience of it and if you 19 take the Northern Cape policemen and you put 30 000 people 20 there in a march, that will, for them to handle for the 21 first time will be really a challenge. 22 MR SEMENYA SC: Is that your answer to 23 what tactically is done – 24 COLONEL VERMAAK: That's correct. 25 MR SEMENYA SC: - what tactically is done</p>	<p style="text-align: right;">Page 27696</p> <p>1 it in broad. If you go and look at every situation where 2 there was a crowd management situation, normally you will 3 see that people only open one case and that's for illegal 4 march, while there's other cases you can also open against 5 the people and not only just go for the easiest one. 6 MR SEMENYA SC: So you don't speak about 7 any particular individual? 8 COLONEL VERMAAK: That's correct. 9 MR SEMENYA SC: You're just saying all of 10 them? 11 COLONEL VERMAAK: I didn't say all of 12 them. I said I identified that there can be a problem, or 13 there is a problem with the people out of experience that 14 we saw and we experience it in the North West province 15 specifically. 16 MR SEMENYA SC: What legislation are you 17 referring to? 18 COLONEL VERMAAK: Public Road Act for 19 example, if they're blocking the roads, I never saw that 20 they open such a case. 21 COMMISSIONER HEMRAJ: Do I understand 22 that you're saying that the commanders don't have enough 23 knowledge of the law to lay charges, criminal charges 24 against the protesters or the strikers – 25 COLONEL VERMAAK: That is, that is</p>

<p style="text-align: right;">Page 27697</p> <p>1 correct, Chair.</p> <p>2 COMMISSIONER HEMRAJ: Is that what that</p> <p>3 criticism relates to?</p> <p>4 COLONEL VERMAAK: That's correct.</p> <p>5 COMMISSIONER HEMRAJ: Thank you.</p> <p>6 MR SEMENYA SC: Exhibit OOO8 is your</p> <p>7 statement that you made on the 16th of August – triple L –</p> <p>8 CHAIRPERSON: Do you want this one put up</p> <p>9 on the screen now?</p> <p>10 MR SEMENYA SC: No, no, no, not –</p> <p>11 CHAIRPERSON: No?</p> <p>12 MR SEMENYA SC: OOO8, the one that was a</p> <p>13 statement you gave to Brigadier Van Zyl.</p> <p>14 CHAIRPERSON: Ja.</p> <p>15 MR SEMENYA SC: In relation to the</p> <p>16 matters of the 13th.</p> <p>17 CHAIRPERSON: Alright, it looks as if</p> <p>18 we're getting it on the screen.</p> <p>19 MR SEMENYA SC: You remember that</p> <p>20 statement?</p> <p>21 COLONEL VERMAAK: That's correct.</p> <p>22 MR SEMENYA SC: Neither you mention all</p> <p>23 this contraventions of the Road Traffic Act and the</p> <p>24 Dangerous Weapons Act or these other in relation to the</p> <p>25 events of the 13th. All you're talking about is that –</p>	<p style="text-align: right;">Page 27699</p> <p>1 does it work, this docket was Marikana CAS119/08/2012.</p> <p>2 Your statement was A16, so it was the 16th statement filed</p> <p>3 in the docket. Now who would have opened, who would have</p> <p>4 caused the docket to be opened?</p> <p>5 COLONEL VERMAAK: Chair, I haven't got an</p> <p>6 idea. Brigadier Van Zyl was on the scene.</p> <p>7 CHAIRPERSON: Yes.</p> <p>8 COLONEL VERMAAK: I didn't know who he</p> <p>9 gave instruction to go and open the case –</p> <p>10 CHAIRPERSON: Somebody opened the docket.</p> <p>11 You're not sure –</p> <p>12 COLONEL VERMAAK: I don't know who it</p> <p>13 was, Chair.</p> <p>14 CHAIRPERSON: Now what's the mechanism</p> <p>15 when a docket is opened? Does the person who's opening the</p> <p>16 docket, causing the docket to be opened specify what the</p> <p>17 charge is in respect of which the docket is to be opened,</p> <p>18 or how does it work?</p> <p>19 COLONEL VERMAAK: Yes, Chair, if you open</p> <p>20 a docket you will put all the complaints that you have in</p> <p>21 front of the docket. There's a specific area where you</p> <p>22 write down all the complaints, and then the docket is being</p> <p>23 given to an investigating officer.</p> <p>24 CHAIRPERSON: And when that happens, as</p> <p>25 far as I can remember from the days when I was a</p>
