

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 226

09 MAY 2014

PAGES 27859 TO 27925



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://www.realtime.co.za>



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1 [PROCEEDINGS ON 9 MAY 2014]
 2 [09:20] CHAIRPERSON: The Commission resumes.
 3 You're still bound by your affirmation, Colonel.
 4 SALMON JOHANNES VERMAAK: (affirms
 5 further)
 6 CHAIRPERSON: Mr Semenya.
 7 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 8 Thank you, Chair. Colonel, I understood your evidence to
 9 be that on the 16th whilst you were still up in the chopper
 10 you knew the plan to have been one of encirclement.
 11 Correct?
 12 COLONEL VERMAAK: That's correct, Chair.
 13 MR SEMENYA SC: And by that you mean the
 14 plan to encircle the entire 3 000 people and in a manner
 15 that will allow them to leave their weapons and walk out?
 16 COLONEL VERMAAK: That is what I
 17 understood, yes.
 18 MR SEMENYA SC: Can I invite us to look
 19 at the transcript, page 25418, that would be on the 25th of
 20 March 2014, against line 11. There Ms Pillay is asking,
 21 "And when you say that at 11:12 of the tape 'Alright guys,
 22 you've got them in the middle,' who are you talking to?"
 23 Your response is, "Ek het na al die voertuie wat in daardie
 24 gebied ontplooi was dadelik vir hulle laat weet dat die
 25 mense is omsirkel van alle kante af deur die

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1 polisiebeamptes, soos wat daar aanvanklik tydens die
 2 voorligting die oggend vir ons gesê was dat 'n dispersion
 3 sal plaasvind, dan encirclement, dan sal hulle die mense
 4 ontwapen en dan daarna sal die arrestasie dan uitgevoer
 5 word."
 6 CHAIRPERSON: Perhaps that can be
 7 interpreted as follows. The question was who were you
 8 talking to. The answer was "I was talking to all the
 9 vehicles which were deployed in that area immediately to
 10 inform them, or let them know that the people were
 11 encircled from all sides by the police officials, as was
 12 originally said to us during the briefing in the morning
 13 that, or had been said to us during the briefing in the
 14 morning that a dispersion will take place, then
 15 encirclement, then they will disarm the people and
 16 thereafter the arrests will be carried out."
 17 MR SEMENYA SC: That was your evidence,
 18 Colonel, right?
 19 COLONEL VERMAAK: That's correct, Chair.
 20 MR SEMENYA SC: And when you were up in
 21 the sky you saw the formation of the barbed wire Nyalas,
 22 right?
 23 COLONEL VERMAAK: That is correct.
 24 MR SEMENYA SC: Not consistent with an
 25 encirclement of the type you mentioned.

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1 COLONEL VERMAAK: That's correct.
 2 MR SEMENYA SC: Didn't surprise you at
 3 all?
 4 COLONEL VERMAAK: No.
 5 MR SEMENYA SC: Chair, can I ask that we
 6 mark as exhibit OOO44 the transcript of the interview that
 7 the Colonel had with evidence leaders and Mr Pretorius?
 8 Chair, the document is unnumbered –
 9 CHAIRPERSON: [Microphone off, inaudible]
 10 OOO44, transcript of interview, this is – I haven't got my
 11 copy with me, but I've written in my notebook OOO4,
 12 transcript of interview between –
 13 MR SEMENYA SC: 44. 44.
 14 CHAIRPERSON: Did I say something else?
 15 OOO44, transcript of interview between, it's the one
 16 between Adv Wesley and Colonel Vermaak. I see there
 17 Attorney Pretorius's name is in the heading, but he wasn't
 18 really one of the – he was just present as I understand it,
 19 to protect the rights of the witness and the police who
 20 were at that stage proposing to call him.
 21 MR SEMENYA SC: That is correct.
 22 CHAIRPERSON: But really an interview
 23 between Adv Wesley and Lieutenant-Colonel Vermaak.
 24 MR SEMENYA SC: Indeed, Chair.
 25 CHAIRPERSON: Yes, I've so recorded it in

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1 my notebook.
 2 MR SEMENYA SC: The document
 3 unfortunately is not numbered, but I'm interested in
 4 entries which are 11 pages from the end. It would be a
 5 page starting with Colonel Vermaak saying, "Ja, ja, that
 6 one there."
 7 CHAIRPERSON: That's not the page we've
 8 got at the moment on the screen. Yes, Mr Bizos?
 9 MR BIZOS SC: I have paginated that
 10 document, that's from page 1 to page 46. I think that it
 11 will be of some convenience if everyone paginates the
 12 document so –
 13 CHAIRPERSON: Yes, I think that's a –
 14 MR BIZOS SC: We will not be able to find
 15 the passage and –
 16 CHAIRPERSON: Sorry, I had difficulty
 17 getting my red light to come on. I've finally succeeded.
 18 I think that's an excellent suggestion, Mr Bizos, and I
 19 suggest that everybody does that, and does that page begin
 20 with the following, Colonel Vermaak, "Ja, ja," the 12th page
 21 from the back? Alright, well let's go on with scrolling
 22 them down on the screen so we get the relevant page on the
 23 screen before us. That's it. That's the one that says
 24 Colonel Vermaak, "Ja, ja, that one there." Mr Pretorius,
 25 "It was not Papa1, it was chopper 1." Is that the page

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1 you're referring to, Mr Semenya?

2 MR SEMENYA SC: Indeed, Chair.

3 CHAIRPERSON: Alright, okay.

4 MR SEMENYA SC: At the middle of that

5 page in the broad block there Colonel Vermaak says, "That

6 is where I also briefed. I was at the JOC then. They said

7 to me they are going to disperse the people at 15:30. I

8 went out and I get the Squirrel's pilot, Captain

9 Oosthuizen, Padayachee, my pilot who was with me, and also

10 the pilot of the RX, discussed if we get airborne which

11 levels each chopper will operate, so the lowest one should

12 have been the 44." That accurately reflects what you said.

13 Am I correct, Colonel?

14 COLONEL VERMAAK: That is correct.

15 MR SEMENYA SC: Now I am correct to say

16 that at every instance when you threw either the teargas or

17 a stun grenade, all of those were never done on the command

18 by anybody else? Am I correct?

19 COLONEL VERMAAK: No, are you referring

20 specifically to the Marikana incident?

21 MR SEMENYA SC: The Marikana incident,

22 yes.

23 COLONEL VERMAAK: Yes, that is correct.

24 COMMISSIONER HEMRAJ: Can I just clarify

25 something on the encirclement? At the time that you were

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1 in the air on the 16th and you saw the formation of the

2 barbed wire Nyalas, it must have been clear at that stage

3 that there wasn't an encirclement of the koppie because

4 there weren't enough barbed wire Nyalas there?

5 COLONEL VERMAAK: Chair, if you remember,

6 I think it Nyala 6 that was ready to turn around the koppie

7 and then they withdraw him there and instructed him to take

8 another position. After they withdraw the vehicle there

9 with the barbed wire then it make sense to me that they

10 will not be able to encircle the whole koppie.

11 COMMISSIONER HEMRAJ: But Colonel,

12 encirclement of the koppie would require more than just the

13 six Nyalas if each of them has only got 100 metres of wire.

14 You would need a similar number on the other side of the

15 koppie.

16 COLONEL VERMAAK: That is correct, Chair.

17 COMMISSIONER HEMRAJ: And they weren't

18 deployed there.

19 COLONEL VERMAAK: No, so that is why I

20 couldn't understand exactly what is their plan as it was

21 not discussed or briefed to me in the afternoon.

22 COMMISSIONER HEMRAJ: At that stage it

23 must have been clear to you that this was not an

24 encirclement?

25 COLONEL VERMAAK: That's correct, Chair.

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1 COMMISSIONER HEMRAJ: Thank you. I'm

2 sorry to have interrupted you.

3 MR SEMENYA SC: No, thank you. Now when

4 you're in the air and you were directing Captain Kidd and

5 his team, you remember that?

6 COLONEL VERMAAK: No, Chair, I was not

7 directing Captain Kidd. At that stage I didn't know who

8 was on the ground. It was just months later that I was

9 informed that that group was Captain Kidd's group.

10 MR SEMENYA SC: You were commanding them

11 to encircle the people at koppie 3, were you not?

12 COLONEL VERMAAK: That is correct.

13 MR SEMENYA SC: Without informing the

14 other sides that there are also police officers on the

15 other end?

16 COLONEL VERMAAK: Chair, if you go back

17 to the radio conversations it is very clear that everybody

18 could understand that the request was that the water

19 cannons must be one on the left-hand side and the other one

20 on the right-hand side of the koppie.

21 MR SEMENYA SC: Okay. Chair, can I do

22 the, what I call the Mpfu rain check and say that we're

23 not going to be putting each and other factual contestation

24 with the witness –

25 CHAIRPERSON: No, no, that rule isn't

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1 only applicable to Mr Mpfu; it applies to everybody, even

2 you.

3 MR SEMENYA SC: Those are the questions

4 we have for the witness, Chair.

5 CHAIRPERSON: Thank you, Mr Semenya. Now

6 Ms Lewis, previously when you were cross-examining the

7 witness you reserved your rights in respect of some

8 statements which were filed rather late by the police,

9 dealing essentially with the shooting at the other side of

10 the stream and the death of Mr Sokanyile. Do you wish to

11 make use of the rights you reserved?

12 MS LEWIS: Chair, we do. Mr Ntsebeza

13 will be cross-examining the Colonel on that issue.

14 CHAIRPERSON: I'm sorry, I didn't see Mr

15 Ntsebeza because I'm sure without any intent to confuse me

16 he was sitting in a different position. Mr Ntsebeza, would

17 you like to move to your usual position, or would you like

18 to cross-examine from where you are now?

19 MR NTSEBEZA SC: No, I would like to

20 [microphone off, inaudible]. Mr Chairman, thank you very

21 much for allowing me to relocate. Now Colonel, I may not

22 be seeing you properly because of Mr Wesley in front of

23 you, but - there you are.

24 CHAIRPERSON: You succeeded in getting

25 him to relocate as well.

