

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 215

10 APRIL 2014

PAGES 26454 TO 26595



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1 [PROCEEDINGS ON 10 APRIL 2014]
 2 [09:29] CHAIRPERSON: I'm sorry, I'm sad to have
 3 to say, as every morning, housekeeping matters intervened
 4 so we start later than I'd expected. I apologise to those
 5 who were kept waiting. The Commission resumes.
 6 Lieutenant-Colonel, you're still bound by your affirmation.
 7 SALMON JOHANNES VERMAAK: (affirms
 8 further).
 9 CHAIRPERSON: Mr Gotz, we're going to go
 10 on with the fascinating discussion about the fences but
 11 before we do that, I was told that Colonel Vermaak may wish
 12 to say something. Am I right?
 13 COLONEL VERMAAK: That is correct, Chair.
 14 I just want to put the request to the Commission, if it is
 15 possible that we can continue with cross-examination with
 16 the SAPS. The reason why is that you are still fresh in
 17 your memory with all the facts and if you have to stand off
 18 for a week or two or longer, you might be missing something
 19 that you are now knowing and then you forgot about specific
 20 things. So that is why I put the request that we just can
 21 continue with it, without any delay if possible but it is
 22 for the Commission to decide. Thank you, Chair.
 23 CHAIRPERSON: Well, if it's possible
 24 obviously one will have regard to that but obviously if we
 25 do have to have some delay, that'll be borne in mind in

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1 assessing your evidence. One would take into account the
 2 fact that there was this interruption which may have caused
 3 difficulties and may not lead to adverse inferences being
 4 otherwise drawn, but Mr Semenya how do you respond to what
 5 the Colonel says?
 6 MR SEMENYA SC: Chair, I personally have
 7 sympathy for the concern that the Colonel is expressing.
 8 Ideally one would have wanted to do the cross-examination.
 9 We had almost prepared ourselves to get there but there are
 10 reputational risks associated with that. We have consulted
 11 with the witness. We think it might compromise, as I say,
 12 ethical issues and – but in mitigation we have also been
 13 informed that a separate counsel has been found and we have
 14 on our side prepared excerpts of the evidence material to
 15 the cross-examination of the witness, we have identified
 16 the exhibits that are relevant to that aspect, we have
 17 lined witnesses which that counsel would be able to confer
 18 with and, but we're unable to do that cross-examination
 19 ourselves.
 20 CHAIRPERSON: Yes, yes, I see. In other
 21 words, what you're telling us is, for the reasons you've
 22 given, you don't think it's possible or appropriate for
 23 those of you who have consulted with the witness, who have
 24 been members of the SAPS team from the beginning, to cross-
 25 examine the witness, despite the fact that he's prepared to

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1 waive any rights he may have to object to your cross-
 2 examining him.
 3 MR SEMENYA SC: Indeed, Chair.
 4 CHAIRPERSON: But if that is so, can you
 5 give us the assurance that you will endeavour to impress
 6 upon those instructing you and the counsel concerned that
 7 the Commission would appreciate it if this cross-
 8 examination could proceed as soon as possible for the
 9 reasons which the witness has very appropriately stated and
 10 which clearly carry considerable weight.
 11 MR SEMENYA SC: I will certainly do so,
 12 Chair, I will certainly do so.
 13 CHAIRPERSON: I think that's the best we
 14 can do, Colonel. I mean we can't, we can take them to
 15 water but we can't make them drink in the circumstances
 16 which have been outlined. There are broader issues but as
 17 I've said, two points, one, we've asked them to hurry up
 18 with it for the reasons you've mentioned and if you find
 19 when you are being cross-examined that you haven't got the
 20 fingers, the matters at your fingertips as much as you
 21 would have them now, that's something we will bear – we
 22 will bear in mind the delay and what the probable or
 23 possible consequences of the delay may be. So you don't
 24 have to worry that you will be prejudiced in any way.
 25 COLONEL VERMAAK: Thank you, Chair.

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1 CHAIRPERSON: Mr Gotz, are we ready to
 2 solve the fencing problem this morning?
 3 MR GOTZ: Chair, I think that the fencing
 4 problem –
 5 CHAIRPERSON: You've given us some more
 6 documents –
 7 MR GOTZ: - may have been solved.
 8 CHAIRPERSON: - which I only saw this
 9 morning but –
 10 MR GOTZ: Yes, Chair. Overnight we have
 11 prepared an additional set of slides relating to the
 12 subject of fences. Chair, we have given a copy to the
 13 witness –
 14 CHAIRPERSON: Have or haven't?
 15 MR GOTZ: We have indeed, Chair.
 16 CHAIRPERSON: You have?
 17 MR GOTZ: We have given a copy.
 18 CHAIRPERSON: Oh, you have? Oh, good,
 19 alright.
 20 MR GOTZ: But in the interim, Chair,
 21 we've also had, through the evidence leaders, an acceptance
 22 by the SAPS team that the line that we mark from A to B
 23 both in exhibit OOO34 as well as this document, indeed is a
 24 fence. SAPS, I understand, says it's not a particularly
 25 good fence but they do concede that it is a fence. And

<p style="text-align: right;">Page 26458</p> <p>1 Chair, we, in the light of that, don't need to cross-</p> <p>2 examine this witness on the subject of fences any further</p> <p>3 and perhaps all we can do is enter this document as an</p> <p>4 additional exhibit so that when the concession or</p> <p>5 acceptance is given, that we know what we're talking about,</p> <p>6 Chair. So if we can make this exhibit OOO36.</p> <p>7 CHAIRPERSON: So what you want to put in</p> <p>8 now as exhibit OOO36 is, what do you want to call it?</p> <p>9 MR GOTZ: The title is –</p> <p>10 CHAIRPERSON: A document entitled</p> <p>11 "Fences."</p> <p>12 MR GOTZ: Yes.</p> <p>13 CHAIRPERSON: Document containing four</p> <p>14 slides entitled "Fences."</p> <p>15 MR GOTZ: Chair, then as I understand –</p> <p>16 CHAIRPERSON: I've marked my copy OOO34</p> <p>17 and I take it those who are – sorry, 36 – those who are</p> <p>18 looking after the exhibits, putting them on the screen and</p> <p>19 so on, will do the necessary.</p> <p>20 MR GOTZ: Then Chair, if we can just look</p> <p>21 at slide 2 which is a further photograph taken by the LCRC</p> <p>22 on the morning of the 17th of August 2012, as I understand –</p> <p>23 CHAIRPERSON: This is slide 1 –</p> <p>24 MR GOTZ: Well, yes –</p> <p>25 CHAIRPERSON: What's on the screen, it's</p>	<p style="text-align: right;">Page 26460</p> <p>1 case, Mr Semenya?</p> <p>2 MR SEMENYA SC: I confirm that, Chair.</p> <p>3 CHAIRPERSON: Alright, so now we've got</p> <p>4 that on record, yes, where do we go now?</p> <p>5 MR GOTZ: Chair, in the light of that I</p> <p>6 don't need to cross-examine the witness on this subject any</p> <p>7 further.</p> <p>8 CHAIRPERSON: Do you need to cross-</p> <p>9 examine him on any other subject?</p> <p>10 MR GOTZ: Yes, there are a couple of</p> <p>11 items –</p> <p>12 CHAIRPERSON: Alright, proceed then with</p> <p>13 your cross-examination.</p> <p>14 CROSS-EXAMINATION BY MR GOTZ (CONTD.):</p> <p>15 Lieutenant-Colonel, can we have a look at exhibit HHH20, at</p> <p>16 page 92 and if we can have that put up on screen?</p> <p>17 CHAIRPERSON: Sorry, Mr Gotz, you're</p> <p>18 looking at -</p> <p>19 MR GOTZ: I beg your pardon?</p> <p>20 CHAIRPERSON: You were referring to an</p> <p>21 exhibit HHH?</p> <p>22 MR GOTZ: Yes, HHH20, consolidated</p> <p>23 statement by -</p> <p>24 CHAIRPERSON: Colonel, Lieutenant-Colonel</p> <p>25 Scott –</p>
<p style="text-align: right;">Page 26459</p> <p>1 the second page of the presentation.</p> <p>2 MR GOTZ: Indeed, Chair.</p> <p>3 CHAIRPERSON: But it's the first slide in</p> <p>4 the presentation.</p> <p>5 MR GOTZ: So it's slide –</p> <p>6 CHAIRPERSON: Accuracy is a good thing,</p> <p>7 even early in the morning.</p> <p>8 MR GOTZ: It's the second page of the</p> <p>9 presentation, in other words the page after the –</p> <p>10 CHAIRPERSON: It's the first slide in the</p> <p>11 presentation.</p> <p>12 MR GOTZ: - title page, the "Fences."</p> <p>13 CHAIRPERSON: Alright, so we now can see</p> <p>14 it.</p> <p>15 MR GOTZ: Yes.</p> <p>16 CHAIRPERSON: Who took the picture?</p> <p>17 MR GOTZ: It's a picture taken by the</p> <p>18 LCRC on the morning of the 17th of August 2012. Chair, as I</p> <p>19 understand, SAPS has accepted that the points A to B, if we</p> <p>20 can zoom in on that, is in fact or was in fact a fence on</p> <p>21 the 16th of August 2012. So the points A to B was in fact a</p> <p>22 fence. I understand that SAPS says it wasn't a</p> <p>23 particularly good fence but they do accept that it was a</p> <p>24 fence.</p> <p>25 CHAIRPERSON: You confirm that is the</p>	<p style="text-align: right;">Page 26461</p> <p>1 MR GOTZ: Lieutenant-Colonel Scott.</p> <p>2 CHAIRPERSON: What page?</p> <p>3 MR GOTZ: And the page that I want to</p> <p>4 refer to first is page 92 and the paragraph is 19.1.</p> <p>5 CHAIRPERSON: Alright.</p> <p>6 MR GOTZ: Lieutenant-Colonel, you'll see</p> <p>7 in that paragraph that Lieutenant-Colonel Scott – well,</p> <p>8 let's start with paragraph 19, in other words the main</p> <p>9 paragraph 19 rather than the sub-paragraph 19.1. He says</p> <p>10 that he was at the JOC and he was standing next to the</p> <p>11 radio listening to the operation as things were</p> <p>12 communicated through the radio. He indicates in paragraph</p> <p>13 19.1 that after Brigadier Calitz had initiated the</p> <p>14 operation, "Some minutes later I heard the intensity</p> <p>15 increase in the radio communication with Brigadier Calitz</p> <p>16 calling the Nyalas on their Pappa call signs into some</p> <p>17 formation and to engage. He was repeatedly calling the</p> <p>18 water cannons to come forward and engage." Now I presume</p> <p>19 that you heard the same communication from Brigadier</p> <p>20 Calitz.</p> <p>21 COLONEL VERMAAK: Chair, that is correct.</p> <p>22 Maybe I just want to put a request regarding the fence,</p> <p>23 there's just something that I want to point out to the</p> <p>24 Commission. If you will give me the permission to only</p> <p>25 look at a photo on the 16th, 4522 –</p>

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1 CHAIRPERSON: Well, that seems a fair
 2 request. Let's look at that.
 3 MR GOTZ: 4522.
 4 CHAIRPERSON: Now it's on the screen,
 5 what do you want us to see?
 6 COLONEL VERMAAK: Chair, this is the
 7 altitude that we were flying and if you look at the picture
 8 now you see no fence. If you zoom in then you can see
 9 there's something like a fence but if you look at the
 10 altitude that we are flying and what we must observe on the
 11 ground, it is clear that you can't see any fence there.
 12 CHAIRPERSON: It would be fair to say
 13 that in the light of the police admission that there was a
 14 fence but it was a poor fence, you say that you were, you
 15 can't be criticised or blamed for not thinking there was –
 16 for thinking there wasn't a fence there, regard being had
 17 to the poor nature of the fence which we now know there was
 18 there. That's basically what you're saying.
 19 COLONEL VERMAAK: That's correct.
 20 CHAIRPERSON: That sounds fair because
 21 you were how high at the time when this picture was taken?
 22 COLONEL VERMAAK: This was about 500
 23 feet.
 24 CHAIRPERSON: Ja, alright. So the poorer
 25 the fence, the more difficult to see that it is a fence.

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1 COLONEL VERMAAK: That is correct, Chair.
 2 CHAIRPERSON: Okay.
 3 MR GOTZ: Thank you for that, Lieutenant-
 4 Colonel. Can we go back to exhibit HHH20 at page 92? I
 5 understood you to say that you heard exactly what
 6 Lieutenant-Colonel Scott says he heard when he describes
 7 the radio communications in paragraph 19.1.
 8 COLONEL VERMAAK: That's correct. I have
 9 testified that I repeat the instruction from Brigadier
 10 Calitz for the members on the ground to engage.
 11 MR GOTZ: Yes, of course what the
 12 Lieutenant-Colonel does say is two other things that he
 13 heard. He first of all heard Brigadier Calitz calling the
 14 Nyalas on their Pappa call signs into some formation, did
 15 you hear that?
 16 COLONEL VERMAAK: Chair, no. I only
 17 heard the words "Engage."
 18 MR GOTZ: And the other thing he says he
 19 heard was the water cannons repeatedly being called to come
 20 forward and engage –
 21 COLONEL VERMAAK: Chair –
 22 MR GOTZ: – heard that.
 23 COLONEL VERMAAK: – the water cannons
 24 that were called was when they move into koppie 3 and I
 25 think you can hear that instruction on the video of Lonmin

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1 where he called the water cannons to come forward.
 2 MR GOTZ: Well, in fact what Lieutenant-
 3 Colonel Scott is describing in this paragraph is the events
 4 before the TRT opened fire because you'll see in paragraph
 5 19.2 and 19.3 and following that he then goes on to
 6 describe the, describe you providing situational reporting
 7 and then the reorganisation which occurs after the report
 8 that you give that bodies are down. And so what he's
 9 describing in paragraph 19.1 is the call for the water
 10 cannon to come forward and engage before the TRT opens
 11 fire. Did you hear that?
 12 COLONEL VERMAAK: Chair, I said again if
 13 we can go back to the video or to the transcription, there
 14 is places where Brigadier Calitz called for the water
 15 cannon to come forward. There was even at one stage that
 16 he called and said that the one water cannon did have now a
 17 radio and I can communicate with the water cannon there.
 18 Engage, yes, that is true but I think Colonel Scott gets
 19 confused with the times when the specific instructions were
 20 given.
 21 MR GOTZ: I'm not sure that he's confused
 22 at all. At a certain point in time the water cannon would
 23 have needed to have been called forward from their starting
 24 position to the point where the Nyala 4 intercepted with
 25 the kraal, correct? Somebody would have had to have called

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1 them forward.
 2 COLONEL VERMAAK: I don't know if anybody
 3 called them to go forward. They can also act on their own
 4 from where they were standing and they saw something is
 5 going to happen, they knew they can use the water cannon
 6 but what I heard is that Brigadier Calitz there said
 7 "Engage" and where he called the Pappa Nyalas was to form
 8 up in a line, that is also on one of the photos, and where
 9 he was talking to the water cannons that we have heard on
 10 the chopper was at koppie 3. So that is my testimony.
 11 What Scott says, I cannot stand in for.
 12 MR GOTZ: You're saying you personally
 13 heard no instruction for the water cannon to come forward
 14 prior to when they were told to come forward at koppie 3?
 15 COLONEL VERMAAK: That's correct. As I
 16 said, you can see it, or heard it on the video from Lonmin.
 17 That is the only place where Brigadier Calitz called the
 18 water cannons to come forward. You also remember that is
 19 also where I talked the water cannons in to koppie 3 and I
 20 stand by it. When he called the Pappa vehicles was when,
 21 after the shooting incident when they lined up close to
 22 koppie 2.
 23 MR GOTZ: Lieutenant-Colonel, can I ask
 24 you to look at your consolidated statement which is LLL8
 25 and in fact can I, if you don't mind, look at the English

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1 translation which Mr Mahlangu has provided us, which will
 2 be LLL8.1 and to look at paragraph 11 on page 7 of the
 3 document. Can we read from where you say, "Again Brigadier
 4 Calitz gave an order." You say, "Again Brigadier Calitz
 5 gave an order that the members take action." And then you
 6 say, "It almost seemed as though the members did not hear
 7 him. Due to the incident on Monday, 13 August, where two
 8 policemen were killed under the helicopter by being
 9 chopped, I realised that the members would have to act to
 10 protect themselves. I again repeated Brigadier Calitz's
 11 instruction from the helicopter, whereupon I saw the
 12 members act." Now Lieutenant-Colonel, I just want to get
 13 some sense of timing. When you say that you saw the
 14 members act, what exactly are you seeing? Is that the TRT
 15 opening fire?
 16 [09:48] COLONEL VERMAAK: No, that is where I saw
 17 the dust and everything before that, before the incident
 18 there when the people were or the protesters approaching
 19 that corner, that is when I give the instruction that the
 20 Brigadier had given and that nowhere I mentioned water
 21 cannons to come forward.
 22 CHAIRPERSON: I think you said you simply
 23 said "Engage." He said he'd given an order "Engage."
 24 COLONEL VERMAAK: That's correct.
 25 CHAIRPERSON: You repeated that order, is

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1 that right? Did you say anything else?
 2 COLONEL VERMAAK: Nothing, Chair.
 3 CHAIRPERSON: When you say you saw the
 4 members act, you say you saw dust and so on, so presumably
 5 you saw the signs of some kind of activity –
 6 COLONEL VERMAAK: That's correct. I
 7 didn't see anybody -
 8 CHAIRPERSON: - but you didn't know what
 9 the activity was.
 10 COLONEL VERMAAK: - shooting, but there
 11 was a lot of dust and I took it that there were some
 12 actions taken by the police.
 13 CHAIRPERSON: You don't know whether –
 14 you say you saw dust which was a sign of action or
 15 activity.
 16 COLONEL VERMAAK: That's correct.
 17 CHAIRPERSON: On the part of the police.
 18 COLONEL VERMAAK: That's correct.
 19 CHAIRPERSON: Do you know or were you
 20 able to see which section of the police was taking the
 21 action –
 22 COLONEL VERMAAK: No, Chair.
 23 CHAIRPERSON: - being involved in the
 24 activity.
 25 COLONEL VERMAAK: No, from the altitude

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1 it is very difficult to see which units or members are
 2 acting or are lined up in specific lines.
 3 MR GOTZ: Lieutenant-Colonel, did I hear
 4 you correctly that you repeated the instruction when you
 5 saw the strikers approach the corner of the kraal, of the
 6 small kraal?
 7 COLONEL VERMAAK: I repeated every time
 8 the instruction from Brigadier Calitz.
 9 MR GOTZ: No, but the instruction that
 10 you gave to them to engage, in other words the final
 11 instruction prior to seeing the members act, as you put it
 12 in your statement.
 13 COLONEL VERMAAK: That's correct.
 14 MR GOTZ: That was given when you saw the
 15 strikers approach the corner of the kraal, is that correct?
 16 COLONEL VERMAAK: That is correct.
 17 MR GOTZ: Can you just give us a sense of
 18 what exactly you said? You used the word "engage" but with
 19 what force? Can you give us a demonstration of how you –
 20 COLONEL VERMAAK: Just as I said –
 21 MR GOTZ: - demonstrate the instruction.
 22 COLONEL VERMAAK: Just as I said, the
 23 instruction from Brigadier Calitz, "engage." As I said to
 24 you, that you keep your conversations on the radio very
 25 short so I said, "Instruction from Brigadier Calitz,

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1 engage."
 2 MR GOTZ: Did you repeat that? Did you
 3 say it once?
 4 COLONEL VERMAAK: The first and the
 5 second time.
 6 MR GOTZ: You said it twice?
 7 COLONEL VERMAAK: That's correct. It was
 8 when I saw there's not really action from the police, they
 9 were standing still and when the people came closer to them
 10 I repeated it again.
 11 CHAIRPERSON: Mr Gotz, you actually
 12 didn't put it quite accurately, if I may say so. You said,
 13 you talked about the witness giving the instruction. I
 14 understand the witness's case to be, he never gave
 15 instructions except when he was acting as a kind of traffic
 16 policeman. He was simply repeating the instructions which
 17 Brigadier Calitz had given and from what he now tells us it
 18 appears he made that clear by introducing what he said by
 19 the words "Instruction from Brigadier Calitz, engage."
 20 MR GOTZ: Yes, Chair.
 21 CHAIRPERSON: Am I understanding you
 22 correctly, Colonel, or have I got it wrong?
 23 COLONEL VERMAAK: That is correct, Chair.
 24 MR GOTZ: I apologise if I mis-phrased, I
 25 wasn't seeking to suggest that he had given the

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1 instruction. I understand that he was repeating an
2 instruction that he had heard from Brigadier Calitz. Thank
3 you, Chair. Can I take you briefly to what happens in the
4 aftermath of the members taking action. I understand that
5 you have testified that you took a Blackberry photograph,
6 we don't need to go there and the timing we've been told by
7 the evidence leaders, of that Blackberry photograph is
8 15:56:29. It's that Blackberry photograph which shows
9 various bodies lying in front of the kraal. What I do want
10 to show is two further photographs which you then
11 subsequently take with your Pentax camera. Chair, I think
12 it might be appropriate to give a warning because it does
13 show rather graphically the scene in the minutes following
14 –

15 CHAIRPERSON: Thank you. I am informed
16 that we're now going to be shown two video clips which, or
17 photographs, photographs I think which show rather
18 graphically some of the people who were killed on the 16th
19 and I'm led to believe that those who were close to the
20 people who are depicted on the photographs may experience
21 emotional distress looking at these pictures. So I'm going
22 to ask that they not be shown until a minute has expired
23 from the time I have finished speaking, that is to say a
24 minute from now. Those who wish to leave, I think it may
25 be advisable for them to leave, must please do so now.