<p style="text-align: right;">Page 27698</p> <p>1 COLONEL VERMAAK: I –</p> <p>2 MR SEMENYA SC: All you are talking about</p> <p>3 is that they did not comply with the Regulation of</p> <p>4 Gatherings Act. Am I right?</p> <p>5 COLONEL VERMAAK: That's correct, Chair.</p> <p>6 But maybe I must just ask, I didn't open the docket. I</p> <p>7 didn't write the A1 statement. I only support with a short</p> <p>8 statement as it was requested by Brigadier Van Zyl to use</p> <p>9 quickly in a bail application.</p> <p>10 MR SEMENYA SC: But you accept that your</p> <p>11 statement does not include what you are criticising other</p> <p>12 commanders of doing?</p> <p>13 COLONEL VERMAAK: If I was in charge and</p> <p>14 I was a senior member at that scene, that is my</p> <p>15 responsibility as the senior then, go and open the case and</p> <p>16 then you will file on all the complaints in the A1</p> <p>17 statement of the docket.</p> <p>18 MR SEMENYA SC: Were you precluded by</p> <p>19 anything in stating in your own statement these are the</p> <p>20 transgressions that I saw, because you knew this document</p> <p>21 is going to be used in a bail application, to oppose a bail</p> <p>22 application?</p> <p>23 COLONEL VERMAAK: Chair, I've already</p> <p>24 answered on that question.</p> <p>25 CHAIRPERSON: Now Lieutenant-Colonel, how</p>	<p style="text-align: right;">Page 27700</p> <p>1 prosecutor, is you don't just open the docket. There's</p> <p>2 always an A1, in fact at one stage the A1 used to be on the</p> <p>3 inside of the front cover, as far as I recall.</p> <p>4 COLONEL VERMAAK: That's correct, Chair.</p> <p>5 CHAIRPERSON: And the A1 would be, as it</p> <p>6 were, the founding statement.</p> <p>7 COLONEL VERMAAK: That's correct.</p> <p>8 CHAIRPERSON: Right, now you were asked</p> <p>9 to provide the 16th statement in the A-section of the</p> <p>10 docket, the A-section being the section where all the</p> <p>11 statements are.</p> <p>12 COLONEL VERMAAK: That's correct.</p> <p>13 CHAIRPERSON: And you say Brigadier Van</p> <p>14 Zyl came to you and he asked you for a statement.</p> <p>15 COLONEL VERMAAK: He asked me for a</p> <p>16 statement specifically only to mention the Gatherings Act,</p> <p>17 what is expected from people who's taking part in illegal</p> <p>18 march or a legal march.</p> <p>19 CHAIRPERSON: Okay. I think this was on</p> <p>20 the 16th, wasn't it?</p> <p>21 COLONEL VERMAAK: That's correct.</p> <p>22 CHAIRPERSON: It was after you'd landed,</p> <p>23 before you went up again.</p> <p>24 COLONEL VERMAAK: That's correct –</p> <p>25 CHAIRPERSON: In the course of the</p>



<p style="text-align: right;">Page 27701</p> <p>1 afternoon –</p> <p>2 COLONEL VERMAAK: It was in a period when</p> <p>3 we refuelled that he asked that.</p> <p>4 CHAIRPERSON: Yes, during a refuelling</p> <p>5 stop.</p> <p>6 COLONEL VERMAAK: That's correct.</p> <p>7 CHAIRPERSON: And you wrote the statement</p> <p>8 down in your own handwriting.</p> <p>9 COLONEL VERMAAK: That's correct, Chair.</p> <p>10 CHAIRPERSON: In English.</p> <p>11 COLONEL VERMAAK: That's –</p> <p>12 CHAIRPERSON: And this is the statement</p> <p>13 we have, exhibit –</p> <p>14 COLONEL VERMAAK: That's correct.</p> <p>15 CHAIRPERSON: - 0008.</p> <p>16 COLONEL VERMAAK: That's correct, Chair.</p> <p>17 CHAIRPERSON: I see. Now the question</p> <p>18 you were asked is why didn't you in that statement also</p> <p>19 include a whole lot of other charges that the Brigadier</p> <p>20 didn't refer to, which may not have been on the front part</p> <p>21 of the docket and may not have been included in the</p> <p>22 founding statement, A1?</p> <p>23 COLONEL VERMAAK: Chair, I haven't got</p> <p>24 the docket in front of me, so I wasn't aware which cases</p> <p>25 was opened already on the docket, and as I said, Brigadier</p>	<p style="text-align: right;">Page 27703</p> <p>1 must do is incorrect, Brigadier.' You didn't say that to</p> <p>2 him.</p> <p>3 COLONEL VERMAAK: I explained to the</p> <p>4 Chair now the circumstances under which the Brigadier asked</p> <p>5 me for the statement.</p> <p>6 MR SEMENYA SC: No, I don't understand.</p> <p>7 The Brigadier comes to you because you are the eye-in-the-</p> <p>8 sky, to speak about whether or not there was a notice in</p> <p>9 terms of the Regulation of Gatherings Act.</p> <p>10 COLONEL VERMAAK: I don't know why did he</p> <p>11 approach me for a statement. I think that is a question</p> <p>12 that must be put to Brigadier Van Zyl himself.</p> <p>13 MR SEMENYA SC: No, I'm asking from you</p> <p>14 as a witness. Are you saying that the evidence that the</p> <p>15 Brigadier wanted from somebody who is the eye-in-the-sky</p> <p>16 was to talk about whether or not there was compliance with</p> <p>17 the act?</p> <p>18 COLONEL VERMAAK: You know my</p> <p>19 experience –</p> <p>20 MS PILLAY: Chair, the witness has just</p> <p>21 indicated that he doesn't know why Brigadier Van Zyl</p> <p>22 approached him for the statement.</p> <p>23 CHAIRPERSON: No, no, we know that, but</p> <p>24 the question relates to something else. When he was</p> <p>25 approached for whatever reason – he may not know what it</p>
