

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 221

24 APRIL 2014

PAGES 27226 TO 27339



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1 [PROCEEDINGS ON 24 APRIL 2014]
 2 [09:35] CHAIRPERSON: I'm sorry we're starting
 3 late again but we had housekeeping matters to attend to in
 4 chambers. Colonel, you're still under oath.
 5 COLONEL MERAPE: Thank you, Chairperson.
 6 CHAIRPERSON: Oh I understand Ms Le
 7 Roux, you are next to cross-examine. I thought it was
 8 going to be Mr Bizos but I was told that you were going to
 9 go first. Is that correct?
 10 MS LE ROUX: Yes, Chair.
 11 CHAIRPERSON: For the Human Rights
 12 Commission.
 13 MS LE ROUX: That's correct, Chair.
 14 CHAIRPERSON: We received some material
 15 from you which –
 16 MS LE ROUX: Yes, Chair, there are –
 17 CHAIRPERSON: I trust the witness has
 18 received it as well?
 19 MS LE ROUX: Yes, he has, Chair. Perhaps
 20 if you would like to do the housekeeping there are then
 21 five new exhibits we should mark.
 22 CHAIRPERSON: Right now what are the, we
 23 got as far as QQQ13.
 24 MS LE ROUX: Right, so the –
 25 CHAIRPERSON: So what will be QQQ14?

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1 MS LE ROUX: Would be the statement of
 2 Brigadier Seboloke 19 July 2013.
 3 CHAIRPERSON: Statement of Brigadier
 4 Seboloke dated 19, what you've got on your schedule is 19.
 5 19 July 2013. Let's see whether that was the 19th.
 6 COMMISSIONER HEMRAJ: The statement says
 7 22nd July 2013, Ms Le Roux on page 4.
 8 CHAIRPERSON: No, look at page 2, the
 9 foot –
 10 MS LE ROUX: Yes, Chair, we're using the
 11 foot of page 2.
 12 CHAIRPERSON: It says 19, presumably
 13 when the typed version was prepared.
 14 MS LE ROUX: Yes, Chair.
 15 CHAIRPERSON: And then it was attested
 16 on the 22nd.
 17 MS LE ROUX: Yes, Chair.
 18 CHAIRPERSON: So it's dated 19-7-2013
 19 and attested on, what's the date?
 20 COMMISSIONER HEMRAJ: 22nd.
 21 MS LE ROUX: The 22nd.
 22 CHAIRPERSON: 22nd, now the interesting
 23 question is whether this is a repetition of what happened
 24 earlier in the commission. Where the Commissioner of Oaths
 25 and the deponent were present at the same time and the same

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1 place. But inasmuch as –
 2 MS LE ROUX: Then, Chair, we have –
 3 CHAIRPERSON: That's not a matter that
 4 need worry you. So we've marked that one, alright.
 5 MS LE ROUX: Then, Chair, we have a
 6 supplementary statement from the Brigadier. So I'm not
 7 sure if you want to do 14.1, 14.2.
 8 CHAIRPERSON: Yes, I think so. QQQ14.2
 9 is?
 10 MS LE ROUX: Will be the supplementary
 11 statement of Brigadier Seboloke dated 12 September 2013.
 12 CHAIRPERSON: Now did he and the
 13 Commissioner get together on the same day as far as this
 14 statement?
 15 MS LE ROUX: It appears so, Chair.
 16 COMMISSIONER HEMRAJ: It's actually on
 17 the same page too.
 18 CHAIRPERSON: - enough he starts by
 19 saying I'm making this statement for the purposes of
 20 supplementing my statement of 19 July. Anyway
 21 supplementary statement dated 12th September.
 22 MS LE ROUX: Yes. Then –
 23 CHAIRPERSON: That's QQQ14.1 and 14.2.
 24 The next one?
 25 MS LE ROUX: Then QQQ15 will be the CAL

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1 letter to the SAPS attorney of record dated 24 January
 2 2013.
 3 CHAIRPERSON: CAL's letter to Van der
 4 Velden and Duffy?
 5 MS LE ROUX: Yes.
 6 CHAIRPERSON: Van Velden and Duffy,
 7 dated?
 8 MS LE ROUX: 24 January 2013.
 9 CHAIRPERSON: Yes.
 10 MS LE ROUX: Then Chair, there's an
 11 annexure which is a table. That should then be, I think
 12 we'll make these 15.1, 2 and 3. So the letter 15.1, 15.2
 13 the annexure, the one that says request and feedback.
 14 CHAIRPERSON: We've got a document here
 15 headed response to CALS.
 16 MS LE ROUX: No, Chair, there's a –
 17 CHAIRPERSON: - sorry.
 18 MS LE ROUX: Then there's an annexure –
 19 CHAIRPERSON: I see that.
 20 MS LE ROUX: It looks like a table.
 21 CHAIRPERSON: I see that, headed request
 22 and then feedback.
 23 MS LE ROUX: And then feedback.
 24 CHAIRPERSON: Now the document headed,
 25 which I misread is response to call is response to CAL.

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1 MS LE ROUX: Then that would be 15.3,
 2 that's from the SAPS.
 3 CHAIRPERSON: That's 15.3?
 4 MS LE ROUX: Yes.
 5 CHAIRPERSON: So 15.2 is the table?
 6 MS LE ROUX: Yes.
 7 CHAIRPERSON: QQQ15.2 what do I call it?
 8 MS LE ROUX: Annexure –
 9 CHAIRPERSON: Table headed request-
 10 feedback.
 11 MS LE ROUX: Yes. Annexure, it relates
 12 to a discovery request. So annexure regarding –
 13 CHAIRPERSON: So how do I call it? What
 14 about document headed request/feedback?
 15 MS LE ROUX: That's fine, Chair, and
 16 Chair, it's dated the 26th of January. It was attached to
 17 an email, sorry February 26th February 2013.
 18 CHAIRPERSON: Well there's no –
 19 MS LE ROUX: It was forwarded to us, we
 20 didn't give you the covering letter.
 21 CHAIRPERSON: We don't need that in
 22 describing the exhibits.
 23 MS LE ROUX: Alright.
 24 CHAIRPERSON: Then the last one is
 25 QQQ15.3 document –

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1 MS LE ROUX: SAPS response to CALS.
 2 CHAIRPERSON: SAPS response to CALS and
 3 has that got a date on? Any way SAPS response to CALS -
 4 MS LE ROUX: The 8th of –
 5 CHAIRPERSON: We know what that is.
 6 MS LE ROUX: Right.
 7 CHAIRPERSON: So I'll mark that one
 8 QQQ15.3. I will, it looks like you've got two tables. The
 9 request-feedback document is QQQ –
 10 MS LE ROUX: 15.2.
 11 CHAIRPERSON: 15.2 and the CALS' letter
 12 is 15.1. It's QQQ15.1. Now that the homework has been
 13 done. Now you can –
 14 MS LE ROUX: Thank you, Chair.
 15 CHAIRPERSON: Start asking questions and
 16 getting his answers.
 17 CROSS-EXAMINATION BY MS LE ROUX: Thank
 18 you, Chair. Good morning, Lieutenant Colonel.
 19 COLONEL MERAFE: Morning, Miss.
 20 MS LE ROUX: If I could start with
 21 exhibit SS3 which is the contingency plan for the SAPS, it
 22 commences dated the 10th of August 2012 and just, I just
 23 have a few clarification questions about this plan. In
 24 chief you said you had not written plan, correct?
 25 COLONEL MERAFE: That's correct,

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1 Chairperson.
 2 MS LE ROUX: And Chair, for the record
 3 the reference is day 216 page 26620, we don't need to go
 4 there. You said "that it was an operational plan which we
 5 draw to prepare ourselves for anything to prepare ourselves
 6 for any action that might happen and you also said it was
 7 not a proper plan, it's something that's been done to take
 8 care of the situation as at the time to intervene" and I
 9 just want to be clear that we understand what you mean by
 10 that. Do you mean that this is a plan drawn up quickly to
 11 deal with an unfolding and uncertain situation?
 12 COLONEL MERAFE: Chairperson, it's a plan
 13 that we draw without having sufficient information about
 14 the unfolding situation.
 15 MS LE ROUX: And therefore it's quite
 16 broad and general, correct?
 17 COLONEL MERAFE: Correct, Chair.
 18 MS LE ROUX: And am I also correct that
 19 ordinarily plan like this would be revised as you get more
 20 information and further detail?
 21 COLONEL MERAFE: That's correct, Chair.
 22 MS LE ROUX: Now before you signed this
 23 first plan dated the 10th of August you hadn't yet been to
 24 Marikana, correct?
 25 COLONEL MERAFE: It is so, Chairperson,

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1 even if the position is I am not on the scene but I had
 2 sent police over there, I would have the plan in the
 3 office.
 4 MS LE ROUX: Alright and the other
 5 officer who signed the plan was Brigadier Seboloke and am I
 6 also correct that he hadn't been at Marikana either before
 7 he signed the plan?
 8 COLONEL MERAFE: Yes, it is so.
 9 MS LE ROUX: Chair, then we don't need to
 10 go to the statements that we've just marked but for the
 11 record QQQ14.1 and 14.2 and in particular paragraph 3 of
 12 14.1 and paragraph 2.3 of 14.2 indicates that Brigadier
 13 Seboloke in his statement indicates he wasn't yet at
 14 Marikana by the 10th of August. So Lieutenant Colonel, can
 15 I therefore ask you to confirm the following
 16 characteristics about how this plan was drawn up. Firstly
 17 that –
 18 CHAIRPERSON: Sorry to interrupt you.
 19 My understanding is the police were going to hand these
 20 affidavits in any way as evidential material before us so
 21 no harm has been done by the fact that they've come in
 22 prematurely through you.
 23 MS LE ROUX: Thank you, Chair. So,
 24 Lieutenant Colonel, am I correct that the plan is drawn up
 25 by a relatively junior officer?

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1 COLONEL MERAPE: No, it's not so,
 2 Chairperson.
 3 MS LE ROUX: So who drew up this plan?
 4 COLONEL MERAPE: It's a member of the
 5 rank of Warrant Officer. Chairperson, I'm saying this is
 6 not a junior official in that a person with the rank of
 7 Warrant Officer who arrives on a scene can take charge of
 8 the operation.
 9 MS LE ROUX: Right, I understand that but
 10 -
 11 COLONEL MERAPE: In terms of standing
 12 order 262.
 13 MS LE ROUX: Right I understand that, but
 14 am a correct that a Warrant Officer is not a commissioned
 15 officer?
 16 COLONEL MERAPE: Yes, it's true but the,
 17 in the planning it's not about commissioning.
 18 MS LE ROUX: Right, and I understand your
 19 answer about standing order 262. Am I also correct that
 20 the plan was drawn up quickly so that you could respond to
 21 a developing and uncertain situation?
 22 COLONEL MERAPE: Chairperson, even if
 23 there is no plan written we are able to respond to a
 24 developing situation. We are trained, we have been trained
 25 to deal with situation that can arise at any time.

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1 MS LE ROUX: Lieutenant Colonel, I
 2 understand that. But my question is this particular plan,
 3 because you had an uncertain developing situation you
 4 didn't have a lot of time to prepare the plan that was
 5 produced?
 6 COLONEL MERAPE: Well as I'm explaining,
 7 whether there is one at the moment or none we are able to
 8 respond to a situation, a plan like this can then be drawn
 9 later.
 10 MS LE ROUX: And am I correct then that
 11 the plan was essentially a stopgap, so it was a plan that
 12 was in place until such time as you could get more
 13 information and a more developed plan, a proper plan could
 14 be put together?
 15 COLONEL MERAPE: This is correct.
 16 MS LE ROUX: Lieutenant Colonel, could I
 17 ask you to turn to exhibit JJJ178, this is the statement of
 18 Mr Gary White and in particular if you could turn to page
 19 50 of Mr White's statement. Page 50.
 20 COLONEL MERAPE: What is the page?
 21 MS LE ROUX: Page 50, five zero.
 22 COLONEL MERAPE: Okay.
 23 MS LE ROUX: And I'd particularly like to
 24 deal with paragraphs 5.2.1 and 5.2.2 which appears on the
 25 next page. This is under a section headed planning and

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1 briefing. Mr White states here "the operational plan
 2 guiding the police action between 10 to 13 August is marked
 3 contingency plan as is dated 10 August 2012. The state
 4 admission is that public order to be maintained and crime
 5 be prevented. As a strategic aim this objective provides
 6 little useful direction to the police involved in the
 7 operation. In the risk analysis section there is no
 8 reference to the risk of an attack on the police. While
 9 that may be appropriate on 10 August the plan was not
 10 updated as the situation on the ground changed on 11 and 12
 11 August. The annexures marked Saturday and Sunday are
 12 simply a photocopy of the plan applying on 10 August. In
 13 my view that failure to update the plan suggests a lack of
 14 ongoing planning where police adjusted the plan in
 15 accordance with the information that they were receiving or
 16 the events that were occurring on the ground. It is clear
 17 that the situation developed over the weekend of 10 to 12
 18 August to the extent that additional resources were
 19 required to be deployed. Violence occurred on Friday 10
 20 and Saturday 11 August which led to the shooting of at
 21 least two mine workers. Four deaths had occurred by the
 22 end of Sunday 12 August. It is obvious that additional
 23 police action was taken in response to the heightening
 24 levels of violence but no amendment appeared to have been
 25 made to the operational plans guiding the public order

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1 operation or to the risk assessments. Suggesting that the
 2 updated information was not being disseminated to officers
 3 on the ground."
 4 Now, Lieutenant Colonel, would you agree with Mr
 5 White's criticism set out there, that the plan was clearly
 6 not taking into account what happened over the weekend from
 7 10 to 12 August because in those two days, the 11th and the
 8 12th we had the violence escalate but we don't see any
 9 revision being made to the stopgap plan, the contingency
 10 plan. Would you agree with Mr White's criticism?
 11 COLONEL MERAPE: Chairperson, I am not
 12 going to agree with this. As I say on the 10th the, there
 13 was no, there was no continuation of the protest and again
 14 on the 11th it continued, people were marching past
 15 Wonderkop where there was shooting and at all times,
 16 Chairperson, the members of the POP were requested to go
 17 and attend to the situation. We did not have information
 18 as to what was going to happen so as to have police ready
 19 at the scene.
 20 MS LE ROUX: But, Lieutenant Colonel,
 21 over that, the course of that weekend the plan remains
 22 unchanged but we have four deaths. Do you not believe that
 23 the plan should have been revised to take account of that
 24 escalating violence and the threat and the risks that had
 25 obviously changed?

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1 COLONEL MERAFFE: Chairperson, I am saying
 2 the plan would have been changed if the, there was
 3 escalation in the protests, in the JOC. I am referring to
 4 the officers who were in the JOC, if they had had this
 5 information they would have then seen to it that the plan
 6 be revised.

7 CHAIRPERSON: According to the statement
 8 that we have from Brigadier Engelbrecht information had
 9 been received, he had spoken to General Mpembe about it.
 10 General Mpembe apparently passed it on. General Mpembe
 11 later after the events on the 12th told him that he was,
 12 that he was, I forget the exact word he used but was
 13 dissatisfied with the response which wasn't what he had
 14 expected would happen and if there had been more police
 15 sent, the matter had been dealt with the way it should, the
 16 way he wanted it dealt with, the suggestion is that what
 17 happened on the 12th might not, on the morning, you know two
 18 security guards were killed might not have happened. Now
 19 have you read that statement of Brigadier Engelbrecht? He
 20 said there were insufficient people on patrol but his point
 21 is that he had received information which he passed on. I
 22 think to General Mpembe amongst others and General Mpembe
 23 passed it on further to the people on the ground. So it's
 24 not quite as simple as you've just told us. But are you
 25 aware of what Brigadier Engelbrecht says in that regard and

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1 what he says about what General Mpembe said to him?
 2 [09:55] COLONEL MERAFFE: Chairperson, I will try
 3 to explain that I as a unit commander of the POP in
 4 Rustenburg I was not given information prior to the attacks
 5 that took place. I was reacting to something that was
 6 already happening. This is why I sent Lieutenant Titwane
 7 and members when it was said this is happening. If I had
 8 the information before, Chairperson, I would've placed
 9 members there to avoid this incident happening on the
 10 scene.

11 CHAIRPERSON: I don't want to interfere
 12 with your cross-examination, but it occurs to me that at
 13 some stage, possibly now or possibly later depending how
 14 you plan to run things, but what Brigadier Engelbrecht says
 15 in this regard should be put on the screen. The exhibit
 16 should be available for the witness to look at and then Mr
 17 Lekota is looking at the moment in his notebook to find the
 18 number of Brigadier Engelbrecht's – the exhibit containing
 19 his statement.