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1 MR GOTZ: Chairperson, while we wait, the
2 relevant exhibit is exhibit JJJ11 and if the technician can
3 find 4541 of exhibit JJJ11 but only put it up on screen
4 after the minute has expired.

5 CHAIRPERSON: I think the slides can now
6 be shown.

7 MR GOTZ: I beg your pardon, it is JJJ10.
8 I keep on mixing these up, JJJ10.4541.

9 CHAIRPERSON: Is this the slide you want?

10 MR GOTZ: Yes.

11 CHAIRPERSON: Alright.

12 MR GOTZ: Now Lieutenant-Colonel, this is
13 a picture that was taken with your Pentax camera. The eTV
14 time is 15:56:50 which is 20 seconds after you took the
15 Blackberry photograph. Can you indicate to us, did you
16 report to the JOC after taking the Blackberry photograph or
17 after taking this photograph?

18 COLONEL VERMAAK: Are you referring to
19 the Blackberry where they approached the kraal?

20 MR GOTZ: No, I'm referring to the
21 Blackberry photograph which is taken immediately after the
22 members take action or in the minutes following it and the
23 one that you sent to the JOC to indicate that bodies were
24 down.

25 COLONEL VERMAAK: Chair, if I remember

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1 correctly, I first sent the Blackberry photo and then
2 thereafter I sent the Pentax – or no, I did not be able to
3 send the Pentax, I sent the Blackberry and thereafter I
4 take photos with the Pentax.

5 CHAIRPERSON: I think what Mr Gotz wants
6 to know, when did you report to the JOC? Is that right, Mr
7 Gotz?

8 MR GOTZ: Yes, indeed.

9 CHAIRPERSON: I understand the
10 Blackberries you could send, the Pentax photographs you
11 couldn't send but you could communicate orally as it were
12 with the JOC. Now what Mr Gotz is concerned about is at
13 what stage round about the time of taking these photographs
14 did you report orally to the JOC? Is that the question?

15 COLONEL VERMAAK: Yes, yes. Chair, yes,
16 I did. Also on the video of Lonmin you can hear where I am
17 counting the bodies. The first time I count the bodies
18 then we did the circle and thereafter I count the bodies
19 and give it through. After, before – just after the
20 incident, we took those photos with the Blackberry, sent it
21 to the JOC and called the JOC operators to make sure that
22 they did receive, Brigadier Pretorius did receive the
23 photos on her Blackberry.

24 MR GOTZ: You then take the two Pentax
25 photographs, this one 4541 and the photograph which follows

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1 immediately upon this, 4542, if we can have a look at that?
2 This photograph was taken at eTV time 15:27 – sorry, 57:26
3 so it's approximately 45 seconds after the photograph that
4 we saw previously. Lieutenant-Colonel, it seems to us to
5 be quite clear that there, at the very least, you could see
6 that there were a number of people who were very seriously
7 injured. If this is what you seeing and taking photographs
8 of, you can see that there are a number of people who are
9 very seriously injured at the very least, if not dead.
10 Would you agree with that?

11 COLONEL VERMAAK: That is correct, Chair.
12 I only saw it clearly through the Pentax because why,
13 you've got the privilege to zoom in with the Pentax but if
14 you did it with the Blackberry you are losing some pixels
15 and then the photos did not go through very clear.

16 MR GOTZ: Are you in fact zooming in at
17 this stage or is this essentially what you are seeing from

18 –
19 COLONEL VERMAAK: Yes, I was zooming in
20 on this photo.

21 MR GOTZ: And does your Pentax have a
22 little screen that you can –

23 COLONEL VERMAAK: No, no, it had a screen
24 but I did not activate that screen. I'm looking through
25 the lens to take pictures. It makes it easier when you are

<p style="text-align: right;">Page 26474</p> <p>1 zooming in to make sure you've got a clear picture.</p> <p>2 MR GOTZ: Nevertheless it is clear to</p> <p>3 you, using the zoom function on your Pentax, that there are</p> <p>4 a number of people who are very seriously injured, if not</p> <p>5 dead.</p> <p>6 COLONEL VERMAAK: That's correct. I have</p> <p>7 testified that the way the body was lying in an unnatural</p> <p>8 position, that is where I realised that some people might</p> <p>9 be injured seriously because why, the way they are lying</p> <p>10 and also the possibility that people can be dead and that</p> <p>11 is why I report to the JOC, bodies down.</p> <p>12 MR GOTZ: Lieutenant-Colonel, we've heard</p> <p>13 from a number of police witnesses that if they had known</p> <p>14 the extent of the injuries and possible deaths at scene 1,</p> <p>15 they would have halted the operation immediately. My</p> <p>16 question to you is, why did you not call for a halt to the</p> <p>17 operation?</p> <p>18 COLONEL VERMAAK: Chair, I was not the</p> <p>19 overall commander. I was not the operational commander. I</p> <p>20 was the eye in the sky. Just seeing back to the letters</p> <p>21 that I sent in 2011 and 2012 before this incident where I</p> <p>22 expressed my concern about the handling of specific</p> <p>23 incidents where they are using TRT and other members that</p> <p>24 is not trained in POP, I think it is a fair question to ask</p> <p>25 and say, if they didn't listen to my inputs at the JOC</p>	<p style="text-align: right;">Page 26476</p> <p>1 seriously they are injured. But I must remind you, Chair,</p> <p>2 that at that scenes were senior officers, Colonels, and I</p> <p>3 think it should be their responsibility to inform the JOC</p> <p>4 there's people dead, because why, they're standing next to</p> <p>5 the bodies and if they didn't even report it through to the</p> <p>6 JOC, I don't think anybody should listen to me when I'm</p> <p>7 telling them to stop the operation.</p> <p>8 MR GOTZ: Lieutenant-Colonel, are you not</p> <p>9 prepared to share the responsibility for the fact that the</p> <p>10 operation was not stopped? You gave the information</p> <p>11 through but what you saw from your position as eye in the</p> <p>12 sky was that people simply ignored the fact that there was</p> <p>13 a significant number of people who were injured, if not</p> <p>14 dead, and you never said, come on guys, there are people</p> <p>15 injured, possibly dead, let's call a halt to the operation</p> <p>16 or let's consider calling a halt to the operation. You</p> <p>17 never say that.</p> <p>18 COLONEL VERMAAK: Chair –</p> <p>19 MR GOTZ: Do you not think that you</p> <p>20 should share some of the responsibility?</p> <p>21 COLONEL VERMAAK: I'm not going to share</p> <p>22 the responsibility that I didn't stop the operation. I was</p> <p>23 the eye in the sky, I give feedback to them, I give</p> <p>24 feedback of people who have been shot and might be dead.</p> <p>25 To blame me that I should have stopped the operation, I</p>
<p style="text-align: right;">Page 26475</p> <p>1 where they were warned about these people's actions, and I</p> <p>2 refer to the message that I sent to Brigadier Calitz where</p> <p>3 I mentioned, according to me, even the task force will get</p> <p>4 some difficulty in this situations, just imagine if I tell</p> <p>5 them now to stop the operation. If they didn't listen to</p> <p>6 me prior, why would they listen now to me to stop an</p> <p>7 operation where I already had objected against?</p> <p>8 MR GOTZ: Well, Lieutenant-Colonel, I'm</p> <p>9 not sure that it's that easy for you. You don't even make</p> <p>10 an attempt at this stage. You see that the operation</p> <p>11 continues but you don't even make the attempt to say,</p> <p>12 listen guys, there are people seriously injured, if not</p> <p>13 dead, isn't it appropriate that we call off the operation</p> <p>14 and assess the situation.</p> <p>15 COLONEL VERMAAK: Chair –</p> <p>16 MR GOTZ: You don't say anything.</p> <p>17 COLONEL VERMAAK: No, the information was</p> <p>18 given to the relevant people. I did not know that General</p> <p>19 Mpembe was in a helicopter above us. I wasn't aware of it,</p> <p>20 nobody informed us, as myself and Mr Sinclair agreed on,</p> <p>21 that no helicopter would get airborne, private helicopters,</p> <p>22 while the police helicopters were there and also the Oryx</p> <p>23 helicopter. I gave through the information, that is what</p> <p>24 is expected from me and I mentioned twice that there are</p> <p>25 bodies down, not knowing they are dead and I don't know how</p>	<p style="text-align: right;">Page 26477</p> <p>1 think it is unfair. As I said, there were senior officers</p> <p>2 on the ground who were standing next to the scene where the</p> <p>3 people were being shot and I must also remind you, Chair,</p> <p>4 that I wasn't part of the briefing of the, at the</p> <p>5 afternoon. I was still under the impression that they are</p> <p>6 busy with the plan of the morning at the JOC. So I said to</p> <p>7 this Commission if I make a mistake, I will admit it but</p> <p>8 the fact that they didn't decide to stop when they heard</p> <p>9 that there's people down and especially so many people, I</p> <p>10 have counted the first time 18 and the next time 25. So I</p> <p>11 think the operational commander, the people in the JOC –</p> <p>12 Scott just, you, was testifying, he was saying he heard the</p> <p>13 instructions over the radio, he was the planner of the</p> <p>14 operation. General Annandale was in the JOC. They did</p> <p>15 have the CCTV cameras of the mine that was under</p> <p>16 observation 24 hours a day. I think they will be the</p> <p>17 people and should be the people who have to make the call</p> <p>18 to stop the operation.</p> <p>19 CHAIRPERSON: Just to take that up, you</p> <p>20 didn't know General Mpembe was in the air in a helicopter?</p> <p>21 [10:08] COLONEL VERMAAK: I didn't know –</p> <p>22 CHAIRPERSON: Did you think he was in the</p> <p>23 JOC?</p> <p>24 COLONEL VERMAAK: That's correct, Chair.</p> <p>25 CHAIRPERSON: That's where he should have</p>

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1 been.

2 COLONEL VERMAAK: That's correct, Chair.

3 CHAIRPERSON: So you had Major-General

4 Mpmembe who was the overall commander, you thought, in the

5 JOC?

6 COLONEL VERMAAK: That's correct, Chair.

7 CHAIRPERSON: You had the chief-of-staff,

8 the chairman of the committee, the JOCCOM, Major-General

9 Annandale was in the JOC.

10 COLONEL VERMAAK: He was also in the JOC.

11 CHAIRPERSON: The planner Lieutenant-

12 Colonel Scott whose rank was equal to yours, was in the

13 JOC.

14 COLONEL VERMAAK: That's correct, Chair.

15 CHAIRPERSON: Brigadier Calitz – you

16 didn't know where Brigadier Calitz was?

17 COLONEL VERMAAK: I know he was on the

18 ground, Chair.

19 CHAIRPERSON: Ja, no, you knew on the

20 ground –

21 COLONEL VERMAAK: But not –

22 CHAIRPERSON: He claims, he claims that

23 by that time he'd gone off in the direction of the second

24 koppie but whether that's correct or not, is a matter we've

25 still got to consider carefully but you weren't aware of

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1 that, I take it.

2 COLONEL VERMAAK: No, Chair, I didn't –

3 CHAIRPERSON: You were thinking he was

4 still at the scene, at scene 1?

5 COLONEL VERMAAK: Chair, I must admit I

6 didn't think even where he was. I immediately report what

7 I've seen –

8 CHAIRPERSON: Alright, okay, so you

9 didn't know where he was?

10 COLONEL VERMAAK: I didn't know where he

11 was, Chair.

12 CHAIRPERSON: But there were other Nyalas

13 around there.

14 COLONEL VERMAAK: That's correct, Chair.

15 CHAIRPERSON: I think there were colonels

16 who were there in –

17 COLONEL VERMAAK: That's correct.

18 CHAIRPERSON: - Nyalas.

19 COLONEL VERMAAK: That's correct, Chair.

20 CHAIRPERSON: So there were a whole

21 battery of people who were senior in rank to you.

22 COLONEL VERMAAK: That's correct, Chair.

23 CHAIRPERSON: Who were not looking from

24 500 feet above but on the ground.

25 COLONEL VERMAAK: That's correct, Chair.

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1 CHAIRPERSON: There were very senior

2 people in the JOC who had heard what you had to say and

3 presumably were also, you didn't know whether they were or

4 not, but in touch with what was going on, possibly through

5 cell phones or something of that kind.

6 COLONEL VERMAAK: That's correct, Chair.

7 CHAIRPERSON: Now was it your

8 responsibility as the eye in the sky to make

9 recommendations to all those seniors as to what should

10 happen or was your duty simply to report what you could see

11 from the sky?

12 COLONEL VERMAAK: My only instruction was

13 in the morning at the briefing that I must report what I

14 saw on the ground and at that stage me and Brigadier

15 Pretorius from own initiative shared with the Blackberry

16 photos that I've taken, so they request me that where

17 possible I must also send the Blackberry photos, as the

18 previous day, to Brigadier Pretorius's phone.

19 MR GOTZ: As far as you were concerned,

20 Lieutenant-Colonel, let's put it this way, in your opinion

21 did the people who had the power to make the decision have

22 the necessary information to make the decision to stop the

23 operation?

24 COLONEL VERMAAK: Chair, as it just was

25 said by you, there were full colonels on the ground, people

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1 who is my senior. I give feedback to the JOC. I didn't

2 know who was in the JOC but I know who was supposed to be

3 in the JOC and if I read the statement of Colonel Scott it

4 seems to me that he was at the radio, listening what is

5 happening. I think in his statement he mentioned that I

6 reported bodies down. If he knew there's bodies down and

7 he is the planner of the plan, then I think he should have

8 informed – if General Annandale didn't hear it, I think

9 because they were the people most of the time considering

10 the plans, then I think Colonel Scott should have been,

11 immediately informed General Annandale and they knew

12 General Mpmembe was not in the JOC so I believe it was their

13 responsibility to make contact with General Mpmembe to give

14 the instruction to stop the operation.

15 CHAIRPERSON: Would you know whether the

16 Provincial Commissioner was in or near the JOC at that

17 time?

18 COLONEL VERMAAK: No, Chair, I didn't

19 know. As I have testified, we only landed to refuel and

20 quickly offload the pictures on my computer and on Colonel

21 Scott's computer. We spent the whole day, over seven hours

22 in the air. So I did not really know who was in the JOC,

23 when they were in the JOC, but I know who are the people

24 who were supposed to be in the JOC.

25 MR GOTZ: Is it your –

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1 COMMISSIONER TOKOTA: Sorry, Mr Gotz, I
2 don't know whether it's worthwhile spending time on this
3 but I just want to know from you, suppose you were on the
4 ground, you are a junior, there's operational commander,
5 there's overall commander, do you have power to say stop
6 this operation as a junior, notwithstanding that there is
7 an operational commander who can do so? Do you have
8 authority to do that?
9 COLONEL VERMAAK: If we look at what
10 happened on the 13th, when we got the information I
11 immediately phoned the PC, I report to her the situation, I
12 ask her permission to take General Mpmembe, for his own
13 safety, away from the scene there. So if I was on the
14 ground I should immediately contact the operational
15 commander and give him feedback and if he gave the
16 instruction to stop the operation, I would have, do that,
17 yes.
18 MR GOTZ: Lieutenant-Colonel –
19 CHAIRPERSON: Mr Gotz, I don't want to
20 unduly hamper your cross-examination but I understand the
21 point you're seeking to make. I assume you may, you will
22 argue it at the end but are there any further facts that
23 you wish to elicit from the witness in support of the
24 argument you propose to advance or have you got everything
25 you need for the purposes of advancing the argument already

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1 at this stage?
2 MR GOTZ: Chair, there's just one final
3 question. Lieutenant-Colonel, in your opinion, or did you
4 hold a view at the time that the operation should have been
5 stopped as a consequence of what you saw happening at scene
6 1?
7 COLONEL VERMAAK: Just repeat the
8 question for me?
9 MR GOTZ: You saw what was happening at
10 scene 1 or what had happened at scene 1. You saw bodies
11 down, serious, people seriously injured and possibly dead.
12 In your opinion, should the operation have been stopped at
13 that stage?
14 COLONEL VERMAAK: Yes.
15 MR GOTZ: Did you hold that view at the
16 time?
17 COLONEL VERMAAK: I said that I gave that
18 information through to the JOC and it was for the seniors
19 to decide what to do.
20 MR GOTZ: No –
21 COLONEL VERMAAK: I must just remind you
22 that I was handling the police radio, I was handling the
23 Blackberry camera, I was handling the Pentax, so there's no
24 time to sit and think about everything. You are really
25 busy in that helicopter with everything and you are the eye

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1 in the sky and you try your utmost best to inform the
2 people on the ground so that they can make the necessary
3 decisions.
4 MR GOTZ: Lieutenant-Colonel, can we move
5 on to what is my final topic and it'll be brief. Can I ask
6 you to look again at your consolidated statement, exhibit
7 LLL8? Or let's look at LLL8.1 and if we can go to
8 paragraph 9 of that statement. There you describe that you
9 send an SMS message on the 14th of August in which you say
10 the following, "Morning Brigadier, sorry I am so early with
11 the message. These officers do not have any experience of
12 mine unrests. This lot will now fight to the death because
13 they were with a witchdoctor and believe that no bullet
14 will kill them. They are now impis. I warned them but
15 they would not listen yesterday. I was for 15 years the
16 commander of the POP Klerksdorp with lots of experience in
17 mine unrest. These are not Tswanas, according to me they
18 are Mozambicans and other nationalities." And then you
19 say, "Even the task force will stumble against this group."
20 Now Lieutenant-Colonel, of course you're entirely incorrect
21 in your opinion that these are Mozambicans and other
22 nationalities, we do know that now.
23 COLONEL VERMAAK: Chair, out of
24 experience, people that's working on the mines are from
25 different nationalities. So I take it from that experience

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1 that this is not only one group of people, that there might
2 be other nationalities also between this people that I know
3 that they can get very aggressive and that is why I sent
4 that message to Brigadier Garnett that they can take notice
5 of the seriousness of what is going to happen and what was
6 happening there. I think just the translation to the lot,
7 I don't think I mean it in that way. If I remember
8 correct, I said "die klomp mense," group of people.
9 MR GOTZ: Lieutenant-Colonel, the vast
10 majority of the people who were involved in the strike were
11 in fact from the Eastern Cape, they were South Africans
12 from the Eastern Cape. You know that now?
13 COLONEL VERMAAK: That's correct. I
14 think you must also see that I mean ethnical people, not
15 only – that's why I said it's not only Tswanas, the Tswanas
16 are also from South Africa.
17 MR GOTZ: Tswanas are not from the
18 Eastern Cape.
19 COLONEL VERMAAK: That's correct, that is
20 your Xhosas that is in the Eastern Cape.
21 MR GOTZ: No, the point he's making, he's
22 talking about ethnic groups and he says they're not Tswanas
23 who are an ethnic group from – well, amongst other things,
24 the North-West province shading into Botswana, but he
25 thought they were Mozambicans and other nationalities. Now

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1 the question really is, what did you mean by other
 2 nationalities? Did you mean people from Malawi and people
 3 from Zambia as well as Mozambicans or Lesotho and Swaziland
 4 or what did you mean by that expression "other
 5 nationalities?"

6 COLONEL VERMAAK: That is also the people
 7 from Mozambique. We all know there are Sothos working at
 8 the mines and then also the different "groepe mense" in
 9 South Africa.

10 CHAIRPERSON: So you're talking about –
 11 [microphone off, inaudible] – are you saying, I don't –
 12 that by other nationalities in contradistinction to Tswanas
 13 and Mozambicans did you mean other ethnic groups from –

14 COLONEL VERMAAK: From South Africa.

15 CHAIRPERSON: - within the borders of
 16 South Africa.

17 COLONEL VERMAAK: That's correct, Chair.

18 CHAIRPERSON: Other than Tswanas.

19 COLONEL VERMAAK: That's correct.

20 CHAIRPERSON: Did you know in your
 21 experience with mine unrest that you speak about in this
 22 SMS that you sent to Brigadier Garnett, did you know from
 23 your experience that a number, a significant number of the
 24 mineworkers in the North-West province, the platinum area,
 25 were from the Eastern Cape?

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1 COLONEL VERMAAK: I know there was from
 2 the Eastern Cape, Sothos and also Mozambicans. So yes, I
 3 was aware of this information also due to the fact that
 4 earlier that year at Implats with the unrest there it was
 5 also mentioned there of the different groups of people who
 6 is working on the mines and there was a fear that they can
 7 have some troubles between these groups of peoples during
 8 the strikes as well.

9 MR GOTZ: But Lieutenant-Colonel, the
 10 vast majority of the people that were involved in the
 11 strike were Xhosa-speaking people from the Eastern Cape,
 12 correct?

13 COLONEL VERMAAK: Chair, at that stage I
 14 didn't know it.

15 MR GOTZ: Yes. And on the basis of your
 16 incorrect assumption you make the statement, "These are not
 17 Tswanas, according to me they are Mozambicans and other
 18 nationalities. Even the task force will stumble against
 19 this group." You were entirely incorrect in your
 20 assumption that these were Mozambicans and other
 21 nationalities and you make certain recommendations on the
 22 basis of those incorrect assumptions, correct?