<p style="text-align: right;">Page 27702</p> <p>1 Van Zyl approached me and asked me I must mainly just</p> <p>2 concentrate for him, give a broad explanation what happened</p> <p>3 on that day and as far as I know if the people have</p> <p>4 authority to have a march or not.</p> <p>5 CHAIRPERSON: Now if a docket had been</p> <p>6 opened to your knowledge on a murder charge and you were</p> <p>7 able to contribute evidence about the murder, but you also</p> <p>8 knew that the accused was guilty of negligent driving on</p> <p>9 the same day he committed the murder - accused or suspected</p> <p>10 of committing negligent driving on the day he allegedly</p> <p>11 committed the murder - and you were asked to make a</p> <p>12 statement to be filed in the murder docket, would you have</p> <p>13 included the negligent driving material as well?</p> <p>14 COLONEL VERMAAK: Chair yes, if, in</p> <p>15 normal instances you will include all that information, but</p> <p>16 due to the fact that Brigadier Van Zyl knew that we is the</p> <p>17 eye-in-the-sky, he asked me only to concentrate on that</p> <p>18 specific points.</p> <p>19 MR SEMENYA SC: I don't understand –</p> <p>20 COLONEL VERMAAK: He said we will at a</p> <p>21 later stage obtain a full statement from my side.</p> <p>22 MR SEMENYA SC: No, but mindful of this</p> <p>23 very criticism you have, you would have said to him, 'But</p> <p>24 that's precisely why we keep complaining, that commanders</p> <p>25 must include all transgressions. This thing that you say I</p>	<p style="text-align: right;">Page 27704</p> <p>1 was – the question is why didn't he say, 'By the way, there</p> <p>2 are a lot of other offences as well that I should cover in</p> <p>3 my statement'. That's the question Mr Semanya is asking.</p> <p>4 I don't see any problem about that. I don't know what the</p> <p>5 answer is – or I think I do know the answer. I think he's</p> <p>6 given it already, but maybe the witness cares to repeat his</p> <p>7 answer.</p> <p>8 COLONEL VERMAAK: Chair, as I said,</p> <p>9 Brigadier Calitz – ag, Van Zyl asked me to concentrate only</p> <p>10 for him on that specific incident. It's easily for me from</p> <p>11 the eye-in-the-sky to know that is an illegal gathering</p> <p>12 with all those dangerous weapons, so the whole thing was</p> <p>13 about the illegal march and as far as if I know that those</p> <p>14 people have any particular approval for that sort of march.</p> <p>15 I did between the 13th and the date that I made the</p> <p>16 statement, did take knowledge that those people didn't have</p> <p>17 any permission to have a march.</p> <p>18 MR SEMENYA SC: But you do accept that if</p> <p>19 you had included all other transgressions, the Public</p> <p>20 Prosecutor who was going to formulate the charges would</p> <p>21 have had the benefit of real evidence based on your</p> <p>22 statement to include those charges as well?</p> <p>23 COLONEL VERMAAK: Chair, as I said, I was</p> <p>24 not the investigating officer. I didn't put the A1</p> <p>25 statement in the docket. I only gave Brigadier Van Zyl the</p>