20 MS BALOYI: Chair –
 21 CHAIRPERSON: Ms Baloyi's got it.
 22 MS BALOYI: - it's Exhibit JJJ167.
 23 CHAIRPERSON: Thank you very much. So I
 24 know that wasn't one of the documents you're going to look
 25 at and it may be that it's not appropriate for us to look

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1 at it now because it's your cross-examination, and I don't
 2 want to tell you how to do it and in what order, but if I
 3 may make a suggestion, it might be helpful at some stage,
 4 sooner or later, to look at that. Let the witness deal
 5 with it because I think it's relevant to the point that you
 6 – or may be relevant to the point you make.

7 MS LE ROUX: Chair, I think I'm dealing
 8 with a slightly different point, but if – I mean I think if
 9 he would like to explore Brigadier Engelbrecht's statement
 10 with the Lieutenant Colonel now, I think let's do that
 11 while we're on the point.

12 CHAIRPERSON: I'd like to get his
 13 response. Alright so can we –

14 MS LE ROUX: Yes.

15 CHAIRPERSON: What did you say? It's
 16 JJJ167? Could we have that please on the screen? Alright
 17 and we better scroll through it quickly. Can we – yes.
 18 Alright, can we go back now. Let's just go back to the
 19 foot of I think on page 2. No, it starts there. Paragraph
 20 – no, could we have paragraph 2, please? Can we have
 21 paragraph 2? He says "on 11 August", this is now Brigadier
 22 Engelbrecht talking, "11 August" that's to say the Saturday
 23 "I received information pertaining information about the
 24 gathering that had taken place the previous day at
 25 Marikana". That's the 10th. "Information I received is

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1 contained in paragraph 5 of Exhibit TTT5. I received this
 2 report from a handler, also called a collector, who is the
 3 person who deals with the primary human sources
 4 information". I take it what we would call informers. "I
 5 have dealt with this handler for the last 10 years. I
 6 received this report by way of an SMS. The report included
 7 information that there were going to be attacks that night
 8 against supporters of NUM. No specifics were given of the
 9 attacks but the attackers would be part of a group of about
 10 2 500 people".

11 Paragraph 3 then he says "I then telephoned
 12 Major-General Mpembe, discussed the information I received
 13 with him. I did this because it was my duty to report the
 14 information to Major-General Mpembe and because I wanted to
 15 see that visible policing was deployed in the area. I
 16 discussed the information I had received with Major-General
 17 Mpembe in relation to the gathering that had taken place
 18 the previous day at Marikana. I also forwarded the SMS I
 19 had received from the handler to Major-General Mpembe.
 20 Major-General Mpembe told me he was going to deploy
 21 operational people from SAPS at Marikana and that he would
 22 deal with the issue". And paragraph 4 says "During the
 23 afternoon of 12 August", now this is after the killing of
 24 the two security guards, "During the afternoon of 12 August
 25 2012 I received another report by way of an SMS from the

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1 same handler. The information that I had received is
 2 contained in paragraph 6 of Exhibit TT5. The report was
 3 also that the protestors wanted to stop employees going to
 4 Karee Mine on the nightshift as well as the next day".
 5 Now we know that in fact two employees going to
 6 the Karee Mine on that Sunday evening were in fact killed.
 7 Now I start the sentence again. "The report is also that
 8 the protestors wanted to stop employees going to Karee Mine
 9 on the nightshift as well as the next day. I again
 10 telephone Major-General Mpembe and conveyed the content of
 11 the report that I had received to him. I also raised my
 12 concern with Major-General Mpembe concerning the killing of
 13 the two security guards at Wonderkop. My concern being why
 14 people had been killed when I had asked the previous day
 15 for visible policing to be deployed. Major-General Mpembe
 16 replied that he was attending to the issue and that visible
 17 police had not be employed as he would've wanted them to be
 18 deployed". This is where I get the idea he was
 19 dissatisfied. "I again forwarded the SMS that I had
 20 received from the handler to Major-General Mpembe. I then
 21 received a follow-up report from the handler by way of sms
 22 saying that information indicated that AMCU supporters
 23 would also target employees who supported NUM in the area
 24 of Nkaneng, Marikana West and Karee Mine hostel. The
 25 report was also that all employees who were not supporting

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1 the stay-away or strike and the demand for salary increases
 2 would be targeted. When I received this report I forwarded
 3 the SMS to Major-General Mpembe without further discussion
 4 because I had already had a discussion with him". Then he
 5 goes on about what happened on the afternoon of the 13th of
 6 August. So the point of the statements is that a lot of
 7 very important information, I think you would agree with
 8 that, was important information, had been received by
 9 Brigadier Engelbrecht from his – from the handler. It had
 10 been given to Major-General Mpembe and you've seen what
 11 Major-General Mpembe said to Brigadier Engelbrecht and
 12 think this was put to Major-General Engelbrecht, sorry, to
 13 Major-General Mpembe and he agreed with it. Now it is
 14 relevant, I think, to the questions you've just been asked
 15 by Advocate Le Roux in relation to the non-updating of the
 16 plan and so on. Now would you care to comment on the
 17 passages I read to you?
 18 COLONEL MERAFAE: Chairperson, I want to
 19 agree with what Brigadier Engelbrecht says about him giving
 20 information over to General Mpembe. But I want to say that
 21 me on the ground, a member who had to execute the duties on
 22 the ground, I did not have this information. And the
 23 killing of the people during the night of the 12th Captain
 24 Sefiki was on duty with members on the ground as a result
 25 of the information. If I received this other information,

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1 Chairperson, I would have posted Captain Sefiki with the
 2 members on the night of the 12th.
 3 CHAIRPERSON: You want to say? Is that
 4 your comment?
 5 COLONEL MERAFAE: Ja, that is my comment
 6 regarding –
 7 CHAIRPERSON: Okay.
 8 COLONEL MERAFAE: - not updating but,
 9 Chairperson, but I have to agree that the plan was not
 10 updated when it's about the question of the plan being not
 11 updated.
 12 CHAIRPERSON: If you had received that
 13 information would the plan have been updated?
 14 COLONEL MERAFAE: Chairperson, this is
 15 difficult for me to say. If I was in the JOC, I wasn't in
 16 the JOC, if I was possibly there I could have mentioned it
 17 and - I only reported on duty on the morning of the 13th of
 18 August.
 19 CHAIRPERSON: I put the question
 20 differently. Do you think, is it your opinion, that the
 21 plan should have been updated in the light of the
 22 information which is set out in Brigadier Engelbrecht's
 23 statement?
 24 COLONEL MERAFAE: Chair, you consider
 25 there's a difference between a contingency plan and a

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1 proper plan, Chairperson. If we get information like we
 2 got from Brigadier Engelbrecht, it is proper for us to do
 3 the proper plan. Like I'm explaining now, it only surfaced
 4 to us on the night and then I posted members on the
 5 instructions of Brigadier Calitz nightshift, on the night I
 6 then placed Sefiki with members there on the night of the
 7 12th.
 8 MS LE ROUX: So, Lieutenant Colonel, just
 9 to get a little more specific about this, if we look at the
 10 risk analysis that's set out in the plan of the 10th of
 11 August that is the only plan that was holding in place over
 12 the period of time that Brigadier Engelbrecht is talking
 13 about receiving this information, the risk analysis which
 14 appears on page 1 of SS3, paragraph 1.3, the only risks
 15 identified there are seizure, damage to property,
 16 intimidation and persons flocking together. But obviously
 17 as you've now conceded, there was not only more violence
 18 and death over that weekend but there was the information
 19 that had come through from Brigadier Engelbrecht in
 20 addition. So you'll agree with me that that risk analysis
 21 was hopelessly out of date for the 11th and 12th of August?
 22 COLONEL MERAFAE: I agree with this.
 23 MS LE ROUX: And would you also accept
 24 that the murders of the two security guards that had taken
 25 place over that weekend suggested that there might also be

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1 a risk or a possibility of an attack on the police that
 2 should've been recorded in the plan. Do you accept that
 3 the murder of the security guards should have made the
 4 police think that possibly there was a risk that they were
 5 facing as well?
 6 COLONEL MERAFAE: I don't seem to agree
 7 here, Chair. The killing on the security – because the
 8 killing of the security, no information was received prior
 9 to the incident taking place.
 10 MS LE ROUX: But, Colonel, there was a
 11 video taken of the march prior to that, prior to the
 12 security guards' killing and the way it played out was very
 13 clear on that video. So that information was available
 14 from the 12th.
 15 COLONEL MERAFAE: From the 12th in the
 16 evening, Chairperson, it is so, yes, from the 12th in the
 17 evening. But before the incident information was not there
 18 to place members to present the information. That is my
 19 argument, to say I can't say if members were there this
 20 could not happen if I don't have the information. For me
 21 to – we are information driven. For us to operate to go to
 22 point A, information must say to us, Merafe, here is the
 23 hotspot, post members there, but if there is no information
 24 it doesn't happen.
 25 CHAIRPERSON: Are you saying that there

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1 was breakdown in communication? That the information which
 2 Brigadier Engelbrecht received, passed on to Major-General
 3 Mpembe wasn't passed on to you. Because that's what you've
 4 said already. If it had been passed on then you would've
 5 been able to take steps to prevent or to endeavour to
 6 prevent – is that correct?
 7 COLONEL MERAFAE: That is correct.
 8 CHAIRPERSON: And it's quite clear, I
 9 take it, that from what you tell us that if you had
 10 received that information you would've taken vigorous steps
 11 to try to prevent what happened, is that correct?
 12 COLONEL MERAFAE: Correct, Chairperson.
 13 COMMISSIONER HEMRAJ: Colonel, at the
 14 very least the information was available that there was a
 15 march, that security guards tried to stop the march and
 16 then there was an incident where certain security guards
 17 were killed. That much was known, wasn't it?
 18 COLONEL MERAFAE: No, the march was not
 19 known to us, Chairperson. What happened is that I got a
 20 call from Mr Sinclair who also had my number fortunately,
 21 who is the Lonmin security official. For long time I have
 22 been working in that area. He knows me. He called me to
 23 say, Merafe, there is a march to NUM offices in the morning
 24 of the 12th and there are two attacks on our security
 25 officials. We need police intervention. That was what I

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1 have received on the morning of the 12th and I sent the
 2 members to go and assist in that aspect. But I did not get
 3 any information that suggest to me there will be a march on
 4 the morning. So that if there will be a march I will
 5 obviously post the members before.
 6 CHAIRPERSON: Let me just make sure I
 7 understand you correctly. The position is there was a
 8 prediction as to what might happen contained in the
 9 information which Brigadier Engelbrecht had but you didn't
 10 receive. Right. Then Mr Sinclair spoke to you, was it
 11 after the security guards had been – after the march
 12 towards the NUM office on the Sunday morning and the
 13 killing of the security guards. He spoke to you after that
 14 –
 15 COLONEL MERAFAE: Yes.
 16 CHAIRPERSON: - and reported that to you.
 17 So obviously you couldn't prevent it on the basis –
 18 COLONEL MERAFAE: Yes.
 19 CHAIRPERSON: - that he told you because
 20 it already happened. Is that what you're saying?
 21 COLONEL MERAFAE: That is what I'm
 22 explaining, Chairperson, yes.
 23 CHAIRPERSON: But the point I think Ms Le
 24 Roux is making, if I misinterpreting her - the intention
 25 she will I'm sure will tell me, is that you had information

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1 then from Mr Sinclair that there had been an attack two
 2 security guards who had been killed. It was suggested, I
 3 think, is that the bar be lifted, the intensity of the
 4 problem had increased and what I – what is now a matter
 5 that one must look at is did it not occur to the police at
 6 that stage that look the next people to be attacked may be
 7 the police. They have attacked security guards employed by
 8 Lonmin, but the next people who may well come into,
 9 literally and metaphorically called the firing line, would
 10 be the police who are seeking to maintain law and order.
 11 Was that not a thought that occurred to the police? Is
 12 that the point you're making, Ms Le Roux?
 13 MS LE ROUX: Yes, Chair.
 14 CHAIRPERSON: Alright, so how do you
 15 answer that?
 16 COLONEL MERAFAE: Chairperson, I did not
 17 pick it up that information that the killing of the
 18 security came from - the information came from the police.
 19 What I'm saying, Chairperson, what I'm saying is that the
 20 attack on the security did not make me think that there
 21 would then be an attack on the police. But what I want to
 22 explain, after the death of the securities, Brigadier
 23 Calitz went to Marikana and JOC was moved from the police
 24 station to Lonmin offices for space purpose. The Brigadier
 25 Calitz then went to Marikana where the JOC was removed from

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1 the police to a Marikana place where there was space.
 2 Captain Sefiki who's an officer of public order police in
 3 Rustenburg went and work nightshift with members - Captain
 4 Sefiki, who is a member of the POP in Rustenburg was put in
 5 the JOC to work there with members from Mafikeng. So it
 6 shows we were aware that this thing is growing up then.
 7 From the police we sent the members to go and deal with the
 8 situation, even in the night, until the morning of the 13th.
 9 COMMISSIONER HEMRAJ: So would you agree
 10 that as at the end, evening of the 12th, it was known that
 11 the levels of violence had risen by a considerable number
 12 of degrees?
 13 COLONEL MERAFAE: That's correct, Chair.
 14 MS LE ROUX: Thank you, Lieutenant
 15 Colonel. So if we can now pick up the chronology on the
 16 13th of August. Now it's not clear when the next plan that
 17 we see in SS3 which is dated the 13th of August, we're not
 18 clear when that was actually produced. You don't know do
 19 you?
 20 COLONEL MERAFAE: I do not know,
 21 Chairperson. It was between Brigadier Calitz and General
 22 Mpembe.
 23 MS LE ROUX: Right and just to recap,
 24 Major-General Mpembe was clear he hadn't – he didn't have a
 25 plan, hadn't seen a plan before he went to the railway line

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1 on the 13th. Chair, the reference for that is Day 103, page
 2 11082 and Day 110, page 11756 to 757. And then Brigadier
 3 Calitz's statement, JJJ107, page 6, paragraph 28 and 29, he
 4 talks about how this contingency plan needed to be extended
 5 through the 13th. So that's what those two officers said
 6 about the plan. The fact that there wasn't yet a plan in
 7 place by the time the incident on the 13th, does that also
 8 explain why you referred to yourself as the operational
 9 commander in your statement GGG15, page 6 paragraph 16 you
 10 describe yourself as the operational commander. Is that
 11 because until that plan on the 13th was signed off you were
 12 the operational commander?
 13 COLONEL MERAFAE: Chair, by virtue of my
 14 being the commander of the public order police in
 15 Rustenburg.
 16 [10:15] According to me there wasn't a full colonel or
 17 brigadier present in the incident of the 13th of the POP.
 18 I'm referring to that of the POP. Senior member of the POP
 19 on the scene resume operational commandership during the
 20 crowd management incident. So it's not about me placing
 21 myself there, it's about me being responsible, it's
 22 discharging my responsibility.
 23 MS LE ROUX: Then, Colonel, it may be
 24 easier if we just go to your statement so that's GGG15 and
 25 if we can go to page 6 paragraph 16 of that. There you're

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1 dealing with the incident at the railway line and you're
 2 saying the miners sat down while Major-General Mpembe was
 3 talking to them, they were, however, still very aggressive
 4 and demanded the mine management to come and talk to them.
 5 Major-General Mpembe was the most senior officer at the
 6 scene and in command as the overall commander. "I was the
 7 operational commander at that stage." So that was your
 8 understanding, correct?
 9 COLONEL MERAFAE: My understanding and the
 10 General also was aware of this.
 11 MS LE ROUX: So at the time that you go
 12 to intercept the strikers at the railway line the
 13 operational plan had not yet been updated. You don't
 14 remember a 13th of August plan before you go to the railway
 15 line.
 16 COLONEL MERAFAE: Chairperson, I explained
 17 that. About the updating of the plan on the 13th was done
 18 by Brigadier Calitz and General Mpembe. So I don't
 19 remember seeing them sitting down updating it when we went
 20 to the railway crossing.
 21 MS LE ROUX: And before you left for the
 22 railway crossing not only had you not seen them updating
 23 it, you hadn't seen an update.
 24 COLONEL MERAFAE: No I know that there is
 25 a condition to plan that we draw on the 10th that is in

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1 place to cater for anything that happens until the dating.
 2 MS LE ROUX: All right. But if we look
 3 at that plan that was then produced on the 13th, that's also
 4 in SS3. If we go to page 7 of that document the risk
 5 analysis that is updated, this is again paragraph 1.3, if
 6 we could put that up on the screen, SS3 page 7. Right if
 7 we go down to the plan of the 13th of August that risk
 8 analysis now reads murder of dissenting persons to strike,
 9 damage to property, intimidation, assault, persons
 10 gathering illegally, acts of public violence, possession of
 11 dangerous weapons. It still doesn't have anything about
 12 any risk to the police, that's correct.
 13 COLONEL MERAFAE: Unless I don't
 14 understand there, Mr Chairperson, but I believe the police
 15 falls within the definition of persons. Harboursing murder
 16 on dissenting persons to strike, person might also be a
 17 police and person gathering – ja it includes the police.
 18 We are human beings as well.
 19 MS LE ROUX: Lieutenant-Colonel I don't
 20 dispute that you're human beings too but as we read murder
 21 of dissenting persons to strike we read that to mean that
 22 if there's a miner who doesn't want to go on strike, who's
 23 reluctant to strike, who dissents from the strike, that
 24 person is at risk of murder. That's how we had read that
 25 first risk assessment.