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1 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 2 Thank you, Mr Chairman. Now Colonel, you will be aware
 3 that in our last cross-examination of you we were dealing
 4 with the events of the 13th of August 2012, and particularly
 5 we had a presentation around the events that led to the, or
 6 that we associated with the killing of mineworker, Mr
 7 Sokanyile.
 8 COLONEL VERMAAK: That's correct, Chair.
 9 MR NTSEBEZA SC: Yes, now we are going to
 10 be asking questions relevant to that largely to revisit
 11 questions of which SAPS members were at the scene and where
 12 they were in relation to you at the time of the shooting,
 13 and I would like to indicate to you right from the
 14 beginning that we will try and explore whether it is
 15 probable that you could not have seen any members firing or
 16 you could not have heard any shots which were being fired
 17 at the time, because my sense of your evidence the last
 18 time was that you didn't hear or see any – you didn't hear
 19 shots being fired, or you didn't see any shots being fired.
 20 You understand that?
 21 COLONEL VERMAAK: Chair, if I could
 22 remember correctly I said that I could hear the R5 and
 23 something that sound like a shotgun that was also fired.
 24 MR NTSEBEZA SC: I see. Talking about an
 25 R5, can I just ask you something which – and it's just a

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1 question of observation; yesterday there was, and you know,
 2 we didn't seek permission to ask you on this, it's only
 3 going to be just one question relative to that, it's a
 4 matter of observation. It relates to the 1993 incident.
 5 You were asked by Mr Semenya how many people you killed. I
 6 got a sense that you – I don't want to say you prevaricated
 7 in your response, but the question had to be put to you
 8 twice, or even more than twice. It seemed to me that you
 9 were not being candid by admitting that actually you were
 10 the author of those three deaths. Did I make an incorrect
 11 observation?
 12 COLONEL VERMAAK: Chair, can you just
 13 please repeat –
 14 MR NTSEBEZA SC: The question was put to
 15 you how many people did you kill in that event, and your
 16 answer was "I shot three times."
 17 COLONEL VERMAAK: That's correct.
 18 MR NTSEBEZA SC: And Mr Semenya had to
 19 ask you again and say "Colonel, that was not the question.
 20 The question is how many people did you kill?" and it was
 21 then that you volunteered that you killed actually all
 22 three.
 23 COLONEL VERMAAK: That is correct, Chair.
 24 MR NTSEBEZA SC: Now why did you have a
 25 problem in simply saying so the first time? Because the

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1 question I would assume was very clear. Mr Semenya wanted
 2 to know how many people you killed in that campaign.
 3 COLONEL VERMAAK: There was no –
 4 MR NTSEBEZA SC: Then it was because you
 5 wanted to retrieve an R5 rifle or a rifle that had been
 6 allegedly taken by those protesters.
 7 COLONEL VERMAAK: No, Chair, it had
 8 nothing to do with the incident on the 13th. Remember that
 9 in my chief testimony I also mentioned that there were
 10 action taken at Springvale in Stilfontein in 1993 and there
 11 were some people killed. So that is not a fact that I want
 12 to hide from anybody.
 13 MR NTSEBEZA SC: No, I'm aware that it
 14 has nothing to do with the 13th of August in 2012. I'm
 15 simply saying we lost Mr Sokanyile, the families here lost
 16 Mr Sokanyile in a campaign in which you were involved.
 17 [09:39] And in a campaign in which you sought, as I
 18 understood your evidence, to retrieve an R5 rifle which had
 19 been taken by the mineworkers and it just occurs to me when
 20 I listened to your evidence yesterday on this specific
 21 question that there was, we will argue, a reluctance on
 22 your part to answer straightforward your involvement in the
 23 killing of the people in this Stilfontein incident. Do you
 24 understand where I'm coming from?
 25 COLONEL VERMAAK: I do understand, Chair.

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1 MR NTSEBEZA SC: Yes. Now, because you
 2 see we will seek to persuade the Chairman and the
 3 Commissioners at the end of all of this inquiry that your
 4 evidence, there are aspects of your evidence which we will
 5 submit are evidently true and we will seek to persuade the
 6 Commission that they should accept those aspects. I mean
 7 for instance your claim that it was irresponsible, whether
 8 or not it is accepted on the facts, it was irresponsible to
 9 seek to encircle, disarm and disperse 3 000 to 4 000 people
 10 who were armed to the extent that it is reported they were,
 11 that you know the people should have been disarmed in their
 12 places of residence, et cetera, et cetera. We will argue
 13 strongly that those aspects of your evidence must be
 14 accepted but we will also argue that there are aspects of
 15 your evidence which are evidently not true because you were
 16 not prepared to be candid and one of those aspects is going
 17 to be that you are not forthcoming on your knowledge with
 18 the events surrounding Mr Sokanyile and we'll argue that
 19 that is the way in which your evidence should be
 20 approached. You were truthful in some respects, you were
 21 not truthful in some respects. Do you think that would be
 22 a fair assessment of your evidence?
 23 COLONEL VERMAAK: Chair, I cannot really
 24 comment on what is going to be argued afterwards. All that
 25 I know is that what I've testified according to me, that is

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1 the truth.

2 MR NTSEBEZA SC: Yes –

3 CHAIRPERSON: It's a rather vague

4 question. Is part of your evidence untrue, is really what

5 the question amounts to, but you say that's not correct.

6 All your evidence is, to the best of your ability, correct,

7 is that –

8 COLONEL VERMAAK: Correct, Chair.

9 MR NTSEBEZA SC: Yes. Now this is going

10 to be yet another opportunity to redeem yourself. Let me

11 put the questions that we'd like to put to you and I want

12 you to have that at the back of your mind, that we will

13 seek to draw the attention of the Commission to aspects of

14 your evidence where we feel you are not really being candid

15 with it and you now, you realise and you realise that the

16 Commission's work is to –

17 CHAIRPERSON: Mr Ntsebeza, you will

18 remember that you – the rights that were reserved were

19 rather limited only to new matter arising from those

20 statements that were filed late. So I'm not going to allow

21 wide-ranging re-examination, or re-examination is the wrong

22 word, reconsideration of the evidence, re-interrogation of

23 the witness's evidence. Cross-examination is confined to

24 the aspects in respect of which the rights to cross-examine

25 –

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1 MR NTSEBEZA SC: Yes, yes, Mr Chairman, I

2 assure you that. It's just that I thought that the witness

3 should have the opportunity to reflect as the questions are

4 –

5 CHAIRPERSON: You've given him a chance

6 to recant and which he declined to exercise, so –

7 MR NTSEBEZA SC: Yes. Thank you, Mr

8 Chairman.

9 CHAIRPERSON: - you will argue in due

10 course about that, I take it.

11 MR NTSEBEZA SC: Indeed. Now Mr – I

12 nearly said Mr Chairman – now Colonel, I recall that your

13 evidence on the events of the 13th was that after you had

14 brought the helicopter down, you assembled a group of

15 people who were unknown to you, members who were –

16 CHAIRPERSON: I'm sorry to interrupt you.

17 You said the 18th, I think you meant the 13th -

18 MR NTSEBEZA SC: On the 13th, yes, on the

19 13th.

20 CHAIRPERSON: - you said the 15th, you

21 meant the 13th, the Monday.

22 MR NTSEBEZA SC: Thank you, Mr Chairman.

23 I'm anxious to get to an end. Do you recall that you said

24 you assembled a group of officers who, I think the

25 Afrikaans was "onbekend," who were unknown to you when you

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1 sought to pursue those mineworkers who you felt had an R5

2 rifle with them?

3 COLONEL VERMAAK: Chair, I did testify

4 that after we had landed I immediately went where Warrant

5 Officer Monene was lying and first to see if he's injured,

6 if we can give him any assistance. Thereafter, that we

7 established that he is already dead, I asked Captain Loest

8 to get members for me together so that we can follow that

9 person on the one side who was, I saw, dragging another -

10 two persons dragging one person with a white overall and

11 also the person with the R5.

12 MR NTSEBEZA SC: Yes, I – yes.

13 CHAIRPERSON: Mr Ntsebeza went on and

14 said you then gathered together or caused to be gathered

15 together a group of people who were unknown to you –

16 COLONEL VERMAAK: That is –

17 CHAIRPERSON: - a group of members of the

18 police service who were unknown to you.

19 COLONEL VERMAAK: That is correct, Chair.

20 CHAIRPERSON: That's also correct,

21 obviously.

22 MR NTSEBEZA SC: Yes. Now, do you know

23 Captain Samuel Kay Thupe?

24 COLONEL VERMAAK: Yes, I know him.

25 MR NTSEBEZA SC: He, in fact he himself

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1 says you are well known to him.

2 COLONEL VERMAAK: That is correct, Chair.

3 MR NTSEBEZA SC: Did you see him on the

4 13th of August?

5 COLONEL VERMAAK: No Chair, I did not see

6 him.

7 MR NTSEBEZA SC: Now, you have exhibit

8 QQQ9 with you, do you?

9 COLONEL VERMAAK: Is that the statement

10 of –

11 MR NTSEBEZA SC: Yes, it is a statement,

12 it's called a consolidated statement of Captain Samuel Kay

13 Thupe.

14 COLONEL VERMAAK: I do have it.

15 MR NTSEBEZA SC: You will have been aware

16 that in paragraph 10, is it 10, ja, paragraph 10 thereof he

17 says what you see on the screen there, that "Whilst we were

18 following the suspects I realised that the chopper had

19 landed and departed again after a short while. I later on

20 learned that the chopper took one of the injured police

21 officers to hospital." And in paragraph 10, that was 9,

22 paragraph 10 says "While we were busy securing the crime

23 scene Colonel Vermaak, who is the air wing commander of the

24 North-West Province, came to me and told me that he

25 followed the group who ran away with the R5 rifle. He

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1 furthermore told me that he had arranged that Mpembe be
 2 removed from the scene because some members threatened to
 3 kill the General." Now, the question I want to put to you
 4 is, did that conversation take place?
 5 COLONEL VERMAAK: Chair, the only officer
 6 that I spoke to on the ground that day, except for the
 7 General and afterwards when the brigadiers and the other
 8 investigating officers came in, was Captain Loest. I don't
 9 know where Captain Thupe talked to me about that because
 10 why, at Roots it was the first time that this issue was
 11 also discussed between a group of us where the General was
 12 also in the group.
 13 MR NTSEBEZA SC: Do you still remember
 14 the question, Colonel?
 15 COLONEL VERMAAK: I can remember the
 16 question and on this question –
 17 MR NTSEBEZA SC: The question was did
 18 that conversation take place?
 19 COLONEL VERMAAK: No, Chair.
 20 MR NTSEBEZA SC: So, and I would like to
 21 be able to make sure that there is nothing in it that could
 22 remind you of a detail which you perhaps have forgotten and
 23 you might have to concede that it probably took place, so
 24 is it your evidence that you did not tell Thupe -
 25 COLONEL VERMAAK: No.