<p style="text-align: right;">Page 27705</p> <p>1 information that he quickly – and I put it to you, quickly  2 needed from me, because why he said to me he's on his way  3 to the court for the application.  4 MR SEMENYA SC: So if I looked at OOO8 I  5 can say that this commander doesn't know the legislation  6 under which they are acting?  7 COLONEL VERMAAK: Chair, I don't know  8 what complaints were opened. If I've got the docket before  9 me I believe I can comment on that.  10 MR SEMENYA SC: On 11.4 you deal with the  11 senior officers do planning without any experience in  12 serious incidents. Let me start here; in Marikana at least  13 we know according to your evidence the planning happened  14 with you being present, right?  15 COLONEL VERMAAK: No, I wasn't present.  16 MR SEMENYA SC: I thought you said you  17 were in the JOCCOM throughout, without fail.  18 COLONEL VERMAAK: Chair, in the afternoon  19 at 1 o'clock or half past 1 when they finalised the plan I  20 was not part of it.  21 [12:41] MR SEMENYA SC: Well, I'm really talking  22 from the 13th onwards. Those plannings, you were part of  23 them?  24 COLONEL VERMAAK: I was not – I was  25 present. I did give my input and the plan was drawn up by</p>	<p style="text-align: right;">Page 27707</p> <p>1 referring to you. I'm saying as a matter of practice if  2 you're a member of the JOCCOM and you have a view to  3 contribute, you don't have to be invited to do so. Am I  4 right?  5 COLONEL VERMAAK: That's correct, if your  6 meetings is being handling properly, if there's agendas  7 being distributing, if there's proper minutes being taken,  8 if the following day those minutes were distributing to the  9 members to make any amendments if needed, that is normal  10 procedure and I think that is also official procedures,  11 then you will have a chance under "General" to make inputs.  12 MR SEMENYA SC: If all those things are  13 not there you don't make an input as a member in the JOC?  14 COLONEL VERMAAK: Chair, you refer to  15 overall if I was a colonel in circumstances. Now you said  16 "me."  17 MR SEMENYA SC: No, I'm saying if you are  18 a member of the JOCCOM and all those things are not  19 present, you don't make a contribution?  20 COLONEL VERMAAK: I might make  21 contribution, Chair.  22 MR SEMENYA SC: So there's nothing  23 precluding you from making a contribution?  24 COLONEL VERMAAK: Excuse? Just repeat?  25 MR SEMENYA SC: There is nothing</p>
<p style="text-align: right;">Page 27706</p> <p>1 Colonel Scott and I believe it was approved by General  2 Annandale and General Mpembe.  3 MR SEMENYA SC: Was it discussed with the  4 POP members with experience being present there?  5 COLONEL VERMAAK: They were briefed about  6 the plan. They were not asked specifically inputs.  7 MR SEMENYA SC: Neither were you asked  8 specifically to make inputs?  9 COLONEL VERMAAK: No. Out of my own, I  10 made my own input.  11 CHAIRPERSON: As far as you could see was  12 any attention paid to your inputs? Were your inputs  13 incorporated into the plan in any way?  14 COLONEL VERMAAK: Nothing, Chair. It was  15 not even used as a plan B. There was a plan A, but no plan  16 B if something went wrong.  17 MR SEMENYA SC: I would have thought that  18 if I'm a member of the JOCCOM and we're discussing a plan  19 and I am a colonel with a view different, or with a view to  20 improve the plan, you don't have to be invited to do that,  21 do you?  22 COLONEL VERMAAK: I did gave my input and  23 if they didn't want to use my input I cannot force the  24 people who draw up the plan to make use of my inputs.  25 MR SEMENYA SC: No, no, no, I'm not</p>	<p style="text-align: right;">Page 27708</p> <p>1 precluding a JOCCOM member from making a contribution when  2 they are sitting in a JOCCOM that is not that –  3 COLONEL VERMAAK: Volgens, according to  4 structure?  5 MR SEMENYA SC: Ja.  6 COLONEL VERMAAK: No, you can make a –  7 if, Chair, if you have the confidence to stand up and make  8 a contribution you will do it, and that is what I've done.  9 I stand up, I make my contribution, and if it is ignored by  10 the chairperson and the planner, I cannot stand in for  11 that.  12 MR SEMENYA SC: We'll deal with the  13 ignoring part. I'm just trying to understand, so when  14 Colonel Merafe is there, is the planning happening with an  15 experienced POP commander in the JOCCOM?  16 COLONEL VERMAAK: Chair, I cannot comment  17 on Colonel Merafe's whereabouts.  18 MR SEMENYA SC: No, you were in the  19 JOCCOM, man. So you would have known whether there are or  20 there are not people with the POP experience in the JOCCOM  21 deliberations.  22 COLONEL VERMAAK: The, Brigadier Calitz  23 was there and Colonel Merafe was there and at a later stage  24 Colonel Pitsi was also there.  25 MR SEMENYA SC: That's precisely my</p>