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1 COLONEL MERAFAE: - Chair, there's no
 2 specific mention of a police being at risk.
 3 MS LE ROUX: All right so then
 4 Lieutenant-Colonel if we could move on to the planning of
 5 the operation from the 13th of August onwards there's one
 6 issue I want to pick up from the cross-examination by my
 7 learned friend, Mr Wesley. He put to you the discrepancy
 8 between your initial statement which is exhibit QQQ2, page
 9 4 where you said that on the morning of the 14th you were
 10 briefed by Lieutenant-Colonel Scott and then he put to you
 11 the discrepancy with your more recent statement, exhibit
 12 QQQ1, paragraph 5.28 where you say that you briefed the
 13 members with Lieutenant-Colonel Scott. Do you remember
 14 that discrepancy that he put to you? Where on the one you
 15 say you were briefed and on the other one you say you did
 16 the briefing with Lieutenant-Colonel Scott. I'd like you
 17 to also look on the same point at your third statement QQQ3
 18 and if we could put that up on the screen. So QQQ3 and if
 19 we go to page 3 of that document, paragraph 6. This is
 20 dealing with the JOC meeting on the morning of the 14th of
 21 August, "CI" being Crime Intelligence "gave us a threat
 22 assessment, told us what was happening. CI told us the
 23 people were armed and their numbers were increasing. We
 24 then discussed what SAPS were going to do. Colonel Scott
 25 presented the draft plan which he displayed after which

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1 everyone was asked to give their input as to how we were
 2 going to implement the plan. We all gave our input. The
 3 plan was that the barbed wire was going to be used to
 4 encircle the koppie and I wanted to understand how this
 5 barbed wire was going to be used because when you disperse
 6 people you should give them space to move, to disperse to
 7 whereas when you encircle people you don't give them place
 8 to disperse. I was told that the barbed wire was there for
 9 purposes of forming a barrier between people and the
 10 police. I was also told that the whole koppie would not be
 11 encircled with the barbed placed just on one side. The
 12 barbed wire was to be placed on the eastern side of the
 13 Koppie in a form of a line. After the JOC meeting on the
 14 morning of 14 August 2012 I did nothing more in respect of
 15 the plan." So in this paragraph it appears from the way
 16 you describe you're making an enquiry about how the barbed
 17 wire was going to be used that you were being briefed
 18 rather than doing the briefing. Would you agree with that
 19 interpretation?
 20 COLONEL MERAFAE: Chairperson, when this
 21 question was put to me I explained that, Chair, that we
 22 were sitting together with Colonel Scott in drawing the
 23 plan but one presenter was being chosen and that being
 24 Colonel Scott. We could not both present one saying this
 25 and one saying this, one person had to present. About the

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1 placing of the barbed wire I said all the commanders were
 2 there and we were looking at this thing, discussing it,
 3 advising each other. So I don't see any mistake that I
 4 committed there by seeing something and then raising it.
 5 MS LE ROUX: Lieutenant-Colonel, I just
 6 want to clarify what you've just testified to, so you were
 7 involved with Lieutenant-Colonel Scott in creating the plan
 8 then he's chosen to present the plan but surely you had
 9 explored how the barbed wire was going to be used if you
 10 were part of the planning session.
 11 COLONEL MERAFAE: On the 14th, Chairman,
 12 the plan that was there was subject to be signed, approved
 13 and we got the buy in of other commanders that was there.
 14 So it was necessary that it be displayed so that everybody
 15 who were present would discuss it because it won't be one
 16 man's plan, it's our plan. As he says it wasn't a one man
 17 plan, it was our plan.
 18 MS LE ROUX: Thank you. Lieutenant-
 19 Colonel, let me move on.
 20 COMMISSIONER HEMRAJ: Before you do that,
 21 just before you do that, Ms Le Roux, the plan that was
 22 presented was one that had been agreed upon by both of you.
 23 COLONEL MERAFAE: Yes, both of us were
 24 tasked to go and draft a plan.
 25 COMMISSIONER HEMRAJ: Yes, yes I

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1 understand that.
 2 COLONEL MERAFAE: It was a draft by then,
 3 then it will be a plan after the authority has approved it.
 4 And after other commanders have made their input or if
 5 there are changes we will then sitting in the JOC suggest
 6 that no we can't do this, we need to do this. We get
 7 inputs.
 8 COMMISSIONER HEMRAJ: Colonel, the
 9 question was that the plan that was presented by Colonel
 10 Scott was one that both of you had agreed upon in the
 11 planning.
 12 COLONEL MERAFAE: Positive, it is so.
 13 COMMISSIONER HEMRAJ: Then why was it
 14 necessary for you to ask these questions in clarification
 15 of where the barbed wire would be if indeed it had been
 16 agreed between the two of you?
 17 COLONEL MERAFAE: When we agreed we did
 18 not know the amount of barbed wire we had and then the
 19 other commanders arrived it then became clear how much
 20 barbed wire was there and what the purpose of this barbed
 21 wire would then be. And like I said the placement thereof
 22 we all know was discussed. So it was important for me to
 23 also get more clarity as well because I can't just say
 24 because I was with him if something goes wrong I must just
 25 rubber stamp it then agree with it.

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1 COMMISSIONER HEMRAJ: Do I understand
 2 that the availability of the barbed wire made the
 3 encirclement problematic?
 4 COLONEL MERAFAE: Yes, that is why I raise
 5 it that we make it, we are going to encircle it don't work
 6 then I raise it there and then because I was part of the
 7 planners, we should all talk about it.
 8 COMMISSIONER HEMRAJ: Yes, thank you,
 9 Colonel, I understand that, thank you.
 10 CHAIRPERSON: Sorry, I don't understand
 11 your evidence. If one looks at paragraph 6 of exhibit
 12 QQQ3, there you say that – you talk about Colonel Scott
 13 presenting the draft plan and you say the plan was barbed
 14 wire was going to be used to encircle the koppie. Now
 15 encircle means go right around, it's a circle, right?
 16 COLONEL MERAFAE: Correct, Chair. Right
 17 around, yes.
 18 CHAIRPERSON: That was the evidence of
 19 Colonel Scott, he said there was a gap they were going to
 20 leave in the circle so that they could get in or the people
 21 inside could get out. That was the evidence he gave quite
 22 clearly.
 23 COLONEL MERAFAE: Correct, Chairperson,
 24 yes.
 25 CHAIRPERSON: Right, you now say that,

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1 further down in that paragraph, "I was also told the whole
 2 koppie would not be encircled with the barbed wire being
 3 placed just on one side." Now that sounds to me to be
 4 nonsense. You can't have a circle just on one side, if
 5 it's on one side it's not a circle and if what you're
 6 telling us is contrary to the evidence of Colonel Scott and
 7 in fact the documents taken from his computer which were
 8 put before us. His evidence was that on Tuesday the plan
 9 which he worked out the night before in discussion with
 10 you, was there was going to be an early morning attack on
 11 the koppie. The koppie was going to be encircled, there
 12 was going to be a gap for people to either you people to go
 13 in, or people inside to be able to get out. So it wasn't
 14 going to be a complete circle and he said that couldn't be
 15 implemented, this was because there weren't enough people
 16 yet on the Tuesday morning. People were still arriving
 17 from other provinces and they hadn't come yet. Now that
 18 was his evidence, do you not agree with that?
 19 COLONEL MERAFAE: Chairperson, I hear you,
 20 but I don't really understand exactly. I'm not disputing
 21 what Scott is saying. I say I was making my point. And -
 22 some discrepancy in what Scott has testified about and what
 23 I say here because in my statement I was saying I was
 24 trying to clear the purpose of us placing the barbed wire
 25 there. That is what my statement is saying I also at the

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1 end say we also agree that now that we've got limited
 2 numbers of the barbed wire, barbed wires are going to be
 3 used as a barrier to prevent – between the police and these
 4 people. So there is nothing in dispute to what Scott is
 5 saying, Chairperson.
 6 CHAIRPERSON: Well there are two by point
 7 that. The first is that at one stage a question was
 8 raised, going according to the evidence that there wasn't
 9 enough barbed wire and Lonmin were asked to provide more
 10 barbed wire which they agreed to do and there was barbed
 11 wire available which according to the evidence, that Lonmin
 12 was prepared to provide. That's the one point and I'll put
 13 the other point when you've answered the point I've just
 14 put to you. Okay, you don't answer that, I'll move on.
 15 COLONEL MERAFAE: I did not hear whether
 16 there is a question, Chairperson.
 17 CHAIRPERSON: What is your comment? I
 18 put to you that the evidence was that at stage, a bit later
 19 on in fact, not on the Tuesday morning, there was a
 20 question as to whether there was enough barbed wire and a
 21 request was made to Lonmin if they could provide more
 22 barbed wire and they agreed to do so. And there was barbed
 23 wire available apparently from Lonmin and we saw
 24 photographs actually of the scene of where the barbed wire
 25 was. But that apparently was later. Perhaps I should add

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1 this that according to Colonel Scott originally the plan on
 2 the Tuesday morning was a very tight circle around the
 3 koppie and there was enough barbed wire for that, that was
 4 is evidence. Do you quarrel with that?
 5 COLONEL MERAFAE: I agree with that,
 6 Chair.
 7 CHAIRPERSON: Now the other point I put
 8 to you is that I don't understand how you can say and this
 9 is the problem I have, your paragraph 6 that having said
 10 the barbed wire was going to be used to encircle the
 11 koppie, you then say I was told that the barbed wire was
 12 there for purposes of forming a barrier between the people
 13 and the police. I was told the whole koppie would not be
 14 encircled with the barbed wire just being placed on one
 15 side. Now that seems to me to be a contradiction. A
 16 circle is a circle, barbed wire on one side is something
 17 different and certainly Colonel Scott never suggested that
 18 that was the plan on the Tuesday. What happens later, much
 19 later was that some days later it was decided for reasons
 20 that I'll put to you in a moment, not to proceed with the
 21 encirclement plan but rather to put up a wire barrier which
 22 in fact was done between the strikers on the one hand and
 23 the police, the media as well on the other. But that was
 24 something that was only done days later. Now are you not
 25 perhaps confusing what happened later with what was

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1 discussed on the Tuesday morning?
 2 COLONEL MERAFAE: I agree, Chairperson.
 3 CHAIRPERSON: You see the big problem I
 4 have and I've had it for a long time in this Commission is
 5 General Mpembe said there were minutes kept to the meeting,
 6 you confirmed that but the minutes have not been
 7 forthcoming and we've been told there aren't minutes. So
 8 there's a contradiction there. Clearly minutes are
 9 normally kept to these meetings aren't they, meetings are
 10 normally kept at JOCCOM meetings aren't they, it's
 11 important that there should be minutes kept. Am I correct?
 12 COLONEL MERAFAE: It is so, Sir.
 13 CHAIRPERSON: So there should be minutes
 14 and you say there were minutes but you agree with me that
 15 there certainly should be minutes of that meeting.
 16 COLONEL MERAFAE: I agree with the
 17 Chairperson that minutes should have been kept. The person
 18 chairing the meeting has a responsibility of seeing to it
 19 that there are minutes kept.
 20 CHAIRPERSON: Well the person chairing
 21 the meeting is Major-General Mpembe and he says minutes
 22 were kept.
 23 COLONEL MERAFAE: Both General Annandale
 24 and General Mpembe were alternating in chairing the meeting
 25 and they had the duty of seeing to it.

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1 CHAIRPERSON: All right well we're going
 2 to take the first comfort break in a minute but I said I'd
 3 tell you why the plan was changed according to the evidence
 4 that we've heard. Evidence we have heard was this that the
 5 encirclement plan could only work early in the morning when
 6 there were relatively few strikers on the koppie. Most of
 7 the strikers used to go home at night and come back in the
 8 morning, that's the evidence. The evidence that we heard
 9 was that the encirclement plan couldn't be implemented
 10 unless it was implemented early in the morning and the
 11 Thursday because the encirclement plan couldn't be
 12 implemented because the police were waiting to see whether
 13 the strikers would lay down their arms. It only became
 14 clear later on that they weren't going to lay down their
 15 arms and by that time there were lots and lots of people on
 16 the koppie. So the encirclement plan couldn't work
 17 anymore. That was some of the evidence we got. Now you
 18 don't know about because you weren't there on the Thursday.
 19 Am I right?
 20 COLONEL MERAFAE: I know about this,
 21 Chair.
 22 CHAIRPERSON: You do know about it. What
 23 do you know about it?
 24 COLONEL MERAFAE: What I know is the
 25 encirclement did not take place.

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1 CHAIRPERSON: Well it couldn't have –
 2 sorry carry on.
 3 COLONEL MERAFAE: I think that was my
 4 explanation and I gave evidence there.
 5 CHAIRPERSON: Well we'll take the first
 6 comfort break at this stage.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [10:51] CHAIRPERSON: The Commission resumes.
 9 You're still under oath, Colonel.
 10 OMPHILE JOSEPH MERAFAE: (s.u.o.)
 11 CHAIRPERSON: Ms le Roux.
 12 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):
 13 Thank you, Chair. Lieutenant-Colonel, you've produced four
 14 statements to the Commission and you understood when you
 15 were drafting each one of those that you needed to include
 16 all the relevant important information of your recollection
 17 of the events of the 13th, didn't you?
 18 COLONEL MERAFAE: It is correct, Chair.
 19 MS LE ROUX: So what I'd like to explore
 20 with you now is your evidence in your statements about the
 21 use of teargas and stun grenades on the 13th. Now your
 22 statement in QQQ6, which is of course your contemporaneous,
 23 most contemporaneous statement, that has no mention of stun
 24 grenades or teargas at all. There's no mention of the use
 25 of teargas or stun grenades in that statement.

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1 If I could ask you then to turn to your next
 2 statement, QQQ2, which is your statement of 30 November
 3 2012, that statement, if we could put that up, and if we go
 4 to page 3 of it and then paragraph 3 on that page, there's
 5 a mention there about teargas, but nothing about stun
 6 grenades. So there we – let me just read, "Some members
 7 followed the group on foot, accompanied by the General and
 8 other officers. I got inside my vehicle, turned it around
 9 to follow the Nyalas that were going to block the people.
 10 Whilst on the way I saw people starting to run and a
 11 teargas cloud amongst the people and the police who were in
 12 front of the people retreated." In that statement that's
 13 the only mention we can find of teargas and nowhere in that
 14 statement do we find any mention of stun grenades being
 15 used.
 16 If we then go to your next statement in time,
 17 which is GGG15, that's 20th of December 2012, and in that
 18 statement if we go to paragraph 20, here we see teargas and
 19 the mention of one stun grenade, singular. So we see in
 20 this statement, "While driving next to the marching
 21 mineworkers I noticed from a distance that teargas was
 22 discharged. I also heard the sound of a stun grenade and
 23 the sound of guns shooting. I did not see who threw the
 24 stun and teargas grenades as I was too far from the members
 25 in front."