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1 MR NTSEBEZA SC: - that the police had
 2 fired shots at the strikers with the R5.
 3 COLONEL VERMAAK: Yes, that is my
 4 testimony that I did not speak to Captain Thupe on that
 5 scene.
 6 MR NTSEBEZA SC: So it is not correct
 7 when he says that you had given instruction for a member to
 8 return fire at the striker with the R5?
 9 CHAIRPERSON: What's your answer? He
 10 says, he put to you that your version is that it's not
 11 correct that you spoke to Thupe, it's not correct that you
 12 told Thupe about instructing people to return fire and that
 13 kind of thing. That's your evidence.
 14 COLONEL VERMAAK: That there was no
 15 conversation between me and Captain Thupe about it.
 16 MR NTSEBEZA SC: Well, I mean if there
 17 was no conversation then some of the questions that I
 18 wanted to put to you then become irrelevant. Mr Chairman,
 19 there is an attachment which I think has been labelled
 20 SKT1. It would appear it is an attachment to QQQ9 which
 21 would be the statement but I think there, to the statement
 22 of Captain Thupe. We have – oh yes, there you are. Now
 23 General – now in paragraphs 8.2 to 8.4, if we could go to
 24 that just so we have some orientation. "I followed the
 25 strikers and met Constable Sekgweleya at point A as

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1 indicated on exhibit SKT1" – we'll get there. "One of the
 2 strikers turned round and shot several shots with a handgun
 3 in our direction. Constable Sekgweleya and myself followed
 4 them in order to arrest and recover the firearm. The
 5 striker who was in possession of the R5 rifle
 6 unsuccessfully tried to cock it and point it in our
 7 direction. I returned fire with my 9 millimetre pistol.
 8 However, the strikers managed to escape in the direction as
 9 indicated with the arrow" on that exhibit, we will go
 10 there. "I specifically shot in the ground and shouted to
 11 them to drop their firearms. Constable Sekgweleya also
 12 shot with his R5 rifle in their direction. The main reason
 13 I shot in the ground was because there were a lot of
 14 civilians and it was dangerous to open fire in the
 15 direction of the strikers because of the number of
 16 bystanders in the vicinity. We stopped following them and
 17 returned to the place where the police officer was
 18 attacked."
 19 Now if we could go to SK – now of course this
 20 comes from Captain Thupe's statement and you say there was
 21 no conversation between you and him. Is it so that before
 22 you pursued the group of strikers who had the R5 rifle
 23 which you wanted to retrieve, that you were not informed of
 24 any police members who had pursued the strikers to point A?
 25 COLONEL VERMAAK: Yes, Chair, I was not

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1 aware of any other police officers who were following the
 2 strikers as well.
 3 MR NTSEBEZA SC: No-one told you of this?
 4 COLONEL VERMAAK: No, Chair, it's the
 5 first time that I saw it.
 6 MR NTSEBEZA SC: So you only got to know
 7 about it when you got the documentation on which we are
 8 seeking to rely for your cross-examination? Is that what
 9 you're telling us?
 10 COLONEL VERMAAK: Yes, the statement, but
 11 I did not have the photos.
 12 MR NTSEBEZA SC: So as far as you are
 13 aware and this is what we tried to establish the last time,
 14 you were the first group of police members to pursue the
 15 group of strikers with the R5 beyond point A, is that
 16 correct?
 17 COLONEL VERMAAK: Chair, according to me
 18 we were the only people who were following the strikers. I
 19 was not aware that Captain Thupe at any stage was also
 20 following them.
 21 MR NTSEBEZA SC: Yes. We had also
 22 thought that was the position. Now, there is a further
 23 statement with which I'm sure you are familiar which I
 24 would like us to look at and that would be exhibit QQQ8.2.
 25 That would be the supplementary statement of Sergeant

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1 Nkosana Shepeko Mguye. Do you have that?
 2 COLONEL VERMAAK: I do.
 3 MR NTSEBEZA SC: Now, if you could go to
 4 paragraph 10, now you see there that he says that "While
 5 warning shots were being fired at the striker with the R5,
 6 we noticed that a Nyala was driving on his left-hand side
 7 on the gravel road towards the direction of the strikers
 8 and at the same time a group of POP members together with
 9 Constable Rikhotso who was from Rustenburg TRT were walking
 10 on foot in the same direction." And then Mguye then says,
 11 "Both groups of members joined us in the vicinity of the
 12 red spot circled with the blue colour described in exhibit
 13 OOO23, page 23." Now were you aware of this, in other
 14 words of POP members arriving and it sounds like another
 15 group of members arriving in a Nyala?
 16 [09:59] COLONEL VERMAAK: No, Chair. There were
 17 no people arriving with a Nyala while we were following
 18 those people.
 19 MR NTSEBEZA SC: So it's not a question
 20 of you saying you were not aware of another group, it seems
 21 to me you are emphatic that there was no other group that
 22 arrived there, let alone with a Nyala.
 23 COLONEL VERMAAK: Chair, if I can just
 24 point out, he's talking in his statement about a gravel
 25 road in the same direction as that the POP members were

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1 moving. Maybe if we can look at the aerial photo again, I
 2 don't know to which gravel road he is referring but as the
 3 photo is there, there was no Nyalas close to us – because
 4 why I know that for a fact is that after we have discovered
 5 the body I went back to go and fetch the Nyala for
 6 protection for the members who I left at the scene. So I
 7 was, I'm for sure that there was not any Nyalas close to me
 8 where I was moving with the members.
 9 MR NTSEBEZA SC: But I mean your answer
 10 seems to me to be that you certainly were not aware of any
 11 members arriving there and in fact you are more emphatic to
 12 say there's no way that they could have arrived there.
 13 COLONEL VERMAAK: There was only the
 14 members who was with me, Chair.
 15 MR NTSEBEZA SC: Yes.
 16 COLONEL VERMAAK: And there was no other
 17 members who joined us.
 18 MR NTSEBEZA SC: Yes. Now, there is
 19 another statement QOQ7.2, I am told it's significant to say
 20 .2. Now that would be Constable Sekgweleya's supplementary
 21 statement. You were given that statement, Colonel?
 22 COLONEL VERMAAK: That's correct, Chair.
 23 MR NTSEBEZA SC: Ja. Now if you went to
 24 paragraph 12 thereof, we see that Constable Sekgweleya says
 25 this, amongst other things, "Whilst at the ridge" – where

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1 does it say, there is somewhere where it says – let's start
 2 right from the beginning. "The striker with the R5 rifle
 3 changed direction and followed the other strikers running
 4 towards the informal settlement. The armed striker all of
 5 a sudden changed direction, faced us again and pointed us
 6 with the R5 rifle. We then shot in the ground as before on
 7 the instruction of Colonel Vermaak and the armed striker
 8 ran towards the direction of the informal settlement. This
 9 happened a few times, which resulted in me and Sergeant
 10 Mguye utilising the R5 rifles on the instructions of
 11 Colonel Vermaak. Whilst at the ridge we were joined by
 12 members of pops who had, amongst others, service pistols
 13 and they also fired towards the direction of the strikers
 14 on the instructions of Colonel Vermaak. It is at that
 15 stage that I again fired some shots using the R5 rifle. I
 16 at no stage used the 9 millimetre pistol in my possession."
 17 Now there's copious reference to you being joined
 18 by members of the POP in that statement and in fact if you
 19 went to paragraph 15, Mr Chair, before the witness answers,
 20 there you see that in paragraph 15 Sekgweleya says the
 21 following, "I, together with Colonel Vermaak, Mguye,
 22 Rekgotso and other POP members who I will not be able to
 23 identify, returned to the original scene on foot." So
 24 there is again a reference to Constable Rekgotso who is
 25 from the Rustenburg TRT, as are Mguye and Sekgweleya which

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1 is why they knew you. Now, what is your reaction to these
 2 paragraphs from this statement?
 3 COLONEL VERMAAK: Chair, if you look at
 4 the statement of Captain Thupe he is only talking about
 5 Constable Sekgweleya who was with him. If you look at the
 6 statement of the constable he also doesn't mention anything
 7 about Captain Thupe who he was with and where he also was
 8 firing shots, so that is a problem for me in these two
 9 statements.
 10 MR NTSEBEZA SC: You probably do not know
 11 Constable Rekgotso, do you? Constable Rikhotso was
 12 mentioned in this statement, do you know him?
 13 COLONEL VERMAAK: Constable?
 14 MR NTSEBEZA SC: Rikhotso.
 15 COLONEL VERMAAK: No, I did not know any
 16 of those members. I have also testified that not one of
 17 those members was known to me.
 18 MR NTSEBEZA SC: You don't know even, you
 19 have not even come to know him subsequently?
 20 COLONEL VERMAAK: No.
 21 MR NTSEBEZA SC: And your evidence that –
 22 that's why I don't want to infer, but is it your evidence
 23 that you were not joined by a group of POP members together
 24 with a TRT member whilst you were pursuing the group of
 25 strikers with the R5?

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1 COLONEL VERMAAK: Chair, if you can
 2 remember I said that where Captain Loest gathered members
 3 for me there was members from TRT and POP and we moved as
 4 one group. So any other POP members, I am not aware of it,
 5 it was only the group that was gathered by Captain Loest.
 6 MR NTSEBEZA SC: Now you say there were
 7 members, POP members that joined you at some stage but –
 8 COLONEL VERMAAK: No, Chair.
 9 MR NTSEBEZA SC: So the only members that
 10 you were with when you were pursuing these mineworkers were
 11 the members who you had assembled and had taken with?
 12 COLONEL VERMAAK: That's correct,
 13 consisting of TRT and POP members, Chair.
 14 MR NTSEBEZA SC: Yes. Now you are quite
 15 emphatic that there were no other members because if they
 16 were there you would have seen them, isn't it?
 17 COLONEL VERMAAK: That's correct, Chair.
 18 MR NTSEBEZA SC: Yes and if those
 19 members, as is the claim here, if they had fired at the
 20 group of strikers on the other side of the river you would
 21 have seen that?
 22 COLONEL VERMAAK: If the group who was
 23 with me, if they fired, yes but as I said I only give
 24 instruction to one member with an R5 rifle to shoot back at
 25 the attacker.