23 COLONEL VERMAAK: Chair, no, I don't
 24 think you are correct. I believe there's also other
 25 nationalities or other groups of people there. I don't

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1 know if I take all the people, the injured people and the
 2 people who were killed, I believe between them will be
 3 Mozambicans, Zulus, Tswanas, Xhosas and also Sothos.

4 MR GOTZ: There were in fact no
 5 Mozambicans who were involved in this incident.

6 COLONEL VERMAAK: That is what you know
 7 about –

8 CHAIRPERSON: Mr Gotz, sorry to interrupt
 9 you. Do we know that the injured and arrested persons are
 10 not Mozambicans? We know none of the deceased was a
 11 Mozambican but do we know the nationalities of the rest of
 12 the 3 or 4 000 people who were on the koppie? So I'm
 13 asking really whether you can put it as a fact to the
 14 witness that there weren't Mozambicans. You may be right
 15 that there weren't, but do we know that? Is there a basis
 16 for putting that to the witness? I'm not sure actually
 17 whether it helps us anyway but I won't stop you to proceed
 18 with the point, you may well see a relevance that I don't
 19 but what I'm putting to you is something different. Do we
 20 know, fact, can we – is there a basis for suggesting to the
 21 witness that among those 3, 4 000 people who were involved
 22 on the koppie there were no Mozambicans?

23 MR GOTZ: Chair, I see nothing to
 24 indicate that there were any Mozambicans, so I –

25 CHAIRPERSON: That's one way of looking

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1 at it but you put it as a fact that there were no
 2 Mozambicans. I'm not sure that that fact was correctly put
 3 but where – but you'll forgive me, where does this point
 4 take us? If this point takes us somewhere you can carry on
 5 with it but I don't understand where it takes us but as I
 6 say, you may see something here which I don't, so I won't
 7 stop you if there is a relevance in the point.

8 MR GOTZ: Chair, all I can say is that
 9 our instructions are and all the information that I have
 10 was that the vast majority of the people involved were
 11 from, Xhosa-speaking people from the Eastern Cape. That's
 12 as high as I can put it.

13 CHAIRPERSON: I must say that's my
 14 understanding as well. The witness says he didn't know
 15 that but I take it you won't argue with the proposition
 16 that's been put to you that according to our information
 17 and the information of those instructing Mr Gotz, most of
 18 the people involved, that's the rock drill operators, were
 19 people from the Eastern Cape – I think in fact many of them
 20 were from Pondoland but you didn't know that, I take it.

21 COLONEL VERMAAK: I didn't know that,
 22 Chair.

23 CHAIRPERSON: But I take it you won't
 24 argue with it, argue about it.

25 COLONEL VERMAAK: No, I cannot argue. I

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1 haven't got that statistics to argue with.
 2 COMMISSIONER HEMRAJ: Colonel, that
 3 statement "Even the task force will stumble against this
 4 group," does that mean that even the tactical units would
 5 have difficulty controlling this group of people, as you
 6 describe?
 7 COLONEL VERMAAK: Chair –
 8 CHAIRPERSON: The word you used, I'm
 9 sorry to interrupt, the word you used was "vasloop" in your
 10 SMS. Now, by that did you mean what Adv Hemraj has put to
 11 you?
 12 COLONEL VERMAAK: That's correct, Chair.
 13 Chair, we have got some experience where the task force
 14 were used with special operations with the gold and diamond
 15 unit where they were called in, into that operations, and I
 16 remember very clearly at one stage it was in Khuma in
 17 Stilfontein where the people in the township gathered
 18 around the house where the task force and the detectives
 19 was and they could not get out there because why, they
 20 didn't have any riot equipment with them. If they want to
 21 get out, they should have used live ammunition and they
 22 called us in, the POP, to get the task force and the
 23 detectives out from the township.
 24 [10:28] COMMISSIONER HEMRAJ: So as experienced
 25 as you are in POP to deal with the crowd constituted as you

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1 say it is, with that background of going to the
 2 witchdoctor, you would require tactical units to deal with
 3 them successfully?
 4 COLONEL VERMAAK: No. Chair, if you
 5 remember my letters to the PC, I was really worried about
 6 the fact that they used TRT for example at crowd control.
 7 So it was only to sensitise him that this is a serious
 8 thing, by referring to the task force, they are not trained
 9 to handle a crowd management situation and I know the
 10 operation from the Monday was a crowd control situation.
 11 We have many times incidents where we have people with
 12 dangerous weapons at mines specifically and that is also
 13 the reason what I said is these people or these commanders
 14 didn't have the experience of really big mine unrest,
 15 except for Colonel Merafe, Brigadier Calitz, I also have
 16 Colonel Du Plooy from Sun City, he was also for many years
 17 the commander of the POP and that is why I sent this SMS to
 18 Brigadier Garnett. He was the duty officer in the NATJOC
 19 that week and that is why I sent this to him so that he can
 20 share it in the NATJOC also.
 21 COMMISSIONER HEMRAJ: If the task force
 22 would have difficulty with this crowd then surely POP on
 23 their own would not have been sufficient to deal with this,
 24 with this –
 25 COLONEL VERMAAK: If you've got enough

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1 POP members, you can handle it. Specifically mentioning
 2 task force is that I know they can only use live
 3 ammunition. TRT can only use live ammunition and that is,
 4 as I said, also mentioned that in my letters that if you're
 5 going to use these people in unrest incidents, you're going
 6 to have people get killed.
 7 COMMISSIONER HEMRAJ: Thank you, Colonel.
 8 CHAIRPERSON: Mr Gotz, sorry, we took
 9 over a bit from you but we hadn't forgotten that it's
 10 really your cross-examination. Please carry on.
 11 MR GOTZ: Thank you, Chair. To pick up
 12 on this issue of the witchdoctor, can we look at paragraph
 13 2 of your statement? I beg your pardon, sorry, I think
 14 it's paragraph 3 – 4, I beg your pardon. You say, and this
 15 I understand you testified in relation to questions that I
 16 had for you yesterday that at this point you're receiving
 17 messages or information from Sergeant Venter and Warrant
 18 Officer Padayachee, correct?
 19 COLONEL VERMAAK: That's correct.
 20 MR GOTZ: And one of the photographs that
 21 Sergeant Venter sent you was of people on the koppie and
 22 you say in relation to that photograph, "They are all naked
 23 and doing something with the sangoma, get ready to fight."
 24 COLONEL VERMAAK: That is correct.
 25 MR GOTZ: You didn't know what they were

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1 doing with the sangoma, did you?
 2 COLONEL VERMAAK: I didn't know precisely
 3 what they were doing but also out of experience, that when
 4 they visit a sangoma and they're taking part in rituals,
 5 you can be assured that these people have a belief that
 6 nobody can kill them and they will fight till they die.
 7 MR GOTZ: Well, people see sangomas for
 8 various reasons, Lieutenant-Colonel.
 9 COLONEL VERMAAK: That's true, but you
 10 must look to the situation there. I don't think they're
 11 going to see the sangoma to heal them or something like
 12 that. There was unrest and, from experience, when there is
 13 unrest on the mines that is almost the first thing that
 14 they are doing, they're going to the sangomas.
 15 MR GOTZ: I'll take you up on your use of
 16 the word "sangoma" in this paragraph. In paragraph 4 you
 17 use the word "sangoma," in paragraph 9 you use the word
 18 "witchdoctor" or in Afrikaans you use the word
 19 "toordokter." They are not the same thing, do you know
 20 that, Lieutenant-Colonel?
 21 COLONEL VERMAAK: No, I didn't know it
 22 but that is the normal way of talking between people. I
 23 think officially you're referring to sangomas but what I
 24 have said in the beginning, it was the sangomas, so it's
 25 only words, different words but the same meaning.

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1 MR GOTZ: Well, in fact they've got very
2 different meanings. A sangoma is a person who practises
3 traditional medicine. A witchdoctor is a person who
4 practises witchcraft in African culture. Did you know that
5 Lieutenant-Colonel?

6 COLONEL VERMAAK: I'm not an expert on
7 it.

8 CHAIRPERSON: Yes, Mr Gotz, of course
9 we're not concerned with the dictionary meaning of the word
10 although one of my advisers tells me that he thinks they
11 have the same meaning, but what we're concerned about is
12 what the witness meant when he used the words. You may be
13 right, correct, in saying – I don't know what the correct
14 position is – you may be correct in saying there's a
15 difference between a sangoma and a witch – and a
16 "toordokter" but the question is not what the correct
17 meaning is, even if you're right. The question is what did
18 this witness mean when he used those words and if he used
19 them interchangeably then the point disappears and I
20 understood him to say that that is so. Am I right?

21 COLONEL VERMAAK: That's correct, Chair.

22 MR GOTZ: It goes to a further point,
23 Chair and Lieutenant-Colonel, we will argue –

24 CHAIRPERSON: I'm sorry, can we look at
25 this further point after we've taken a comfort break?

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1 MR GOTZ: Yes, indeed. I'll be –

2 CHAIRPERSON: But before we do that, I'm
3 sorry, there's something I wanted to – well, the picture I
4 want to look at which I thought was in L, it doesn't appear
5 to be there but it's somewhere else, but what you tell us –
6 let me just see if I can put this to you before we take the
7 comfort break, unless you'd be more comfortable if I put it
8 to you afterwards – what you say is that a report was made
9 to you on the Sunday and that report was made to you by
10 Sergeant Venter.

11 COLONEL VERMAAK: That's correct, Chair.

12 CHAIRPERSON: Now, and you say that she
13 had taken pictures of the ritual.

14 COLONEL VERMAAK: That's correct.

15 CHAIRPERSON: With her Blackberry.

16 COLONEL VERMAAK: That's correct.

17 CHAIRPERSON: She sent them to you and
18 you then sent them on to Brigadier Calitz, is that right?

19 COLONEL VERMAAK: That's correct.

20 CHAIRPERSON: And you also sent them on
21 to Brigadier Garnett.

22 COLONEL VERMAAK: That's correct, Chair.

23 CHAIRPERSON: Now I don't know that those
24 – what we've got in exhibit L are photographs taken on the
25 Tuesday, the 14th. I'm not sure that we've got these

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1 pictures but possibly the question of these pictures can be
2 looked into while we take a comfort break. Are they, do
3 you know if they're available?

4 COLONEL VERMAAK: I will quickly look at
5 my computer, Chair.

6 CHAIRPERSON: Alright, so let's take the
7 comfort break now and then when we come back you can give
8 us that information and then Mr Gotz can proceed with his
9 cross-examination.

10 [COMMISSION ADJOURNS COMMISSION RESUMES]

11 [11:05] CHAIRPERSON: The Commission resumes.
12 Lieutenant-Colonel, you're still bound by your affirmation.
13 Mr Gotz?

14 SALMON JOHANNES VERMAAK: (affirms
15 further)

16 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
17 Chair, I understood that the Lieutenant-Colonel would be
18 looking to see whether or not there were any additional
19 photographs of the 14th. Have you found those, Lieutenant-
20 Colonel?

21 COLONEL VERMAAK: Yes. Yes, Chair, I
22 did. Ms Pillay has it available, I believe.

23 CHAIRPERSON: Shall we put them in now or
24 should we wait for her re-examination? Perhaps we'll ask
25 her. Ms Pillay, what's best do you think?

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1 MS PILLAY: Chair, we're happy to deal
2 with it in re-examination. I'm not sure if it's necessary
3 for Mr Gotz's cross-examination though.

4 CHAIRPERSON: We should ask him. Mr
5 Gotz, you understand what's happening. They found the
6 pictures. She was going to deal with them in re-
7 examination but would you want then to have a chance to ask
8 was about them?

9 MR GOTZ: Chair, I don't want to ask
10 questions on those photographs and I have reached the end
11 of my list of questions in cross-examination.

12 CHAIRPERSON: Alright, okay, so the
13 appropriate way to deal with it then is for Ms Pillay to
14 deal with it in re-examination. Alright, so that then –

15 MR GOTZ: That concludes my cross-
16 examination, Chair.

17 CHAIRPERSON: That concludes your cross-
18 examination, thank you. I think that concludes all the
19 cross-examiners who have given notice of intention to
20 cross-examine and been given permission to do so, with the
21 exception of the SAPS and we've heard this morning that
22 they have logistical problems, their counsel is not yet
23 available and that, we covered that this morning. So what
24 it means, Lieutenant-Colonel, is that you're excused for
25 the moment. I'm sorry about the delay which will be

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1 occasioned by this. We are endeavouring to keep it as
 2 short as we can but anyway, we canvassed that fully, you
 3 understand the position. So you're now excused for the
 4 moment but on the basis that when we receive the word from
 5 the SAPS that their counsel is ready, you will come back
 6 and continue with your evidence.

7 COLONEL VERMAAK: Thank you, Chair.

8 CHAIRPERSON: Mr Semenya, I understand
 9 you're now going to proceed with your re-examination of
 10 Major-General Naidoo and I see he's with us already in the
 11 chamber. Would you like to move to what some people
 12 incorrectly call the hot seat?

13 GENERAL NAIDOO: Thank you, Chair.

14 CHAIRPERSON: Have you got all your files
 15 with you?

16 GENERAL NAIDOO: Yes, Chair.

17 CHAIRPERSON: I'm sorry we had the
 18 interruption while you were giving evidence. I think I'd
 19 better swear you in again, would you please stand up? Do
 20 you swear that the resumed evidence you will give in this
 21 matter before this Commission will be the truth, the whole
 22 truth and nothing but the truth? Please raise your right
 23 hand and say so help me God.

24 GENERAL NAIDOO: So help me God.

25 CHAIRPERSON: You may be seated, thank

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1 you. Mr Semenya, are you going to do the re-examination?
 2 GENERAL NAIDOO: (s.u.o.)

3 RE-EXAMINATION BY MR SEMENYA SC:
 4 General, I would like to treat several elements of the
 5 matter that were dealt with you in cross-examination. One
 6 of those related to the intelligence which the police had
 7 around the events in Marikana and there the contentions are
 8 that the intelligence was either inadequate or inaccurate
 9 or of sub-quality. Do you remember that?

10 GENERAL NAIDOO: I do remember that,
 11 Chair.

12 MR SEMENYA SC: Now, I want to cast this
 13 background before I solicit your responses. Later the
 14 Commission will be told that the Makarapas had agreed that
 15 only one person in that group of 2 or 300 would have a cell
 16 phone and in fact Mr Twala gets killed because his cell
 17 phone, he had a cell phone with airtime and that they were
 18 sleeping at koppie 3 where they were appropriately
 19 concealed from public view. What were the opportunities of
 20 accessing accurate intelligence in relation to this group's
 21 activities?

22 GENERAL NAIDOO: Chair, as indicated
 23 during cross-examination, that the intelligence was of a
 24 very general nature. It was not specific enough for us to
 25 action certain proactive activities which could have

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1 mitigated the need for a confrontation. That's where we
 2 talked about, we had a discussion about the quality, it was
 3 not what we required and this was primarily because there
 4 was insufficient or almost no information coming in from
 5 the group that would assist us in taking that proactive
 6 action. I indicated during my cross-examination that we
 7 would have liked to know who are these five delegates that
 8 are currently negotiating with the police, what is their
 9 attitude, what is their disposition towards the – that
 10 would have assisted the negotiators in terms of trying to
 11 leverage some sort of solution to this thing but we did not
 12 have that specific intelligence and it was because very
 13 little was coming out of the group to tell us those things.

14 MR SEMENYA SC: The opportunity to
 15 infiltrate these Makarapas to access information, what
 16 opportunities were there?

17 GENERAL NAIDOO: According to our
 18 intelligence personnel, that they could not penetrate this
 19 group –

20 MR SEMENYA SC: Because?

21 GENERAL NAIDOO: Because of the way they
 22 isolated themselves and they had control over the smaller
 23 group so that they would know if somebody tried to break
 24 away or communicate with any external people. Their
 25 contact with outside people was limited, it seems.

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1 MR SEMENYA SC: Opportunities of
 2 verifying whatever little intelligence that you had?

3 GENERAL NAIDOO: Chair, I also indicated
 4 that there were lots of things that did not realise. For
 5 instance, we had information that there was a vehicle
 6 possibly transporting arms, et cetera. None of these
 7 things could be verified for more specific, and we could
 8 not in any way confirm this information that was
 9 circulating so we had very little opportunity in terms of
 10 that.

11 MR SEMENYA SC: And opportunity in
 12 relation to time, apparently these Makarapas would have
 13 formed themselves the Sunday night, how much time would you
 14 have had to obtain intelligible intelligence?

15 GENERAL NAIDOO: Chair, unless there was
 16 something in place or some of the members who were
 17 recruited as informers were eventually inducted into the
 18 structure, it would have not been possible. Then we are
 19 dependent on untested sources which, you know, we had to
 20 also verify.

21 MR SEMENYA SC: I'm just trying to
 22 explore in what manner there could have been other
 23 opportunities of getting reliable intelligence but the
 24 police have simply failed to take that opportunity.

25 GENERAL NAIDOO: Chair, yes, I don't have

<p style="text-align: right;">Page 26502</p> <p>1 an intelligence background but obviously we are the end 2 users of it and what we were reliably informed is they were 3 unable to access specific information from within the 4 group. There was a very close knit, and people were under 5 threat if it were discovered that they were participating 6 with the authorities. Obviously their lives were at risk 7 so our intelligence people indicated to us they had 8 sources, they did not have people in the group who could 9 give us specific information.</p> <p>10 MR SEMENYA SC: Alright. The other area 11 relates to whether the time was adequate to do briefing 12 between 14:30 and the time as stage 3 was implemented. Do 13 you recall that evidence?</p> <p>14 GENERAL NAIDOO: Yes, Chair.</p> <p>15 MR SEMENYA SC: And the contention there 16 was that there was inadequate time for proper briefings to 17 occur between the 14:30 briefing and the actual roll-out of 18 stage 3, remember that?</p> <p>19 GENERAL NAIDOO: I remember that, Chair.</p> <p>20 MR SEMENYA SC: Now, just give us a sense 21 of what type of briefing would be given, say for instance 22 to the K9s.</p> <p>23 GENERAL NAIDOO: Chair, in the overall 24 picture obviously Colonel Scott was then indicating what 25 would happen and what the expectation was from each group,</p>	<p style="text-align: right;">Page 26504</p> <p>1 expectation was, when they were given the appropriate 2 command they would conduct searches and secure exhibits and 3 persons in that particular area.</p> <p>4 MR SEMENYA SC: And how much time would 5 be necessary to do that type of briefing?</p> <p>6 GENERAL NAIDOO: Not long because 7 obviously during this briefing, what follows from the 8 briefing is the implementation of the standard operating 9 procedures for conducting such a search. So basically it's 10 identifying the time, the location and how, et cetera. So 11 yes, 10 minutes, depending on if there's any questions that 12 were asked, yes.</p> <p>13 MR SEMENYA SC: It was also put to you 14 that, around the evidence of – around Warrant Officer 15 Breedt and whether or not the crime scene was properly 16 supervised, you remember questions around that?</p> <p>17 GENERAL NAIDOO: Yes, sir.</p> <p>18 MR SEMENYA SC: Firstly starting with 19 you, were you aware that Warrant Officer Breedt is removing 20 any evidentiary material from where it was?</p> <p>21 GENERAL NAIDOO: At the time, no.</p> <p>22 MR SEMENYA SC: Are you aware of anyone 23 senior who was alive to his activities at the time?</p> <p>24 GENERAL NAIDOO: Not that I know of, no.</p> <p>25 MR SEMENYA SC: As a warrant officer,</p>
<p style="text-align: right;">Page 26503</p> <p>1 with specifically the K9 they were indicated that they 2 would be deployed after the dispersal action had taken 3 place and then the physical sweeping had taken place by the 4 tactical units, the NIU, the special task force as well as 5 the TRT. Then they would be utilising their dogs to 6 identify weapons which may be concealed or disposed of in 7 the area as well as suspects who might be hiding in places 8 which a visual search would not detect them, as well as 9 people who were possibly injured, et cetera.</p> <p>10 MR SEMENYA SC: What I'm trying to 11 establish is, given the K9 as a specialised unit –</p> <p>12 GENERAL NAIDOO: Yes.</p> <p>13 MR SEMENYA SC: - do they know what 14 specialisation they're employed to do?</p> <p>15 GENERAL NAIDOO: Definitely. Their focus 16 was in terms of utilising their tools, in this case being 17 the K9, the dogs to support the operation. So their 18 briefing would have been specific to the expectation to 19 them, yes.</p> <p>20 MR SEMENYA SC: So they are not told, 21 they are not trained in the briefings. I just want to 22 understand what briefing is given to somebody who is 23 already a specialised unit?</p> <p>24 GENERAL NAIDOO: An example, for the K9 25 the expectation from, they would have been told the</p>	<p style="text-align: right;">Page 26505</p> <p>1 given his training, could or should he have known what is 2 the right thing to do on a crime scene?</p> <p>3 GENERAL NAIDOO: Yes, a warrant officer 4 is a supervisor in the police structure and by that I mean 5 he also supervised junior personnel at the other ranks, so 6 yes, he would know.</p> <p>7 MR SEMENYA SC: It was put to you that 8 shouldn't someone have been responsible to see what it is 9 that he is doing. Did he need that type of supervision?</p> <p>10 GENERAL NAIDOO: Chair, no. As I 11 indicated, he is a supervisor, a warrant officer is a 12 supervisory rank in the SAPS.</p> <p>13 MR SEMENYA SC: Now you were also cross- 14 examined quite extensively in relation to your movement 15 from forward holding area 1 up to koppie 3, remember that?</p> <p>16 GENERAL NAIDOO: I do.</p> <p>17 MR SEMENYA SC: And during that cross- 18 examination it was put to you that there were at least five 19 alternative routes by which you could move from that 20 position to koppie 3.</p> <p>21 GENERAL NAIDOO: That's correct, Chair.</p> <p>22 MR SEMENYA SC: And you gave us the 23 Google map that you had in your car at the time.</p> <p>24 GENERAL NAIDOO: That's correct, Chair.</p> <p>25 MR SEMENYA SC: And the original is part</p>

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1 of the exhibits before the Commission, is that right?