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1 Then in your most recent statement, QQQ1, which
 2 is dated 10 April 2014, in that if we go to paragraph 5.18
 3 and 19, now we have teargas and two stun grenades. So
 4 we've gone from no mention of either to a mention of
 5 teargas only, then a mention of teargas and one stun
 6 grenade. Now in your statement made most recently we see
 7 teargas and two stun grenades. So 5.18 and 19 you state
 8 there, "As the police and marchers were walking someone at
 9 the front on the right of the strikers fired a teargas
 10 canister. The marchers didn't appear to be affected by the
 11 teargas and continued walking. I saw members retreating
 12 away from the teargas. The teargas was immediately
 13 followed by the sound of a stun grenade from somewhere in
 14 the same direction where the teargas was fired from." It
 15 carries on. If we then turn the page to 5.19, "I also
 16 heard the sound of a second stun grenade thrown from the
 17 front on the extreme left. I this stage I was still
 18 driving on the road. The time that I heard the sound of
 19 the second stun grenade I saw police members retreating
 20 from smaller groups of strikers who were charging at them.
 21 The second stun grenade is the one that was thrown in the
 22 direction where Lieutenant-Colonel Baloyi was later found
 23 injured."
 24 Now several questions come out of this for the
 25 Human Rights Commission. So the first is until this most

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1 recent statement, QQQ1, the 10th of April statement, no
 2 witness had given any evidence, whether in writing in a
 3 statement or sitting where you are, about the use of two
 4 stun grenades on the 13th of August. Can you explain to the
 5 Commission how in April 2014 you suddenly remembered that
 6 there were two stun grenades used when previously in all
 7 your other three statements you hadn't mentioned the use of
 8 two stun grenades? Can you explain how you came to
 9 remember the second stun grenade?
 10 COLONEL MERAFE: Chairperson, all the
 11 time I remembered that there were two stun grenades used.
 12 That there is no witness who has mentioned stun grenades up
 13 to thus far I do not know why that is the position. As a
 14 policeman who works with stun grenades I can hear the sound
 15 of stun grenades because it makes those two sounds, bah-
 16 bah.
 17 COMMISSIONER HEMRAJ: Before you carry on
 18 can one of the evidence leaders assist with this? I seem
 19 to think when we looked at Z1 the issue of two stun
 20 grenades was pointed out, or am I mistaken? Mr Budlender,
 21 could you help me on that?
 22 MS LE ROUX: Commissioner, perhaps you
 23 were thinking of –
 24 MR BUDLENDER SC: I'm not sure,
 25 Commissioner –

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1 MS LE ROUX: - our exhibit that analysed
 2 Z2 and Z3 where you can see the two stun grenades being
 3 used. That's exhibit OOO20, the CALS analysis of exhibits
 4 Z2 and Z3. That's the slide presentation where we take
 5 screen grabs from –
 6 COMMISSIONER HEMRAJ: Yes, and having –
 7 MS LE ROUX: - the videos. Those show
 8 the two stun grenade explosions.
 9 COMMISSIONER HEMRAJ: And during which
 10 witness's cross-examination was that? Was it General
 11 Mpmembe?
 12 MS LE ROUX: Vermaak.
 13 COMMISSIONER HEMRAJ: Vermaak.
 14 CHAIRPERSON: Actually just to be clear,
 15 there were two stun grenades. I'm not talking about the
 16 one thrown from the helicopter. There were two stun
 17 grenades on the ground.
 18 MS LE ROUX: Yes.
 19 CHAIRPERSON: And the witness didn't
 20 mention that in his earlier statements, but he did mention
 21 it in his last one. He is obviously supported by the video
 22 information.
 23 MS LE ROUX: And Chair, that's what I'm
 24 interested in, is Lieutenant-Colonel, as we understand what
 25 could have happened here, there are only sort of two

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1 explanations for why in your most recent final statement in
 2 April 2014 you finally mention the two stun grenades.
 3 Either it would be because you'd seen the objective
 4 evidence, the analysis that CALS had done, exhibit OOO20,
 5 either you'd seen that and the objective evidence Z2/Z3
 6 that it's based on that show the two stun grenades, so you
 7 included it in your April statement, or you independently
 8 remember the two stun grenades, but you only put it in a
 9 statement in your fourth statement in April. Which
 10 explanation is it?
 11 COLONEL MERAFE: My last statement,
 12 Chairperson, I explained to this Commission that it
 13 contains each and everything that I did not mention in my
 14 other previous statements. Possibly that I had forgotten
 15 then at that time, but I explained to this Commission that
 16 in my last statement I tried to include everything.
 17 MS LE ROUX: Lieutenant-Colonel, OOO20,
 18 the CALS analysis of the use of stun grenades, analysing
 19 exhibit Z2 and Z3, that was shown to the Commission on the
 20 3rd of April during the cross-examination of Lieutenant-
 21 Colonel Vermaak, and that is seven days before your QQQ1
 22 statement is finalised. Did your legal team show you
 23 OOO20? Have you seen the document OOO20, the analysis by
 24 CALS of the video showing the two stun grenades? Did you
 25 see that before you finalised your statement?

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1 COLONEL MERAPE: If I could possibly
 2 explain to the Commission the two statements that you are
 3 referring to, that could be of assistance.
 4 MS BALOYI: Chairperson, thank you to Ms
 5 Pillay; she's pointed out to me exhibit L57, which is a
 6 consolidation of what happened on the 13th, that in fact the
 7 SAPS account for 12 stun grenades, and we know from the
 8 evidence of Colonel Vermaak that he fired 10 stun grenades.
 9 So it is not correct to say it was never put to the
 10 Commission.
 11 CHAIRPERSON: We were clearly under the
 12 impression that earlier on we'd realised that there were
 13 two stun grenades used on the ground and we were trying to
 14 work out where it came from, but Ms Pillay has put her
 15 finger on the point clearly, so there's an omission as it
 16 were by the police that this was obviously based on their
 17 stun grenade count before and after, that 10 were thrown
 18 from the air by Lieutenant-Colonel Vermaak, two were on the
 19 ground. Lieutenant Baloyi admits that he was responsible
 20 for one of them. Who was responsible for the other is a
 21 mystery which we may or may not solve before the end of the
 22 Commission.
 23 COMMISSIONER HEMRAJ: There was also –
 24 MS LE ROUX: Yes, Chair, and –
 25 COMMISSIONER HEMRAJ: There was also

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1 cross-examination of Mr Chaskalson which deals with this
 2 issue of two stun grenades being seen on one of the videos,
 3 prior to the CALS presentation. But I don't think anything
 4 turns on that right now.
 5 MS LE ROUX: Yes Chair, and the critical
 6 point I'm exploring with the Lieutenant-Colonel at the
 7 moment is the two stun grenades before the attack on the
 8 police. Lieutenant-Colonel, I don't think I've had an
 9 answer to my question, which is have you seen exhibit
 10 OOO20, the CALS analysis of the use of teargas and stun
 11 grenades on the 13th?
 12 COLONEL MERAPE: No, I have not seen
 13 that, Chairperson.
 14 MS LE ROUX: If I could then ask you to
 15 move on to QQQ5, which are your contemporaneous notes. Now
 16 as I understand it these are your handwritten notes from
 17 the 13th of August until the end of the Roots meeting. Is
 18 that correct?
 19 COLONEL MERAPE: It is correct,
 20 Chairperson, yes, though I must mention that on certain
 21 days I did not have this document with me. I noted things
 22 in my pocketbook. These were just notes that I kept
 23 privately.
 24 MS LE ROUX: Right, and –
 25 COMMISSIONER HEMRAJ: That first entry of

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1 barbed wire between koppie and the squatter camp, when was
 2 that made? It says 13 August on the top, but when was it
 3 actually made?
 4 COLONEL MERAPE: Early morning of the
 5 14th.
 6 MS LE ROUX: Lieutenant-Colonel, when
 7 were these notes first submitted to the Commission?
 8 COLONEL MERAPE: These were taken by my
 9 legal team the last time when we were busy with my
 10 consolidated statement.
 11 MS LE ROUX: So your statement of 10
 12 April 2014?
 13 COLONEL MERAPE: It's not long, yes, that
 14 they were brought to the Commission.
 15 MS LE ROUX: And when were you first
 16 asked if you had any such notes?
 17 COLONEL MERAPE: I was not asked for such
 18 notes. What I was asked for was my diary, which I
 19 submitted, and the IRIS documents that were done in the
 20 unit, and my statements. This came up on the day of the
 21 last consultation. I have been writing this as my private
 22 document that I was using for my work.
 23 MS LE ROUX: So you were never asked for
 24 any notes? You were only asked for your diary?
 25 COLONEL MERAPE: Correct, Chairperson,

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1 had it been requested I would have given it over.
 2 MS LE ROUX: Chair, if we can then turn
 3 to one of our new exhibits, QQQ15.1. This is the Human
 4 Rights Commission's discovery request to the SAPS of 24
 5 January 2013, and if we look at paragraph 5.5 it asks for,
 6 "In relation to the SAPS witnesses who have provided
 7 statements dated later than 11 September 2012," that would
 8 include the Lieutenant-Colonel because three of his
 9 statements are beyond 11 September 2012, we asked for, "all
 10 contemporaneous notes or notes recorded shortly after 16
 11 August, used to assist the drafting of the statement," and
 12 then 5.13 requests, "All original and handwritten notes
 13 made by officers on 13 and 16 August 2012."
 14 CHAIRPERSON: Yes.
 15 MS LE ROUX: If we also look at paragraph
 16 5.10, G asks for "Minutes or recordings of the meeting held
 17 at Potchefstroom," and I asks for "Any other relevant
 18 documentation." Now Lieutenant-Colonel, would you agree
 19 with me that your contemporaneous notes would fall into
 20 these requests?
 21 COLONEL MERAPE: I agree with you,
 22 Chairperson, but if I had not been requested to produce
 23 them, how could I? I was able to produce them when my
 24 legal team told me these things were necessary, and every
 25 time I went for consultation I would make notes in this

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1 document.

2 MS LE ROUX: Lieutenant-Colonel, if we

3 then go to QQQ15.3, this is the SAPS response to the CALS

4 discovery request on the 8th of February 2013, and if we

5 look at paragraph 5 there, this is where the SAPS is

6 responding to the request in paragraph 5.5 of the CALS

7 letter, the SAPS says, "A callout has been made to all

8 officers who provided statements to make available any

9 contemporaneous notes each may have. Please note these

10 members are spread out the country. As and when such notes

11 are made available we will immediately forward to

12 yourselves," and then if you look at paragraph 13, which is

13 the one that responds to paragraph 5.13 in the Human Rights

14 Commission's request, it says, "Please see the response in

15 respect of paragraph 5.5." So the SAPS response was we've

16 put a call out for any contemporaneous notes and members

17 are around the country and as soon as we get anything we

18 will forward it.

19 If we then look at QQQ15.2, this is the annexure,

20 the schedule with the columns "Request" and "Feedback."

21 This, if you look at paragraph 4.2 which requested

22 contemporaneous notes of all officers present in Marikana,

23 the feedback was, "Requests were sent out to all members

24 for any contemporaneous notes. Feedback received back from

25 members indicate that no such notes are available."

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1 Lieutenant-Colonel Merafe, in February, January

2 or February of last year were you asked for any

3 contemporaneous notes?

4 COLONEL MERAFE: I was not asked to bring

5 any notes forward.

6 MS LE ROUX: And when you produced the

7 notes in the consultation around your April 2014 statement,

8 did you volunteer those notes or were you asked whether you

9 had any contemporaneous notes?

10 COLONEL MERAFE: I was taking out the

11 book in which I note everything behind it. My

12 representative then said, "Could I please see that book?"

13 He then mentioned to me that he was going to – my

14 representative said this would be handed to the Commission.

15 I gave it voluntarily because there was nothing to hide. I

16 wasn't hiding anything.

17 MS LE ROUX: Right. Lieutenant-Colonel,

18 let me move on then to some topics raised by your notes,

19 QQQ5. If I could ask you to turn to page 3 of those notes,

20 and if we go down a little bit, there we see an entry that

21 says, "Members that should attend firearm training,

22 Brigadier Calitz said they need to be replaced if they were

23 involved in Marikana shooting," and you explained this

24 briefly to the Chair, but not in much detail. Could I ask

25 you to explain again what Brigadier Calitz was saying, what

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1 you understood him to be explaining? Because we're not

2 sure if he was saying everyone who discharged their weapons

3 should be replaced, or whether everyone who was involved in

4 the incident at all in Marikana needs to be replaced. What

5 do you remember was Brigadier Calitz saying around it?

6 COLONEL MERAFE: There was training,

7 firearm training taking place. I was requested to send

8 members for this training. I was then told that the people

9 who were involved in Marikana who had fired shots and whose

10 firearms had been taken, these should not be sent to this

11 training. I did exactly that.

12 [11:11] MS LE ROUX: And do you have any idea why

13 that wasn't followed through, do you know why members

14 didn't go for that training?

15 COLONEL MERAFE: Normally, Chairperson,

16 in our employment as police officers, when I have used my

17 firearm and there is some investigation about it on me, the

18 members of the IPID take that firearm from the policeman.

19 During that time, whilst the firearm is taken we cannot

20 post that police officer anywhere or issue a firearm to

21 him. I then could understand why these policemen were

22 excluded from that training. Another reason was that some

23 of the policemen were still undergoing counselling after

24 the shooting. During that counselling, Chairperson, we

25 removed the firearms to them give them a chance to undergo

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1 this counselling.

2 MS LE ROUX: But, Lieutenant-Colonel, as

3 a matter of fact we know that members who fired their

4 firearms, discharged their firearms on the 13th, some of

5 them were on duty on the 16th. Your evidence this morning

6 makes it sounds as if all members who had fired were stood

7 down because there was going to have to be some sort of

8 investigation. Could you just clarify in this regard?

9 COLONEL MERAFE: Chairperson, in many

10 occasions the independent investigators, if a case has been

11 opened against a policeman they request for the firearm of

12 that policeman. After the Marikana incident on the 13th I

13 don't remember them coming to request the firearms of the

14 people in my unit. If that had happened the policeman

15 would not have been posted on that day because they would

16 not be equipped correctly.

17 MS LE ROUX: But, Lieutenant-Colonel, I'm

18 not asking about, you know because of an IPID

19 investigation, I understand the general practice that

20 you've described, but your note seems to indicate that

21 Brigadier Calitz gave an order that if they were involved

22 in the Marikana shooting those members must be replaced, is

23 that what he ordered?

24 COLONEL MERAFE: Chairperson, in this

25 private notebook of mine I wrote things that I was

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1 requested to do, so that I could remember these things
 2 rightly.
 3 MS LE ROUX: Alright, but your
 4 recollection of what Brigadier Calitz was ordering was that
 5 if they had been involved in a Marikana shooting on the 13th
 6 they needed to be replaced, meaning they shouldn't be on
 7 duty on the 16th, is that right?
 8 MS BALOYI: Chairperson, -
 9 COMMISSIONER HEMRAJ: Isn't the context
 10 of that the firearm training, they need to be replaced for
 11 the firearm training?
 12 MS BALOYI: Chair, if I may, Ms Le Roux
 13 speaks about this note suggesting that Brigadier Calitz
 14 spoke about people that shot on the 13th. This note doesn't
 15 mention any date, in fact the note appears to have been
 16 made on the 21st of August and I'm not sure -
 17 MS LE ROUX: No, no, but Chair, the
 18 answer -
 19 CHAIRPERSON: The phrase Marikana
 20 shooting is ambiguous, I suppose, it could include the 13th
 21 as well as the 16th, or it could merely be the 16th. I'm
 22 not sure that you can put positively that Brigadier Calitz'
 23 instruction amounted to this, that those who were involved
 24 in the shooting on the 13th -
 25 MS LE ROUX: But, Chair, -

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1 CHAIRPERSON: - also had to be -
 2 MS LE ROUX: - as I understood it, this
 3 is what I'm trying to clarify because, Lieutenant-Colonel,
 4 as I understood your evidence, when I asked you what the
 5 note referred to you said the shooting on the 13th, that
 6 Brigadier Calitz said members who had been involved in the
 7 shooting on the 13th needed to stand down, go for firearm
 8 training and be replaced, that's what I understood your
 9 answer a few moments ago to be, is that incorrect?
 10 COLONEL MERAFAE: If I had said that,
 11 Chairperson, then that could not have been. If I was
 12 referring to the 13th I would have made mention of it, I was
 13 talking of Marikana in general, the operation from the
 14 beginning to the end.
 15 MS LE ROUX: Okay, well, then let me move
 16 on. Brigadier Calitz in his evidence, for the record
 17 Chair, it is day 170, page 19941, we don't need to go
 18 there. He was asked whether any officers, any members were
 19 removed because of, the question that was put by the chair
 20 was, the effect of the 13th and Brigadier Calitz' evidence
 21 seemed to be that you were one of the members that had been
 22 removed because of the effect of the 13th and then he went
 23 on his answer to explain that was because you then went to
 24 the family of the members who had died and you attended to
 25 arrangements for memorial services and that. So I just

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1 want to clarify that, did you, were you removed after the
 2 13th in order to support the family and be involved in
 3 organising the memorial service or was it because of the
 4 effect of the 13th?
 5 COLONEL MERAFAE: Chairperson, it was only
 6 on the 15th that I left Marikana in order to be of
 7 assistance to the Lepaakus. There was any reason, there
 8 was no reason for my being removed there because of my
 9 involvement. Let me say, the reason for my going was not
 10 because of my involvement.
 11 MS LE ROUX: Do you know of any SAPS
 12 member that was removed because of the effect of the
 13 incident on the 13th on them?
 14 COLONEL MERAFAE: Members of the POP,
 15 members of my unit and the Klipgat were removed and some
 16 were removed for attending the Lepaaku funeral. Some POPS
 17 members from KwaMhlanga were removed for that reason, the
 18 burial of Warrant-Officer Monene.
 19 MS LE ROUX: So you don't know of any
 20 SAPS member that was removed from service because of
 21 emotional, psychological, any other reasons arising from
 22 the 13th?
 23 COLONEL MERAFAE: I don't remember,
 24 because for some time I was away.
 25 MS LE ROUX: In your notes, if we could