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1 MR NTSEBEZA SC: Now we know from the
 2 previous presentation that SAPS members did fire shots, 16
 3 shots. You recall when we did the presentation?
 4 COLONEL VERMAAK: I do remember it, yes,
 5 Chair.
 6 MR NTSEBEZA SC: And do you know where,
 7 we know where they were fired from because the doppies,
 8 cartridges were found. You recall that?
 9 COLONEL VERMAAK: That is correct, Chair.
 10 CHAIRPERSON: Cartridge cases.
 11 MR NTSEBEZA SC: Cartridge cases, yes but
 12 your evidence, just remind me a little bit here, your
 13 evidence was that you did not see any members firing and
 14 you did not hear any of these shots being fired. Was that
 15 your evidence or is that still your evidence?
 16 COLONEL VERMAAK: That is correct, Chair,
 17 that is the members who were with me.
 18 MR NTSEBEZA SC: Now I think on the
 19 calculation exercise during the presentation, you would
 20 have been able 30 metres away. Do you recall?
 21 COLONEL VERMAAK: How many metres?
 22 MR NTSEBEZA SC: About 30 metres away.
 23 COLONEL VERMAAK: From where, Chair?
 24 MR NTSEBEZA SC: From where the members
 25 were when they shot.

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1 COLONEL VERMAAK: That's between where I
 2 pointed out and where the cartridges were –
 3 MR NTSEBEZA SC: Yes.
 4 COLONEL VERMAAK: - recovered. More or
 5 less, yes Chair.
 6 MR NTSEBEZA SC: Yes, that is why we are
 7 trying to test whether you could (a) not have seen SAPS
 8 members shooting and (b) not have heard the shots being
 9 shot at the time.
 10 COLONEL VERMAAK: I did not hear any
 11 shots fired except for the one that was being on my
 12 instruction, Chair.
 13 MR NTSEBEZA SC: Yes, that much is the
 14 evidence but we are simply trying to test the probability.
 15 Are you saying if, on our calculation, you were about 30
 16 metres away when those shots were fired, that the
 17 probabilities are that you could not have heard shots being
 18 fired 30 metres away from where you were and you couldn't
 19 have seen who was shooting. Is that what you want the
 20 Commission to accept?
 21 COLONEL VERMAAK: Chair, no. I think if
 22 somebody is firing 30 metres away from you with an R5 and a
 23 9 millimetre you should have heard it. I didn't hear any
 24 shots being fired.
 25 MR NTSEBEZA SC: So what do we make of

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1 it? When we argue we will be arguing that it's improbable,
 2 almost impossible that you wouldn't have heard shots being
 3 fired, let alone with an R5 rifle when you were 30 metres
 4 away. It is improbable that you couldn't have seen shots
 5 being fired when you were only 30 metres away.
 6 COLONEL VERMAAK: Chair, all that I know
 7 is what I've already testified, that I did not hear any
 8 shots being fired.
 9 MR NTSEBEZA SC: So you didn't see
 10 anything, you didn't hear anything. Is that your evidence?
 11 COLONEL VERMAAK: Chair, I did not hear
 12 anything.
 13 MR NTSEBEZA SC: You didn't see anything?
 14 COLONEL VERMAAK: And I don't see that
 15 anybody else fired shots except the one that was with me.
 16 MR NTSEBEZA SC: Now your testimony was
 17 that when the LCRC people – now we know the LCRC people
 18 don't have anything to do with Mr Bizos's LRC – now when
 19 they arrived on the scene, you didn't give them any detail
 20 about what happened at the scene. I think this evidence
 21 could be found on pages T27538 line 20 to 27539 line 140.
 22 COLONEL VERMAAK: Yes, Chair, I remember
 23 it.
 24 MR NTSEBEZA SC: You remember that.
 25 COLONEL VERMAAK: The only LCRC member

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1 that was on the scene while we were there was Colonel,
 2 Lieutenant-Colonel Botha.
 3 MR NTSEBEZA SC: Now you also testified
 4 that you told Brigadier Calitz and I got the sense that you
 5 were seeking to say you did not need to inform anyone else
 6 about what had happened.
 7 COLONEL VERMAAK: He is my immediate
 8 commander and he's the head of the operational response
 9 services in the North-West Province. That is why,
 10 according to me, he is the senior person that I have to
 11 report it to.
 12 MR NTSEBEZA SC: You testified that you
 13 had told Brigadier Calitz when you were back at the scene
 14 where the Warrant Officer Monene was, that someone had been
 15 killed at the river. Do you remember that?
 16 COLONEL VERMAAK: That is correct, Chair.
 17 MR NTSEBEZA SC: Was that the reason that
 18 you felt that there was no need to tell the LCRC anything?
 19 COLONEL VERMAAK: While we were busy to
 20 assist, and I also state that we assisted the LCRC where
 21 possible, but then we have to withdraw due to the fact that
 22 it was busy getting dark.
 23 MR NTSEBEZA SC: Now, there's a detail
 24 around that that I would like to explore with you. Now
 25 isn't it correct that the LCRC when they come to a crime

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1 scene they conduct their investigation on the basis of what
 2 the officers at the scene tell them. Isn't that what is
 3 supposed to – am I missing something there, Colonel? I
 4 mean they come there, you have secured the crime scene,
 5 isn't it so that they don't just walk into the crime scene
 6 and sort of independently and objectively want to see what
 7 is there. There is nothing militating against them in the
 8 rules or in the regulations, against them getting a sense
 9 from the people who have been securing the crime scene as
 10 to what has happened, where is where?
 11 COLONEL VERMAAK: No, that's –
 12 MR NTSEBEZA SC: And then of course they
 13 conduct their own independent investigation, isn't that
 14 what should be happening?
 15 COLONEL VERMAAK: That is correct, Chair.
 16 CHAIRPERSON: Mr Ntsebeza, how does this
 17 part of the cross-examination flow from the points that
 18 were reserved in respect of the – following upon the late
 19 filing of statements by Constable Sekgweleya and Sergeant
 20 Mguye? It now seems to me you're busy re-cross-examining
 21 on matters that weren't covered by the reservation that was
 22 made.
 23 MR NTSEBEZA SC: Mr Chairman, Mr Chairman
 24 will have realised that the three statements introduce the
 25 possibility of a second group of –

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1 CHAIRPERSON: No, I understand that but
 2 what's that got to do with what he told or didn't tell
 3 Lieutenant-Colonel Botha when Lieutenant-Colonel Botha
 4 arrived on the scene? And that's the point you're busy
 5 with at the moment and that doesn't seem to be relevant to
 6 -
 7 [10:19] I understand your point about the second group
 8 and there are some questions I want to ask about that too
 9 if you don't ask them, but I don't see what he told or
 10 didn't tell Lieutenant-Colonel Botha is relevant in this
 11 regard.
 12 MR NTSEBEZA SC: Well, Mr Chairman, it's
 13 either the version introduced by the three statements is
 14 the correct version, in which case then it raises questions
 15 about this witness's testimony.
 16 CHAIRPERSON: I understand that, but
 17 what's that got to do with the arrival of Lieutenant-
 18 Colonel Botha on the scene and what this witness told him
 19 or didn't tell him? That's the point I'm putting to you.
 20 I think that line is not covered by the reservation and I
 21 won't allow you to proceed with it.
 22 MR NTSEBEZA SC: Sure.
 23 CHAIRPERSON: But I'll allow you to ask
 24 questions based on the points that were reserved.
 25 MS LEWIS: Mr Chair, this line of cross-

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1 examination does go to the probabilities of the Colonel's
 2 version being accurate, which is of course directly
 3 relevant to whether there could have been another group
 4 there –
 5 CHAIRPERSON: No, I understand that, but
 6 what he told or didn't tell Lieutenant-Colonel Botha, I
 7 don't see how that helps in this regard. Anyway, normally
 8 as I understand it the LCRC people come on the scene and
 9 they record what they see and they draw plans or take
 10 photographs and mark spots on the photographs or on the
 11 plans where they found particular things. Sometimes some
 12 of the people present tell them things, but they don't
 13 normally go there to receive a narrative of what happened
 14 from before they arrived. So the fact that he didn't say
 15 much to Lieutenant-Colonel Botha doesn't seem to me to be a
 16 point that's sinister, that can be taken much further. But
 17 at any rate I don't see how relevant it is in relation to
 18 the new statement in respect of files which were deposited to
 19 by Constable Sekgweleya and Sergeant Mguye.
 20 MS LEWIS: Mr Chair, the issue that we
 21 reserved the right to cross-examine on was whether there
 22 could have been another group there of which the Colonel
 23 was unaware.
 24 CHAIRPERSON: No, no, I understand that.
 25 I haven't got a problem with that. I'll permit questions

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1 on that. I was solely concerned with his conversation, or
 2 his non-conversation with Lieutenant-Colonel Botha. That's
 3 the only point in respect of which I'm refusing to allow
 4 further questions to be asked.

5 MS LEWIS: Well, Mr Chair, whether there
 6 could have been another group there of which the Colonel
 7 was unaware, part of his explanation is that he shot from
 8 some distance away and of course what we put to him is that
 9 no cartridges were found there, and so this line of cross-
 10 examination is relevant to whether –

11 CHAIRPERSON: No, no, no, that would be
 12 relevant to what Lieutenant-Colonel Botha found. It
 13 wouldn't be relevant to what he said or didn't say to
 14 Lieutenant-Colonel Botha. Now I'm against you on that, I'm
 15 afraid. I understand the other point. Of course there's
 16 an explanation for it which hasn't been put to the witness
 17 yet, which may well bear out the contention that you're
 18 putting to the witness, but if you like me to ask the
 19 question, perhaps it will save time if I do.