2 GENERAL NAIDOO: That's correct, Chair.

3 MR SEMENYA SC: With its legibility being

4 what it is, we will argue on it in the fullness of time.

5 GENERAL NAIDOO: Correct, Chair.

6 MR SEMENYA SC: Firstly, General, did it

7 occur to you when you were in forward holding area 1 that

8 you should look at that Google map and see whether there

9 are four, five, six or seven opportunities of getting to

10 koppie 3 – I mean to koppie 1?

11 GENERAL NAIDOO: No, Chair. From the

12 explanation that was given to us in terms of the route we

13 would take, it appeared straightforward. The driver didn't

14 seem to have a problem with the location at that stage, so

15 yes, we did not look at alternative routes.

16 MR SEMENYA SC: At the time that you were

17 in your car at that point, did it occur to you that you

18 might get lost going to koppie 1?

19 GENERAL NAIDOO: No, Chair.

20 MR SEMENYA SC: Did you doubt the ability

21 of your driver to take you there?

22 GENERAL NAIDOO: No, Chair.

23 MR SEMENYA SC: At what point does it

24 become for the first time obvious to you that you are not

25 on the right path?

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1 GENERAL NAIDOO: Chair, when we took that

2 turn and then realised that the road, well, was interrupted

3 by this donga or it was not traversable, I realised that we

4 were on the wrong route and that's when we turned the

5 convoy around.

6 MR SEMENYA SC: And did you at that time

7 now look at your Google map to see what is the other

8 alternative route capable of transporting you to koppie 1?

9 GENERAL NAIDOO: Chair, yes and – yes, we

10 did.

11 MR SEMENYA SC: Did you have, did it

12 strike your mind that now that you've hit the donga you

13 better look at your Google map again?

14 GENERAL NAIDOO: That's correct, Chair.

15 MR SEMENYA SC: To try and reorientate

16 yourself.

17 GENERAL NAIDOO: That's correct, Chair,

18 we did.

19 MR SEMENYA SC: What does the driver do?

20 GENERAL NAIDOO: That's when we decided

21 to go to the next power station.

22 MR SEMENYA SC: Stay with me, General, I

23 just want to take these things as they happened.

24 GENERAL NAIDOO: Okay.

25 MR SEMENYA SC: Now that we have an

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1 opportunity of months of looking at the material, I just

2 wanted to help us to understand what was in your mind at

3 that time, given the circumstances that prevailed there.

4 GENERAL NAIDOO: Okay, Chair.

5 MR SEMENYA SC: Firstly, did you know how

6 many power stations there were?

7 GENERAL NAIDOO: At that stage, no.

8 Before this, when I looked at the map I saw a power

9 station, I did not know there was a second power station.

10 MR SEMENYA SC: Now when you hit the

11 ditch, what did you say to the driver?

12 GENERAL NAIDOO: No, we realised we could

13 not carry on so we would have to turn around, so we did

14 turn around and we turned the whole convoy around.

15 MR SEMENYA SC: And you turn right when

16 you get to the main road?

17 GENERAL NAIDOO: That's right, Chair.

18 MR SEMENYA SC: And then you realised

19 there is a second power station.

20 GENERAL NAIDOO: That's right, Chair.

21 MR SEMENYA SC: The bigger one?

22 GENERAL NAIDOO: Yes.

23 MR SEMENYA SC: Do you at that time make

24 the judgment call whether he should go to the left or to

25 the right of this power station?

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1 GENERAL NAIDOO: Chair, we drove to the

2 power station and obviously looking for the road where we

3 were told that at the power station you will turn right and

4 that's when we proceeded to the power station.

5 MR SEMENYA SC: I want to understand

6 whether, during this time, you were giving instructions to

7 the driver or how do you, you move in that convoy?

8 GENERAL NAIDOO: Yes, I was asking him to

9 proceed because obviously we were trying to make some good

10 time.

11 [11:25] MR SEMENYA SC: Do you choose the routes,

12 that's what I'm trying to establish, do you choose the

13 route the driver must take or he drives to the direction

14 that you said he must go?

15 GENERAL NAIDOO: Chair, when we came out

16 of the first turn I asked him to turn right, yes.

17 MR SEMENYA SC: Now, you were also asked

18 around that matter that you ought to have been able to see

19 what was happening at koppie 1 whilst you were at the power

20 station, do you remember that line of questions?

21 GENERAL NAIDOO: Yes, Chair.

22 MR SEMENYA SC: And when you were cross-

23 examined around that matter it was in relation to the fence

24 that is enclosing the big power station.

25 GENERAL NAIDOO: That's correct, Chair.

<p style="text-align: right;">Page 26510</p> <p>1 MR SEMENYA SC: And I think the import of 2 the questions was that anybody could see from that position 3 and your evidence around your vision being obscured cannot 4 be correct, do you recall that battery of questions? 5 GENERAL NAIDOO: I do, Chair. 6 MR SEMENYA SC: But if I understand your 7 evidence it was at that small power station where you were, 8 where you had stopped. 9 GENERAL NAIDOO: Chair, with the 10 description I gave, yes, we realised it was a small power 11 station. I described the wall that obscured our vision, 12 yes. 13 MR SEMENYA SC: Is that wall there next 14 to the small power station? 15 GENERAL NAIDOO: It is a wall that is 16 surrounding the small power station, yes. 17 MR SEMENYA SC: And could you have an 18 untrammelled vision from that point to where koppie 1 was? 19 GENERAL NAIDOO: No, Chair. 20 MR SEMENYA SC: Part of the other line of 21 questions that were asked of you around that matter related 22 to whether or not you should or could have seen the 23 teargas. 24 GENERAL NAIDOO: That's correct, Chair. 25 MR SEMENYA SC: Could you see the teargas</p>	<p style="text-align: right;">Page 26512</p> <p>1 GENERAL NAIDOO: Yes, I do. 2 MR SEMENYA SC: And your evidence is that 3 you did not speak to the Brigadier at that time. 4 GENERAL NAIDOO: My evidence was I did 5 try twice to speak to him but I did not get him, yes. 6 MR SEMENYA SC: I thought the import of 7 that line of questions was to suggest that you must have, 8 at that time, been speaking to Brigadier Calitz and trying 9 to co-ordinate your movement to koppie 3. 10 GENERAL NAIDOO: Chair, yes, as I 11 indicated that the reason for the call was to try and 12 establish what was happening. We were getting the 13 different reports and sounds but I did not get hold of him 14 and the idea was to, when we were responding, to go to 15 koppie 1, we did not know the existence of koppie 3 at that 16 stage. 17 MR SEMENYA SC: I'm trying to test the 18 plausibility of those propositions with you, General. Was 19 it know, as you were at forward holding area 1 that 20 ultimately a group of people would be running to koppie 3 21 in the event of any police operation? 22 GENERAL NAIDOO: No, Chair, as I also 23 testified that nowhere in the briefing were we told 24 anything about the area which we now know as koppie 3. 25 MR SEMENYA SC: Are you aware whether</p>
<p style="text-align: right;">Page 26511</p> <p>1 from where you were? 2 GENERAL NAIDOO: As I testified, Chair, I 3 could not and I did not, Chair. 4 MR SEMENYA SC: Could anyone of your team 5 have seen the teargas there? 6 GENERAL NAIDOO: Chair, not the vehicles 7 that were in the front of the convoy, I'm not sure about 8 the vehicles – because it was a long convoy, if something 9 at the rear which was not obstructed by the small power 10 station, I am not sure. 11 MR SEMENYA SC: Even with the best 12 endeavour? 13 GENERAL NAIDOO: Chair, sorry? 14 MR SEMENYA SC: Even with the best 15 endeavour, could you see any teargas from there? 16 GENERAL NAIDOO: Me myself, no. 17 MR SEMENYA SC: The other line of 18 questions that were put to you related to the position 19 where you were at forward holding area 1 and the position 20 of Brigadier Calitz in the Nyala along the line of Nyalas 21 that were to be deployed in stage 3, do you recall that? 22 GENERAL NAIDOO: I recall. 23 MR SEMENYA SC: You were asked questions 24 in relation to what it is that you were discussing with the 25 Brigadier at that time, remember that?</p>	<p style="text-align: right;">Page 26513</p> <p>1 Brigadier Calitz as the operational commander knew that 2 given any police operation, the group would run to koppie 3 3? 4 GENERAL NAIDOO: As I indicated, we had 5 no intelligence or briefing on that particular – 6 MR SEMENYA SC: Could there have been any 7 purpose for you and Brigadier Calitz over the phone to 8 discuss going to koppie 3? 9 GENERAL NAIDOO: Not at that stage, no. 10 MR SEMENYA SC: Could you and Brigadier 11 Calitz have dictated the movement of the strikers? 12 GENERAL NAIDOO: No, we had no control 13 over that. 14 MR SEMENYA SC: You say during that 15 attempt at speaking to Brigadier Calitz that your intention 16 was to establish whether the operation had started or what, 17 that was your intention? 18 GENERAL NAIDOO: Chair, yes, as I 19 testified, we did hear shooting and certain reports and 20 obviously I called in to establish what was happening. 21 MR SEMENYA SC: Now, the other area of 22 questions that you had to field related to the message you 23 had that people were down. Remember that line of 24 questions? 25 GENERAL NAIDOO: I remember that, Chair.</p>

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1 MR SEMENYA SC: And it was suggested to
 2 you that one of the things that you should have conjured in
 3 your mind is that live ammunition was used.
 4 GENERAL NAIDOO: I remember that, Chair.
 5 MR SEMENYA SC: You remember that?
 6 GENERAL NAIDOO: I do.
 7 MR SEMENYA SC: What, in the position you
 8 were in at forward holding area 1, could have been the
 9 indicators of that as a possibility?
 10 GENERAL NAIDOO: Chair, well, the
 11 indication was that because I heard live ammunition there's
 12 a possibility of people being injured but as I indicated,
 13 from where I was I had no sight of what was happening.
 14 There was no communication on the radio in terms of the
 15 instruction to use live ammunition or people indicating
 16 that they're using live ammunition. The shots that we
 17 heard could have been shots that were fired as warning
 18 shots as well. So at that stage, as I testified, our
 19 original plan was to respond to people who were being
 20 dispersed and possibly injured during the stampedes, et
 21 cetera. We did not expect to have to deal with people who
 22 were shot.
 23 MR SEMENYA SC: And answering that aspect
 24 again, your understanding of bodies at that time conveyed
 25 what in your mind?

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1 GENERAL NAIDOO: Well, the message that
 2 we heard was that people were down and my understanding was
 3 that the dispersal action, during the dispersal action
 4 people had fell and injured themselves, et cetera.
 5 MR SEMENYA SC: Now you tell us that the
 6 reason for your movement from forward holding area 1 was to
 7 assist in the medical personnel getting to the scene.
 8 GENERAL NAIDOO: Yes, immediate response
 9 area 1. Yes, to get medical personnel to the scene because
 10 as I testified, it was reported by helicopter that people
 11 were down and medical personnel were required.
 12 MR SEMENYA SC: And I have looked at the
 13 transcript of your evidence, there are times when you say
 14 you had three ambulances or three medics, what did you
 15 have?
 16 GENERAL NAIDOO: Three, there were three
 17 units, three, one car and two ambulances, yes.
 18 MR SEMENYA SC: The personnel, what
 19 number of people did you have as medics?
 20 GENERAL NAIDOO: Chair, I spoke to three
 21 people. The two ambulances could have had additional
 22 personnel in them but I spoke to the three drivers, they
 23 were with me, yes.
 24 MR SEMENYA SC: Now one of the
 25 recommendations which the evidence leaders intend to ask

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1 for is that people who are in tactical, tactical units,
 2 ought to have amongst them people with medical aid
 3 capabilities, remember that?
 4 GENERAL NAIDOO: I remember it, yes,
 5 first aid.
 6 MR SEMENYA SC: What would that entail?
 7 GENERAL NAIDOO: Basically it would
 8 entail that we'll have to train personnel, although the
 9 indication is tactical units but we'll have to train police
 10 personnel to serve as either first aid or beyond that as
 11 paramedics at scenes that they attend.
 12 MR SEMENYA SC: Yes. No, I understand
 13 the concept but I'm trying to understand how implementable
 14 is that concept.
 15 GENERAL NAIDOO: It will be difficult, as
 16 I testified, and certain issues have to be clarified
 17 because in some instances the police officials themselves
 18 may have been involved in the injuring or the securing of a
 19 person and there might be some conflict of interest there
 20 in terms of training the people but, as I said, as a normal
 21 human being one would expect people would want to assist a
 22 fellow human being but in terms of the level of technical
 23 skill required and the implications for the police that
 24 such a responsibility be put on them, those things have to
 25 be well thought of because this is an issue that confronts

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1 the police on a daily basis.
 2 MR SEMENYA SC: I think I understand a
 3 Colonel McIntosh –
 4 GENERAL NAIDOO: That's correct.
 5 MR SEMENYA SC: - arriving at the scene
 6 of an injured person, given his experience, attempting to
 7 do the best medical aid intervention he can.
 8 GENERAL NAIDOO: That's correct, Chair.
 9 MR SEMENYA SC: Now I want to understand
 10 that scenario in relation to the responsibilities of the
 11 police and the area of responsibility of IPID. If Colonel
 12 McIntosh was the one who had discharged those rounds and
 13 fatally wounded that individual –
 14 GENERAL NAIDOO: Yes.
 15 MR SEMENYA SC: - would he be the one to
 16 go there and try and resuscitate them, to give medical aid
 17 if - how does it work?
 18 GENERAL NAIDOO: Chair, yes. If he was
 19 the suitably trained person, as the case was he was, then
 20 he would be expected to go and deal with that to secure the
 21 patient to try and save the life of a patient and ensure
 22 that he tried to sustain that patient until other
 23 assistance arrives.
 24 MR SEMENYA SC: Even if he was the only
 25 individual on that scene -

<p style="text-align: right;">Page 26518</p> <p>1 GENERAL NAIDOO: That's correct.</p> <p>2 MR SEMENYA SC: - in the circumstances.</p> <p>3 GENERAL NAIDOO: That's correct, Chair.</p> <p>4 MR SEMENYA SC: Chair, would this be a</p> <p>5 convenient stage for the tea –</p> <p>6 CHAIRPERSON: Yes, I was proposing to</p> <p>7 take it at quarter to but I understand if you ask for it</p> <p>8 now you have a reason. We'll take the tea adjournment now.</p> <p>9 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>10 [12:11] CHAIRPERSON: The Commission resumes.</p> <p>11 Major-General, you're still under oath.</p> <p>12 GENERAL NAIDOO: Under oath, Chair.</p> <p>13 CHAIRPERSON: Mr Semanya?</p> <p>14 GENERAL NAIDOO: (s.u.o.)</p> <p>15 RE-EXAMINATION BY MR SEMENYA SC (CONTD.):</p> <p>16 General, can I ask you in relation to the stage 3 plan, it</p> <p>17 was put to you that the phase 3 plan went only up to the</p> <p>18 dry riverbed, do you remember that line of questions?</p> <p>19 GENERAL NAIDOO: Dry riverbed, yes.</p> <p>20 MR SEMENYA SC: You would remember</p> <p>21 according to the evidence of Brigadier Calitz the dispersal</p> <p>22 would happen and they would reform a line at the dry</p> <p>23 riverbed.</p> <p>24 GENERAL NAIDOO: That's right.</p> <p>25 MR SEMENYA SC: That line of questioning.</p>	<p style="text-align: right;">Page 26520</p> <p>1 continue until they were sure that there was no regrouping</p> <p>2 of individuals to any other activities which might endanger</p> <p>3 property or life.</p> <p>4 MR SEMENYA SC: If there was any armed</p> <p>5 regrouping, say at koppie 3, what did the plan contemplate</p> <p>6 would happen?</p> <p>7 GENERAL NAIDOO: There were two things.</p> <p>8 Obviously the first line was the public order police but we</p> <p>9 indicated that the tactical units would also deal with</p> <p>10 pockets of resistance where individuals would entrench</p> <p>11 themselves in particular places and try to resist the</p> <p>12 dispersal, the tactical units being the TRT, the NIU as</p> <p>13 well as the special task force because the expectation was</p> <p>14 that there were firearms also among the group.</p> <p>15 MR SEMENYA SC: Now on another topic, we</p> <p>16 have heard repeatedly that part of the reason for having</p> <p>17 TRT in the plan was their role being to protect the POP.</p> <p>18 Can you explain that for us a little?</p> <p>19 GENERAL NAIDOO: My understanding of that</p> <p>20 was that the public order police were engaged with the</p> <p>21 large crowd, facing the large crowd and negotiating with</p> <p>22 them in terms of the lay down of weapons and dispersal</p> <p>23 action. The TRT line was put behind the public order</p> <p>24 police units because it would allow them to protect the</p> <p>25 rear of the public order police units, firstly, and</p>
<p style="text-align: right;">Page 26519</p> <p>1 GENERAL NAIDOO: Yes, yes, Chair.</p> <p>2 MR SEMENYA SC: But help me understand,</p> <p>3 where the plan indicated the positive attraction to the</p> <p>4 westerly direction –</p> <p>5 GENERAL NAIDOO: That's correct, Chair.</p> <p>6 MR SEMENYA SC: - how far west would that</p> <p>7 dispersal go?</p> <p>8 GENERAL NAIDOO: Chair, I think from my</p> <p>9 understanding it would go until we're sure that the crowd</p> <p>10 had cleared the particular area, there would not be</p> <p>11 regrouping in a particular place and my understanding that</p> <p>12 the west was the positive attraction point, obviously there</p> <p>13 were places that the strikers would go to such as the</p> <p>14 hostels, et cetera. So the dispersal would just ensure</p> <p>15 that the groups did not regroup and start any other action</p> <p>16 such as destruction of property, attacking of people, et</p> <p>17 cetera.</p> <p>18 MR SEMENYA SC: Because I think that line</p> <p>19 of criticism is saying that the stage 3 plan did not cover</p> <p>20 koppie 3. Is that a fair criticism?</p> <p>21 GENERAL NAIDOO: Chair, no. It would</p> <p>22 indicate any regrouping would be dealt with. As I</p> <p>23 indicated, in our briefing there was no specific mention</p> <p>24 made of koppie 3 or any koppies other than the main koppie</p> <p>25 but in terms of a dispersal action the action would</p>	<p style="text-align: right;">Page 26521</p> <p>1 secondly, the public order police units primarily use non-</p> <p>2 lethal weapons, equipment. They had, each of them had a 9</p> <p>3 millimetre but primarily they use non-lethal force with the</p> <p>4 exception of each section having a member with an R5 rifle</p> <p>5 and the idea was to protect these people when they are</p> <p>6 utilising the non-lethal force from elements that could</p> <p>7 have firearms, et cetera.</p> <p>8 MR SEMENYA SC: What type of protection?</p> <p>9 GENERAL NAIDOO: To protect their lives</p> <p>10 and their – because it was necessitate the public order</p> <p>11 police members coming out of the Nyalas and utilising</p> <p>12 teargas, using the shotguns in their dispersal line. If</p> <p>13 they were utilised in that way they would be exposed to</p> <p>14 people with lethal weapons which could endanger their life.</p> <p>15 And secondly, there was also the reality that there was</p> <p>16 this armed group who was more armed, heavily armed and they</p> <p>17 could overrun the public order police line as well and they</p> <p>18 needed that protection.</p> <p>19 MR SEMENYA SC: Just to close the other</p> <p>20 topic in relation to why it is that the records indicate</p> <p>21 Brigadier Calitz to have responded to your call, you</p> <p>22 remember that line of questioning?</p> <p>23 GENERAL NAIDOO: That's correct, Chair.</p> <p>24 MR SEMENYA SC: And I think the Chair</p> <p>25 indicated we might obtain, expect a statement from Vodacom</p>

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1 in that regard so I won't deal with that with you.
 2 GENERAL NAIDOO: Okay.
 3 MR SEMENYA SC: What I want to deal with
 4 you, though, is to invite the operator to give us LLL26 on
 5 the screen and go to paragraph 13. General, I want to
 6 invite your comment in relation to the criticism that was
 7 also levelled at the police operation and that related to
 8 the fact that it is contended that search and seizure
 9 should have been the first option, first tactical option as
 10 opposed to what we now know to be stage 3. Now this is a
 11 statement outlining –
 12 MR CHASKALSON SC: Sorry, Chairperson, I
 13 don't think this is a matter for re-examination. This is a
 14 matter flowing from the evidence of Lieutenant-Colonel
 15 Vermaak, it wasn't traversed in cross-examination of this
 16 witness in any way.
 17 MR SEMENYA SC: I have ex tempore notes,
 18 Chair. If I have to go find the reference I will do so but
 19 the search and seizure would have been launched first, was
 20 the note I have on this matter.
 21 CHAIRPERSON: Is it a note that you made
 22 while this witness was giving evidence?
 23 MR SEMENYA SC: Correct.
 24 CHAIRPERSON: Well, if that's correct
 25 then your point falls away.