<p style="text-align: right;">Page 27709</p> <p>1 point. I'm saying when the planning happened, it happened  2 in the presence of POP-experienced individuals –  3 COLONEL VERMAAK: That's correct.  4 MR SEMENYA SC: And they did not find  5 anything untoward about that plan as a plan for the  6 operation that was to be conducted.  7 COLONEL VERMAAK: That is their view. I  8 cannot stand in for how did they feel about the planning.  9 That is my, when I feel that the planning might have some  10 shortcomings I bring it under the attention of the people.  11 MR SEMENYA SC: Colonel, you know I don't  12 understand this. In police operations if you have eight  13 individuals to do a particular operation, what happens?  14 Surely one view would prevail, no? Or do you have to  15 implement each and every of those eight individual ideas  16 about how that operation should unfold?  17 COLONEL VERMAAK: No Chair, if it is  18 being done properly each and every member will give his  19 input. It will be documented and it will be discussed.  20 MR SEMENYA SC: Wasn't the plan about  21 addressing Marikana unrest discussed in the JOCCOM?  22 COLONEL VERMAAK: It was discussed there.  23 MR SEMENYA SC: Now I would understand,  24 just help me understand a different issue now. If there  25 are eight ideas about how that operation must unfold, what</p>	<p style="text-align: right;">Page 27711</p> <p>1 MR SEMENYA SC: So you're saying the  2 overall commander's idea will prevail for the day?  3 COLONEL VERMAAK: No –  4 MS PILLAY: Chair, the evidence was that  5 the operational commander would –  6 MR SEMENYA SC: The operational  7 commander, sorry. Are you saying the operational  8 commander's opinion will prevail on the day?  9 COLONEL VERMAAK: No. Together with the  10 overall commander. I said –  11 MR SEMENYA SC: Okay, but we know the  12 operational commander holds a different view from the  13 overall commander as part of the eight. Which idea will  14 prevail?  15 COLONEL VERMAAK: Chair, it is not for me  16 to decide. That is for those people in that situation that  17 will make that decision, not me.  18 MR SEMENYA SC: I understand. If you're  19 the overall commander there in that JOCCOM, which idea  20 would prevail? I just want to understand police practice.  21 COLONEL VERMAAK: Well, I've explained it  22 now several times, Chair, and I'm, really, I don't think I  23 must –  24 MR SEMENYA SC: Okay.  25 COLONEL VERMAAK: - again do it.</p>
<p style="text-align: right;">Page 27710</p> <p>1 happens then?  2 COLONEL VERMAAK: Plan is being drawn up  3 and it will be –  4 MR SEMENYA SC: Now which of the eight  5 ideas is going to be implemented by the police?  6 COLONEL VERMAAK: Can I please – the plan  7 will be drawn up with all the information on hand  8 stipulated in the plan and it will be given to the JOCCOM  9 commander and the operational commander to approve it.  10 MR SEMENYA SC: If there are eight ideas  11 ultimately held by eight individuals about how that  12 operation must happen, tell us which idea will take, will  13 prevail, and why.  14 COLONEL VERMAAK: The final decision will  15 lay by the operational manager, or the operation commander  16 and the JOCCOM commander, and after they have done the plan  17 they will come back to the members.  18 MR SEMENYA SC: No, no, no, I'm talking  19 about the JOCCOM now.  20 COLONEL VERMAAK: I'm also talking about  21 the JOCCOM.  22 MR SEMENYA SC: Which members are you  23 referring to, sorry?  24 COLONEL VERMAAK: The members in the  25 JOCCOM.</p>	<p style="text-align: right;">Page 27712</p> <p>1 MR SEMENYA SC: The point I'm making,  2 Chair - Colonel, is this; you cannot if you were part of a  3 JOCCOM and a JOCCOM that comes to a particular operational  4 strategy then say that you were ignored.  5 COLONEL VERMAAK: Well, that's a fact. I  6 was there and they ignored me. Nowhere is any plan –  7 MR SEMENYA SC: No, no, no, if your  8 opinion does not prevail –  9 MS PILLAY: Chair, I think it's only fair  10 that the witness be giving an opportunity to complete his  11 answers.  12 CHAIRPERSON: I think that's a good  13 point, Mr Semanya. I uphold the point. Finish your  14 answer, then Mr Semanya will ask you his next question.  15 COLONEL VERMAAK: In this specific  16 operation, Chair, I did say that I'm not happy with the  17 plan. I made a suggestion. It wasn't taken up by the  18 senior people who was there and as far as I know it was  19 also not minuted and also not write into the plan at any  20 stage.  21 CHAIRPERSON: While we're on the subject  22 of minutes, as far as I can remember the evidence indicates  23 that certainly minutes weren't considered, at the beginning  24 of these meetings there wasn't any consideration of the  25 minutes of previous meetings. Is that correct? You know</p>