20 Would you look at, Colonel, at Captain Thupe's
 21 statement, QQQ9? There are two parts that seem to me to be
 22 relevant. The first is the section starting essentially
 23 with paragraph 7, it really starts at 7.1 and 7.2 and
 24 thereafter goes into paragraph 8. He describes an incident
 25 where one of the strikers grabbed an R5 rifle from an

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1 police officer, ran away in the direction of the informal
 2 settlement, and he then says at 8.2, "I followed them and I
 3 met Constable Sekgweleya at point A," and he goes on to
 4 describe what happened then, and shots were fired. He
 5 fired with his 9 millimetre pistol and Constable Sekgweleya
 6 fired with an R5. Now you don't know anything about that?

7 COLONEL VERMAAK: I don't know anything
 8 about that, Chair.

9 CHAIRPERSON: And the answer, the
 10 explanation for that seems to appear in para 9 where he
 11 says, "While we were following the suspects," he describes
 12 how he and those, at least Constable Sekgweleya and
 13 possibly others, "While we were following the suspects I
 14 realised that the chopper had landed and departed again
 15 after a short while. I later on learned that the chopper
 16 took one of the injured police officers to hospital. While
 17 we were busy securing the crime scene Colonel Vermaak then
 18 came and told me" - that's the passage that was put to you
 19 earlier. Now what appears from this statement therefore is
 20 that if Captain Thupe's description of what happened in
 21 relation to following the people with the rifle and the
 22 shots fired and so on, that took place while your chopper
 23 was still in the air.

24 COLONEL VERMAAK: That is –

25 CHAIRPERSON: It seems clear from para 9

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1 that your chopper only landed after that.

2 COLONEL VERMAAK: That is correct, Chair.

3 CHAIRPERSON: So that then creates the
 4 room for – I'm not saying what actually happened because
 5 I'm a bit puzzled at the moment, but it certainly creates
 6 the room for two separate incidents, one while your chopper
 7 was still in the air, and another one after your chopper
 8 landed, and Thupe is clearly talking about the former
 9 incident, where you can only testify as to the latter
 10 incident.

11 COLONEL VERMAAK: That's correct.

12 CHAIRPERSON: Is that right? And the
 13 fact that if the first incident happened, if it had
 14 happened while your chopper was in the air, could it be
 15 that it took place while your chopper was still in the air
 16 and you didn't see it taking place?

17 COLONEL VERMAAK: That is –

18 CHAIRPERSON: Is that a possibility?

19 COLONEL VERMAAK: That is a possibility.

20 CHAIRPERSON: Why would that be?

21 COLONEL VERMAAK: Chair, if you look at
 22 the statement, as you have pointed it now that the Captain
 23 said they were busy following the people. He saw the
 24 chopper. He heard the chopper landing and they were on,
 25 going on with their follow-up and he say also that the

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1 chopper then, he heard him again get airborne. So that is
 2 really a, there's some time between the incidents because
 3 why the chopper only take off after Captain Loest assist
 4 with the injured policeman and thereafter we get the people
 5 together and do the follow-up.

6 CHAIRPERSON: Yes, now that of course
 7 also raises the possibility - but this is a matter we have
 8 to investigate with Captain Thupe, not with you – that he
 9 and those with him were responsible, or may well have been
 10 responsible for the cartridge cases that were found at the
 11 orange circle. Remember you said you weren't there and you
 12 weren't responsible for them.

13 COLONEL VERMAAK: That's correct, Chair.

14 CHAIRPERSON: That might be the
 15 explanation, but this is a matter that you can't help us
 16 on.

17 COLONEL VERMAAK: No, Chair.

18 CHAIRPERSON: But maybe Captain Thupe
 19 can, if –

20 COLONEL VERMAAK: I believe he –

21 CHAIRPERSON: - if he deals fully with
 22 the matter himself.

23 COLONEL VERMAAK: That's correct, Chair.

24 CHAIRPERSON: Alright. I'm sorry to have
 25 interrupted you, Mr Ntsebeza, but that may cut a bit of a

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1 path through the jungle.

2 MR NTSEBEZA SC: No, thank you, Mr

3 Chairman. That has been fairly helpful. Mr Chairman,

4 those are our questions.

5 CHAIRPERSON: Thank you. Ms Barnes, you

6 reserved cross-examination on behalf of AMCU. Do you wish

7 to exercise your right that you reserved?

8 MS BARNES: No, we don't, Chair. Thank

9 you.

10 CHAIRPERSON: Re-examination, Ms Pillay?

11 MS PILLAY: Chair, I am ready to begin

12 re-examination. I see that it's 10:30, Chair. I'm not

13 sure if this –

14 CHAIRPERSON: Yes, I hadn't noticed that

15 most important fact. We will now take the – I wonder

16 whether the way things are going on, it doesn't look as if

17 we'll have enough material to go on until 1 o'clock. I

18 haven't yet ruled on the applications to cross-examine in

19 respect of Captain Thupe. I don't know whether he's

20 available to give evidence-in-chief today or if you prefer

21 him to start on Monday?

22 MR SEMENYA SC: I'm advised it would be

23 Monday, Chair, with your permission.

24 CHAIRPERSON: Well, that then answers the

25 next question I was going to ask; should we have the tea

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1 adjournment now, and the answer is yes.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [11:05] CHAIRPERSON: The Commission resumes.

4 Lieutenant-Colonel, you're still bound by your affirmation.

5 SALMON JOHANNES VERMAAK: Thank you,

6 Chair.

7 CHAIRPERSON: Ms Pillay.

8 RE-EXAMINATION BY MS PILLAY: Thank you,

9 Chair. Colonel, you were referred by my learned friend Mr

10 Semanya to exhibit OOO42 and the essence of the questions

11 put to you was that it was irregular for you to have –

12 CHAIRPERSON: Sorry to interrupt you.

13 Someone has either got his or her headphones on too loudly

14 or they're not on his or her ears so that we can hear it

15 and it's causing a disturbance, so please sort that out.

16 It's very disturbing and difficult to follow when that

17 happens. Ms Pillay, please proceed.

18 MS PILLAY: Thank you, Chair. The

19 essence of the questions put to you was that it was

20 irregular for you to have flown in the helicopter in the

21 absence of a trained ALEO with you. Do you recall that?

22 COLONEL VERMAAK: I do.

23 MS PILLAY: Now was General Mpembe aware

24 that you were not a trained ALEO?

25 COLONEL VERMAAK: That is correct, Chair.

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1 MS PILLAY: And was Brigadier Calitz

2 aware that you were not a trained ALEO?

3 COLONEL VERMAAK: That is correct.

4 MS PILLAY: Now we know that between

5 General Mpembe and Brigadier Calitz they were the overall

6 commanders and the operational commanders for both the

7 operations on the 13th and the 16th, and we know also that

8 you flew in the helicopter both on the 13th and the 16th.

9 Did any of them prior to you getting into the helicopter

10 raise any concerns around whether or not you were permitted

11 to fly in that manner?

12 COLONEL VERMAAK: No, Chair.

13 MS PILLAY: And since the operations both

14 on the 16th and the 13th did any of them raise any concerns

15 about your conduct on that day with you?

16 COLONEL VERMAAK: No, Chair, actually

17 they were, thanked me for the fact that I've taken aerial

18 photos as well with my BlackBerry, that I send it to the

19 JOC, and nobody take me on, on the fact that I was acting

20 as ALEO as well.

21 MS PILLAY: Now has this issue ever been

22 raised with you by anyone from SAPS before you testified

23 before this Commission?

24 COLONEL VERMAAK: No, Chair, never.

25 MS PILLAY: Now in a similar vein you

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1 were cross-examined on whether or not it was permissible

2 for you to carry teargas and stun grenades in the

3 helicopter and to throw them from the helicopter. Do you

4 recall that?

5 COLONEL VERMAAK: I do.

6 MS PILLAY: And you were referred to

7 OOO38. Do you recall that? It's the helicopter manual.

8 COLONEL VERMAAK: That's correct, Chair.

9 MS PILLAY: Now you testified, and I

10 think it's clear from the contents of OOO38 that it does

11 not apply to SAPS, but what I would like to establish is

12 whether or not it was brought to your attention before you

13 testified before this Commission that there was a question

14 mark around whether or not from SAPS' view it was regular

15 for you to carry teargas and stun grenades in the

16 helicopter.

17 COLONEL VERMAAK: No, never, Chair.

18 MS PILLAY: And was this issue raised at

19 Roots? Because we know that the operation both on the 13th

20 and the 16th was subject to an intense scrutiny from SAPS.

21 You will agree with that?

22 COLONEL VERMAAK: That is correct.

23 MS PILLAY: We had the Mkhwanazi review.

24 You recall that?

25 COLONEL VERMAAK: That's correct.

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1 MS PILLAY: We had Roots over a number,
 2 over a nine-day period. You'll agree?
 3 COLONEL VERMAAK: I'll agree.
 4 MS PILLAY: And there has been intense
 5 consultations with the SAPS legal team since then.
 6 COLONEL VERMAAK: That is correct, Chair.
 7 CHAIRPERSON: We don't want to hear about
 8 the consultations with the SAPS legal team, but the other
 9 part of the question can stand.
 10 MS PILLAY: Has it ever been raised with
 11 you that SAPS may view it to be irregular to carry and
 12 throw stun grenades from the helicopter?
 13 COLONEL VERMAAK: No, never, Chair.
 14 MS PILLAY: Now do you know whether or
 15 not other ALEOS and/or pilots carry teargas and stun
 16 grenades in the helicopters?
 17 COLONEL VERMAAK: Yes, Chair, when NIU
 18 and Task Force is deployed for specific operations that is
 19 part of their equipment, especially Task Force have stun
 20 grenades for their operations and that is normal procedure.
 21 CHAIRPERSON: I see from exhibit L, slide
 22 47 in the narrative of what happened on the 13th it's stated
 23 that the Air Wing helicopter witnessed these incidents,
 24 that's the attack on the members.
 25 COLONEL VERMAAK: That is correct, Chair.