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1 MR SEMENYA SC: Anyway I thought,
 2 General, I could have the benefit of your comments. Was it
 3 known to the police at the time before the 16th that the
 4 Makarapas had chosen koppie 3 as a strategic position for
 5 them?
 6 GENERAL NAIDOO: No Chair, we did not
 7 know.
 8 MR SEMENYA SC: Was it known that they
 9 did so because it was secluded and located away from the
 10 public for the performance of their own rituals? Was that
 11 information known to you?
 12 GENERAL NAIDOO: No, Chair. We did not
 13 have that information either.
 14 MR SEMENYA SC: That those boulders and
 15 trees gave them some privacy, was it known to you?
 16 GENERAL NAIDOO: We were not aware of
 17 that.
 18 MR SEMENYA SC: That they had the
 19 advantage that strangers could be seen approaching from far
 20 away because of its vantage position and [inaudible], was
 21 that information known to you?
 22 GENERAL NAIDOO: No, Chair.
 23 MR SEMENYA SC: Were the police aware
 24 that there was an appreciation on the part of this group
 25 that it would be difficult for a stranger to specifically

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1 pinpoint the precise location of where they were camped?
 2 GENERAL NAIDOO: We were not aware of
 3 that information either.
 4 MR SEMENYA SC: In fact, I thought it was
 5 your evidence that when you go to koppie 3 ultimately the
 6 number of people arrested there were not, were a surprise
 7 to the police.
 8 GENERAL NAIDOO: I did testify to that
 9 effect, yes.
 10 MR SEMENYA SC: Was it known at the time,
 11 though, before the 16th that that koppie was chosen because
 12 access to it using a motor vehicle was going to be
 13 difficult –
 14 GENERAL NAIDOO: No, Chair.
 15 MR SEMENYA SC: - because of the rugged
 16 terrain.
 17 GENERAL NAIDOO: No, Chair, we were not
 18 aware of that.
 19 MR SEMENYA SC: Can we just finish that?
 20 Can we scroll up? And that it was appreciated that should
 21 the need arise, it would be easy for the group to escape
 22 from that koppie. Were all of those factors known to the
 23 police at all?
 24 GENERAL NAIDOO: Not at all, Chair.
 25 MR SEMENYA SC: During cross-examination

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1 there was also the challenge, there was a challenge around
 2 – and that was Mr Ntsebeza doing the cross-examination –
 3 that reinforcements were brought in and the tactical units
 4 brought in after the Monday incident where the police
 5 members perished. Do you remember that line of
 6 questioning?
 7 GENERAL NAIDOO: I remember something
 8 like that, yes.
 9 MR SEMENYA SC: When did you again come
 10 to Marikana around the period 9 to 16?
 11 GENERAL NAIDOO: Chair, the first time I
 12 arrived at Marikana was on the 13th.
 13 MR SEMENYA SC: But did you do anything
 14 in relation to reinforcement of personnel before your
 15 arrival?
 16 GENERAL NAIDOO: That's correct. As I
 17 indicated, on Saturday we sent in our local public order
 18 police unit and on Sunday we had to reinforce them with
 19 members from out of the province from both public order
 20 police unit as well as the national intervention unit.
 21 MR SEMENYA SC: Yes, because the
 22 criticism there was that the national intervention unit
 23 only came subsequent to members of the police perishing in
 24 the events of Monday the 11th.
 25 GENERAL NAIDOO: 13th.

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1 MR SEMENYA SC: 13th, Monday the 13th.
 2 And there was also a line of questions that were put to you
 3 suggesting that you were not interested in the civilians
 4 who also were fatally wounded around the events of Monday,
 5 do you recall that?
 6 GENERAL NAIDOO: I recall that, Chair.
 7 MR SEMENYA SC: What was your concern
 8 around that matter?
 9 GENERAL NAIDOO: Chair, firstly as I
 10 indicated, I did not know of the specifics of the civilians
 11 that were killed on that day and I put the information on
 12 the statement as I became aware of it and secondly, when I
 13 reported in my statement it was in relation to the issues
 14 that informed police activities and that, from my
 15 perspective in terms of the things that were being dealt
 16 with by the police, that I put into my statement what I
 17 did, not in relation to not considering the position of
 18 civilians.
 19 MR SEMENYA SC: You were also asked in
 20 relation to whether or not statements of various witnesses
 21 were consistent with your account in relation to the stage
 22 when you fired around koppie 3, you recall that?
 23 GENERAL NAIDOO: That's correct, Chair.
 24 MR SEMENYA SC: At the time of making
 25 your statement, did you compare your statement with the

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1 statements of other witnesses?
 2 GENERAL NAIDOO: No, Chair, I had not had
 3 any sight of those.
 4 MR SEMENYA SC: Did they have an
 5 opportunity to have a look at yours before writing their
 6 own?
 7 GENERAL NAIDOO: No, Chair.
 8 MR SEMENYA SC: Are you aware if any of
 9 them were pertinently asked to make specific comment in
 10 relation to your conduct?
 11 GENERAL NAIDOO: Not that I'm aware of,
 12 Chair.
 13 MR SEMENYA SC: Do you have an
 14 explanation why they don't mention things that happened
 15 there?
 16 GENERAL NAIDOO: Chair, as I indicated in
 17 my evidence, that the members made the statements in
 18 relation to their actions, the simple question being, did
 19 you shoot or did you not shoot and what were the
 20 circumstances of you using your firearm. So I would
 21 understand why they couched it in that particular line,
 22 their focus was on what they did as individuals. I
 23 remember during the cross-examination going through several
 24 of the statements that were provided to me and they don't,
 25 in none of those statements, actually indicate any action

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1 of other people, rather talk of their own actions, ja.
 2 MR SEMENYA SC: Now one of the areas,
 3 General, where we can benefit from your insight is how an
 4 operation, command and control is maintained in an
 5 operation. If, as has happened, you are at koppie 3 and
 6 your rank is one of a General –
 7 GENERAL NAIDOO: Yes.
 8 MR SEMENYA SC: - one, are you in control
 9 of the NIU members you find there?
 10 GENERAL NAIDOO: Chair, not directly, as
 11 they have their operational commander but yes, their
 12 commander, if I was the senior the commander will come and
 13 report to me, yes but not directly. As I said, each unit
 14 has their own commanders as well, it just depends on my
 15 reason for being there and responsibility.
 16 MR SEMENYA SC: Firstly, I want to
 17 understand whether the two are two different concepts,
 18 control and command, two different concepts.
 19 GENERAL NAIDOO: Chair, yes. When we say
 20 control, in the end you obviously have the authority,
 21 executive authority in terms of how to utilise. Command is
 22 you are supervising their immediate task in terms of what
 23 you have to do, in a more line function way, ja.
 24 MR SEMENYA SC: What I'm trying to
 25 understand, General, is can you at any stage be in control

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1 of the STF members?
 2 GENERAL NAIDOO: No, Chair.
 3 MR SEMENYA SC: Can you at any stage,
 4 just purely because you're a General, be in control of the
 5 NIU unit?
 6 GENERAL NAIDOO: No, not purely.
 7 MR SEMENYA SC: Not – sorry?
 8 GENERAL NAIDOO: I say not specifically.
 9 CHAIRPERSON: Not specifically. I mean
 10 if you're on –
 11 GENERAL NAIDOO: Chair –
 12 CHAIRPERSON: - on the, I hesitate to use
 13 the word "battlefield" but you know that's really what I
 14 mean, without the connotations that go with it, when you're
 15 on the field of operation and there are some NIU people
 16 there and you're there as well and you're the senior
 17 officer and there are things happening, weapons are being,
 18 firearms are being fired from different directions, do you
 19 have to just stand by and see the NIU people doing things
 20 that you don't agree with? Would you not, in that
 21 circumstance, have the right as the general to take
 22 command, as it were?
 23 GENERAL NAIDOO: Okay, as the police
 24 then, yes. Chair, I think what I was trying to explain is,
 25 and I think you have been exposed to this in the public

<p style="text-align: right;">Page 26530</p> <p>1 order scenario where, when you get to a particular scene, a 2 public order scene, the public order commander takes charge 3 of the public, the crowd management issue and is 4 responsible, even if he gets – and I used the example 5 during my testimony, you get to a place where there's an 6 area commissioner or the station commander, sorry, cluster 7 commander or a station commander who is on the scene but 8 when the public order police unit arrives, the member in 9 charge of that unit then takes charge of that scene. You 10 can't then utilise your rank and say I am a brigadier. 11 Similarly at the crime scene, once the crime scene person 12 takes charge of the scene, everybody needs to then follow 13 the direction of the crime scene commander. I'm just 14 trying to put that. 15 [12:31] CHAIRPERSON: Sorry, I understand that 16 but applying that to the facts of this case, you were on 17 the eastern side, I think it was, of koppie 3. 18 GENERAL NAIDOO: That's correct. 19 CHAIRPERSON: You weren't aware that 20 Brigadier Calitz and the other people were on – 21 GENERAL NAIDOO: That's correct, Chair. 22 CHAIRPERSON: - on the western side. 23 GENERAL NAIDOO: Yes, Chair. 24 CHAIRPERSON: As far as you were 25 concerned there was a problem that had to be dealt with.</p>	<p style="text-align: right;">Page 26532</p> <p>1 CHAIRPERSON: But your point, as I 2 understand you, is you didn't know he was there. Is that 3 correct? 4 GENERAL NAIDOO: That's correct, Chair. 5 MR SEMENYA SC: General, I want to have 6 the benefit of your training and I'm trying to firstly 7 establish, I can understand as a senior you can command 8 those who are junior to you but I want to understand the 9 word "control." As you were at forward holding area 1, you 10 would have been in command of the units that were there. 11 GENERAL NAIDOO: Overall, yes. 12 MR SEMENYA SC: But were you in control 13 of the mounted unit, for instance, where the commander of 14 the mounted unit was present? 15 GENERAL NAIDOO: Hence yes, I understand 16 what you're saying that -that's what I tried to explain, 17 that there was a multidisciplinary force that was assembled 18 and whilst I was overall co-ordinating them, for want of a 19 better word, and ensuring that they were deployed as 20 needed, their immediate commanders were the different 21 discipline specialists such as the NIU, the mounted unit, 22 the K9, et cetera, yes. 23 MR SEMENYA SC: What I'm trying to 24 understand, put differently, can a commander of the NIU say 25 to the Commission, once General Naidoo came on the scene my</p>
<p style="text-align: right;">Page 26531</p> <p>1 There was no POP officer around to take charge. 2 GENERAL NAIDOO: That's correct. 3 CHAIRPERSON: There were NIU people. 4 GENERAL NAIDOO: Yes. 5 CHAIRPERSON: But they weren't members of 6 the POP but they were performing a kind of a POP function 7 at the time. 8 GENERAL NAIDOO: That's correct. 9 CHAIRPERSON: You were a Major-General, 10 you were the senior officer there. 11 GENERAL NAIDOO: That's right. 12 CHAIRPERSON: You considered it your duty 13 to deal with the situation for the reasons you've 14 explained. In that context I take it you would have had 15 the right and the authority – 16 GENERAL NAIDOO: As I've testified – 17 CHAIRPERSON: - the NIU, which in fact I 18 think you did – 19 GENERAL NAIDOO: That's right. 20 CHAIRPERSON: - to take command. 21 GENERAL NAIDOO: That's right. 22 CHAIRPERSON: Obviously if you'd known 23 that Brigadier Calitz was on the other side of the koppie 24 you might have operated, acted differently. 25 GENERAL NAIDOO: Yes.</p>	<p style="text-align: right;">Page 26533</p> <p>1 control over my members was gone because he is now a senior 2 police officer than I am? 3 GENERAL NAIDOO: No, Chair. Two things, 4 firstly I worked through that, there is a chain of command 5 and secondly, looking at the different specialisations, 6 obviously the expectation is that I would work through the 7 senior specialist that's there. It's not just disregard 8 the chain of command, it can't be like that. 9 MR SEMENYA SC: Simply because you are on 10 the eastern side of the koppie and you are a General and 11 you are of where Brigadier Calitz is, do you then become 12 the operational commander there? 13 GENERAL NAIDOO: No, Chair. 14 MR SEMENYA SC: What type of commander do 15 you become? 16 GENERAL NAIDOO: Chair, I was dealing 17 with a particular incident that I encountered, so I would 18 probably be the senior person at that particular incident. 19 MR SEMENYA SC: Ja, but I want to 20 understand what that entails. It entails what authority in 21 respect of what type of conduct do you then acquire? 22 GENERAL NAIDOO: Chair, I'm a police 23 officer and just to put an appropriate example, if I am 24 going down past an incident and an incident occurs, I'm 25 expected to stop at that incident and to render whatever</p>

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1 assistance until the appropriate people arrive to take over
 2 that incident, just to put it in context of what you're
 3 asking. So even though I might be working in an
 4 administration function but I was on duty at that
 5 particular time or even off duty in uniform when an
 6 incident occurred, I cannot go past that incident. The
 7 expectation from especially the public who'll be viewing me
 8 is that as a police officer I would stop – say if it was a
 9 collision, I would stop at that collision, render the
 10 necessary assistance, contact the relevant people and hold
 11 until the proper people who were performing this function
 12 arrive and take over.

13 MR SEMENYA SC: I understand, given your
 14 seniority, you would have an obligation and a duty to
 15 exercise the powers you have but I'm trying to have you
 16 tell us in relation to koppie 3 and assuming nothing wrong
 17 is happening, I just want to understand the concepts –

18 GENERAL NAIDOO: Yes.

19 MR SEMENYA SC: - on arrival do you take
 20 command of the environment by your seniority alone?

21 GENERAL NAIDOO: No, as indicated, by the
 22 fact that I was the most senior person there, I just
 23 ensured that certain things were done. As I indicated that
 24 Brigadier Calitz, when he arrived there we discussed the
 25 scene and then he indicated he was going to deal with the

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1 prisoners.

2 MR SEMENYA SC: No, before anything else.

3 GENERAL NAIDOO: Yes.

4 MR SEMENYA SC: Work with me on the
 5 hypothesis I'm putting to you.

6 GENERAL NAIDOO: Yes.

7 MR SEMENYA SC: So that I can understand
 8 the concepts.

9 GENERAL NAIDOO: Okay.

10 MR SEMENYA SC: As you arrive there and
 11 assume for the purposes of answering this question that
 12 nothing wrong is happening –

13 GENERAL NAIDOO: Yes.

14 MR SEMENYA SC: As you arrive at the
 15 scene –

16 GENERAL NAIDOO: Yes.

17 MR SEMENYA SC: - are you in control or
 18 are you in command purely arising out of your seniority?

19 GENERAL NAIDOO: No, Chair. Obviously
 20 the person who was in charge at that stage will be in
 21 charge.

22 MR SEMENYA SC: And who would be in
 23 command?

24 GENERAL NAIDOO: The commander of that
 25 particular unit or the group that was there.

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1 COMMISSIONER HEMRAJ: So Colonel,
 2 General, when you arrived at koppie 3 there were NIU
 3 members there.

4 GENERAL NAIDOO: That's right.

5 COMMISSIONER HEMRAJ: Who would be in
 6 command and control of those NIU members after you arrived?

7 GENERAL NAIDOO: Colonel Modiba was
 8 there, he was in charge. I mentioned him by name, yes.

9 CHAIRPERSON: The question you were asked
 10 by Mr Semenya says, presupposes that there was nothing
 11 wrong happening. Now we know something wrong was
 12 happening. When you got to the eastern end of koppie 3,
 13 firearms were being discharged from the west, you thought
 14 it was from the strikers and in fact some of them may well
 15 have been the strikers but there was action going on, there
 16 was – bullets were flying around. There was, effectively
 17 an operation had to be mounted at that point to deal with
 18 the situation.

19 GENERAL NAIDOO: That's correct.

20 CHAIRPERSON: Now I understand the
 21 terminological differences and difficulties but from a
 22 practical point of view there was an operation going on.

23 GENERAL NAIDOO: That's right.

24 CHAIRPERSON: And you were, co-ordination
 25 was required of the forces on the ground to deal with that.

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1 GENERAL NAIDOO: That's correct.

2 CHAIRPERSON: And you were effectively, I
 3 would have thought, the acting operational commander until
 4 the appropriate person arrived on the scene to take over.
 5 Would that be correct?

6 GENERAL NAIDOO: Chair –

7 CHAIRPERSON: I mean you had to co-
 8 ordinate what was happening.

9 GENERAL NAIDOO: Chair –

10 CHAIRPERSON: Am I right or have I got it
 11 wrong?

12 GENERAL NAIDOO: No, it would depend.
 13 After I arrive on the scene and my subsequent actions would
 14 determine that but when I arrived at the scene, I mean you
 15 first establish – I could have arrived and seen, yes,
 16 everything, they were busy with an operation and then
 17 carried on but at that stage there was, I stopped at the
 18 scene and then I obviously deviated there.

19 MR SEMENYA SC: Now let's explore that a
 20 little, General. As far as the account of members is
 21 concerned in relation to their conduct at koppie 3, they
 22 acted in self and private defence.

23 GENERAL NAIDOO: According to their
 24 account, yes, that's correct.

25 MR SEMENYA SC: That is an area not

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1 governed by the concept control and command –

2 GENERAL NAIDOO: No.

3 MR SEMENYA SC: - or is it?

4 GENERAL NAIDOO: It's not.

5 MR SEMENYA SC: Now I want to understand

6 what were you in command of and in control of at koppie 3?

7 GENERAL NAIDOO: Chair, as I indicated,

8 when I arrived there it was after one of the incidents so

9 the only thing that – well, the instruction that I gave

10 initially was, because as I indicated I observed people

11 lying there. Obviously I had within my group the

12 ambulances and I indicated to the Colonel that we should

13 move forward because we had to ascertain the condition of

14 those people, they had been shot. So I, when I arrived at

15 the scene I determined that there was a need for medical

16 assistance and that's why we moved forward.

17 MR SEMENYA SC: No, I'm talking at koppie

18 3 now.

19 GENERAL NAIDOO: Yes.

20 MR SEMENYA SC: Did you command any

21 police action there?

22 GENERAL NAIDOO: Not specifically, no,

23 other than this – I'm going to say, when you say command

24 I'm trying to understand. As I said, I arrived there, the

25 NIU had some action. I told them – okay, maybe the better

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1 word is I commanded them that we should go forward because

2 these people were lying there and I, as I testified, when

3 we arrived there we saw that two of them had been killed

4 and three were not killed. So yes, if that's command -

5 MR SEMENYA SC: What other command did

6 you give while you were at koppie 3?

7 GENERAL NAIDOO: I – well, I indicated

8 they should arrest some of those people that we found there

9 and the K9 was called in, the medical personnel were called

10 in, the crime scene and the detective people were called

11 in, yes.

12 MR SEMENYA SC: All on your command?

13 GENERAL NAIDOO: That's correct.

14 MR SEMENYA SC: Okay. What did you

15 control there?

16 GENERAL NAIDOO: The activities of these

17 various police officials and other support services, yes.

18 MR SEMENYA SC: In what manner did you

19 control them?

20 GENERAL NAIDOO: I asked the K9 to sweep

21 the koppie, I asked the detectives and the crime scene

22 people to come and take charge of the place. What was the

23 other one? There were public order people that were

24 removing the arrested people out of the way - so ja, there

25 were various activities.

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1 MR SEMENYA SC: The other criticism is

2 that you had, I think that's the evidence, you had stun

3 grenades with you.

4 GENERAL NAIDOO: That's correct, Chair.

5 MR SEMENYA SC: That why didn't you use

6 them at koppie 3, remember that?

7 GENERAL NAIDOO: Chair, yes, I remember

8 that.

9 MR SEMENYA SC: Now take us back to your

10 mental frame at that point. As you were approaching the

11 koppie was there anything, as far as you could see,

12 demanding the use of a stun grenade?

13 GENERAL NAIDOO: Chair, as I testified,

14 as we approached the koppie there was shooting. I saw the

15 NIU, I proceeded to the NIU who were in a defensive

16 position. As I alighted from the vehicle before, before I

17 got out of the vehicle the two grenades, as I say they were

18 on the seat, I kept them on so that they would be available

19 and whether anything required them at koppie 3, they could

20 have possibly been – as I said, I will still going to

21 assess the situation with the NIU.

22 MR SEMENYA SC: No, I understand that.

23 I'm asking as you approached the koppie, was there anything

24 addressing to you the need for the use of a stun grenade?

25 That's the question I'm asking.

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1 GENERAL NAIDOO: Not, not immediately,

2 no. I can't remember. As I said, there was shooting and

3 shooting is not necessarily requiring stun grenades.

4 MR SEMENYA SC: Give us, in broad terms,

5 environments where a stun grenade, it is appropriate to

6 discharge.