<p style="text-align: right;">Page 27713</p> <p>1 in a formally structured meeting one of the first items of 2 business on the agenda is the minutes of the previous 3 meeting – 4 COLONEL VERMAAK: That's correct. 5 CHAIRPERSON: - which are then 6 considered. If they are confirmed they are signed by the 7 chairman. If there are corrections suggested these are – 8 COLONEL VERMAAK: That is correct, Chair. 9 CHAIRPERSON: Now did that happen in 10 respect of the minutes of the JOCCOM meetings? 11 COLONEL VERMAAK: No, Chair. 12 CHAIRPERSON: Did the members receive 13 copies of the minutes – 14 COLONEL VERMAAK: No, Chair. 15 CHAIRPERSON: - of the previous meeting 16 before they attended the next one? 17 COLONEL VERMAAK: Nothing at all. 18 CHAIRPERSON: So did you know what was 19 minuted in the minutes? 20 COLONEL VERMAAK: No, Chair, it was not 21 distributed to anybody in the JOC. 22 COMMISSIONER HEMRAJ: I'm sorry to 23 interrupt, Mr Semenya. Can I just, can you help me 24 understand something? At every JOCCOM meeting that you 25 were present you held a view that was different to the</p>	<p style="text-align: right;">Page 27715</p> <p>1 and cordon and search the hostel and then I explained to 2 them why did I still suggest that it must be done. 3 COMMISSIONER HEMRAJ: I see, and there 4 was no support for this view from any of the other POP 5 commanders present at the JOCCOM? 6 COLONEL VERMAAK: No, from POP commanders 7 there was nobody who support me. It was only Colonel 8 Isaacs from CIG who confirm that this people will not lay 9 down their weapons and they are prepared to fight with the 10 police. 11 COMMISSIONER HEMRAJ: Yes, but you did 12 get a hearing. Your complaint is that they did not adopt 13 your plan of action? 14 COLONEL VERMAAK: That is correct, Chair. 15 COMMISSIONER HEMRAJ: I understand. 16 Thank you, Colonel. 17 CHAIRPERSON: It goes a little bit 18 further, does it not? Because though there were problems 19 in relation to intelligence, the representatives of the 20 CIG, as you call them, were at the meeting and consistently 21 reported, Isaacs and Engelbrecht – in fact Engelbrecht and 22 Isaacs, I think Isaacs was there on the last day – 23 consistently reported that the strikers wouldn't lay down 24 their weapons and they would fight. 25 COLONEL VERMAAK: That's correct, Chair.</p>
<p style="text-align: right;">Page 27714</p> <p>1 common view held by the others? 2 COLONEL VERMAAK: That's correct, Chair. 3 That's why I said from the Sunday I discuss it with the 4 senior members and I stayed with that view, also especially 5 due to the fact that Colonel Isaac and Brigadier – 6 CHAIRPERSON: Engelbrecht. 7 COLONEL VERMAAK: - Engelbrecht said they 8 have a difficulty to get specific information. I stay with 9 that view and I mention it every time that I'm worried 10 about the plan that they want to execute. To go and 11 challenge 3 000 people on a koppie with dangerous weapons, 12 you know that on the Sunday people were killed, you know on 13 the Monday people were killed. So it is, I think just 14 normal to know that this people is not going to be very 15 peaceful if you're going to approach them in such a big 16 group. 17 COMMISSIONER HEMRAJ: Yes, now Colonel, 18 when you, your view, whenever you put it forward all the 19 others had a separate view. Now did they simply ignore 20 what you said, or did they point out to you that there 21 might be certain difficulties with what you were 22 suggesting? 