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1 CHAIRPERSON: And the fact that the
 2 members of the police fired at the protesters with live
 3 ammunition. The Air Wing helicopter witnessed these
 4 incidents and 10 stun grenades and 20 teargas grenades were
 5 thrown out of the helicopter in an attempt to stop the
 6 attack.
 7 COLONEL VERMAAK: That is correct.
 8 CHAIRPERSON: So that matter was
 9 pertinently raised that you did that, at Roots.
 10 COLONEL VERMAAK: That's correct.
 11 CHAIRPERSON: And no-one suggested for a
 12 moment, you say –
 13 COLONEL VERMAAK: No, there was no –
 14 CHAIRPERSON: - that that was in any
 15 event –
 16 COLONEL VERMAAK: - no queries on –
 17 CHAIRPERSON: - irregular or improper or
 18 anything like that?
 19 COLONEL VERMAAK: No, Chair.
 20 MS PILLAY: If I can then go to the third
 21 topic, Colonel, and that's the line of cross-examination
 22 that was taken by the SAPS team that the withholding of the
 23 picture of the body of the late Mr Sokanyile, that you
 24 withheld the picture of the body of the late Mr Sokanyile,
 25 which is in exhibit 00013. Do you recall that line of

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1 cross-examination?
 2 COLONEL VERMAAK: I do recall it.
 3 MS PILLAY: Now during the course of
 4 yesterday the evidence leaders supplied the SAPS team with
 5 the pathway where that picture can be found on the SAPS
 6 hard drive, and I just want to place on record that the
 7 SAPS team have confirmed that in fact that picture was on
 8 the initial SAPS hard drive that was provided to the
 9 evidence leaders.
 10 Can I ask, Colonel, has it ever been raised with
 11 you in the 20-month period since the incident of the 16th,
 12 has it been raised with you by anyone from SAPS that there
 13 was a concern that you may be withholding pictures or
 14 information from SAPS?
 15 COLONEL VERMAAK: No, Chair, never.
 16 MS PILLAY: If I can then go to the next
 17 topic, which is the incident at Stilfontein. Now you were
 18 referred to the IRIS report dealing with the Stilfontein
 19 incident, and it was highlighted that during the operation
 20 you killed three people. Did you ever face disciplinary
 21 proceedings as a result of your conduct on that day?
 22 COLONEL VERMAAK: No, never, Chair.
 23 CHAIRPERSON: I take it an inquest was
 24 held.
 25 COLONEL VERMAAK: Yes, there was a formal

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1 inquest, Chair.
 2 CHAIRPERSON: And presumably if the
 3 magistrate had found that you committed an offence, or
 4 possibly committed an offence in relation to those deaths,
 5 there would have been a follow-up of some sort.
 6 COLONEL VERMAAK: That's correct.
 7 CHAIRPERSON: Did the magistrate at the
 8 inquest bring in a finding that no offence had been
 9 committed? In other words effectively upholding what would
 10 have been your defence of self, that you'd acted in self-
 11 defence?
 12 COLONEL VERMAAK: Yes, he did say that I
 13 act in self-defence under that circumstances, Chair.
 14 MS PILLAY: Now Colonel, it was put to
 15 you today by Mr Ntsebeza that you had difficulty in
 16 admitting that you killed the three people in Stilfontein,
 17 and Mr Ntsebeza implied that you were in one way or another
 18 being economical with the truth. Now is that the position?
 19 Would you like to comment on that?
 20 COLONEL VERMAAK: No, Chair, that is not
 21 the truth. In my chief testimony I did say that there were
 22 people killed. Nobody asked me specifically at that stage
 23 who was responsible for the killing of the people and
 24 during the questioning there was also not intention of, to
 25 withheld it from anybody.

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1 CHAIRPERSON: Yes, Mr Ntsebeza of course
 2 did deal with the hesitation with which you said that you
 3 had killed people and he quoted what you'd said. I could
 4 understand that the fact that you killed those people in
 5 the circumstances you've described is not something that
 6 gave you any pleasure and when you think about it I'm sure
 7 it still causes you regret, even though –
 8 COLONEL VERMAAK: That is true. It is
 9 a –
 10 CHAIRPERSON: It's not a memory you
 11 appreciate being reminded of. Is that right?
 12 COLONEL VERMAAK: No. No, not at all,
 13 Chair.
 14 MS PILLAY: If we can then deal with the
 15 movement report, which is OOO40. Now you were cross-
 16 examined on document OOO40 in order to establish that you
 17 were not at the 6 o'clock JOCCOM on the 16th of August. Now
 18 if I could ask that OOO40 be put up on the screen, and you
 19 will see from this exhibit that it shows your vehicle
 20 starting up at 7:38, and it shows in more or less five-
 21 minute intervals that you were consistently driving until
 22 7:37:16. Do you see that?
 23 COLONEL VERMAAK: I did see it, Chair.
 24 MS PILLAY: Now can I ask that we show
 25 exhibit TT4 on the screen? Now TT4, Colonel, is the minute

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1 of the 6 o'clock JOCCOM on the 16th, and you will see at the
 2 beginning of the document that the JOCCOM commenced at 6
 3 o'clock, and if we go down to the end of the document you
 4 will see that the meeting adjourned at 7:30 in the morning.
 5 COLONEL VERMAAK: That's correct, Chair.
 6 MS PILLAY: Now if we go now into the
 7 body of the document, if we can just go a little bit up –
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 MS PILLAY: There we go, at 3.3 point –
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 paragraph 3.3.7 [inaudible].
 12 MS PILLAY: That's correct, Chair, it's
 13 at 3 point –
 14 CHAIRPERSON: Sorry, what I was saying
 15 wasn't being recorded, but I was directing the operator to
 16 3.3.7.
 17 MS PILLAY: So we see from 3.3.7,
 18 Colonel, that you confirmed the availability of air support
 19 for the day.
 20 COLONEL VERMAAK: That is correct, Chair.
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 MS PILLAY: Chair, your –
 23 CHAIRPERSON: Sorry. We know those
 24 minutes were heavily edited at Roots, but I'm not sure that
 25 it's suggested that this particular part is suspect. Do we

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1 have the original notes of the meeting, of the minutes, on
 2 which the minutes were based?
 3 MS PILLAY: Chair, it's Captain Moolman's
 4 notes. I'll just have to get it for you.
 5 CHAIRPERSON: I suggest you carry on with
 6 your re-examination. You've put 3.3.7 to the witness which
 7 indicates that certainly those responsible for editing the
 8 notes at Roots were satisfied that he was at the meeting.
 9 Mr Wesley can perhaps find the notes while you deal with
 10 something else.
 11 MS PILLAY: And we know that General
 12 Annandale was given an opportunity to look at GGG4 to
 13 indicate if he's got any changes and he produced – sorry,
 14 TT4, and he produced TT4.1. If we can just put up TT4.1?
 15 Alright, let me put it to you as a positive averment that
 16 there was no correction made to 3.3.7, which shows that you
 17 were indeed present at the JOCCOM on, at the 6 o'clock
 18 JOCCOM.
 19 CHAIRPERSON: We were going to see TT1,
 20 weren't we?
 21 MS PILLAY: TT4.1, Chair.
 22 CHAIRPERSON: TT4.1. We're not seeing
 23 that at the moment. I take it the purpose of that is
 24 simply to show us that General Annandale didn't make that
 25 alteration, he accepted he was there.

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1 MS PILLAY: That's correct, Chair.
 2 CHAIRPERSON: Okay, we don't have to look
 3 at it.
 4 MS PILLAY: If we can then go to another
 5 topic that was dealt with, Colonel, and that's yesterday
 6 during his cross-examination my learned friend Mr Semenya
 7 described you as a maverick, and that was the word he used,
 8 which essentially means someone who did things his own way
 9 without regard to protocol, to rules, or to regulations.
 10 Now we know, Colonel, that you played a crucial role on the
 11 13th in the sense that you were the eye in the sky on the
 12 day.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 MS PILLAY: Now if I could ask you to
 15 comment, is that the kind of role that would be allocated
 16 to someone who has the reputation of being a maverick?
 17 COLONEL VERMAAK: Not at all, Chair.
 18 MS PILLAY: And we know you played a
 19 similar role at scene 1. You were the eye in the sky at
 20 scene 1.
 21 COLONEL VERMAAK: That is correct, Chair.
 22 MS PILLAY: Again given the nature of the
 23 operation, the nature of the crowd that you were dealing
 24 with, would that be a role given to someone who has no
 25 regard for rules and regulations?

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1 COLONEL VERMAAK: No, never.
 2 CHAIRPERSON: And it also was known on
 3 the 16th that you'd taken it upon yourself, after
 4 consultation with the Provincial Commissioner, to remove
 5 General Mpembe from the scene.
 6 COLONEL VERMAAK: That's correct, Chair.
 7 CHAIRPERSON: If that was the basis for
 8 criticising you, regarding you as a maverick, then it's a
 9 matter for surprise that you were retained as the eye in
 10 the sky on the 16th both at scene 1 and scene 2.
 11 COLONEL VERMAAK: That is correct, Chair.
 12 MS PILLAY: And in fact, Colonel, on
 13 SAPS' version your importance in respect of the operation
 14 increased incrementally to the point where according to
 15 Brigadier Calitz you were given a command and control in
 16 relation to scene 2.
 17 CHAIRPERSON: You don't admit that, do
 18 you? You deny that?
 19 COLONEL VERMAAK: That's correct.
 20 MS PILLAY: Again in your experience
 21 would such a role, command and control of such an important
 22 operation be given to someone who has no regard for rules,
 23 for regulations, and protocol?
 24 COLONEL VERMAAK: No, Chair.
 25 MS PILLAY: If we can then deal with the

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1 removal of General Mpembe from the scene. Now it was put
 2 to you by my learned friend Mr Semenya that your version
 3 that there were serious threats to the life of General
 4 Mpembe was a ploy on your part to remove him from the scene
 5 so that you could take control of the scene. Now can you
 6 just tell us when did you hear of the threats to General
 7 Mpembe's life?
 8 COLONEL VERMAAK: Chair, it was on our
 9 way back from the scene after I have posted the, after I've
 10 posted the members.
 11 MS PILLAY: Alright, so you had General
 12 Mpembe removed from the scene after you returned from the
 13 incident at the stream?
 14 COLONEL VERMAAK: That is correct.
 15 MS PILLAY: And once you returned from
 16 the incident at the stream what did you do to take control
 17 of the scene?
 18 COLONEL VERMAAK: Chair, it was not my
 19 intention to take control of the scene. I was worried
 20 about the safety of the General, so I first phoned the
 21 Provincial Commissioner, informed her about the threats,
 22 and I asked her if I can remove the General for his own
 23 safety and she give me the permission to do it and that was
 24 the message that I also give for the General.
 25 MS PILLAY: Alright, in the context of