7 GENERAL NAIDOO: Chair, normally - the

8 stun grenade is a percussion pyrotechnical aid which is

9 normally used to disorientate or confuse people who might

10 be in a particular location, more appropriately in more

11 confined, closer environments which might be difficult to

12 access by police officials. That would be the appropriate

13 place.

14 MR SEMENYA SC: Now I asked if, when you

15 were approaching koppie 3 did it occur to you that you

16 needed to confuse some people?

17 GENERAL NAIDOO: Chair, if it was

18 required to use minimum force to deal with people, yes.

19 MR SEMENYA SC: No, not in a hypothetical

20 sense, General.

21 GENERAL NAIDOO: Okay.

22 MR SEMENYA SC: I know you had them on

23 you.

24 GENERAL NAIDOO: Yes.

25 MR SEMENYA SC: I'm asking whether did

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1 anything present there, in your judgment, necessitating the
2 use of a stun grenade?
3 GENERAL NAIDOO: Chair, as I testified,
4 when we arrived there we were under the impression that
5 there were a few people that were entrenched in the bushes
6 or in the rocks, that were engaging with the police and
7 maybe that would be an appropriate environment to use such
8 an aid.
9 MR SEMENYA SC: Okay. About the
10 compilation –
11 CHAIRPERSON: I'm sorry, before we move
12 on to the compilation of whatever you're going to be asked,
13 why didn't you use the stun grenade?
14 GENERAL NAIDOO: Chair, I never came to a
15 circumstance where I could use it or a situation where I
16 would use it.
17 CHAIRPERSON: I thought you just answered
18 the question previously saying there was a situation where
19 there were people entrenched in rocks and it would have
20 been appropriate to use a stun grenade, or did I mishear
21 you?
22 GENERAL NAIDOO: No, Chair, I said that
23 we were arriving in a situation where people could have
24 been entrenched in the rocks or in the bushes. I still had
25 to make that assessment as we were approaching the terrain

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1 that I was viewing.
2 MR SEMENYA SC: That, General, accounts
3 to why you had hand grenades on your person?
4 GENERAL NAIDOO: Stun grenades, sir.
5 MR SEMENYA SC: Stun grenades, I
6 apologise, General. What I sought to establish with you
7 is, was there a moment when you thought it appropriate to
8 use it?
9 GENERAL NAIDOO: Chair, I didn't have the
10 opportunity or the moment to use it, yes, no.
11 MR SEMENYA SC: And there were areas
12 where you testified that you take responsibility for those
13 people who are in your team, remember that?
14 GENERAL NAIDOO: Yes, Chair.
15 MR SEMENYA SC: Can you explain that?
16 GENERAL NAIDOO: Chair, when I say that,
17 I indicated that I noticed the particular situation that
18 was at koppie 3 and I deviated part of the K9 unit to
19 koppie 3. I was responsible for that decision, the members
20 didn't just go there on their own.
21 MR SEMENYA SC: The line of questions
22 around that subject was in some sense talking about
23 culpability in that context. Were you answering to that?
24 GENERAL NAIDOO: Chair, well, my
25 understanding was that the individuals who utilised their

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1 firearms, almost all of them, specifically indicated that
2 they had to utilise those firearms in self-defence. I was
3 not present when most of the K9 people shot, so I can't
4 specifically indicate the circumstances under which they
5 used their firearms but I did notice the incident occurring
6 at koppie 3 and I did divert the K9, part of the K9 unit to
7 go and ascertain what was happening there.
8 MR SEMENYA SC: Yes, that's just what I'm
9 trying to probe with you, General. In respect of those K9
10 members who came to koppie 3 with you –
11 GENERAL NAIDOO: Yes.
12 MR SEMENYA SC: - and who would have
13 discharged their firearms out of your sight, how do you
14 take responsibility for their conduct?
15 GENERAL NAIDOO: Chair, as you indicated,
16 the issue of private defence is a little bit different from
17 command and control, so that would be difficult to
18 specifically take responsibility for their actions without
19 knowing what was the circumstances of their actions.
20 MR SEMENYA SC: So in that example you
21 would take responsibility for what?
22 GENERAL NAIDOO: For – the question was
23 that I brought the K9 unit to koppie 3 and I said yes, so
24 I'm responsible for bringing them. I felt that it was my
25 responsibility for bringing them to koppie 3 that I had to

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1 account for and the reasons why I brought them there.
2 MR SEMENYA SC: Okay. On the facts, in
3 your judgment, was there anything wrong in bringing K9
4 there?
5 GENERAL NAIDOO: Chair, no. The two
6 issues that I raised was, one of them is that it would seem
7 that we were going to go in the direction with the
8 ambulances of where the shooting had occurred and,
9 secondly, there was the issue of police responding to
10 police that were involved in incidents and in fact I was
11 reading through some of the evidence and I see even the
12 statement that was submitted by Mr White, he proposes that
13 the K9 was one of the less lethal options that should have
14 been used at koppie 3. So yes, that's -
15 [12:50] MR SEMENYA SC: Can I ask that we flight
16 on the screen transcript day 197, pages 24150? Perhaps if
17 we may start with seeing what the question was that you
18 were responding to, General.
19 CHAIRPERSON: It looks like rather a long
20 question, doesn't it?
21 MR SEMENYA SC: The question was put by
22 Ms Le Roux, "Major-General, can I ask you to then turn back
23 to MMM44, the CALS analysis document, movement of forward
24 holding area 1 convoy to koppie 3, because we think we've
25 been able to time the scene that you described reasonably

<p style="text-align: right;">Page 26546</p> <p>1 accurately and specifically in that document if you could 2 start at slide 14, which is timed 16:03:23, position 7. 3 Now in this document where" – 4 CHAIRPERSON: It carries on, "where we've 5 been able to identify your particular vehicle we've circled 6 it in red, just so you can understand the key." And then 7 she goes on. 8 MR SEMENYA SC: I think let's do it 9 differently. If you go to page 24151 and you start at line 10 1 you will see you address what you call the second issue 11 there. 12 GENERAL NAIDOO: Yes, Chair. 13 MR SEMENYA SC: Do you see that? 14 GENERAL NAIDOO: Yes, Chair. 15 MR SEMENYA SC: And there your evidence 16 stands and reads, "The second issue, well, I went through 17 some of the NIU statements and there are – there is a 18 member, Constable Dubeni, who in his statement he clearly 19 indicates that he shot long before they got to koppie 3. 20 He shot, he 21 5 says, more than a 150 meters away from – before 22 they get to koppie 3." It is just that aspect of the 23 statement of Dubeni. Can I give you a copy of – 24 GENERAL NAIDOO: Dubeni? 25 MR SEMENYA SC: Of Constable Dubeni.</p>	<p style="text-align: right;">Page 26548</p> <p>1 suit you we'll take the adjournment now. 2 [COMMISSION ADJOURNS COMMISSION RESUMES] 3 [13:57] CHAIRPERSON: The Commission resumes. 4 Major-General, you're still under oath. 5 GENERAL NAIDOO: Still under oath, Chair. 6 CHAIRPERSON: Mr Semenya? 7 GENERAL NAIDOO: (s.u.o.) 8 RE-EXAMINATION BY MR SEMENYA SC (CONTD.): 9 Thank you, Chair. I want you to have a look at MMM50, the 10 statement of – 11 CHAIRPERSON: [Microphone off, inaudible] 12 – sorry, according to the screen it's MMM54, actually we 13 marked it MMM50 before we adjourned but then there was 14 going to be another statement by another constable. Are 15 you not going to persist in that? 16 MR SEMENYA SC: No. 17 CHAIRPERSON: So just Dubeni's statement. 18 MR SEMENYA SC: Correct, Chair. 19 CHAIRPERSON: Alright. Now we've got it 20 on the screen. It's wrongly marked 54, it's actually 50. 21 MR SEMENYA SC: General, I want to focus 22 your attention to paragraph 7 of that statement. 23 CHAIRPERSON: The bottom line seems to be 24 missing or it's obscured possibly by the other page. 25 MR SEMENYA SC: No, that's –</p>
<p style="text-align: right;">Page 26547</p> <p>1 MR CHASKALSON SC: Chair, can we have it 2 on screen as well? 3 CHAIRPERSON: Is it an exhibit already? 4 Mr Semenya, is it already an exhibit or must I mark it? 5 MR SEMENYA SC: It's not an exhibit as 6 yet, Chair. 7 CHAIRPERSON: Well, this witness's 8 exhibits were in the MMM series, were they not? Where do 9 we go in MMM, Ms Pillay? 10 MS PILLAY: The next exhibit is MMM50, 11 Chair. 12 CHAIRPERSON: 5-0. Statement of 13 Constable Dubeni. Exhibit MMM50 is the statement of 14 Constable Dubeni. Is the operator in a position to put it 15 on the screen for us? He says no. It's five to one, do 16 you need it now, Mr Semenya, or shall we take the lunch 17 adjournment now and so that your support team can make the 18 necessary arrangements for this exhibit. And there's 19 another exhibit there also, Constable Nkaweni, is his 20 statement also going to go in? Anyway, you can apply your 21 mind to the question of what statements you want to put in 22 as exhibits at this point. 23 MR SEMENYA SC: It would suit me if we 24 adjourned now, Chair. 25 CHAIRPERSON: I thought it would. So to</p>	<p style="text-align: right;">Page 26549</p> <p>1 CHAIRPERSON: What's on the screen is, 2 there's a problem with it because the last line of the page 3 on which paragraph 7 begins appears to be obscured by the 4 top of the next page. So it reads, "As we approached 5 approximately 50 metres from the last koppie I saw three 6 or" and then there's a line of writing missing and then it 7 goes onto the next page, "pangas and axes towards us. I 8 shouted at them, ordering them to stop and drop the 9 dangerous weapons. They could not comply with my 10 instruction and kept on approaching us." That's the whole 11 paragraph as it reads on the screen but there's clearly a 12 line of writing missing. 13 MR SEMENYA SC: The line that is 14 obscured, for completeness of record, is that "three people 15 advancing with spears as," "spears and pangas." That is 16 how completely it would read. 17 CHAIRPERSON: I understand, thank you. 18 MR SEMENYA SC: General, you did make 19 reference, as I pointed to you, to amongst other people 20 Constable Dubeni, remember? 21 GENERAL NAIDOO: I did, Chair. 22 MR SEMENYA SC: And in your evidence you 23 referred to 150 metres. 24 GENERAL NAIDOO: Yes, Chair. 25 MR SEMENYA SC: Can you explain that?</p>

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1 GENERAL NAIDOO: No, Chair, I was reading
 2 from the copy of the statement I had but I see now the
 3 Chair referred to it as 50 metres, yes.
 4 CHAIRPERSON: I'm not quite sure what the
 5 word after "approximately" is. Oh I see, I see, it's F –
 6 (indistinct) 51, rather a funny way of doing the Fs but
 7 yes, it is obviously, now that one looks at it.
 8 MR SEMENYA SC: Is that what explained
 9 your account of this witness and the reference to 150?
 10 GENERAL NAIDOO: That's correct, Chair.
 11 MR SEMENYA SC: Those are the questions I
 12 have for the witness, Chair.
 13 CHAIRPERSON: Thank you, Mr Semanya.
 14 Could we please see – I've got a few questions for you,
 15 very few – could we please see exhibit MMM9B on the screen?
 16 The one I want isn't 9B, it's the actual – maybe it's 9.
 17 Yes, that's the one I wanted, yes, thank you. Exhibit 9,
 18 oh it's 9A, I see. Do you see exhibit 9A, Major-General?
 19 GENERAL NAIDOO: Yes.
 20 CHAIRPERSON: Now you'll notice on the –
 21 this is a Google, no, this is an aerial photograph, is it,
 22 of the area? Is it a Google Earth photograph of the area?
 23 And it gives the spots at which you idled when you were,
 24 your vehicle idled and stopped for some time.
 25 GENERAL NAIDOO: Yes, Chair.

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1 CHAIRPERSON: Now, the first one is on
 2 the sort of bottom left-hand corner of that section
 3 sticking out of the power station, do you see that? There
 4 you idled from 15:58:05 to 16:02:05, that's four minutes.
 5 You then after that moved up to the, what one could call
 6 the top left-hand corner of that section sticking out from
 7 the power station.
 8 GENERAL NAIDOO: Yes.
 9 CHAIRPERSON: And there you idled for the
 10 second time from 16:03:05 to 16:07 so it's another four
 11 minutes. That was the second idling point.
 12 GENERAL NAIDOO: Yes, Chair.
 13 CHAIRPERSON: And then you proceeded
 14 towards the top of the picture and you came to a spot where
 15 you idled for another approximately three minutes.
 16 GENERAL NAIDOO: Correct, Chair.
 17 CHAIRPERSON: Now according to the
 18 evidence you gave while you were being cross-examined by Mr
 19 Chaskalson, you couldn't remember why you idled at the
 20 second spot. The first spot I think you did give an
 21 explanation but the idling, the four minutes of idling from
 22 16:03:05 to 16:07:05 you said you couldn't remember and
 23 there's no obvious reason that occurs to one as to why you
 24 would've idled there. Now if you hadn't idled for those
 25 four minutes, you would have – and if one sees the distance

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1 it took you to travel from the first idling point to the
 2 second idling point in a minute –
 3 GENERAL NAIDOO: Yes, Chair.
 4 CHAIRPERSON: - it's quite clear, I would
 5 think, that if you had proceeded towards the koppie and
 6 gone past it on the lower portion of it –
 7 GENERAL NAIDOO: Yes.
 8 CHAIRPERSON: - you would've got through
 9 in time and if it took you a minute to move from the first
 10 idling point to the second, in the four minutes that you
 11 would have had if you hadn't idled for the second point for
 12 some reason you can't explain or remember, you would easily
 13 have go to a point in the vicinity of what looks like the
 14 bottom right-hand corner, as one looks at the photograph,
 15 of koppie 1. That must be right, surely. Do you agree
 16 with that?
 17 GENERAL NAIDOO: Could be, yes, Chair.
 18 CHAIRPERSON: Mm? Now, so the problem
 19 I've got is that you could have got to scene 1 if you
 20 hadn't idled for the second time, without any problem
 21 because as far as I can recall the evidence was that the –
 22 this again was put by Mr Chaskalson – was that the first
 23 firing that happened seems to have happened round about
 24 16:08, I think it is. Is that correct, Mr Chaskalson?
 25 MR CHASKALSON SC: Chairperson, I'll have

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1 to go back to my precise times but in terms of the
 2 movements of the vehicle we can show that the vehicle had
 3 moved off from its second idling point before what we,
 4 before the time at which the NIU moved forward.
 5 CHAIRPERSON: Yes, so it's sometime after
 6 16:07.
 7 MR CHASKALSON SC: Yes.
 8 CHAIRPERSON: It moved off from the
 9 second idling point, whereas if you hadn't idled, hadn't
 10 stopped at the second idling point and had proceeded from
 11 the second idling point at 16:03 before the firing started
 12 which is after 16:07, you would have been able to have got,
 13 via the route I indicated, to a spot out of range of fire
 14 and you could have proceeded without any difficulty to
 15 scene 1. So that seems to be correct, doesn't it?
 16 MR SEMENYA SC: Chair, I'm just trying to
 17 clear with the evidence leaders. As far as I understood Mr
 18 Chaskalson's questions, he did not say before the first
 19 shooting happened. He said before the NIU shot. We don't
 20 know which side was doing the first shooting at koppie 3 as
 21 yet, as far as I know the evidence.
 22 MR CHASKALSON SC: Yes, but we can say
 23 that it was before the first shooting took place because
 24 that was the JJJ11, I think 454, 4544, the picture of the
 25 blue water and the green water which is before – which is

1 as the forward holding area 2 people are approaching the
 2 koppie and before there are bodies down in that corner
 3 which we believe to be the first bodies and which we
 4 understand SAPS to believe to be the first bodies as well.
 5 CHAIRPERSON: There's no indication –
 6 there's any time for any other shooting. Anyway, let's
 7 just proceed for the moment. The point Mr Semenya has made
 8 is on record. You see the point I've got difficulty in
 9 understanding is if one can't explain the second idling
 10 period and that idling period had been used to travel in
 11 the direction of scene 1, you could have got past the
 12 bottom right-hand corner of koppie 1 before any firing took
 13 place. Now that seems to me to be correct. Do you quarrel
 14 with that?
 15 GENERAL NAIDOO: Chair, if I remember,
 16 what I testified on that particular aspect is that is where
 17 we left at what I'm assuming is now the third idling spot
 18 that you're referring to.
 19 CHAIRPERSON: No – no, I'm not busy with
 20 the third one. I accept that the third idling spot, the
 21 third idling time was probably when there was already
 22 shooting because I haven't got a problem with that. I
 23 haven't got a problem with that. I'm concentrating on the
 24 second idling spot and what I'm putting to you is it seems
 25 to me – I just want to get your answer to this, if there

1 are answers – if you hadn't stopped at the second idling
 2 spot and proceeded, you would have got past, on the route I
 3 suggested which you could have done, you would have got
 4 past the bottom right-hand corner of koppie 1 and you
 5 would've been well on the way to scene 1 before the
 6 shooting started. That's the proposition that I'm putting
 7 to you to get your answer to.
 8 GENERAL NAIDOO: Of course, Chair –
 9 CHAIRPERSON: It's all obviously
 10 dependent upon the point that Mr Semenya made, that if I'm
 11 wrong in thinking that the first shots in the vicinity of
 12 koppie 3 only took place at the end of your second idling
 13 period – if I'm wrong in that then of course the point
 14 falls away but if I'm right on that then the point must be
 15 good. Do you agree with that?
 16 GENERAL NAIDOO: Two things, Chair. I
 17 think the reason for stopping there, as I did indicate,
 18 when we came and we tried to orientate ourselves and we
 19 used the sight of koppie 1 as our landmark. We, remember,
 20 had a long debate about, you know, which was the shortest
 21 way and I testified that we, the visual that we had of
 22 koppie 1 guided us in the direction that we were going to
 23 go, one. That was the one thing, that we needed to
 24 orientate ourselves and yes, I suppose if we didn't stop
 25 and we travelled straight through we would have probably

1 missed a lot of things, yes.
 2 CHAIRPERSON: Ja, that's the whole point.
 3 And you certainly could not remember, because I read the
 4 record very carefully, you could not give an explanation as
 5 to why you had the second idling period. Now, and the
 6 point is that that route, absent any shooting, that route
 7 would have been a suitable route, in fact a shorter route
 8 to get to scene 1 than the route past koppie 3.
 9 GENERAL NAIDOO: Chair, yes, as I
 10 indicated when we came round, the idea was to take that
 11 road that was leading to koppie 3. That would have been
 12 alongside the police - the power station, going to koppie
 13 1. I did testify to that.
 14 CHAIRPERSON: So we've reach some kind of
 15 consensus on that issue. Now the next point I want to ask
 16 you about is this. In your statement you – JJJ108 page 11
 17 in para 66 you say the following, perhaps that could be put
 18 on the screen please, JJJ108 page 11 para 66. "We moved
 19 forward in a line with K9 members on foot as well as motor
 20 vehicles. Due to the fact that gunfire was still erupting
 21 in the koppie 3 area which we had to pass to go to koppie
 22 1, I diverted four vehicles of the K9 unit personnel in
 23 that direction." Now it's not correct that you had to pass
 24 koppie 3 to go to kk1 –
 25 GENERAL NAIDOO: Chair –

1 CHAIRPERSON: As I indicated on the
 2 exhibit we looked at a moment ago, MMM9A, there was a
 3 route. In fact it was, I would suggest, the more obvious
 4 route or so it appears to me, so before you'd actually got
 5 to koppie 3 you could have gone through below koppie 1 to
 6 scene 1. So the statement that you made that you had to
 7 pass the koppie 3 area to get to koppie 1 wasn't correct.
 8 GENERAL NAIDOO: Chair, I would not agree
 9 with that because as I indicated, we did have also a
 10 discussion on that, from where I stood we turned right, I
 11 looked at the course of the road and the course of the
 12 road, there was a road that was going in front of koppie 1
 13 and going in that direction. That was, I passed, that was
 14 the route that we were going to take.
 15 CHAIRPERSON: My recollection of your
 16 evidence was that you couldn't go that route, the route
 17 I've suggested was the obvious route, because by the time
 18 you got there, there were already bullets flying in that
 19 direction and you had a soft vehicle and so on. Now I can
 20 understand that, if there was firing at that point that
 21 would not have been an appropriate route to follow. I
 22 haven't got a problem with that evidence, but the point I'm
 23 putting to you, you see, is that if you hadn't delayed for
 24 the two, for the four minutes at the second lingering
 25 point, then you would have got through there before there

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1 were any bullets flying but the point is that if you had
 2 done what I suggest would've been appropriate to do, you
 3 wouldn't have had to pass the koppie 3 area to get to
 4 koppie 1.
 5 GENERAL NAIDOO: Chair –
 6 CHAIRPERSON: Because in fact it's clear
 7 from the photograph we saw that it was perfectly possible
 8 to get to koppie without passing the koppie 3 area, in fact
 9 you would have moved over towards koppie 1 before you got
 10 to the koppie 3 area. That's the problem I have, you see,
 11 so I'd be grateful to get your answer on that.
 12 GENERAL NAIDOO: Chair, if we could go
 13 back to the map maybe that would assist us.
 14 CHAIRPERSON: [Microphone off, inaudible]
 15 9A.
 16 GENERAL NAIDOO: That's right. Chair, as
 17 I indicated, where you look at the idling, the third idling
 18 area, if you turn right there and you proceed on that road
 19 you go into that area between koppie 1 and koppie 3.
 20 CHAIRPERSON: Yes, I haven't got a
 21 problem with that. I'm not busy with the third idling
 22 area.
 23 GENERAL NAIDOO: Yes.
 24 CHAIRPERSON: I'm busy with the second
 25 idling area and if you hadn't idled at the second idling