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1 then go down to page 7, there is a reference here to, - ja,
 2 if we could just go down, yes, there is an entry just above
 3 the date, 2012/09/05, command and control. Now as we
 4 understand this, this is the note taken in relation to your
 5 interaction with the team of experts, that in your
 6 consolidated statement, QQQ1, this appears in paragraph 7.1
 7 and 7.3 of that statement, so perhaps if we can go to QQQ1,
 8 paragraph 7. So the task team of POP experts and if you
 9 cast your eye over 7.1 through to 7.3, this is where you
 10 say the session at Roots, you met a team comprising Mr Ali,
 11 Brigadier Mkhwanazi, Colonel Twala, Colonel Mkhari, you've
 12 met them in Potch and then if we can just skim through
 13 really, 7.2, the team asked you about seven things. The
 14 team asked me about whether what happened in the operation
 15 was in accordance with the training of POP, two, about the
 16 use of barbed wire, whether the use of barbed wire was
 17 wise, three, command and control, four, whether there were
 18 sufficient POP commanders deployed, five, the use of force
 19 on 16 August, six, my involvement in the preparation of the
 20 plan and seven, why the POP did not draw the plan.
 21 In 7.3 you then set out your answers where you
 22 said, I answered that one, on 13 and 16 August there was
 23 sufficient POP deployment, we had officers in charge of
 24 each section that were deployed, two, that on 16 August
 25 barbed wire was used as a barrier to separate the strikers

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1 and the police and that this was an appropriate use of it.
 2 Three, I explained my involvement in the drawing of the
 3 plan on 14 August. As I was not present on the 16th I was
 4 unable to give any comment about issues of command and
 5 control, use of force on that day. I had become aware
 6 during evidence presented to the Commission that a document
 7 was handed in which is supposed to be a report of the team
 8 that interviewed me. I saw the document for the first time
 9 during the preparation of this statement. So the team
 10 included Brigadier Mkhwanazi, that's correct?
 11 COLONEL MERAFAE: Correct, Chair.
 12 MS LE ROUX: And we're interested in this
 13 because it references one of the criticisms that Brigadier
 14 Mkhwanazi made mention of in his oral evidence to the
 15 Commission. Chair, the reference is page 29, - sorry, day
 16 29, page 3044 to 3045, and if we could go to that because
 17 it is a little unclear, precisely what he was saying about
 18 command and control at Marikana. Can you, and I understand
 19 of course where you say you weren't there but can you help
 20 the Commission at all in relation to the entry in your
 21 notes, command and control, as to what the criticism was
 22 that you were debating with Brigadier Mkhwanazi, because if
 23 we look at the transcript, his answer, it appears from line
 24 21, this is where he is asked you know for any criticisms
 25 of how things went and he says, command and control.

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1 Under command and control, I'll clarify why I'm
 2 saying that, it is the magnitude of the operation, provided
 3 important information in terms of managing operations in
 4 future in the sense, the unified command and a span of
 5 control, to address the issues of accountability and the
 6 leadership should be entrenched in the operational
 7 doctrine. What I mean is that under Public Order Policing
 8 we've got a span of control, however SAPS as police, we
 9 have a chain of command. So the two, we need to just look
 10 at it and revisit it, especially if we have a unified
 11 command and control, because looking at the situation in
 12 Marikana we have a vast area. It was too big in a sense
 13 that each and every section must have its own tactical
 14 commander and its own tactical commander must at all times
 15 communicate with the operational commander, of which I
 16 somehow, I'm feeling that there was some sort of break of
 17 communication and we need to be improving on that, to see
 18 if we can shape it properly, and he carries on from there.
 19 So when you made the note in reference to the
 20 discussion you were having with Brigadier Mkhwanazi about
 21 command and control, do you remember any of the specifics
 22 of what he was asking you, what the team had asked you, how
 23 the issue was addressed at all or did you simply say to
 24 them, I wasn't there, I don't know anything about command
 25 and control? Did they present the issue to you in any way?

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1 COLONEL MERAFAE: Chairperson, I was
 2 commenting about the command and control of the officers
 3 that were placed in Marikana on the 16th. I was asked,
 4 since there were different units, how communication was
 5 between the commanders and the operation and the person in
 6 command. I mentioned that there were experienced officers,
 7 speaking now on behalf of the POP, that they had a
 8 operational commander who could liaise with any of the
 9 commanders. I also explained clearly that other
 10 components, there were commanders who were communicating
 11 with the operational commander. I was explaining that,
 12 Chairperson, although I wasn't there at the time I was
 13 explaining that they were present there on the ground. So
 14 I also said I couldn't say much because I was not there to
 15 witness what was happening on the ground, that I also
 16 mentioned.
 17 MS LE ROUX: Lieutenant-Colonel, other
 18 than what's in your note and the reference to this meeting
 19 with the team of experts, that included Brigadier
 20 Mkhwanazi, have you on any other occasion discussed the
 21 command and control of the Marikana operation with anyone
 22 else, or is this the only time you were asked for your view
 23 about command and control at Marikana?
 24 COLONEL MERAFAE: Command and control, as
 25 far as I am concerned, we don't only discuss it in relation

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1 to Marikana, we normally are discussing it even before or
 2 after and during, there must be command and control because
 3 we know without command and control things won't be done
 4 accordingly. So we discussed it, yes.
 5 MS LE ROUX: But specifically with
 6 respect to failures of command and control at Marikana,
 7 other than this conversation with the team of experts that
 8 included Brigadier Mkhwanazi, have you discussed what went
 9 wrong with command and control at Marikana with anyone
 10 else?
 11 COLONEL MERAFAE: Not necessarily with
 12 anyone else but at Roots, all of us when we were gathered
 13 there, we also touched the issue of command and control.
 14 MS LE ROUX: And other that at Roots, no
 15 other conversation about command and control failure at
 16 Marikana?
 17 COLONEL MERAFAE: Let me say in my unit
 18 with my members we usually discuss it, with my officers
 19 actually, I usually emphasise on the command and control to
 20 keep them sharp.
 21 MS LE ROUX: But, Lieutenant-Colonel, I'm
 22 focussing only on command and control at Marikana. I
 23 understand generally it is obviously a topic that you'll
 24 have to discuss but you've said that you discussed command
 25 and control at Marikana when you met with the team of

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1 experts and you said it was discussed at Roots. Other than
 2 those two occasions have you discussed Marikana command and
 3 control with anyone else?
 4 COLONEL MERAFAE: Chairperson, as I say we
 5 do discuss about it but to say today where did I discuss it
 6 and when, the next thing I'll be asked for minutes and I'll
 7 be in trouble.
 8 MS LE ROUX: Well, that's not the reason
 9 not to tell us if you have discussed it some other time.
 10 COLONEL MERAFAE: The truth is, normally
 11 we discuss it.
 12 MS LE ROUX: And then any of these
 13 conversations, the one with the team of experts at Roots,
 14 when you've discussed it in your unit, when you've
 15 discussed command and control at Marikana, did you reach a
 16 conclusion that there was a failure of command and control
 17 in Marikana?
 18 COLONEL MERAFAE: Except where we've been
 19 assisted by experts internal and external experts, without
 20 being assisted by experts internally and, by virtue of us
 21 being assisted by experts from outside and within the
 22 country, we are aware of some criticism that has been made
 23 against command and control at Marikana. It is at our
 24 disposal due to the fact that I read newspapers, I've read
 25 the criticism that experts have said about the command and

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1 control, so yes.
 2 MS LE ROUX: If I can ask you to go back
 3 in your final statement, QQQ1 and if we can look at, if we
 4 can call up paragraph 7.3 again, this is where you set out
 5 your response to the team of experts you met with and I
 6 want to explore with you your response around the use of
 7 the barbed wire. So you say there, and it is the second
 8 point, that on 16 August barbed wire was used as a barrier
 9 to separate the strikers and the police and this was an
 10 appropriate use of barbed wire and I don't dispute that,
 11 but I'm interested in whether you would agree with me that
 12 the presence of barbed wire, the use of barbed wire can
 13 have an impact on the crowd dynamic of the people that
 14 you're trying to police, would you agree with that?
 15 COLONEL MERAFAE: I accept that.
 16 MS LE ROUX: And would you also agree
 17 with me that how the barbed wire is laid out is likely to
 18 effect the movement of the crowd?
 19 COLONEL MERAFAE: I also accept that.
 20 MS LE ROUX: So depending on how it is
 21 laid out it could encourage people to go in one direction
 22 and discourage them from going in another direction?
 23 COLONEL MERAFAE: I agree.
 24 [11:30] MS LE ROUX: Were you aware that the
 25 layout of the barbed wire at Marikana was changed without

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1 the approval or even the knowledge of the overall commander
 2 and the chief planner, so neither Major-General Mzembe nor
 3 Lieutenant-Colonel Scott were aware that the layout of the
 4 barbed wire had changed, did you know that?
 5 COLONEL MERAFAE: The question is did I
 6 know or do I know it now?
 7 MS LE ROUX: Do you know –
 8 COLONEL MERAFAE: I did not know.
 9 MS LE ROUX: Can I ask you to go then, in
 10 the statement of Mr Gary White, JJJ178 and ask you to turn
 11 to page 81. We're going to look at paragraph 6.5.18
 12 through to 6.5.20. Chair, this is where Mr White deals
 13 with the deployment of resources at Marikana. So going
 14 through this, Mr White states, starting at paragraph 6.5.18
 15 "since submitting his provisional statement I've received a
 16 significant amount of new information in respect of the
 17 development of the operational plan. In light of that new
 18 information I've amended and added to my judgments in
 19 respect of deployment of resources in relation to the
 20 positive attraction of Nkaneng. When Nyala 6 was
 21 redeployed adjacent to the kraal around midday on 16 August
 22 that created a fundamental change to the positive
 23 attraction of Nkaneng. Below I show three alternative
 24 deployments indicating the effect of the attraction of
 25 Nkaneng. On page 82 there's the original stage 2 plan and

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1 in that original plan there's the semi circle of barbed
 2 wire in orange making it difficult for any protestor to
 3 reach Nkaneng and acting as a clear deterrent from the
 4 positive attraction it would otherwise hold". If we then
 5 turn the page to page 83 we see the 2 o'clock amendment on
 6 the 16th of August. Mr White states "in the amended plan
 7 the L shaped barbed wire represented in orange does not
 8 prevent protestors from reaching Nkaneng and does not act
 9 as a deterrent from the positive attraction point.
 10 Nonetheless the presence of the POP, NIU, TRT and STF
 11 members to the north of the koppie and adjacent to the
 12 barbed wire do act as a deterrent to movement towards
 13 Nkaneng. However the POP, NIU, TRT and STF members with
 14 Nyalas can only act as a deterrent to movement towards
 15 Nkaneng if they are moved into place at the same time as or
 16 before the barbed wire is rolled out. Stage 3 of the plan
 17 did not require this. The stage 3 plan required the barbed
 18 wire to roll out in phase 1 of stage 3 and the POP, TRT,
 19 NIU and STF were to form up to the north west of the kraal
 20 sometime after that". If we move onto page 84.
 21 "Accordingly the deployment of resources at the end of
 22 phase 1 of stage 3 would appear as in the plan set out on
 23 page 84. So in that plan which reflects the deployment of
 24 resources between phases 1 and 2 of stage 3 of the amended
 25 plan the L shaped barbed wire represented in orange does

<p style="text-align: right;">Page 27290</p> <p>1 not prevent protestors from reaching Nkaneng and does not 2 act as a deterrent from the positive attraction point and 3 because the POP, TRT, NIU and STF are not yet deployed to 4 the north of the koppie this L shape invites or channels 5 protestors to move towards the informal settlement until 6 such time as the members move into position to the north 7 west of the kraal". Concluding then at paragraph 6.5.20 8 "it does not appear that the consequences of the movement 9 of Nyala 6 were properly considered by the overall 10 commander or by Lieutenant Colonel Scott. Lieutenant 11 Colonel Scott explains that in his briefing to commanders 12 he said that, 'the razor wire would assist the police to 13 canalise the dispersion towards the west and away from the 14 east.' On Mr White's assessment that is correct on the 15 original deployment of the razor wire depicted in the stage 16 2 plan, shown at the 1:30 JOCCOM however after the 17 redeployment of Nyala 6 the razor wire would if anything 18 canalise protestors towards Nkaneng. So if the police 19 intended to prevent dispersal towards Nkaneng the 20 redeployment of Nyala 6 created a potential flash point at 21 the northern end of the wire". Lieutenant Colonel, do you 22 agree with that criticism by Mr White? 23 COLONEL MERAFAE: Chairperson, yes I want 24 to be very careful in my response here. We're talking of 25 the possible attraction point being Nkaneng.</p>	<p style="text-align: right;">Page 27292</p> <p>1 be that you don't want people that you have identified to 2 take action against, to be mixed with the whole community. 3 It's going to be a trouble. People that you have 4 identified as being attackers that are going to attack you 5 to get involved with the whole community there would be 6 turmoil. That is why I said, Chairperson, I am going to 7 answer with the greatest caution not to get myself into 8 trouble and give one the benefit of the doubt. Because a 9 person who is in charge by then thinks the way he sees 10 things who is not there will come and criticise or will 11 come and give, you know positive and negative points about 12 your action. 13 MS LE ROUX: Lieutenant Colonel, let me 14 go back then to, if we could go back to page 82. This is 15 the original stage 2 plan. You'll agree that the barbed 16 wire deployed as it's shown on this, the orange semi circle 17 that blocks Nkaneng for the protestors. The protestors are 18 unlikely to try to get to Nkaneng if the barbed wire is 19 where it's shown on this plan, you'll agree with me? 20 COLONEL MERAFAE: I agree, Chair. 21 MS LE ROUX: And if we then turn to page 22 84 which is the depiction of phase 1 of stage 3 of the 23 amended plan, you'd agree with me that the barbed wire 24 shown on this plan, the L shape that with this deployment 25 of barbed wire people will try to go through to Nkaneng,</p>
<p style="text-align: right;">Page 27291</p> <p>1 MS LE ROUX: Lieutenant Colonel, can I 2 interrupt you because I know there's a difference in how 3 that phrase is used. 4 COLONEL MERAFAE: Yes. 5 MS LE ROUX: That I must just clarify, 6 when Mr White talks about a positive attraction point he 7 means a point, a place that people will be attracted to. 8 So he means people will want to go to Nkaneng. 9 COLONEL MERAFAE: I understand it fully, 10 Mr Chair. 11 MS LE ROUX: Okay so absent the barbed 12 wire or the members being deployed there people, Mr White 13 says will move back home to Nkaneng. Sorry I interrupted 14 you, do you want to continue. 15 COLONEL MERAFAE: I admit, Chairperson, 16 that the people who were on the koppie going in, towards 17 Nkaneng if the barbed wire is placed on the side of Nkaneng 18 they would not have easy access towards Nkaneng. As I said 19 I'm going to very careful. As a person who was not there 20 on the day in question, Chairperson, the placement of the 21 barbed wire in that manner I do not know what it was that 22 was intended. It could be, it would be that a decision had 23 been taken that now we are going to disarm and disperse 24 them and arrest them. If you do that you can then not 25 allow people to move towards Nkaneng. Another reason would</p>	<p style="text-align: right;">Page 27293</p> <p>1 they would look at how the barbed wire is close to the 2 koppie and then peeling away and they would think I can get 3 through to Nkaneng here. 4 COLONEL MERAFAE: I agree, Chairperson. 5 MS LE ROUX: Could I then ask you to 6 return, oh sorry one more question on this. Are you aware 7 that a number of SAPS members who were there on the day 8 thought that the purpose of the barbed wire was to channel 9 people towards Nkaneng, do you know about that? 10 COLONEL MERAFAE: I don't know that, 11 Chair. 12 MS BALOYI: Chairperson there is no 13 evidence, at least that I'm aware of of any SAPS members 14 who say the purpose of the barbed wire was to channel 15 towards Nkaneng. I'm not sure if that's correct. 16 MS LE ROUX: Chair, we'll – 17 CHAIRPERSON: I think the idea was to 18 channel them away from, wasn't it? So is there some 19 evidence that you can refer us to, Ms Le Roux, someone from 20 SAPS said that the purpose of the barbed wire was to 21 channel them towards Nkaneng. 22 MS LE ROUX: Yes, Chair, but I think what 23 we'll do, is obviously put it to the appropriate witness. 24 Lieutenant Colonel, has said he wasn't aware that anyone 25 had said this. We expect that there will be, will have</p>

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1 witnesses –

2 CHAIRPERSON: Don't keep us in suspense,

3 who is it?