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1 that answer, Colonel, can I ask that we put up day 99, the
 2 transcript for day 99, page 10533, and just to
 3 contextualise what I'm referring you to now, Colonel, your
 4 version of what had transpired on your return from the
 5 stream was put to General Phiyega for comment and I just
 6 want to take you through her comment on your version. If
 7 you can just go down to line 16 where General Phiyega says,
 8 "I think, you know, just listening to what has been read
 9 and what is being interpreted you are mentioning that
 10 there's a scene and there's a reason that has been, there's
 11 a serious qualification by the statement that has been
 12 given, that weens die dreigement op sy lewe, I am
 13 assisting, there's no rank issue here. It's a situation
 14 and a danger that is perceived and a member that is being
 15 responsible." Do you have a comment on that, Colonel?
 16 COLONEL VERMAAK: No, Chair.
 17 MS PILLAY: Colonel, if we can just go to
 18 the next issue, which is the cordon and search issue. It
 19 was put to you that at the time that you suggested a cordon
 20 and search as a preliminary step, that the JOC did not have
 21 enough intelligence or information to consider such a step.
 22 Do you recall that?
 23 COLONEL VERMAAK: That is correct, Chair.
 24 MS PILLAY: Now if we can refer to
 25 exhibit HHH18, if I could ask that it be put on the screen?

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1 HHH18, Colonel, is the application for a cordon and search
 2 that is dated the 15th of August and if I could ask you just
 3 to look at the heading of that, of the first page, of that
 4 particular page, you'll see "Application for cordon off and
 5 search operation Wonderkop and Karee Mine hostels and
 6 adjacent informal settlements, Lonmin Mine." Do you see
 7 that, Colonel?
 8 COLONEL VERMAAK: That's correct, Chair.
 9 MS PILLAY: So it's clear from this
 10 document that at least by the 15th that SAPS were able to
 11 identify specific areas in relation to a potential cordon
 12 and search.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 MS PILLAY: If I can then go to the next
 15 topic, which is Sekgweleya, the allegations made by
 16 Constable Sekgweleya and Sergeant Mguye, we know that
 17 during your evidence before this Commission – and I
 18 emphasise it, it occurred during your evidence – that SAPS
 19 produced affidavits from Constable Sekgweleya and Sergeant
 20 Mguye who allege that you instructed them to shoot their R5
 21 rifles at a striker across the stream on the 13th.
 22 COLONEL VERMAAK: That's correct, Chair.
 23 MS PILLAY: Now prior to you testifying
 24 before this Commission, were you aware or even confronted
 25 with the allegations made by Sekgweleya and Mguye?

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1 COLONEL VERMAAK: No, Chair, never.
 2 [11:25] I was not even aware there is any statements of
 3 members who was with me at that specific scene.
 4 MS PILLAY: So at the point that these
 5 statements were submitted to this Commission, that's the
 6 first time that you had heard these allegations.
 7 COLONEL VERMAAK: That is correct, Chair.
 8 MS PILLAY: To your knowledge, were the
 9 allegations – and obviously Mr Semenya described these as
 10 the most profound and important allegations – were they
 11 raised or discussed at Roots?
 12 COLONEL VERMAAK: No, Chair, not in – the
 13 only place where it was discussed was in that group that we
 14 were where the General was but at no other stage was it
 15 discussed.
 16 MS PILLAY: So are you saying that at
 17 Roots the allegations made by Sekgweleya and Mguye were
 18 discussed?
 19 COLONEL VERMAAK: No, Chair. The
 20 incident where I removed the General, that was discussed
 21 but there was no information from the police conveyed to me
 22 that they knew about anybody who was with me at that
 23 specific scene.
 24 MS PILLAY: And to your knowledge do
 25 these profound and important allegations made by Sekgweleya

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1 and Mguye, do they feature in exhibit L at all?
 2 COLONEL VERMAAK: No, Chair.
 3 MS PILLAY: Now you were cross-examined
 4 extensively on whether, on why your statements were silent
 5 on the instruction from you to a member who was with you to
 6 shoot at the striker shooting at you from across the
 7 stream, do you recall that?
 8 COLONEL VERMAAK: I do.
 9 MS PILLAY: Now, your testimony was that
 10 you informed Brigadier Calitz of this instruction, that's
 11 correct?
 12 COLONEL VERMAAK: That is correct, Chair.
 13 MS PILLAY: You also testified that you
 14 informed your legal team of this instruction.
 15 COLONEL VERMAAK: That is correct, Chair.
 16 MS PILLAY: Now all six statements filed
 17 in this Commission were prepared while you were represented
 18 by the same legal team, is that correct?
 19 COLONEL VERMAAK: That is correct, Chair.
 20 MS PILLAY: Were you ever asked to
 21 supplement any of your statements in order to set out more
 22 detail relating to the incident at the stream?
 23 COLONEL VERMAAK: No, never.
 24 MS PILLAY: And were you asked to
 25 supplement any of your statements to include this version

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1 that there were, there was an instruction given to a member
 2 to shoot at the striker across the stream?
 3 COLONEL VERMAAK: No, Chair.
 4 MS PILLAY: Were you at any time prior to
 5 you being confronted with the statements of Sekgweleya and
 6 Mguye, were you asked by anyone from SAPS to explain your
 7 conduct at the stream?
 8 COLONEL VERMAAK: No, Chair.
 9 CHAIRPERSON: When did you first become
 10 aware of the allegations made by Sekgweleya and Mguye in
 11 their supplementary statements?
 12 COLONEL VERMAAK: It was here while I was
 13 busy testifying, Chair.
 14 MS PILLAY: Now it was put to you by Mr
 15 Semenya that it was, in his words, a ringing omission from
 16 exhibit L that the instruction to the TRT members to shoot
 17 at the striker was not mentioned. Do you have an
 18 explanation for why that instruction did not feature in
 19 exhibit L?
 20 COLONEL VERMAAK: Chair, it was not left
 21 out on purpose. Due to the fact that I've reported to
 22 Brigadier Calitz and also Brigadier Van Zyl who was the
 23 provincial detective head, I didn't think about it to put
 24 it again into the statement.
 25 CHAIRPERSON: Before you move on to the

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1 next topic, Ms Baloyi perhaps you can help us. You know we
 2 have a rule in this Commission that if something is put to
 3 a witness, a statement of fact, it should be based upon a
 4 statement which is available and so on. Now it was put to
 5 the witness that he wasn't at the 6 o'clock JOCCOM meeting
 6 on the Thursday morning. We now see from the minute that
 7 he's recorded as being there. You didn't have the
 8 statement before us at the time and I should have picked it
 9 up but I didn't, of a witness who says he wasn't there.
 10 May I ask who the witness is who is going to come and say
 11 that?
 12 MS BALOYI: Chair, can I please revert on
 13 that?
 14 CHAIRPERSON: Yes, I'd like –
 15 MS BALOYI: I don't have an answer, I
 16 don't have an answer –
 17 CHAIRPERSON: I'd like to see the
 18 statement of the person who says that.
 19 MS PILLAY: Colonel, you were cross-
 20 examined on whether or not your report over the radio that
 21 there were initially 18 bodies down and later two bodies
 22 down, whether that was sufficiently clear. Now immediately
 23 after your report that there were 18 bodies down, was there
 24 any request for clarification in any form, either over the
 25 radio or over any other of the means of communication which

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1 you had at your disposal?

2 COLONEL VERMAAK: No, Chair, not between

3 the first time that I reported and also not after the

4 second time that I reported.

5 MS PILLAY: So there was no request from

6 any member, any SAPS member or commander for clarity or for

7 further details around your report that there were 18

8 bodies down.

9 COLONEL VERMAAK: No, Chair.

10 MS PILLAY: Now finally, Colonel, you

11 were cross-examined extensively on your version that there

12 were members of SAPS who were profoundly unhappy with

13 General Mpmembe on the 13th, to the point that members – you

14 said that certain members were threatening General Mpmembe's

15 life.

16 COLONEL VERMAAK: That's correct.

17 MS PILLAY: Now Chair, it was brought to

18 our attention by the HRC that there's a pocketbook of

19 Sergeant Rekgotso which I'd like to just hand a copy of

20 that pocketbook up.

21 CHAIRPERSON: Is that going to be an

22 exhibit – the next exhibit, you're normally the one who

23 helps me on this but according to my notes the next exhibit

24 should be OOO45, is that correct?

25 MS PILLAY: That's correct, Chair, OOO45.

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1 CHAIRPERSON: So pocketbook of – is he a

2 sergeant, is he? What's his rank? Do you know Rikhotso?

3 MS PILLAY: It's not apparent from his –

4 Constable Rikhotso.

5 CHAIRPERSON: Oh, he's a constable,

6 alright. Constable Rikhotso, that'll be exhibit OOO45.

7 MS PILLAY: Now Colonel, we know that my

8 learned friend Mr Ntsebeza questioned you this morning on

9 your knowledge of Constable Rikhotso because his name is

10 mentioned by Sergeant Sekgweleya in his statement, do you

11 recall that?

12 COLONEL VERMAAK: That's correct, Chair.

13 MS PILLAY: Now if I can ask you to turn

14 to the pocketbook page 39, the entry at 12:30, do you see

15 that?

16 MS LEWIS: Chair, I'm sorry to interrupt.

17 I just want to point out for the record that this is a

18 different Rikhotso. This Rikhotso was a member of POP,

19 Springs and the Rikhotso referred to in the statement of

20 Sekgweleya – sorry, in the statement of Mguye, was a member

21 of the TRT Rustenburg.

22 CHAIRPERSON: It may shorten the re-

23 examination. Ms Pillay?

24 MS PILLAY: Chair, I just still need to

25 put this short passage to the witness, Chair.

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1 CHAIRPERSON: Alright, put it.