23 COLONEL VERMAAK: Chair, there was only 24 once, I think it was on the 15th if I remember correctly, 25 where I was told that they haven't got information to go</p>	<p style="text-align: right;">Page 27716</p> <p>1 CHAIRPERSON: And as far as – well, I 2 mustn't put leading questions here. To what extent as far 3 as you're aware was that information taken into account in 4 the plans that were going forward? 5 COLONEL VERMAAK: Chair, I'm not aware 6 that those information was really write into the plan 7 specifically. We never received a hardcopy of any plans. 8 Any operational commander who was there never received a 9 plan in his hand. It was always put on a screen where 10 different stages were explained by Colonel Scott. 11 MR SEMENYA SC: No, but the members from 12 the Intelligence were not supporting you about the cordon 13 and search, they were supporting you about the nature of 14 the threat. Am I right? 15 COLONEL VERMAAK: No, that's correct, 16 Chair. 17 MR SEMENYA SC: Yes, so most of the POP 18 commanders in the JOC did consider your opinion, if I 19 understood your answers now, and they told you why they 20 think it is – 21 COLONEL VERMAAK: No, that's not how I 22 put it. 23 MR SEMENYA SC: Alright, I can use your 24 words. Did they say to you that they don't have enough 25 information to do a cordon and search?</p>

<p style="text-align: right;">Page 27717</p> <p>1 COLONEL VERMAAK: The only person who was 2 confirming what I've said was Colonel Isaacs and the only 3 person that said that there was already a plan on the table 4 was Colonel Scott. 5 MR SEMENYA SC: Did they say to you that 6 there was inadequate information to implement your plan? 7 COLONEL VERMAAK: They said they did not 8 approve my proposal. 9 MR SEMENYA SC: And you were asked why, 10 were you not? 11 COLONEL VERMAAK: I did ask them why and 12 they said they already have a plan in place. Colonel 13 Moolman have already at that stage, and if I'm correct, 14 prepared on the Tuesday a search warrant for the Provincial 15 Commissioner to sign, but unfortunately it was not being 16 approved by the Provincial Commissioner. 17 MR SEMENYA SC: Colonel, did you just – 18 CHAIRPERSON: I'm sorry, can I just – 19 MR SEMENYA SC: Can I – 20 CHAIRPERSON: Sorry, I'll give you a 21 chance in a moment. That information what you now give us 22 doesn't accord with the evidence. The evidence we have is 23 that Captain Moolman, as she then was – she later became a 24 colonel, I said as she then was – came early as a matter of 25 fact on the Wednesday morning, I think it was, she came on</p>	<p style="text-align: right;">Page 27719</p> <p>1 COLONEL VERMAAK: Chair, that was not 2 shared with me at all. I was not aware of that latest one 3 that was prepared and signed. 4 MR SEMENYA SC: Chair – 5 CHAIRPERSON: Mr Semenya, I know you want 6 to round this off. We'll adjourn once you've finished, 7 rounded off the point you want to make. 8 MR SEMENYA SC: Thank you. Thank you, 9 Chair. Colonel, did you in response to Commissioner 10 Hemraj's question to you say that you were told that there 11 is inadequate information to implement your plan? 12 COLONEL VERMAAK: No. 13 MR SEMENYA SC: Okay, we'll start with 14 that on the record when we resume. 15 CHAIRPERSON: Okay, do I have your 16 permission to adjourn now, Mr Semenya? Alright, we'll 17 adjourn until the morning of the 8th of May. The reason is 18 that it seems an unnecessary expense to come back on 19 Friday, regard being had to the fact that tomorrow is a 20 public holiday. As I've said before, the chamber will not 21 be available to us on Monday and Tuesday of next week. The 22 Wednesday it will also not be available, and in any event 23 that's the day of the election. So we will continue on the 24 8th. 25 We will then be continuing under the new</p>