4 MS LE ROUX: Chair, I'm, we'll provide it

5 to the Commission. We can put the list together. I want

6 to move on in my cross-examination.

7 CHAIRPERSON: Okay.

8 MS LE ROUX: I'm nearly finished.

9 CHAIRPERSON: That's fine.

10 MS LE ROUX: Lieutenant Colonel –

11 CHAIRPERSON: You're not persisting with

12 the point so the objection doesn't have to be ruled on

13 because it's effectively conceded.

14 MS LE ROUX: Chair, if we can return then

15 to QQQ1 and if I could ask you to turn to paragraphs 8.3.4.

16 Starting there and if we can just run through it to 8.3.6.

17 Lieutenant Colonel, in these paragraphs you take issue with

18 Lieutenant Colonel Vermaak's criticisms of certain aspects

19 of record keeping in the POP operation. So 8.3.4 deals

20 with video recording, 8.3.5 deals with operational diaries,

21 SAPS15, see IRIS record keeping and then 8.3.6 is where you

22 deal with sitreps and the occurrence book. Now in these

23 paragraphs I just want to be clear, you're explaining

24 what's done in your POP units, correct?

25 COLONEL MERAFA: That is so, Chair.

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1 MS LE ROUX: And you're not trying to say

2 in these paragraphs that this is what happened at Marikana?

3 So you're not, you're referring to generally what happens

4 in your POP unit, you're not saying specifically at

5 Marikana this is what you know happened?

6 COLONEL MERAFA: That is so.

7 MS LE ROUX: And we know that standing

8 order 262 in paragraph 5.2.10 of that describes as

9 essential that there be record keeping during a crowd

10 management operation. Have you had any opportunity to

11 consider the adequacy of the record keeping at Marikana?

12 Have you considered or been asked by anybody to consider

13 the adequacy of the recording keeping at Marikana?

14 COLONEL MERAFA: Record keeping,

15 Chairperson, in such gathering, public gatherings and the

16 records in the unit of the Public Order Policing there are

17 operational diaries which every time we go to an operation

18 we give this to, who writes –

19 MS LE ROUX: Lieutenant Colonel, I think

20 my question wasn't –

21 COLONEL MERAFA: Who writes down the

22 incident -

23 MS LE ROUX: As narrow as –

24 COLONEL MERAFA: They comes across.

25 MS LE ROUX: Have you considered or been

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1 asked to consider the adequacy of the record keeping at the

2 Marikana operation from 13 to 16 August 2012? That

3 specific operation, have you reflected on whether there's

4 been adequate record keeping of that operation, those days.

5 COLONEL MERAFA: Yes, Chair.

6 MS LE ROUX: And can you tell me what

7 you, were you asked to consider it or have you done it

8 independently, let's start with that?

9 COLONEL MERAFA: As I have mentioned,

10 Chairperson, that about the issue of Marikana a number of

11 units came from different stations with their commanders

12 and because of my not being the operational commander one

13 looks at what is actually facing him at the point in time.

14 In my unit my members who will have operational diaries

15 with them every time for record keeping. That is why when

16 I was asked about diaries my response was that I in my unit

17 see to it that they have this. If for instance in the

18 Marikana incident people coming from KwaMhlanga did not ask

19 for me or did not have it then it would not be my problem.

20 MS LE ROUX: So, Lieutenant Colonel, if

21 we look at how you describe what should happen, so 8.3.4

22 the video recording that should happen, 8.3.5 where you set

23 out how operational diaries, SAP15s and the IRIS system

24 works and then 8.3.6 where you talk about Sitreps and how

25 things are recorded in the occurrence book. From what you

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1 know of the Marikana operation from 13 to 16 August do you

2 think the records were properly kept?

3 COLONEL MERAFA: Up to what has come

4 after to now, records were not properly kept.

5 MS LE ROUX: Thank you, Lieutenant

6 Colonel, thank you, Chair, I have no further questions.

7 CHAIRPERSON: [inaudible microphone off]

8 Mr Bizos, will then cross-examine immediately thereafter.

9 [COMMISSION ADJOURNS COMMISSION RESUMES]

10 [12:22] CHAIRPERSON: The Commission resumes. I

11 apologise for the delay in resuming. There were more

12 housekeeping matters that required attention. Mr Bizos.

13 Before you start I will just remind the Colonel, you're

14 still under oath.

15 OMPHILE JOSEPH MERAFA: (s.u.o.)

16 CROSS-EXAMINATION BY MR BIZOS SC:

17 Colonel, having listened to your evidence, or most of it,

18 it would appear to us that you have made a careful study of

19 the law relating to crowd management.

20 COLONEL MERAFA: It is so, Chair.

21 MR BIZOS SC: You are familiar with the

22 legislation in the Police Act, in the Gatherings Act, in

23 the standing orders, and above all the decisions of our

24 Constitutional Court that human life is sacrosanct and it

25 is not to be taken too easily away?

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1 COLONEL MERAFAE: It is so, Chair.
 2 MR BIZOS SC: This despite the fact that
 3 your initial training in Bophuthatswana in the Riot Squad
 4 probably was not a good start in your career as to how
 5 senior police officers should behave towards protesters.
 6 COLONEL MERAFAE: [African language] as a
 7 commander whether in the era of Bophuthatswana, I have been
 8 observing the law. I have been disciplined. I have been
 9 doing things accordingly.
 10 MR MAHLANGU: Said in English, Sir. "I
 11 don't agree," he said, started by saying "I don't agree
 12 with what counsel is saying."
 13 MR BIZOS SC: In your statement you say
 14 that you did four years' service in the Riot Squad.
 15 COLONEL MERAFAE: That is correct, Sir.
 16 MR BIZOS SC: You see, it's perhaps
 17 significant that it was called the Riot Squad because in
 18 apartheid South Africa and the supposedly independent
 19 Bophuthatswana demonstrators were regarded as rioters.
 20 COLONEL MERAFAE: [African language] but
 21 now from the onset joining the police I have known
 22 demonstrators are fellow human beings.
 23 MR BIZOS SC: Well, it's to your credit
 24 and I accept it without reservation. Now you know that
 25 there was a fundamental change made in the police training

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1 shortly after Mr Mandela's release in 1990.
 2 COLONEL MERAFAE: I am aware and I am one
 3 of the members who were there by then who had undergone
 4 those fundamental changes.
 5 MR BIZOS SC: Yes. Did you serve in the
 6 police in the period of National Commissioner Fivaz?
 7 COLONEL MERAFAE: Correct, Chair.
 8 MR BIZOS SC: And did you know that a
 9 foreigner, one Eddie Hendrickx, came to South Africa in
 10 order to transform the, or to help the government, starting
 11 during Mr De Klerk's presidency, to transform the South
 12 African police from what it was during the apartheid
 13 regime?
 14 COLONEL MERAFAE: I am aware, Chairperson.
 15 [African language] I should treat a person as a fellow
 16 human being.
 17 MR MAHLANGU: He started by saying, "As I
 18 have already stated that I personally as a police officer
 19 treated a human being as a fellow human being."
 20 MR BIZOS SC: Were new programmes
 21 introduced from the early 90s right up to the end of Mr
 22 Mandela's presidency to bring the ethos that you so
 23 correctly followed amongst all the police in the police
 24 force?
 25 COLONEL MERAFAE: I plead the Advocate

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1 should repeat the question so that I understand it
 2 correctly, so that I respond correctly.
 3 MR BIZOS SC: Yes. Were very special
 4 training programmes introduced from the early 90s right up
 5 to Mr Mandela's completion of his term in order to
 6 demilitarise the police?
 7 COLONEL MERAFAE: Yes, I was present
 8 during this time. I also attended such trainings as a
 9 member of the South African Police.
 10 MR BIZOS SC: Yes. Now did you by any
 11 chance know of the presence of Mr Eddie Hendrickx in the
 12 country, leading this programme of demilitarising the
 13 police?
 14 COLONEL MERAFAE: It is correct, I heard
 15 about him, Chair.
 16 MR BIZOS SC: Did you by any chance meet
 17 him?
 18 COLONEL MERAFAE: No, I did not meet him,
 19 but met the people that he trained in order to retrain us.
 20 MR BIZOS SC: Yes. You were given
 21 notice, and I hope you were given copies of the two
 22 statements that he has made to this Commission.
 23 COLONEL MERAFAE: Correct, Chairperson.
 24 MR BIZOS SC: Did you read them?
 25 COLONEL MERAFAE: I read them.

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1 MR BIZOS SC: Carefully?
 2 COLONEL MERAFAE: Very carefully.
 3 MR BIZOS SC: Did you make any notes on
 4 them?
 5 COLONEL MERAFAE: I take notes of them
 6 yes, where it criticise I take note; where it builds one
 7 for the future, I have, take note.
 8 MR BIZOS SC: Good. Well, then this can
 9 shorten the period of this cross-examination, or
 10 examination because there may be a difference between
 11 cross-examination and examination, Colonel, so don't be
 12 uncomfortable when I use the word "cross-examination."
 13 COLONEL MERAFAE: I thank you, Sir.
 14 MR BIZOS SC: Are you in substantial
 15 agreement with the criticisms made by Mr Hendrickx?
 16 COLONEL MERAFAE: [African language] I
 17 wanted to be guided what criticisms so that as and when I
 18 respond I should be, I should know exactly for what am I
 19 responding.
 20 MR BIZOS SC: Let's put it in general
 21 terms. Did you find yourself in substantial agreement with
 22 some of the criticisms that he has made?
 23 COLONEL MERAFAE: Ja, some of the
 24 criticism I really accept, but what I say is Advocate must
 25 direct me, he must tell me regarding this and that so that

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1 as and when I respond, really I must be knowing exactly
 2 what I'm talking about.
 3 MR BIZOS SC: Now you told us that you
 4 studied the documents very carefully and you made marks.
 5 In order to shorten the proceedings would you like to tell
 6 us what criticisms, if any, do you have of Mr Hendrickx's
 7 views or statements that he has made to the Commission?
 8 You can have a look at the documents that were made
 9 available to you and we can take the criticism in which you
 10 disagree with or you have some doubts of or you would like
 11 some explanation, or to say something about a criticism.
 12 Are you prepared for us to follow that procedure?
 13 COLONEL MERAFAE: Chairperson, I would
 14 like to be taken through and for questions to be asked
 15 directly to what I have to respond to in order for me to
 16 respond –
 17 CHAIRPERSON: Mr Bizos, I can understand
 18 your desire to save time, but I think the witness's request
 19 is not one that is unreasonable. So perhaps you could
 20 refer him pertinently to major criticism and see what he
 21 says.
 22 MR BIZOS SC: The option is his. I don't
 23 want to deprive him of that –
 24 CHAIRPERSON: That's what I'm saying.
 25 I'm saying –

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1 MR BIZOS SC: - of exercising the option,
 2 because I do have a list on which, I don't want to go
 3 through everything that he has said, but we can take it one
 4 by one and I think it will probably be fairer to the
 5 witness, rather than –
 6 From your evidence so far it would seem that you
 7 accept the crowd management principles and rules are
 8 outlined by Mr Hendrickx in his provisional statement in
 9 GGG2. Is there anything that you disagree with the general
 10 principles?
 11 COLONEL MERAFAE: There is nothing that I
 12 want to dispute there, Chair.
 13 MR BIZOS SC: There's nothing that you
 14 would disagree on the general principles?
 15 COLONEL MERAFAE: That is correct, Sir.
 16 MR BIZOS SC: Yes, this is in exhibit
 17 LLL12 - sorry, GGG2. So you say that you disagree with the
 18 general –
 19 CHAIRPERSON: He agrees with –
 20 MR BIZOS SC: You agree with the general
 21 statements. Then if we can go to statement LLL12, Mr
 22 Hendrickx makes the following points. Please tell us
 23 whether you agree with him or not. In paragraph 13 –
 24 sorry, paragraph 25, page 11 of that document he says, "The
 25 events of the 13th of August altered the course of SAPS

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1 operation at Marikana." Do you agree with that? I think
 2 you've already expressed an opinion to my predecessor that
 3 it may have. What is your answer?
 4 COLONEL MERAFAE: I agree, Chairperson.
 5 MR BIZOS SC: You agree?
 6 COLONEL MERAFAE: It is so, Sir.
 7 MR BIZOS SC: On page 12, paragraph 26,
 8 he says, "After the events of the 13th of August the SAPS
 9 drew the conclusion that the group of striking mineworkers
 10 were intent on confrontation with the SAPS at a level that
 11 had previously not been experienced in labour and service
 12 delivery unrest." Do you agree or disagree with that?
 13 COLONEL MERAFAE: I do agree, Chairperson.
 14 MR BIZOS SC: You agree with that.
 15 Paragraph 27 on page 13, "The claim by some commanders of
 16 the SAPS that the levels of threat or violence posed by the
 17 group of strikers at Marikana was unprecedented, is not
 18 reasonably sustained by the evidence of the events." I
 19 think that you have already expressed a view in relation to
 20 that, and do you agree with Mr –
 21 MS BALOYI: Chair, I can't see where Mr
 22 Bizos is reading in paragraph 27.
 23 CHAIRPERSON: What he read a minute ago
 24 was the first sentence of paragraph 27. The sentence he
 25 read before that is not on the screen. It's probably 26.

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1 Perhaps I –
 2 MR BIZOS SC: I'm reading a summary, if
 3 the –
 4 CHAIRPERSON: The last sentence that you
 5 uttered was the first sentence in paragraph 27 which we
 6 see. What you said before that wasn't on Mr Hendrickx's
 7 report –
 8 MR BIZOS SC: I see.
 9 CHAIRPERSON: It was presumably your
 10 summary of what he said, but the main point is that
 11 paragraph 27 says that the police conclusions, which were
 12 summarised by way of quotation in any event in 26, were not
 13 reasonably sustained by the evidence and he then is
 14 proceeding in the following paragraphs to motivate that
 15 statement. So I think that is now clear, Ms Baloyi.
 16 MR BIZOS SC: Well, you've heard the
 17 correction. Do you agree with what Mr Hendrickx said?
 18 CHAIRPERSON: No, no, no, I think that
 19 question is too wide. He starts his conclusion that what
 20 he calls the conclusions of the police are not reasonably
 21 sustained by the evidence.
 22 MR BIZOS SC: Yes.
 23 CHAIRPERSON: And he says in his
 24 evaluation of the evidence there are other more probable
 25 important conclusions to be drawn as to the cause of the

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1 conflict and ensuing violence, and then he proceeds to
 2 motivate that in 28 and following. So I don't think it's
 3 fair to say to the witness "Do you agree with 27?" He's
 4 got to have a chance to deal with the motivation and so
 5 forth in 28 and following. Is that right, Colonel?
 6 COLONEL MERAFAE: That is correct,
 7 Chairperson.
 8 CHAIRPERSON: He proceeds in the passage
 9 which follows on what's on the screen to indicate his
 10 reasons for saying that the group, this is the group on the
 11 13th at the railway line were orderly and these reasons are
 12 not yet on the screen, but the witness has obviously read
 13 them. But I think to be fair he has to have an opportunity
 14 to deal with them.
 15 MR BIZOS SC: Yes. Well, read paragraph
 16 27. Do you agree with what he says?
 17 CHAIRPERSON: Mr Bizos, I just made the
 18 point; you can't expect him to answer the general statement
 19 in 27 without dealing with what Mr Hendrickx describes as
 20 the more probable and important conclusions to be drawn as
 21 to the causes of the conflict and ensuing violence, which
 22 are different from those set out by the police, as
 23 summarised in 26, and then he proceeds to deal with that in
 24 28. So I don't think you can just say to him well before
 25 you look at 28 and 29, tell me do you agree with 27. I

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1 think you must, I'm afraid – I know it's a bit longer than
 2 the way you want to do it, but I don't see how you can
 3 escape it. The first point is this; you were at the
 4 railway line on the 13th?
 5 COLONEL MERAFAE: That's correct,
 6 Chairperson.
 7 CHAIRPERSON: And what, the first point
 8 that Mr Hendrickx makes is that the available evidence
 9 suggests that before the stun grenades were fired, and I
 10 would add before the teargas was thrown, there were no
 11 indications that the group of striking mineworkers was
 12 intent on confrontation with the police. And then he then
 13 says they were coming back from Karee, they had been
 14 stopped and redirected by mine security. They'd complied
 15 with this order from mine security. They'd gone past
 16 residential areas. There were no reports of incidents of
 17 violence, and then the discussion they had with General
 18 Mpembe wasn't confrontational and aggressive. They
 19 emphasised their dispute wasn't with the police but with
 20 their employer. They said they didn't want to hand over
 21 their weapons because they thought that they'd be attacked
 22 by NUM, and presumably it will go on further to say that
 23 they in fact asked the police to allow them to proceed
 24 under escort back to the koppie, which eventually as we
 25 know General Mpembe having discussed the matter with the