2 MS PILLAY: If you can see at 12:30 –

3 CHAIRPERSON: Some people's definition of

4 short differs from other people's definition of short but

5 deal with it as shortly as you can.

6 MS PILLAY: At 12:30 you'll see, against

7 12:30 "Crime scene. We cornered a group of participants,

8 plus-minus 100 armed with weapons and after General Mpmembe

9 failed members resulting in two police officers dead." Do

10 you see that?

11 COLONEL VERMAAK: I saw it, Chair.

12 MS PILLAY: Do you have any comment on

13 that, Colonel?

14 COLONEL VERMAAK: Chair, all that I can

15 say is I think this pocketbook entry confirms what the

16 members said to me at the river.

17 MS BALOYI: Chairperson, Chair, with your

18 leave, just so that we are clear about what is being

19 proposed by the evidence leaders, is it put that this is a

20 threat, what is recorded here and that that is a threat?

21 CHAIRPERSON: I take it, I take it what's

22 being put is that this confirms the suggestion that there

23 was dissatisfaction on the part of some of the members

24 present with the decision made by General Mpmembe. It

25 obviously can't be put any further than that. It certainly

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1 doesn't go so far as to corroborate the witness's evidence

2 that certain people said to him that they were going to

3 kill the General. It merely indicates, I would've thought,

4 at least one person present thought that General Mpmembe's

5 conduct had amounted to a failure to protect the other

6 members there. Am I right, Ms Pillay?

7 MS PILLAY: That's correct, Chair, a

8 failure which resulted in the death of two members. And

9 Chair, just on a final note, you asked about the notes of

10 Captain Moolman, that's JJJ168 and if we can refer to

11 electronic page 14 of that document – thank you, and you'll

12 see there "Choppers ready to deploy" which we submit,

13 Chair, is consistent with triple, TT4 which reflects that

14 Colonel Vermaak was present at the meeting.

15 CHAIRPERSON: Yes, thank you.

16 MS PILLAY: Chair, those are our

17 questions. I just want to indicate, Chair, I'm not sure, I

18 haven't had a chance, I wasn't able to consult with the

19 Colonel but he may –

20 CHAIRPERSON: You weren't allowed to

21 consult with him.

22 MS PILLAY: I wasn't allowed to consult

23 but he may want to say something because he is

24 unrepresented at this stage.

25 CHAIRPERSON: Yes, Colonel, is there

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1 anything you want to add?

2 COLONEL VERMAAK: Chair, thank you. I

3 want to thank the Chairperson and his Commissioners and all

4 the legal teams and families who are present. It was

5 mentioned in the media that they referred to me as a rebel

6 officer. I just want to clarify on that maybe. Why I

7 stood up for the truth and the members and families, since

8 I was a commander from 1986 I made a promise to my members

9 that I will not turn my back on them and I will face – at

10 Stilfontein I faced death in Stilfontein where striker

11 people fired at me from a distance about of 10 metres. I

12 know what it is to be in that situation when you have to

13 protect yourself and your colleagues. After that incident

14 one of the members who was with us there, a young

15 constable, committed suicide by shooting himself. I also

16 know what it feels to stand next to the body of one of your

17 colleagues and your members. I made a promise to myself

18 that I will do anything in future to prevent the situation

19 where a member of the public or a police member gets

20 killed. That is why I stood up and tried my utmost best to

21 prevent further loss of lives at Marikana.

22 It is not an easy decision to make, to stand up

23 against the National Commissioner and other senior generals

24 while you were trying to assist and to prevent such an

25 incident. I know that I'm criticised but I stand for the

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1 truth. Chair, I thank you and the Commissioners for the

2 opportunity to address you. I also want to thank all the

3 legal teams who was cross-examining me in the way they did.

4 And also the families of the miners and the police members,

5 they treated me very well and their appreciation for the

6 truth, I thank them there for. Thank you, Chair.

7 CHAIRPERSON: Thank you, Lieutenant-

8 Colonel, you'll be excused from attendance on the basis

9 that if some point arises and it's necessary for you to

10 come back, you'll be prepared to come back without a

11 subpoena having to be issued against you.

12 COLONEL VERMAAK: That's –

13 CHAIRPERSON: On that basis you are

14 excused.

15 COLONEL VERMAAK: Thank you, Chair.

16 CHAIRPERSON: Mr Budlender?

17 MR BUDLENDER SC: Chair, I don't know

18 whether, what you're proposing to do now but I'd like to

19 suggest that we take a short adjournment so that you can

20 prepare an announcement as to what's to happen on Monday so

21 that the parties can be told this morning still.

22 CHAIRPERSON: We'll take a short

23 adjournment now. What, five minutes? How long do you

24 need? Five minutes and then we will reassemble and I'll

25 make an announcement in relation to the way forward.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [11:51] CHAIRPERSON: I've come in on my own

3 because this is not a formal sitting of the Commission,

4 it's merely a meeting for the purpose of announcing the way

5 forward as I indicated I would do.

6 The Commission has limited time available, as you

7 all know, in order to complete its hearings. It must

8 ensure that it makes the best possible use of that time and

9 it follows that those who represent the parties must do

10 their utmost to assist it in doing that. In order to

11 ensure that it is able to finish its work, hear all the

12 relevant evidence and receive arguments by the end of July,

13 the Commission will follow the following procedure from

14 Monday the 12th May:

15 1. The Commission will decide what further

16 witnesses will give oral evidence.

17 2. Time limits will be imposed for the leading

18 of evidence-in-chief in general and, subject to exceptions

19 which will be determined by the Chair, the time limit will

20 be 30 minutes. The evidence-in-chief will be limited to

21 the main points of the signed statement of the witness.

22 3. Time limits will be imposed for cross-

23 examination. As before, parties wishing to cross-examine a

24 witness must apply for leave to do so, indicating what

25 topics they wish to address and how long they wish to be

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1 allocated for this purpose. The parties are encouraged to

2 co-operate with each other in order to agree what topics

3 each of them will address and, where appropriate, to share

4 the time allocated to them. I may say that I've already

5 been approached in chambers by some of those representing,

6 some of the legal representatives of the parties and they

7 have indicated that they have already had a meeting and

8 discussed the matter and propose effectively that that be

9 done.

10 4. Oral evidence in cross-examination will be

11 limited to matters which are still in dispute and on which

12 the Commission needs to make a finding. Obviously the

13 Commission will be happy to receive inputs from the parties

14 in respect of the matters that I've dealt with, in

15 particular the question as to which witnesses will give

16 oral evidence and so on and I am able to say that the

17 evidence leaders will be preparing a schedule over the

18 weekend regarding the witnesses whom they suggest should –

19 I'm not sure what was recorded. I am able to say that the

20 parties, that the evidence leaders will be preparing a list

21 over the weekend of the witnesses whom they think and

22 propose should be called to give oral evidence. This list

23 will be made available to the parties and they will be able

24 to give their inputs and response to that list and the

25 Commission's decision in regard to the list of witnesses to

1 give oral evidence will only be made after a reasonable
 2 time has elapsed for the parties to give inputs. Further
 3 rulings may be made in due course.
 4 In relation to Captain Thupe who is the next
 5 witness, he will give evidence on Monday the 12th of May and
 6 Tuesday the 13th of May. The time allocations in respect of
 7 his evidence are as follows – evidence-in-chief one hour,
 8 evidence leaders one and three-quarter hours, Human Rights
 9 Commission two and a half hours. Warrant Officer Monene,
 10 quarter of an hour. Lieutenant Baloyi quarter of an hour.
 11 AMCU one and a half hours. The families, one and a half
 12 hours. LRC half an hour and re-examination half an hour.
 13 I hope that the SAPS will be able to indicate
 14 which witness they propose calling after Captain Thupe by
 15 early Monday morning and provided that witness is on the
 16 list of witnesses who it is decided should be called, I
 17 would expect the parties to be able to make the necessary
 18 applications by the end of Monday. As I've said, Captain
 19 Thupe has been allocated two days, so the next witness
 20 after him will only commence evidence on Wednesday morning.
 21 Those are the remarks that I wish to make
 22 regarding the way forward. Mr Gotz, I see you've turned
 23 your microphone on.
 24 MR GOTZ: Chair, if we're supposed to
 25 make applications by close of business on Monday I wonder

1 MR CHASKALSON SC: Mr Chairperson, we are
 2 in a position to react in relation to Captain Thupe, which
 3 is that the evidence leaders will confine themselves to
 4 cross-examination on the events of the 13th and what
 5 transpired in Roots in relation to the events of the 13th.
 6 CHAIRPERSON: Thank you very much.
 7 Anyone else wish to make any comment before we adjourn for
 8 the weekend and start the new way of proceeding? No, very
 9 well. We will now adjourn and we will resume at 9 o'clock
 10 – I think from now on we must try to start promptly at 9
 11 o'clock every morning. We must cut down the times
 12 available for tea and for comfort breaks because we must
 13 endeavour to lengthen our sitting hours to some extent in
 14 that way.
 15 [COMMISSION ADJOURNED]
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1 if it wouldn't be possible for the SAPS to indicate over
 2 the course of the weekend by way of an e-mail who the next
 3 could of witnesses that they intend to call are, and in the
 4 order, so that we may at least start working over the
 5 weekend on the applications and divisions between us.
 6 CHAIRPERSON: Yes, now that you say that,
 7 that's obviously a sensible suggestion. Now that you say
 8 that I'm reminded of something that you and some others put
 9 to me in chambers earlier today and that is, it's a
 10 request, we won't make a ruling on it but I merely convey
 11 it as a request, you request that the evidence leaders
 12 should indicate to the parties – obviously apart from the
 13 party calling the witness – which topics they propose
 14 covering in their cross-examination, to make it unnecessary
 15 for the parties to sit down and draft applications to
 16 cross-examine in respect of topics which will be dealt with
 17 by the evidence leaders and therefore effectively waste
 18 time doing work that will be unnecessary once it's known
 19 what the evidence leaders wish to cover. So I make that, I
 20 repeat in open chamber the proposal that was put to me and
 21 I'm sure the evidence leaders will react to it, not
 22 necessarily here but they will have discussions with the
 23 parties in regard thereto. Anything - anyone else wish to
 24 say anything else? Mr Chaskalson, I think you've turned
 25 your –

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