<p style="text-align: right;">Page 27718</p> <p>1 the Wednesday and she drafted the papers, which is not a 2 search warrant, it's an authorisation which dispenses with 3 the need for a search warrant – 4 COLONEL VERMAAK: That's correct. 5 CHAIRPERSON: - signed by the Provincial 6 Commissioner. She prepared the necessary documents, the 7 actual authorisation plus the affidavits to be signed by I 8 think some senior officers. As far as we can tell from the 9 evidence the Provincial Commissioner didn't sign that on 10 the Wednesday, but on the Thursday she did. Captain 11 Moolman came back on the Thursday, compiled fresh documents 12 providing for a cordon and search for 36 hours from, I 13 think it was noon on the 16th until the end of the 17th. I 14 think that's right. This document was signed by the 15 Provincial Commissioner and, but it wasn't implemented 16 because the plan was to do that at a later stage. In other 17 words the tactical option would be implemented first, and 18 of course the tactical operation ended as we know it did 19 and so the cordon and search didn't take place. But what 20 you say isn't entirely correct. There was a decision to 21 take a cordon and search. The relevant documents were 22 prepared, signed by the Provincial Commissioner, with the 23 consequences I've explained. So I'm not sure why you don't 24 know that, but that is the evidence we've had, 25 uncontradicted evidence.</p>	<p style="text-align: right;">Page 27720</p> <p>1 proclamation which has been issued by the President – I'm 2 not sure if it's been Gazetted yet, but I've seen a copy 3 and it's been the subject of a presidential press 4 statement. 5 [13:01] We are continuing only in respect of terms of 6 reference 1.1 to 1.4 - 1.5 has been deleted – and we'll be 7 continuing until the 31st of July, and we will announce on 8 the 8th detailed procedural rulings we'll be making to deal 9 with the situation thereafter. They will include time 10 limits in respect of evidence-in-chief and cross- 11 examination in respect of the witnesses. A plan is being 12 drawn up by the evidence leaders as to which witnesses will 13 give oral evidence, but these matters will be discussed not 14 in this chamber but elsewhere with the representatives of 15 the parties, and so we will have a new way of working from 16 the 8th of May, but this witness I suppose won't be covered 17 by those, so he'll be the last witness under the old regime 18 and from then on things will be done in a different 19 fashion. 20 I would appeal to all the parties concerned to 21 appreciate the fact – I have said this often before, but as 22 I have said it hasn't always been listened to, but I trust 23 it will be listened to now. There is no question about 24 getting an extension beyond the 31st of July and I appeal to 25 everybody concerned to assist to ensure that this</p>

1 Commission is able to hear the necessary evidence and to  
 2 receive argument. I trust that in the meanwhile parties  
 3 are already preparing argument in advance. I hope we'll  
 4 have full argument. We will have a limited time for  
 5 hearing oral argument, but we will obviously enable parties  
 6 to highlight matters and put difficulties to them, but we  
 7 have to finish the hearings by the end of July. The time  
 8 thereafter will be spent to writing the report. It's very  
 9 important for the work of the Commission, and it's very  
 10 important, I would suggest, for the country as a whole that  
 11 we should be able to finish our work and deal with the  
 12 important matters in respect of which we've been asked to  
 13 report. We will adjourn now until 9 o'clock on the morning  
 14 of the 8th –

15 MR BIZOS SC: Chairman, I'm sorry, may I  
 16 raise a matter which you have already made an appeal in  
 17 relation to admissions contained in the expert reports. I  
 18 ask, Mr Chairman, that you appeal to all of us to use the  
 19 period between now and the 8th to either agree that the  
 20 expert reports are admitted, or which portions are  
 21 admitted, in order to avoid the calling of witnesses, of  
 22 expert witnesses, which of necessity if they have to be  
 23 called we will stand very little chance of finishing by the  
 24 end of July.

25 CHAIRPERSON: Yes, thank you, Mr Bizos.

1 I may say the evidence leaders are already preparing a  
 2 proposal to put before the parties in relation to the  
 3 manner in which the expert evidence can be received, and  
 4 that comment that you've made will be conveyed to them and  
 5 they will be communicating with all the parties in regard  
 6 to the proposals that they are going to make in that  
 7 regard.

8 MR BIZOS SC: Thank you, Mr Chairman.

9 CHAIRPERSON: We will now adjourn until 9  
 10 o'clock on the morning of the 8th of May.

11 [COMMISSION ADJOURNED]

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