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1 area and had just proceeded upwards, you would have been
 2 able to turn right and go past the lower portion on the
 3 photograph of koppie 1, without getting to the third idling
 4 area or the area of koppie 3.
 5 GENERAL NAIDOO: Chair, maybe I'm
 6 misunderstanding.
 7 MR SEMENYA SC: Chair, if the Chair is
 8 counting the idling there as well, because maybe that's
 9 where the confusion lies.
 10 CHAIRPERSON: No, no, there's no
 11 confusion at all. The first idling area is 15:58:05 to
 12 16:02:05 as indicated, that's the first idling area.
 13 GENERAL NAIDOO: That's correct.
 14 CHAIRPERSON: The second – and he gives
 15 an explanation for that idling with which I haven't got a
 16 problem. The second idling area which he got to a minute
 17 after the end of the first idling area, is the period
 18 marked, the area marked 16:03:05 to 16:07:05 and there's a
 19 blue mark indicating that. That's the second idling area.
 20 The third idling area is the one where it says 16:12:35
 21 ignition off and below that it says 16:05, 16:08:05 to
 22 16:11:05 idling. That's the third idling area. Now I
 23 haven't got a problem with that. By the time he got to the
 24 –
 25 MR CHASKALSON SC: Sorry, Chairperson,

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1 there may be some confusion because there was an earlier
 2 idling period –
 3 GENERAL NAIDOO: That's right.
 4 MR CHASKALSON SC: - at the first power
 5 station, 16:54. I don't think, my own recollection of the
 6 evidence is that it doesn't affect the questions that
 7 you're putting to the witness –
 8 GENERAL NAIDOO: Yes.
 9 MR CHASKALSON SC: - but I think the
 10 witness must be allowed to answer that.
 11 CHAIRPERSON: I don't think it affects it
 12 all but certainly, you've heard what Mr Chaskalson says.
 13 GENERAL NAIDOO: Yes.
 14 CHAIRPERSON: You see I'm putting the
 15 problem to you, I'm not trying to catch you.
 16 GENERAL NAIDOO: Of course, I'm trying to
 17 understand –
 18 CHAIRPERSON: Obviously the point I put
 19 must be clear.
 20 GENERAL NAIDOO: Yes.
 21 CHAIRPERSON: And you must be able to
 22 answer it and if there's an explanation, well, then that –
 23 so be it, but I want to know what your explanation is if
 24 you've got one.
 25 GENERAL NAIDOO: Of course. Chair, when

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1 you refer to the second idling is it the 15:58:05?
 2 CHAIRPERSON: Yes, the one I mean is the
 3 16:03:05 to 16:07:05.
 4 GENERAL NAIDOO: Yes.
 5 CHAIRPERSON: That one.
 6 GENERAL NAIDOO: Yes.
 7 CHAIRPERSON: And as far as I could see
 8 from the transcript you haven't got an explanation as to
 9 why you idled there. You have got an explanation as to why
 10 you idled at the 15:58:05 to 16:02:05. So I haven't got a
 11 problem with that and I haven't got a problem with what I
 12 call the third one for the same reason. It's what I call
 13 the second one but you said you couldn't remember why, you
 14 couldn't give an explanation, so that's why I'm focusing on
 15 it.
 16 [14:17] GENERAL NAIDOO: Yes. Chair, what I can
 17 remember somewhere now, you know I'm not linking it now to
 18 these two idling times, is where we split the group and
 19 there was a group that stayed behind with the ambulances
 20 and everything. As to the duration of the idling and why
 21 we waited there, I can't specifically say but as I said, I
 22 know when we came around we tried to orientate ourselves,
 23 we looked where the koppie 1 was and then we moved forward
 24 with the intention of going directly to koppie 1 and as I
 25 said, as we came around the power station we heard the

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1 shooting which caused me to hold back some of the vehicles
 2 and the other vehicles went forward.
 3 CHAIRPERSON: The point that I was
 4 concerned with at this point of my questioning was simply
 5 this, that was it true to say that you had to pass the
 6 koppie 3 area to go to koppie 1?
 7 GENERAL NAIDOO: Chair, in my evidence I
 8 indicated that we were going in that direction, we had to
 9 pass between koppie 1 and koppie 3 as far as my assessment
 10 was and if the shooting was coming from that direction
 11 obviously it posed a risk to the ambulances.
 12 CHAIRPERSON: I can understand the second
 13 idling if there's a good reason for it, then everything
 14 follows. The premise was that there wasn't a good reason
 15 for the second idling, you see, but I'm now busy with
 16 another point.
 17 GENERAL NAIDOO: Yes.
 18 CHAIRPERSON: And that is – I've dealt
 19 with that one – is it correct to say that you had to pass
 20 the koppie 3 area to get to koppie 1? There was a route
 21 available to you to koppie 1 which would not have involved
 22 your passing the koppie 3 area. That must be right too,
 23 surely?
 24 GENERAL NAIDOO: Chair, I'm not sure
 25 which route would that be then?

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1 CHAIRPERSON: The route I put to you –
 2 GENERAL NAIDOO: Looking at the map –
 3 CHAIRPERSON: - would take the second
 4 idling point –
 5 GENERAL NAIDOO: Yes?
 6 CHAIRPERSON: - proceed towards the
 7 koppie 1 as if you're proceeding effectively to the top
 8 right-hand corner of the picture. You proceed along that
 9 way, you get to the end of the power station –
 10 GENERAL NAIDOO: Yes?
 11 CHAIRPERSON: - and then you simply go
 12 straight right, past the bottom part of koppie 1 and then
 13 it's very simple to get from there to scene 1. That was a
 14 viable, available route and so to say that you had to pass
 15 koppie 3 area to get to koppie 1 was not true.
 16 GENERAL NAIDOO: Chair, as it was in
 17 cross-examination, exactly the same point was put to me.
 18 As I indicated, from where I stood I could see the road
 19 going down and I could see the road curving in front of
 20 koppie 1, so my assessment was that it was going down there
 21 and going past in front of koppie 1, not going behind it,
 22 but it was also put to me, yes, you could have went around
 23 it and I said yes, I could have taken that possible view.
 24 Then they said what about the barbed wire? My assessment
 25 at that stage was that I was going down the road and I was

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1 going in front of koppie 1 and that would mean I would pass
 2 between the two koppies.
 3 CHAIRPERSON: Did you know about the
 4 barbed wire?
 5 GENERAL NAIDOO: Chair?
 6 CHAIRPERSON: Did you know about the
 7 barbed wire?
 8 GENERAL NAIDOO: I knew that they were
 9 going to deploy barbed wire.
 10 CHAIRPERSON: But did you know it had
 11 been uncoiled yet?
 12 GENERAL NAIDOO: Chair, well, in terms of
 13 our briefing, yes, they said it would be but as I said, I
 14 was still orientating myself in terms of where I was, yes.
 15 CHAIRPERSON: Anyway, I still don't
 16 understand how you can make a positive statement about the
 17 koppie 3 "which I had to pass to go to koppie 1." You seem
 18 now to be changing it to be saying the koppie 3 area "which
 19 I thought I had to pass to go to koppie 1."
 20 GENERAL NAIDOO: No.
 21 CHAIRPERSON: Because that's a different
 22 thing, isn't it?
 23 GENERAL NAIDOO: Chair, no, I'm
 24 definitely not changing what I said. As I said, from where
 25 I stood, that's the assessment I made that we're going to

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1 be going in that direction because I could see where koppie
 2 1 was and –
 3 CHAIRPERSON: You are changing your
 4 statement. Your statement makes a positive statement, it
 5 talks about the koppie 3 area which I had to pass to go to
 6 koppie 1.
 7 GENERAL NAIDOO: Yes, Chair.
 8 CHAIRPERSON: What you're now saying, you
 9 now concede, as I understand it, that it was possible for
 10 you to get to koppie 1 without passing the koppie 3 area
 11 but you now say, well, that may be so – you don't put it
 12 like that but that's the way I understand you, that may be
 13 so but I thought at the time I had to pass the koppie 3
 14 area to get to koppie 1. That is an alteration, a
 15 deviation –
 16 GENERAL NAIDOO: No.
 17 CHAIRPERSON: - from what's in your
 18 statement, isn't that so?
 19 GENERAL NAIDOO: Chair, no, I don't agree
 20 because as I indicated to you, that was my assessment when
 21 I was there. I was cross-examined on this thing and I
 22 said, and I was given alternative routes, you could have
 23 done this and you could have done that and I was cross-
 24 examined on those alternative routes. As I indicated, what
 25 I put on my statement is what I, the assessment that I made

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1 from where I stood.

2 CHAIRPERSON: Well, we have your answer.

3 We have also what paragraph 66 of the statement says and

4 the matter can be left there for the moment.

5 GENERAL NAIDOO: Thank you.

6 CHAIRPERSON: The next point I want to

7 ask you about is, at what point did you see that the

8 strikers had gone or were going in the direction of koppie

9 3? In other words, at some stage you must have been aware

10 of the fact that the strikers had gone to koppie 3 or were

11 going to koppie 3. Now, can you tell me where you were at

12 that point?

13 GENERAL NAIDOO: Chair, as I indicated,

14 as we came around the power station we could see on the

15 left of koppie 3 I indicated the TRT filtering line that

16 was walking towards koppie 3.

17 CHAIRPERSON: Yes, yes, I'm sorry, I'm

18 just asking the question out of ignorance. Where were you

19 at the time when you saw this TRT line moving towards the

20 koppie –

21 GENERAL NAIDOO: Chair, as I said,

22 somewhere –

23 CHAIRPERSON: Was it a TRT line or NIU

24 line?

25 GENERAL NAIDOO: Chair, there were two

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1 that I referred to.

2 CHAIRPERSON: Alright, okay. The

3 question is, where were you when you saw these two groups?

4 GENERAL NAIDOO: As we were coming around

5 the point of the power station, so it would be somewhere

6 after this idling area of 15:58, 16:02, between there and

7 the other idling area –

8 CHAIRPERSON: It's while you were

9 proceeding for that one minute between what I call the

10 first idling area and the second idling area?

11 GENERAL NAIDOO: That's right.

12 CHAIRPERSON: So that's where you were

13 and that also tells us the time.

14 GENERAL NAIDOO: That's right.

15 CHAIRPERSON: Both where you were and the

16 time.

17 GENERAL NAIDOO: Yes.

18 CHAIRPERSON: What did you see at that

19 moment?

20 GENERAL NAIDOO: Chair, as I indicated,

21 there's two things that I saw, one on the left-hand side, I

22 saw the TRT line with people dispersing. I indicated that

23 there were strikers that were dispersing in a westerly

24 direction and as we came a little further down we also saw

25 the NIU advancing on the right-hand side.

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1 CHAIRPERSON: Now remember you showed us

2 before where you saw the NIU line advancing and I think

3 there's a photograph which shows that.

4 GENERAL NAIDOO: That's right.

5 CHAIRPERSON: Now can you just indicate

6 to us – I think you may have done it already but I'm just

7 asking, more refreshing my memory - from the document that

8 you referred to, you remember I think it was, was it MMM1

9 or MMM2, there was a map?

10 GENERAL NAIDOO: Yes.

11 CHAIRPERSON: Perhaps we could see that

12 and you can tell us where you saw the TRT people and the

13 strikers dispersing. This is the right one we're looking

14 at now, isn't it? This is MMM1, slide 148 grid, as it is

15 described. Now we can see there koppie 3 is in the,

16 roughly in the square B3 shading slightly into the slide

17 A3, that's correct?

18 GENERAL NAIDOO: That's correct, Chair.

19 CHAIRPERSON: Right. Now, and we also

20 know I think that the NIU people were in, you saw them in

21 square B3 and shading into B2, is that correct, to the

22 right as we look at the map –

23 GENERAL NAIDOO: To the right.

24 CHAIRPERSON: - of koppie 3, is that

25 right?

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1 GENERAL NAIDOO: Somewhere to the right,

2 yes.

3 CHAIRPERSON: Okay. Now where – now the

4 other people you talked about who were dispersing and where

5 you saw the TRT people, where were they on this map?

6 GENERAL NAIDOO: If I look at there –

7 somewhere around, I think A2, the lower end of A2, the

8 upper end of A3 possibly. They were moving in a westerly

9 direction.

10 CHAIRPERSON: Yes, away from the koppie?

11 GENERAL NAIDOO: Away from the koppie,

12 Chair.

13 CHAIRPERSON: Alright, thank you. And

14 that was the first – was that the first time you realised

15 that something was happening at koppie 3 and that strikers

16 were there?

17 GENERAL NAIDOO: Chair, no. As I

18 indicated that the issue about koppie 3 was the fact that

19 there were shots being fired.

20 CHAIRPERSON: No, but there's some issue

21 about when the shots were being fired, the time of the

22 shots.

23 GENERAL NAIDOO: Of course.

24 CHAIRPERSON: So are you telling us that

25 the first time you realised that there were people,

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1 presumably strikers, at koppie 3 was when you heard shots
 2 being fired there?
 3 GENERAL NAIDOO: Chair, as I indicated,
 4 when we saw koppie – we could not see people, we could see
 5 the bush, yes. It was only after we got much closer and I
 6 went around to the NIU that I started seeing people other
 7 than the three people that we arrested. I testified to
 8 that and I was also asked about, you know, did I not see
 9 the number of people there and I said my, I testified to
 10 the fact that my assumption was that there were a few
 11 people that may have taken cover there. So yes, the fact
 12 that there were strikers there was not a possibility that
 13 escaped my mind but obviously the police action was
 14 something else.
 15 CHAIRPERSON: Yes, but you did say, I
 16 understood you – unless is misunderstood you – that you
 17 realised there were people there, was when you heard shots
 18 in that vicinity, is that correct?
 19 GENERAL NAIDOO: Yes.
 20 CHAIRPERSON: Right. Now that was before
 21 you actually saw people. You realised there were shots
 22 there.
 23 GENERAL NAIDOO: That's right.
 24 CHAIRPERSON: Now the police wouldn't
 25 have been engaging in some target practice, so the fact

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1 that there were shots there would have been an indication
 2 to you there must be strikers there, that's why there are
 3 shots there.
 4 GENERAL NAIDOO: Yes, Chair.
 5 CHAIRPERSON: That's right. And so then
 6 we're back to the question at what time the first shots
 7 took place, but that's a question that we've looked at
 8 already. But you've now told us where you were when you
 9 saw or realised that there must be strikers in that area at
 10 koppie 3.
 11 GENERAL NAIDOO: Yes.
 12 CHAIRPERSON: That's right. Alright, no,
 13 thank you, that's what I wanted to know. Now the last
 14 question I want to ask you about is, we gave you some bits
 15 of homework to do when you were here last time, remember?
 16 One of the things we wanted was, you were going to look in
 17 relation to the question of birdshot in the store, do you
 18 remember that?
 19 GENERAL NAIDOO: That's right, yes.
 20 CHAIRPERSON: Now did you make a list of
 21 the various things we asked you to look at?
 22 GENERAL NAIDOO: Chair, yes. We have
 23 requested the reports. They will be submitted to us
 24 shortly. The people that are dealing with it we have put a
 25 formal request to them and it will be submitted to the

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1 Commission.
 2 CHAIRPERSON: So you haven't got that
 3 yet?
 4 GENERAL NAIDOO: Not yet, no.
 5 CHAIRPERSON: Now did you make a list of
 6 all the other things we asked you to do?
 7 GENERAL NAIDOO: Chair, there are two
 8 things that come to mind. One was for the R5 ammunition
 9 and the other one was for the shotgun ammunition. I think
 10 those are the main things that I had, I had – yes. And
 11 those, both requests have been put to the supply chain for
 12 –
 13 CHAIRPERSON: So what you're telling me
 14 is you can't yet provide that information but it will be
 15 provided as soon as you get it.
 16 GENERAL NAIDOO: As soon as I receive it,
 17 I will –
 18 CHAIRPERSON: Thank you, those are the
 19 questions I wanted to ask you. I gather that Adv Hemraj
 20 wants to ask you some questions too.
 21 GENERAL NAIDOO: Okay, Chair.
 22 COMMISSIONER HEMRAJ: General, you have
 23 testified, as have some other witnesses, that you were
 24 operating on two or three hours of sleep or very few hours
 25 of sleep -

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1 GENERAL NAIDOO: That's true.
 2 COMMISSIONER HEMRAJ: - per night, for a
 3 consecutive number of nights.
 4 GENERAL NAIDOO: That's correct.
 5 COMMISSIONER HEMRAJ: From the logistical
 6 point of view, does it make sense to commit all the
 7 resources into 18 or 20 hour days over a period of time,
 8 just staggering it?
 9 GENERAL NAIDOO: Chair, yes. You see we
 10 were trying to escalate the operation, put in place
 11 resources and deal with all the requests, with all the
 12 available resources we had. We tried to get the members to
 13 book off duty on time, you know, so that they could rest,
 14 et cetera, but a lot of the commanders had to do a lot of
 15 work in preparation for getting things in place and
 16 unfortunately that required us to be available.
 17 COMMISSIONER HEMRAJ: And do that, well
 18 aware of the consequences of people on the field being
 19 sleep deprived?
 20 GENERAL NAIDOO: Chair, that's why I'm
 21 indicating that we try and get our members off duty on time
 22 as soon as possible, get them to go and rest and get to
 23 where they're supposed to be but unfortunately the
 24 commanders who have to put things in place for the next day
 25 have to do, you know, what he's required to do so that when

<p style="text-align: right;">Page 26574</p> <p>1 the members come back to resume their duties, things are in 2 place such as planning, infrastructure, resources. Those 3 things unfortunately have to be done by somebody. 4 COMMISSIONER HEMRAJ: The other issue, 5 you said that there were discussions after you booked off 6 duty with other persons about any alternatives to the 7 encirclement plan. 8 GENERAL NAIDOO: Yes. 9 COMMISSIONER HEMRAJ: Those discussions, 10 what was discussed there? Did it bear any resemblance to 11 the plan that was eventually presented at 14:30 on the 16th? 12 GENERAL NAIDOO: Chair, as I indicated, 13 there were many options discussed in terms of how we could 14 – and mainly why the discussions took place besides, you 15 know, it being some sort of brainstorming, it's also 16 looking at what resources were required to articulate such 17 a plan, et cetera. So in terms of the resemblance, yes, 18 some of these options such as putting the barbed wire, 19 maybe not specifically as it was deployed on the day but 20 putting the barbed wire to protect the police, the 21 journalists, et cetera, was issues that were discussed as a 22 possibility. As I indicated, there was a possibility of 23 encircling the koppie which was discussed more extensively, 24 whether we should encircle it whilst people are on it, 25 while people are not there, et cetera. So bits of these</p>	<p style="text-align: right;">Page 26576</p> <p>1 MR SEMENYA SC: I'm told he is, Chair, 2 yes. 3 CHAIRPERSON: We will then proceed on the 4 basis that you or – are you leading him, Mr Semenya? Ms 5 Baloyi? 6 MS BALOYI: I will be leading him. 7 CHAIRPERSON: I see. So you'll ask the 8 question in English and he will then answer in Tswana and 9 Mr Mahlangu will then interpret for us into English. 10 Alright, okay. Yes, Mr Wesley, you look as if you want to 11 say something? 12 MR WESLEY: Chair, yes. I have spoken to 13 Mr Mahlangu and he does know that he is going to sit and 14 translate in the manner that you've said. 15 CHAIRPERSON: Everything has been 16 organised. Thank you, I should have been more trusting and 17 assumed everything would happen without my asking about it. 18 We'll now take the adjournment. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [15:32] CHAIRPERSON: The Commission resumes. We 21 were asked to adjourn for longer than we thought because 22 documents had to be prepared and have now been prepared, so 23 that's why we're resuming. I apologise to those who had to 24 wait. Mr Semenya, I understand the next witness is going 25 to be – oh, Mr Semenya is not even here. I understand the</p>
<p style="text-align: right;">Page 26575</p> <p>1 things were eventually integrated into the final plan, yes. 2 CHAIRPERSON: Thank you. I take it there 3 are no further questions you're going to be asked so you'll 4 be excused – 5 GENERAL NAIDOO: Thank you, Chair. 6 CHAIRPERSON: - on the usual basis that 7 if it's necessary for you to come back you'll be prepared 8 to come back but otherwise, thank you for your evidence, 9 you're excused. 10 GENERAL NAIDOO: Thank you, Chair. 11 [NO FURTHER QUESTIONS – WITNESS EXCUSED] 12 MR SEMENYA SC: Chair, can we ask for a 13 short stand down to get the next witness ready? 14 CHAIRPERSON: Certainly. When you're 15 ready, you will let us know. When I spoke to you earlier 16 about housekeeping matters there was a question I intended 17 to ask and I forgot and that is, the next witness I gather 18 is to be Lieutenant-Colonel Merafe. What language is he 19 going to speak? 20 MR SEMENYA SC: Vernacular. 21 CHAIRPERSON: Sorry? 22 MR SEMENYA SC: Vernacular, Setswana. 23 CHAIRPERSON: Setswana. So we will then 24 have to have, I take it, consecutive translation of his 25 answers. Is he prepared to receive questions in English?</p>	<p style="text-align: right;">Page 26577</p> <p>1 next witness is going to be called by Adv Baloyi, is that 2 correct? 3 MS BALOYI: That is correct. 4 CHAIRPERSON: who is the witness? 5 MS BALOYI: Chairperson, the witness is 6 Lieutenant-Colonel Omphile Joseph Merafe. 7 CHAIRPERSON: Oh, the statement I have 8 reads Joseph Omphile Merafe. Which name is first and which 9 is second? 10 MS BALOYI: Perhaps, Chair, if I could 11 confirm with the witness? 12 CHAIRPERSON: Well, we'd better swear him 13 in first before – we want his answer on oath about it, 14 don't we? Would you stand up, please? Are you prepared to 15 take the oath? Will that be binding on your conscience or 16 do you wish to affirm? 17 COLONEL MERAFFE: I have no objection 18 taking the oath, Chairperson. 19 CHAIRPERSON: Would you please raise your 20 right hand? Would you raise your right hand, please? Do 21 you swear the evidence you will give before this Commission 22 will be the truth, the whole truth and nothing but the 23 truth. Please say I swear, so help me God. 24 COLONEL MERAFFE: So help me God. 25 OMPHILE JOSEPH MERAFFE: (d.s.s.)</p>