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1 Provincial Commissioner, decided to do, although he made on
 2 last effort to get them to hand over their weapons. All
 3 this is there, you see. Now what Mr Hendrickx says.
 4 [12:42] He mentioned those facts and he says therefore he
 5 concludes the passage we had earlier that they weren't
 6 intending to act violently towards the police on the 13th,
 7 is that the summary, Mr Bizos, that you agree with?
 8 MR BIZOS SC: Thank you.
 9 CHAIRPERSON: That you agree with what
 10 Mr Hendrickx says?
 11 COLONEL MERAFAE: I agree with that,
 12 Chair.
 13 MR BIZOS SC: Yes, thank you. Then page,
 14 paragraph 31 at page 15. Have a look because I want to
 15 rely merely on the summary that, of the question that I –
 16 CHAIRPERSON: Okay, no I understood,
 17 sorry Mr Bizos, I understood that previously when you were
 18 cross-examined by Mr Wesley and others that you essentially
 19 agreed with what is said in paragraph 31, that this
 20 incident was precipitated by the teargas and the stun
 21 grenades, is that, they weren't misbehaving themselves
 22 before that, they didn't hand over their weapons but they
 23 weren't using them and if the teargas and the stun grenades
 24 hadn't been fired then in all probability this incident
 25 wouldn't have happened. I understood you to agree with

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1 that, am I right?
 2 COLONEL MERAFAE: I have agreed with that,
 3 Chairperson.
 4 CHAIRPERSON: He agrees with 31, Mr
 5 Bizos.
 6 MR BIZOS SC: Then we can go to page 34,
 7 paragraph 34 on page 16 and, have you got it?
 8 COLONEL MERAFAE: I saw it, Chairperson.
 9 MR BIZOS SC: Do you agree with what Mr
 10 Hendrickx says?
 11 COLONEL MERAFAE: That the police
 12 leadership on the, after the 13th they shifted the police
 13 operation, he said it's inappropriate they shifted from
 14 crowd management operation and it deals with discreet
 15 sections below, I want that section below to change so that
 16 I can also respond accordingly.
 17 MR BIZOS SC: Did it move away from crowd
 18 management as you understand it to something else? They
 19 call it a hybrid, they call it all sorts of things. In
 20 your view was there any such change?
 21 COLONEL MERAFAE: According to my view
 22 because after the 13th the group went and gathered at the
 23 koppie and remained at the koppie until such time that on
 24 the 16th some actions were taken against them. It still
 25 remains crowd which have gathered there. So I don't

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1 understand how was, how did it change from being a crowd
 2 management to something else.
 3 CHAIRPERSON: Can I come in here.
 4 You'll remember when Mr Wesley cross-examined you. He put
 5 to you that some others had talked about the hybrid.
 6 COLONEL MERAPE: Hybrid, ja.
 7 CHAIRPERSON: And you said that you
 8 didn't agree with that, you said it was a crowd management
 9 operation.
 10 COLONEL MERAPE: Yes.
 11 CHAIRPERSON: It was perhaps a
 12 particular kind of crowd management operation but it fell
 13 within standing order 262 and you rejected the concept of
 14 hybrid, that's correct isn't it?
 15 COLONEL MERAPE: That is why I am still
 16 maintaining that, Chairperson, in my response to the
 17 question that was posed that that it is crowd management.
 18 MR BIZOS SC: Let me ask you this. You
 19 are a great believer in order 262 being obeyed?
 20 COLONEL MERAPE: It is so, Chair.
 21 MR BIZOS SC: If the senior officers says
 22 that the standing orders were not applicable to the
 23 situation which appeared to be developing on the 16th, do
 24 you agree or disagree with them?
 25 COLONEL MERAPE: Chairperson, the

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1 question is not very clear to me, it confuses me a bit, I
 2 don't know what is expected of me.
 3 MR BIZOS SC: Senior officer said insofar
 4 as we did not act in terms, as expected of us of the
 5 standing orders it was a hybrid situation to which the
 6 standing orders did not apply. Do you agree with that
 7 general statement?
 8 CHAIRPERSON: Mr Bizos, Mr Wesley
 9 covered that point. The witness agreed with him, agreed
 10 essentially with the proposition you're putting and I put
 11 it to him a minute, a few minutes ago. He said he doesn't
 12 agree with this idea of a hybrid. This was a crowd
 13 management situation covered by 262. 262 in its terms
 14 deals with spontaneous demonstrations, un-notified
 15 demonstrations or gatherings. Deals with situations where
 16 there's danger, there are attacks on people. But 262 deals
 17 with all that, that was his evidence. He rejected the idea
 18 of something beyond 262.
 19 MR BIZOS SC: Yes.
 20 CHAIRPERSON: He rejected the idea of a
 21 hybrid situation. I don't know why you're repeating the
 22 cross-examination.
 23 MR BIZOS SC: I'm sorry. I'll stand by
 24 that.
 25 CHAIRPERSON: Am I summarising your

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1 evidence correctly?
 2 COLONEL MERAPE: Very correct,
 3 Chairperson, those were my actual words.
 4 MR BIZOS SC: In paragraph 38 on page 18
 5 he says that there was deficiency of command and control in
 6 the SAPS operation on the 13th of August. Do you agree with
 7 that?
 8 COLONEL MERAPE: Ja, I see where it goes,
 9 where the other officer says do this, the other says do
 10 this. At the end of the day the higher in rank, the
 11 operational commander decided and we all have to follow
 12 him. So the issue of saying there was lack of clarity and
 13 understanding of operational strategy relating to
 14 intercepting the group at the railway line there was
 15 command and control and the commander in chief took a
 16 decision and we all obey and follow that instruction. So I
 17 don't agree with it.
 18 CHAIRPERSON: Where Mr Hendrickx says
 19 there was confusion in the ranks of SAPS as to whether the
 20 group were to be allowed to proceed under escort or to be
 21 dispersed and disarmed, that's not correct, there was no
 22 confusion. As far as you tell us everybody there should
 23 have known what General Mpmembe's decision was. It was to
 24 be an escorting exercise to the koppie.
 25 COLONEL MERAPE: That is so, Chair.

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1 CHAIRPERSON: And the fact that some
 2 people thereupon took it upon themselves to depart from
 3 that without an order from General Mpmembe, if that's
 4 correct, I know there's no argument that he gave the order
 5 but we, that's a matter you can't disagree on.
 6 COLONEL MERAPE: Ja.
 7 CHAIRPERSON: But certainly absent an
 8 order by General Mpmembe changing his earlier order anyone
 9 who acted in a way which conflicted with his order was out
 10 of line?
 11 COLONEL MERAPE: That is so, Chair.
 12 CHAIRPERSON: And should be disciplined?
 13 COLONEL MERAPE: Should have been
 14 disciplined if not now he must be disciplined.
 15 MR BIZOS SC: You agree with that?
 16 COLONEL MERAPE: I agree with that, Sir.
 17 MR BIZOS SC: He goes on to say on, on
 18 page 18 paragraph 38.2 "the firing of teargas and stun
 19 grenades without a clear order from the operational
 20 commander is a contravention of section 11.5 of the
 21 standing order 262". Do you agree with that?
 22 COLONEL MERAPE: I totally agree with it,
 23 Chairperson.
 24 MR BIZOS SC: And then he says on
 25 paragraph 32 –

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1 CHAIRPERSON: Sorry to interrupt you, Mr
 2 Bizos, somebody has got a cell phone on and if, unless it's
 3 turned off now, if we hear it again I'll ask that the owner
 4 thereof to please leave the chamber. Please carry on.
 5 MR BIZOS SC: May I proceed and then if
 6 we go to paragraph 39 on page 20 summarised "the failure of
 7 SAPS to conduct an investigation into the threats made
 8 against General Mpembe by members of the day if necessary
 9 to take disciplinary action against those who have issued
 10 them". Do you agree with that?
 11 COLONEL MERAFAE: Obviously if there are
 12 threats, disciplinary action was supposed to be, actually
 13 criminal case because here we're talk about life.
 14 MR BIZOS SC: I'm sorry just repeat that.
 15 COLONEL MERAFAE: What I'm saying,
 16 Chairperson, is that if there was ever such a threat made
 17 disciplinary action should have been taken those issuing
 18 the threats and I further said a criminal case should have
 19 been opened.
 20 CHAIRPERSON: I think he said there was
 21 a threat to life.
 22 MR BIZOS SC: Yes, and you agree with Mr
 23 Hendrickx that if there was no such action or investigation
 24 taken then that was –
 25 CHAIRPERSON: He has agreed already, Mr

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1 Bizos, I think you can move on to the next point.
 2 MR BIZOS SC: Yes.
 3 CHAIRPERSON: What is the next point you
 4 want to put?
 5 MR BIZOS SC: Yes. If we can go to page
 6 74 paragraph 34. Paragraph 74 page 34. "The manner in
 7 which they were conducted from an, the negotiations were
 8 conducted from a Nyala with –
 9 CHAIRPERSON: It's not 74, it must be
 10 beyond that. He's criticising the manner in which the
 11 negotiations were conducted.
 12 MR BIZOS SC: Yes.
 13 CHAIRPERSON: And in 74.1 he, as we can
 14 see, you've read it already, Colonel, but he thinks the
 15 fact you conducted negotiations through the window hole of
 16 a Nyala using a loudhailer wasn't satisfactory, raises
 17 difficulties.
 18 COLONEL MERAFAE: I agree with you, Chair.
 19 MR BIZOS SC: You agree with that. When
 20 you are negotiating are you supposed to avoid
 21 disproportionate deployment like Nyalas and guns and
 22 things?
 23 MS BALOYI: Chairperson, I'm not sure I
 24 understand what the question means.
 25 CHAIRPERSON: The suggestion is that, as

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1 I understand it that if you're negotiating you shouldn't
 2 just have a, you should not have a whole lot of other
 3 Nyalas there apart from the negotiating Nyala, I think
 4 that's the point made. But the other, but I can understand
 5 the point, I'm not sure it's right, but let's see what the
 6 witness says about it. The suggestion is you were there on
 7 the, during the time when the negotiation took place, you
 8 and Lieutenant Colonel Macintosh came I think on the
 9 Tuesday and he also, he negotiated in this manner, you
 10 agree with the criticism. It wasn't appropriate to
 11 negotiate through the window hole of an Nyala using a
 12 loudhailer, but the next point taken is that or made by Mr
 13 Hendrickx was he said it was also inappropriate to do that
 14 with a lot of other Nyalas in the vicinity. That seems to
 15 be the point in 74.2 if we see the whole of it on the
 16 screen, am I right, Mr Bizos?
 17 MR BIZOS SC: That is so.
 18 CHAIRPERSON: And he says that, I think
 19 there should be a plural there. "He says the deployment of
 20 large numbers of SAPS along with their armoured vehicle, I
 21 think it should be armoured vehicles, can have an
 22 unsettling and provocative effect on crowds and individuals
 23 within the crowd". Now did you see what was happening
 24 there on the Tuesday and the Wednesday when the
 25 negotiations took place or can't you comment on that?

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1 COLONEL MERAFAE: I saw it, Chairperson.
 2 The negotiations should be in a conducive manner whereby
 3 the trust should have been developed between the police and
 4 the striking workers. So with the Nyalas it's negative
 5 according to him. So I do understand that and I agree with
 6 him in this criticism.
 7 MR BIZOS SC: Can we go to paragraph 77
 8 on page, and 78 on page 37 where Mr Hendrickx raises
 9 concerns about the inadequacy of the intelligence in an
 10 operation of this nature.
 11 CHAIRPERSON: Do you agree with that
 12 criticism?
 13 COLONEL MERAFAE: I do, I do Chairperson.
 14 MR BIZOS SC: Then the relation to the
 15 plan of the 16th to disperse the –
 16 CHAIRPERSON: What paragraph is that,
 17 that's not on the screen, Mr Bizos.
 18 MR BIZOS SC: 86.
 19 CHAIRPERSON: Yes, alright. Move onto
 20 86 then.
 21 MR BIZOS SC: To 87 paragraphs 39 to 40,
 22 Mr Chairman.
 23 CHAIRPERSON: You see, you've read the
 24 report before, you see again what he says in 86 and 87. He
 25 said "you can't really disperse and disarm and arrest all

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1 at the same time because they're contradictory. Dispersal
 2 is one thing, scattering and spreading the crowd,
 3 disarmament and arrests requires containment and control.
 4 He says you can't do, he says this involves a dual tactical
 5 strategy and he appears to take the view that was an
 6 inappropriate approach". Do you agree with that?
 7 COLONEL MERAFAE: I agree with it,
 8 Chairperson.
 9 MR BIZOS SC: Then can we go to page 88,
 10 paragraph 88 page 40.
 11 CHAIRPERSON: Here he comes with a rule
 12 of thumb, you remember that. You should have, if you're
 13 busy with a defensive operation you should have one police
 14 officer for every three protestors. If you're having an
 15 offensive action which will include a disarming and arrest
 16 which is a tactical option where you, not just defending
 17 the situation. The ratio should change, you should have
 18 three police officers to one protestor. Do you agree with
 19 that view?
 20 COLONEL MERAFAE: That's how we're
 21 trained, Chairperson, yes.
 22 MR BIZOS SC: Yes, Mr Hendrickx also says
 23 on the same paragraph that STF, NIU and TRT were
 24 prioritised in the operation and outnumbered the POP units
 25 by nearly two to one. He's of the view that the POPS

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1 people should have been in the majority and in greater
 2 control of the situation. Do you agree with that?
 3 COLONEL MERAFAE: Unless the figures are
 4 displayed, Chairperson, members of POPS were more than the
 5 number of the other units that I saw there. Unless those
 6 others arrived after I had left, Mr Chairperson.
 7 [13:01] CHAIRPERSON: We are talking about the
 8 16th now, aren't we, you weren't there on the 16th?
 9 COLONEL MERAFAE: Yes, I'm talking about
 10 the 16th, that's why I say unless the people arrived in my
 11 absentia, I need to be convinced by seeing the figures on
 12 the board that suggest that the task force and TRT were
 13 more than POP, because when I was there POP members were
 14 more than the other units that were there.
 15 CHAIRPERSON: Mr Bizos, it is now one
 16 o'clock, may I suggest that we take the lunch adjournment,
 17 during the lunch adjournment you get the figures, to help
 18 him with the figures that he has asked for and you can put
 19 them as soon as we resume. Are you almost done? Alright,
 20 well, it is one o'clock now, you can almost do it, you can
 21 finish just after lunch, alright, unless you want to finish
 22 now, I'm in your hands? No, alright, let's take the lunch
 23 adjournment then and you can reconsider the position then.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [14:07] CHAIRPERSON: The Commission resumes.