<p style="text-align: right;">Page 26578</p> <p>1 CHAIRPERSON: Thank you, you may be 2 seated. Now, we want to know, now you're under oath you 3 can tell us, are you Omphile Joseph Merafe or are you 4 Joseph Omphile Merafe? What's the correct order of your 5 Christian names? 6 COLONEL MERAFFE: I am Omphile Joseph 7 Merafe. 8 CHAIRPERSON: Thank you. You may 9 question the witness. 10 EXAMINATION BY MS BALOYI: Thank you, 11 Chair. Chair, I have to start by apologising for the delay 12 that we have occasioned with the document preparation – 13 CHAIRPERSON: No, your apology is 14 accepted. It's alright, we understand what's happened. 15 The re-examination didn't take as long as was anticipated 16 and the time you thought you would have available for 17 preparing the bundles of documents in the result wasn't 18 available and that's the cause of the trouble. So we 19 understand, your apology is accepted, you may proceed 20 without any further – 21 MS BALOYI: Thank you, Chair, thank you. 22 Chairperson, perhaps to start with housekeeping matters, we 23 have provided bundles of documents with an index at the 24 front of the bundle, of each bundle. Now Chairperson, the 25 bundle consists mainly of documents that are already</p>	<p style="text-align: right;">Page 26580</p> <p>1 the consolidated statement and RRR2 – fortunately it's not 2 difficult to change a P to an R – RRR2 will be the 3 statement of the 30th of November. Thank you for that, Mr 4 Wesley. 5 MR CHASKALSON SC: Chairperson, are we 6 skipping Q? We're jumping the Q, Chairperson. 7 CHAIRPERSON: No, that is a point which 8 is unanswerable. So I rule that I was not functus officio 9 when I marked the exhibit and I call the consolidated 10 statement QQQ1 and the statement of the 30th of November, 11 which fortunately I hadn't marked yet, is QQQ2. 12 MS BALOYI: Yes, Chair. 13 CHAIRPERSON: And then the next one looks 14 like the supplementary statement of the 29th of November 15 2013, is that correct? 16 MS BALOYI: Yes, item 3 on the index, 17 Chair. 18 CHAIRPERSON: That's QQQ3. 19 MS BALOYI: Yes. 20 CHAIRPERSON: That's dated 29/11. And 21 now – 22 MS BALOYI: Chairperson, the next 23 document, new document would be, following the sequence 24 would be item 16. We don't have it in the bundle, somehow 25 it slipped out, Chair. If we could reserve that and first</p>
<p style="text-align: right;">Page 26579</p> <p>1 exhibits before the Commission. We have about four 2 documents that are new documents and perhaps if I could 3 speak to those. 4 CHAIRPERSON: Yes. It looks to me as if 5 the first one is the consolidated statement. 6 MS BALOYI: Indeed it is, Chair. 7 CHAIRPERSON: So that will be PPP1, is 8 that correct? 9 MS BALOYI: Yes, Chair. We were at OOO 10 the last time, I recall. 11 CHAIRPERSON: Yes, that's right, so PPP. 12 MS BALOYI: Yes. 13 CHAIRPERSON: That'll be marked PPP1. 14 Then the second one I take it is the unsigned statement – 15 MS BALOYI: Yes, Chair. 16 CHAIRPERSON: - which is dated the 30th of 17 November 2012. 18 MS BALOYI: That is so, Chair. 19 CHAIRPERSON: That will be PPP2. 20 MS BALOYI: Thank you, Chair. 21 MR WESLEY: Sorry, Chair, can I 22 interrupt? It's been brought to my attention that the PPP 23 series we've already reserved for Mr X. There is already a 24 PPP1. 25 CHAIRPERSON: Alright, so RRR1 will be</p>	<p style="text-align: right;">Page 26581</p> <p>1 thing tomorrow morning – 2 CHAIRPERSON: Alright, so we'll mark it 3 even though we haven't got a document to mark. We'll do 4 virtual marking. 5 MS BALOYI: Yes, that would be in order, 6 Chair. 7 COMMISSIONER HEMRAJ: That's the 8 Manhattan Hotel minutes. We do have them in the file. 9 MS BALOYI: Commissioner Hemraj is 10 correct. Item 16 we do have. I was referring to a 11 different document, I do apologise for that. 12 CHAIRPERSON: [Microphone off, 13 inaudible.] 14 MS BALOYI: It's referred to as – 15 CHAIRPERSON: [Microphone off, 16 inaudible.] 17 MS BALOYI: It's minute of National POP 18 meeting, Manhattan Hotel. 19 CHAIRPERSON: Minute of what? 20 MS BALOYI: Of National – 21 CHAIRPERSON: POP? 22 MS BALOYI: POP meeting – Manhattan 23 Hotel. 24 CHAIRPERSON: Manhattan Hotel. What 25 date?</p>

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1 MS BALOYI: Chair, if I may –

2 CHAIRPERSON: 29 May 2012, alright. So

3 we've now marked the exhibits. Some of us have got

4 complete sets, some of us have been discriminated against

5 and haven't, but we're now able, you are now able to roll

6 with the –

7 MS BALOYI: Perhaps, Chair, if I could

8 just – the one item that I thought, that I was seeking to

9 speak to which we didn't include in the bundle by error is

10 item 18. The document is already an exhibit before the

11 Commission, that is the letter to the National

12 Commissioner. It's exhibit T. It was somehow left out of

13 this bundle and we will slot it in.

14 CHAIRPERSON: My one is missing two

15 documents and other people have got bundles that are only

16 missing one but never mind, it'll be sorted out in the

17 morning. I doubt whether you'll get that far in leading

18 the witness by the time we adjourn.

19 MS BALOYI: I don't think I will, Chair.

20 We'll sort it out. Thank you, Chairperson.

21 CHAIRPERSON: Alright, okay.

22 MS BALOYI: Chairperson, perhaps if we

23 could start with the document marked 1A in the bundle and

24 that would be consolidated statement of Lieutenant-Colonel

25 Merafe.

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1 CHAIRPERSON: Yes. Now do we have to

2 lead all the – do you have to lead all the evidence on the

3 employment history? Can we not just take it as read?

4 Perhaps you can highlight a few things.

5 MS BALOYI: Yes.

6 CHAIRPERSON: It will save time.

7 MS BALOYI: Yes. That's a practical way,

8 Chairperson, I'll do that. Now Colonel Merafe, if you

9 would look at the document, your consolidated statement –

10 CHAIRPERSON: [Microphone off, inaudible]

11 – is get him to confirm the whole document up front.

12 MS BALOYI: Yes, I intend to, Chair.

13 CHAIRPERSON: In case you leave something

14 out that should be in –

15 MS BALOYI: Chair, I intend to do that

16 because in some two paragraphs there's minor corrections

17 that we would like to make. Colonel Merafe, you've read

18 the document. Do you confirm that this is your statement?

19 COLONEL MERAFFE: It is so, Chairperson.

20 MS BALOYI: And if you look at the last

21 page, the second last page of the document at page 27, do

22 you confirm that that is your signature?

23 COLONEL MERAFFE: That is correct,

24 Chairperson.

25 CHAIRPERSON: Do you confirm the contents

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1 of the statement, is that right, subject to two little

2 corrections that Adv Baloyi is going to refer us to?

3 COLONEL MERAFFE: That is correct,

4 Chairperson.

5 MS BALOYI: Thank you, Chairperson.

6 Colonel Merafe, there are two paragraphs in this document

7 that you have indicated require correction. Do you want to

8 refer us to those paragraphs?

9 CHAIRPERSON: Tell us what they are, Adv

10 Baloyi, it would be quicker.

11 MS BALOYI: Chairperson, in the hurry to

12 get started I have missed my –

13 CHAIRPERSON: Oh, well, the witness will

14 tell –

15 MS BALOYI: - my reference and I'm hoping

16 that he will remember offhand.

17 CHAIRPERSON: What are the two paragraphs

18 that require correction?

19 COLONEL MERAFFE: Chairperson, it is

20 paragraph 4.7.11 on page 7.

21 CHAIRPERSON: What's the correction that

22 is required?

23 COLONEL MERAFFE: Sentence number 4, the

24 date on the letter that Lieutenant-Colonel Vermaak – that

25 is the letter Colonel Vermaak refers to on the date that I

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1 have mentioned.

2 CHAIRPERSON: And what's the correct

3 date?

4 COLONEL MERAFFE: The 28th of May 2012.

5 CHAIRPERSON: 28th of May, not 22 May,

6 okay. That's the one correction, and the other one?

7 MS BALOYI: Chairperson, the next

8 correction is at paragraph 4.7.12.

9 CHAIRPERSON: Yes?

10 MS BALOYI: In the fourth line.

11 Lieutenant-Colonel Merafe, the correction that you want to

12 make there?

13 COLONEL MERAFFE: After the word

14 "knobkerries" there is a word "pangas" which should be

15 appearing there, which –

16 CHAIRPERSON: So the sentence reads,

17 "Some of the marches" – it should be "marchers" with an

18 "r", M-A-R-C-H-E-R-S, another correction. "Some of the

19 marchers were armed with knobkerries, pangas and sticks,"

20 is that right?

21 COLONEL MERAFFE: That is correct,

22 Chairperson.

23 MS BALOYI: Thank you, Chair. Now

24 Colonel Merafe, with those changes you confirm the content

25 of the statement?

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1 COLONEL MERAPE: That is correct,
 2 Chairperson.
 3 MS BALOYI: Yes. Colonel Merafe, at
 4 paragraph 2 of the statement you speak about your
 5 employment history. We will not go into each paragraph but
 6 save to confirm with you that you joined the police, the
 7 Bophuthatswana Police in November 1985, is that correct?
 8 COLONEL MERAPE: That is correct,
 9 Chairperson.
 10 MS BALOYI: And we see at paragraph 2.2
 11 you set out the different ranks that you have held in the
 12 period and at paragraph 2.2.5 you state that you were
 13 appointed, you were promoted to Lieutenant-Colonel in 2005
 14 to date, is that correct?
 15 COLONEL MERAPE: That is so, Chairperson.
 16 MS BALOYI: And at paragraph 3 you set
 17 out the details of your training. We will not go through
 18 all of that. Now if you look at paragraph 3.4 where you
 19 speak about SWAT course 1997, what is that course, what
 20 does it entail?
 21 COLONEL MERAPE: That is, the meaning of
 22 SWAT, it means special weapons and technique training.
 23 MS BALOYI: And if you look at paragraph
 24 3.5, technical policing course level 2, what does that
 25 training entail?

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1 COLONEL MERAPE: Tactical policing level
 2 2, that is the training which we received where we were
 3 trained in the use of different kinds of weapons and
 4 ammunition.
 5 MS BALOYI: Then at 3.7, public order
 6 police entry course?
 7 COLONEL MERAPE: Public order police
 8 entry course, that is where we were trained in managing
 9 crowds, crowd management.
 10 MS BALOYI: And at paragraph 3.10 you
 11 have a course, community policing course, what is that
 12 course? What did it entail?
 13 COLONEL MERAPE: Community policing
 14 course, that is where we are trained to work together with
 15 the community in policing or as policemen.
 16 MS BALOYI: Now if we move to paragraph 4
 17 where you talk about your career path and –
 18 CHAIRPERSON: Before you get there, I
 19 think it might be appropriate to refer to 3.15, that POP
 20 crowd management course. So that's a modern course that
 21 you took in 2009 dealing with POP crowd management, is that
 22 correct?
 23 COLONEL MERAPE: That is correct,
 24 Chairperson.
 25 CHAIRPERSON: What did that course

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1 involve?
 2 COLONEL MERAPE: Mr Chairperson, we were
 3 trained there in the modern ways of dealing with crowds.
 4 MS BALOYI: I see that that course, in
 5 paragraph 3.15, is a course that you took in 2009. If I
 6 may just refer you back to look at paragraph 3.7 which is a
 7 course that you undertook in 1998, is there a difference
 8 between the two courses in 3.7 and the one in 3.15?
 9 COLONEL MERAPE: They are not different,
 10 Chairperson.
 11 MS BALOYI: Now, if we move on to
 12 paragraph 4 which deals with your career path and
 13 experience, in paragraph 4.1 you say after you completed
 14 your police training course in '86 you then joined the riot
 15 unit in Mokgotsi police station, is that correct?
 16 COLONEL MERAPE: That's correct,
 17 Chairperson.
 18 MS BALOYI: And then in paragraph 4.3, if
 19 I may, you say that "In 1997 I became part of the first
 20 group to form the Rustenburg public order police unit. The
 21 unit was made up of members from different units in the
 22 North-West province," is that correct?
 23 COLONEL MERAPE: That is correct,
 24 Chairperson.
 25 MS BALOYI: Now, Colonel Merafe, do you –

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1 this 1997 formation of the Rustenburg public police unit,
 2 what was the unit made up of? Who was part of that unit,
 3 the members?
 4 COLONEL MERAPE: The former members of
 5 the South African Police – the police, not the police
 6 service. I am referring to the former police force and
 7 brought together with the police from Bophuthatswana Police
 8 who had to do with riots.
 9 MS BALOYI: So is it correct that it is
 10 only in 1997 that there was integration of the different
 11 police units, POP units, is that correct? Is that what I'm
 12 understanding from you?
 13 COLONEL MERAPE: That is correct,
 14 Chairperson.
 15 MS BALOYI: And then in paragraph 4.5 you
 16 state that in 2005 you were promoted to the rank of
 17 Lieutenant-Colonel and became unit commander at Klerksdorp
 18 where you succeeded Lieutenant-Colonel Vermaak.
 19 COLONEL MERAPE: That is correct.
 20 CHAIRPERSON: You had already said in the
 21 first paragraph that the unit that you were commander of
 22 was the public order police Rustenburg, is that right?
 23 COLONEL MERAPE: I am presently at
 24 Rustenburg. I started in Klerksdorp to be a unit
 25 commander.

<p style="text-align: right;">Page 26590</p> <p>1 CHAIRPERSON: Yes, but what was the unit 2 that you were the commander of? 3 COLONEL MERAFAE: The first one was the 4 Klerksdorp public police unit. I am presently with the 5 public order policing in Rustenburg. 6 MS BALOYI: Now if we may – and then you 7 say in 4.6 that in 2009 you were transferred to POP 8 Rustenburg where you were appointed unit commander and that 9 this is the position you hold today. 10 COLONEL MERAFAE: That is correct, 11 Chairperson. 12 MS BALOYI: Now, other than initially the 13 riot unit and now the POP, have you been a member of any 14 other unit within the SAP in your employment history? 15 COLONEL MERAFAE: From my initial training 16 as a police officer in 1986, Mr Chairperson, I worked in 17 the riotous activities in Bophuthatswana first, Mr 18 Chairperson, and then transferred to South Africa. I am 19 still in that unit. 20 [15:51] MS BALOYI: And that is what you say in 21 paragraph 4.7. 22 COLONEL MERAFAE: That is correct, 23 Chairperson. 24 MS BALOYI: Now still with paragraph 4.7, 25 you set out some of the operations that you were involved</p>	<p style="text-align: right;">Page 26592</p> <p>1 about peace and also to disarm and to arrest those people 2 that had weapons such as firearms and so on. 3 MS BALOYI: Yes. Colonel, was the POP 4 North-West the only unit or component that was deployed to 5 this operation? 6 COLONEL MERAFAE: The operation was 7 referred to as Pax 2. It was a national occasion because 8 we had many other units such as Gauteng, we worked together 9 with people who came from the province of the Free State. 10 MS BALOYI: Did you have only POP 11 deployed in this operation? 12 COLONEL MERAFAE: Chairperson, yes. Such 13 riots were dealt with by members of the POP. There were, 14 however, detectives who would investigate after the arrest 15 of certain suspects. 16 MS BALOYI: And then the operation in 17 paragraph 4.7.4, what was the dynamic of that operation? 18 COLONEL MERAFAE: This was at Tugela in 19 the area of Msinga in KwaZulu Natal, Mr Chairperson. There 20 was a faction fight where there was also shooting taking 21 place, people being killed and this was during the 22 elections where certain political parties could not go to 23 places like Tugela Ferry because of the fighting that was 24 going on there. What happened, Chairperson, is that these 25 people had firearms and we managed to take these firearms</p>
<p style="text-align: right;">Page 26591</p> <p>1 with. Is this a complete list of the operations that 2 you've been involved with in your career, crowd management 3 operations? 4 COLONEL MERAFAE: Those that I mention 5 here, Chairperson, are just a few of those, just a fraction 6 of what I have dealt with, possibly a third or a quarter of 7 them. 8 MS BALOYI: Yes. Now if you look at 9 paragraph 4.7.3 where you speak of, you say "In 2001 I was 10 deployed to Richmond KZN in charge of a POP platoon from 11 the North-West province. We were deployed to stabilise 12 Richmond which at the time was volatile due to violence 13 involving the ANC and the UDM following the killing of a 14 high profile leader of the UDM, Sifiso Nkabinde, you see 15 that? 16 COLONEL MERAFAE: I see, Chairperson. 17 MS BALOYI: Yes. Now, Colonel Merafe, do 18 you – if I may ask, what was the dynamic of this operation 19 in 2001? What did you have to deal with? 20 COLONEL MERAFAE: At the time of the 21 Richmond incident, Chairperson, there were differences 22 between two political parties, the ANC and the UDM. Many 23 people were being killed there by being shot, destruction 24 of their property such as motor vehicles and houses was the 25 order of the day, Chairperson. We went there to bring</p>	<p style="text-align: right;">Page 26593</p> <p>1 away from them. We managed to take more than 200 firearms 2 from those people. 3 MS BALOYI: And then if you turn to page 4 6 at paragraph 4.7 you say, "In 2008 I was operational 5 commander in" – 6 CHAIRPERSON: 4.7.6, sorry. 7 MS BALOYI: 4.7.6, Chairperson. "In 2008 8 I was operational commander in Germiston, East Rand, 9 Gauteng during unrest which involved attacks on and 10 disruption of property of foreign nationals." Now in that 11 operation, what components of the police were deployed? 12 COLONEL MERAFAE: During that time, 13 Chairperson, it was members of the POP, members of the 14 national intervention unit and also people from the South 15 African National Defence Force. 16 MS BALOYI: And then if you turn to the 17 next page, paragraph 4.7.10 you say, "In 2012 I was the 18 operational commander during the strike of RDOs at Impala 19 Mine. In the same year I was the operational commander 20 responsible for crowd management during the criminal trial 21 arising from the death of Mr Moss Phakoe, prominent member 22 of the ANC and a councillor." Now if we speak to the first 23 sentence, "In 2012 I was operational commander during the 24 strike of RDOs at Impala Mine," what was the dynamic of 25 this operation at Impala Mine?</p>

1 COLONEL MERAFE: At that mine, Impala,
 2 members known as rock drill operators were on strike, Mr
 3 Chairperson, pertaining to their salaries and what they did
 4 was to attack those people that were going to work. What
 5 was happening is that they were closing roads with trees,
 6 with rocks and scraps of vehicles. What was also
 7 troublesome was that people were being cut, chopped with
 8 sharp instruments and firearms were also used. Some of the
 9 people were approached in their places of residence and
 10 were intimidated there and some property was damaged.

11 MS BALOYI: What components of the SAPS
 12 were deployed to this operation?

13 COLONEL MERAFE: These were members of
 14 the POP in Rustenburg which was assisted by members of the
 15 national intervention unit from Pretoria.

16 MS BALOYI: Chairperson, I see that it's
 17 4 o'clock, should I –

18 CHAIRPERSON: I was proposing to sit till
 19 the end of paragraph 4.7.12 but if you'd prefer to deal
 20 with those on the morrow, we will do so.

21 MS BALOYI: Chairperson, it might take a
 22 bit of time, the next particular, the detail. We want to
 23 go into detail.

24 CHAIRPERSON: Alright, we'll take the
 25 adjournment now till tomorrow morning at 9 o'clock.

1 MS BALOYI: Thank you, Chair.
 2 [COMMISSION ADJOURNED]

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