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1 You're still under oath, Colonel.
 2 OMPHILE JOSEPH MERAFAE: (s.u.o.)
 3 CHAIRPERSON: Mr Bizos.
 4 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
 5 Could we turn to page 43 of the report, paragraph 96,
 6 please? Now you read it. He's concerned about the
 7 apparent inadequacy of the briefing provided to the members
 8 prior to the phase 3 tactical intervention on the 16th.
 9 Even though you were not there on the 16th, do you agree
 10 with his criticism?
 11 COLONEL MERAFAE: Not altogether,
 12 Chairperson, I don't agree altogether, because when the
 13 commander decided to go to the koppie on the 16th they said
 14 they wanted to go and disperse, disarm, and arrest. So the
 15 concern about the tactical information plan which was
 16 inadequate, I don't know how in the plan because they
 17 planned that they are going to do that.
 18 MR BIZOS SC: You know what section 9(2)
 19 of the standing order says? We'll just trace it for a
 20 moment. "For the purposes for preplanning the JOC must
 21 follow the following procedure – develop a comprehensive
 22 written operational plan, see guidelines contained in model
 23 2 of the Crowd Management for SAPS Management Module;
 24 submit the operational plan for approval to the Area
 25 Commissioner; advocate JOC to appoint an operations

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1 officer, taking into account the circumstances and the
 2 results of the threat assessment. In the event of level 3
 3 threats ACCU operational commander must be appointed in
 4 consultation with the ACCU unit commander." Now that
 5 procedure was not followed. Should it have been?
 6 COLONEL MERAFAE: Chair, Brigadier Calitz,
 7 who is the commander of the ORS North West was appointed as
 8 the operational commander. He is my commander in the POP
 9 in the Rustenburg cluster, and I take it on the 16th they
 10 did act in accordance with what the standing order says.
 11 MR BIZOS SC: Yes, the view of Mr
 12 Hendrickx is that there was no written comprehensive plan.
 13 The final plan was decided at some time, 3 o'clock in the
 14 afternoon, no written plan was made available. It was an
 15 ad hoc thing. That is the criticism of Mr Hendrickx.
 16 CHAIRPERSON: Colonel Merafe, perhaps I
 17 can add something before you answer the question. The
 18 evidence of Brigadier Calitz was that at the 6 o'clock
 19 meeting in the morning, the JOCCOM meeting, it was decided
 20 that if the strikers didn't lay down their weapons, as had
 21 been indicated they might do, or rather in case they didn't
 22 lay down their weapons a contingency plan should be drafted
 23 to deal with the situation, and he said it was expected
 24 that Colonel Scott would do that. Colonel Scott didn't do
 25 it. Colonel Scott told us he couldn't remember what he did

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1 on the Thursday morning, but by the time the meeting was
 2 called, the special meeting at half past 1, he had some
 3 ideas in his head of what could be done, but no more than
 4 that, and he then was – when it was, at the meeting it was
 5 decided that, was said by the Provincial Commissioner the
 6 tactical option had to be implemented people were asked
 7 then what do we do. No-one said anything, and he
 8 eventually put up his hand and mentioned the thoughts that
 9 he had, but he didn't have anything on paper and the JOCCOM
 10 said, go ahead, and it was decided that he and Brigadier
 11 Pretorius would then brief the various units at half past
 12 2. He didn't have time, he said, to have anything printed.
 13 He had nothing on his computer except the diagram which had
 14 been prepared for the previous plan, which is a different
 15 thing, and he said he went to see the units and he showed
 16 them – they clustered around the station, the vehicle he
 17 was in, Vito he was in, and he showed them on the screen of
 18 his laptop what had to be done.
 19 In exhibit L there's a document which contains
 20 what was on his laptop, with some writing on it as to what
 21 the stages would be. Those weren't there yet. He hadn't
 22 had time to do them. So he simply showed them on the
 23 laptop what they were to do. Nobody disagreed with what he
 24 said, and that was it.
 25 So it's quite correct to say that there was no

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1 written operational plan for stage 3 at all, that for some
 2 reason that we don't know, because he can't tell us,
 3 Colonel Scott, who according to Brigadier Calitz had been
 4 given the job to draw up the plan, didn't do it, certainly
 5 didn't do anything in writing, and couldn't remember what
 6 he was doing during the morning, total mental blank, and
 7 that's the basis of the criticism, that there was no –
 8 never mind comprehensive - there was no written operational
 9 plan at all in respect of stage 3, the tactical option,
 10 that had to be implemented that afternoon, and that's the
 11 basis, as I understand it – am I right, Mr Bizos? – of –
 12 MR BIZOS SC: Yes, you are –
 13 CHAIRPERSON: - of Mr Hendrickx's
 14 criticism. Now what is put to you is that the standing
 15 order requires, where possible, a comprehensive written
 16 operational plan. Now this wasn't something spontaneous
 17 that had to be dealt with. The people had been on the
 18 koppie for days. The decision to launch an tactical option
 19 if they didn't lay down their arms was taken, as maybe you
 20 mentioned that earlier, the night before at the Management
 21 Forum. It was realised, as I've said, that a plan would
 22 have to be drafted in case they didn't put down their arms,
 23 and it wasn't done. The question is whether the criticism
 24 of Mr Hendrickx in that regard is correct or not, whether
 25 you agree with it or not. Am I summarising your –

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1 elaborating, in fact, summarising/elaborating correctly the
 2 point that's been made, Mr Bizos?
 3 MR BIZOS SC: Thank you. We await the
 4 answer, Mr Chairman.
 5 COLONEL MERAFAE: If after all the
 6 reasons, Chairperson, the plan was not put in writing, then
 7 I agree with the criticism.
 8 MR BIZOS SC: Yes. I want to take this
 9 opportunity to depart for a moment, once we are dealing
 10 with the standing order. You seem to have a good knowledge
 11 of what the law and particularly the standing orders
 12 relating to crowd management are. Am I right?
 13 COLONEL MERAFAE: It is so, Chair.
 14 MR BIZOS SC: We have a situation here
 15 that the person appointed by the General, telling us that
 16 he didn't really know much about the standing orders and
 17 yet he was chosen to be the chief architect of the plan.
 18 Have you wondered why you, the local man with a knowledge
 19 of the standing orders, was not given the task, or given a
 20 more important task other than a brief consultation with a
 21 man who didn't know anything about the standing orders?
 22 Why you were sidelined; have you wondered about that?
 23 COLONEL MERAFAE: I have explained, Chair,
 24 that when Colonel Scott came and was introduced as the
 25 person that I would be helping, I took it, Chairperson,

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1 that my commander, the person in charge of me, knew his CV,
 2 because he was from head office, Chairperson, and there
 3 were people from head office together with those that are
 4 in command there. I took it that they know him. I did not
 5 suspect anything, nor did I realise anything that he did
 6 not have insight into the standing order 262. If I had
 7 known, Chairperson, I would have mentioned to him, said no
 8 look, you are now misleading us. This wasn't my decision,
 9 Chairperson. It was a decision of people that are far my
 10 seniors.
 11 MR BIZOS SC: Whilst we are on this, you
 12 were at Potchefstroom.
 13 COLONEL MERAFAE: I was at Potchefstroom,
 14 Chairman, yes.
 15 MR BIZOS SC: For how long?
 16 COLONEL MERAFAE: The question is not
 17 perhaps, Chairperson, before being transferred to
 18 Rustenburg I worked in Potchefstroom, at which stage is
 19 counsel referring to? Are you talking about the Roots?
 20 Are you talking about the consultation I've made with the
 21 expert, or what are you talking about, so that I can be
 22 answering the direct question.
 23 MR BIZOS SC: The meeting I'm talking
 24 about in Potchefstroom was after the event of the 16th. For
 25 how long were you there?

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1 COLONEL MERAFAE: In the Roots meeting I
 2 was there for a week.
 3 MR BIZOS SC: For a week?
 4 COLONEL MERAFAE: Correct, Chairperson,
 5 and again I went for a day with the experts, the police
 6 experts.
 7 MR BIZOS SC: Did you make a contribution
 8 in the discussions at Potchefstroom?
 9 COLONEL MERAFAE: I did, Chairperson, yes.
 10 MR BIZOS SC: Was the issue of what did
 11 we do right and what we may have done wrong at Marikana one
 12 of the issues?
 13 COLONEL MERAFAE: Chair, what happened is
 14 everybody came and told what part he or she played at
 15 Marikana. We were divided into groups. Some was a group
 16 of General Mpembe, talking about the incident of the 13th,
 17 and others were divided in other groups according to what
 18 happened. But the question of what is it that we did wrong
 19 and what is it that we did right, this was not discussed in
 20 detail.
 21 MR BIZOS SC: It was not discussed?
 22 COLONEL MERAFAE: To summarise, as a
 23 trained policeman who is serving the community and there is
 24 loss of life, I would not say the operation was a success.
 25 MR BIZOS SC: Sorry, I didn't hear the

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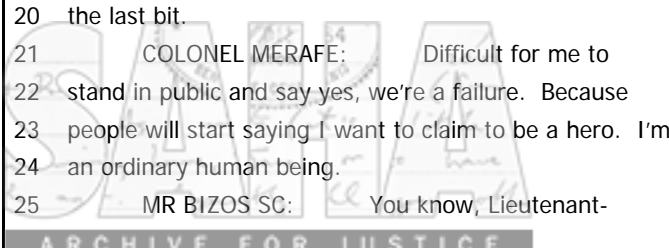
1 last bit.
 2 COLONEL MERAFAE: I would not say the
 3 operation was a success.
 4 MR BIZOS SC: Was that your view whilst
 5 you were at Potchefstroom?
 6 COLONEL MERAFAE: It was my view. It is
 7 my view even now.
 8 MR BIZOS SC: Did you express to you
 9 colleagues your view that it was a failure?
 10 COLONEL MERAFAE: I would like to respond
 11 to that question, Chairperson, but some of these questions
 12 are confusing me. What I explained, Sir, was that there
 13 were certain points that were negative and some points that
 14 were positive.
 15 MR BIZOS SC: Yes.
 16 COLONEL MERAFAE: But to stand in the
 17 presence of everybody to say we failed, oh good, my people
 18 that I – it's difficult for me.
 19 MR BIZOS SC: I'm sorry, I didn't hear
 20 the last bit.
 21 COLONEL MERAFAE: Difficult for me to
 22 stand in public and say yes, we're a failure. Because
 23 people will start saying I want to claim to be a hero. I'm
 24 an ordinary human being.
 25 MR BIZOS SC: You know, Lieutenant-

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1 Colonel, your Commissioner, National Commissioner, our
 2 National Commissioner is recorded as having said on a
 3 document which we will produce a little later, that the
 4 police is a family. Were you there when she said that?
 5 COLONEL MERAFAE: [African language]
 6 police is a family, as the National Commissioner of the
 7 police, I am falling under that very same family.
 8 MR BIZOS SC: Sorry?
 9 COLONEL MERAFAE: As if she says the
 10 police are a family and she is the National Commissioner of
 11 Police, I fall in that family. I am part of her children,
 12 members of the police force.
 13 MR BIZOS SC: But you see, being member
 14 of a family doesn't mean that you are obliged to support
 15 the views of people that have said different things to you,
 16 than you.
 17 COLONEL MERAFAE: I agree with you, Chair.
 18 MR BIZOS SC: If the National
 19 Commissioner is recorded as having said that the police
 20 must be proud of what happened on the 16th, would you be in
 21 difficulty to contradict her on that?
 22 [14:27] CHAIRPERSON: Mr Bizos, is it
 23 appropriate to ask the witness a question, is it going to
 24 assist us at all that we can write our report dealing with
 25 the terms of reference.

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1 MR BIZOS SC: Yes.
 2 CHAIRPERSON: To have his answer to that
 3 question? I can understand the sort of question in a
 4 hierarchical family like the police which, it would be a
 5 bit embarrassing for the witness to answer, his
 6 embarrassment in itself tells us a lot.
 7 MR BIZOS SC: I don't want to put the
 8 witness –
 9 CHAIRPERSON: You've pressed him on the
 10 point and he's given an answer one way or another, is it
 11 going to help us to draft our report. Either the police
 12 were entitled to be proud of what they did and we will say
 13 so or they weren't proud of what they did in which we'll
 14 have to say something in that regard as well. But I, he
 15 can't help us on that and is it fair to push him on it.
 16 MR BIZOS SC: No, I don't want to push
 17 him, I don't want to push him but I understand but I
 18 couldn't resist the temptation of actually drawing
 19 attention to –
 20 CHAIRPERSON: Temptations are there to
 21 be resisted, Mr Bizos.
 22 MR BIZOS SC: Drawing attention to you
 23 know family has many meanings but you may hear from us in
 24 argument what she may wanted to be understood as having
 25 said that. You also attended a meeting where the so-called



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1 Nkwanzazi report was drawn.
 2 CHAIRPERSON: Wasn't drawn, he was
 3 questioned –
 4 MR BIZOS SC: Was discussed –
 5 CHAIRPERSON: And he gave his answer.
 6 MR BIZOS SC: Was discussed.
 7 COLONEL MERAFAE: It's correct, Chair.
 8 MR BIZOS SC: Yes. We'll come to it but
 9 let's finish with Mr Hendricks. Yes at page 101 paragraph
 10 102 Mr Hendrickx is also concerned –
 11 CHAIRPERSON: Mr Bizos, I think you
 12 should wait to give the operator an opportunity to put –
 13 MR BIZOS SC: I'm sorry.
 14 CHAIRPERSON: On the screen. What was
 15 the page and what was the paragraph number?
 16 MR BIZOS SC: It's page 46, Mr Chairman.
 17 CHAIRPERSON: And paragraph number?
 18 MR BIZOS SC: Paragraph 101 and 102.
 19 CHAIRPERSON: That's now on the screen,
 20 yes.
 21 MR BIZOS SC: He is concerned about the
 22 inadequacy of the briefing. Read it and tell us whether
 23 you agree or disagree.
 24 CHAIRPERSON: Isn't this what we
 25 discussed shortly before the lunch adjournment. When I

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1 summarised the evidence for the benefit of the Colonel.
 2 MR BIZOS SC: Yes.
 3 CHAIRPERSON: Which is paragraph, which
 4 is in turn summarised here in the reports and he gave us
 5 his views on the matter and he said it after lunch now as
 6 well. I mean I don't know that you should ask him a third
 7 time you might get a different answer or you won't.
 8 There's no point in asking the question three times.
 9 MR BIZOS SC: I want to read it together
 10 with page 47 and paragraph 105 that there was failure to
 11 communicate clearly with the crowd prior to the deployment
 12 of the razor wire is also criticised by Mr Hendrickx. Can
 13 you read that. Do you agree or disagree with Mr Hendrickx?
 14 CHAIRPERSON: Perhaps I, for the benefit
 15 of those listening put the point to you as Mr Hendrickx
 16 makes. You remember, you weren't there of course but the
 17 evidence, you are a POP expert. So that's why you've been
 18 asked the question. "The evidence indicates that the
 19 barbed wire barrier you know that was uncoiled from the
 20 barbed wire trailers to make the barrier between the
 21 strikers on the one side and the police and the media on
 22 the other that was done without telling the crowd as such
 23 that it was going to be done. They weren't given prior
 24 notification it was being done and what Mr Hendrickx says,
 25 he thinks that communication with the crowd, this is

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1 paragraph 106 was necessary in the circumstances
 2 irrespective of whether the deployment was planned as a
 3 defensive measure or an offensive measure and he goes on to
 4 say that the SAPS evidence was the warning to take place
 5 after the deployment of the wire but that the unexpected
 6 response of the crowd to the SAPS deployment prevented the
 7 SAPS from issuing a warning. What was clear was that there
 8 were certainly no warning to the whole crowd that this was
 9 going to happen and he says whether it was a defensive
 10 measure or an offensive measure didn't make a difference
 11 there should have been such communication". Now how do you
 12 respond to that?
 13 COLONEL MERAFAE: It's true, Sir, that the
 14 protestors should have been told before the deployment of
 15 the barbed wire that there was going to be barbed wire
 16 deployed. So I agree with the criticism.
 17 MR BIZOS SC: There is a document in your
 18 handwriting, exhibit QQQ5, have we got it. Yes that's it,
 19 could you please turn to page 9. Because it's in your
 20 handwriting and I think with the court's permission I would
 21 ask you to please read to us the full statement made by
 22 General Phiyega on page 9 and continued with the top of
 23 page 10. Would you read it out please so that it can go on
 24 record and be legible.
 25 COLONEL MERAFAE: I will proceed in

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1 English, Sir. "Genera Phiyega we are carrying a huge
 2 responsibility. We represent SAP family. We owe it to
 3 generations that comes after us as a team let us take
 4 responsibility as SAPS. Embrace the responsibility. Our
 5 institution at stake, remember I was writing this as
 6 personnel notes. I did not complete the sentences
 7 sometimes. WE have the opportunity but it's how we use it.
 8 We got to the summit, we go to summit the mountain. It is
 9 a long journey. We are a family and must work together.
 10 Have a capacity to advise each other. We are a leadership
 11 team. Feel free, let us build the presentation together
 12 and tell us story. We have a constitutional
 13 responsibility, videos of negotiations during the Marikana
 14 incident, was there a reason for, to fire a stun and
 15 teargas. Illegal march and armed people. Closure, what
 16 did we do right, what did we do wrong. Wearing of bullet
 17 proof vests, why shooting few rubbers vis-à-vis sharp
 18 ammunition. The press conference, the role of the
 19 negotiator, gas mask, briefing to go to Marikana and the
 20 training that the members have". I don't know whether
 21 should I continue with the minutes that follow.
 22 MR BIZOS SC: To page 10 please.
 23 COLONEL MERAFAE: Oh page 10, the 10th of
 24 September. "Meeting at Marikana JOC.
 25 MR BIZOS SC: Oh is that not, is that not

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1 the, it's –

2 CHAIRPERSON: That is something

3 different.

4 MR BIZOS SC: If it's different.

5 CHAIRPERSON: [inaudible, microphone

6 off].

7 MR BIZOS SC: I'm sorry I –

8 CHAIRPERSON: [Inaudible, microphone

9 off].

10 MR BIZOS SC: Yes, no. It wasn't clear

11 to me. I thought that it was finished with a line on the

12 next page.

13 CHAIRPERSON: [Inaudible].

14 MR BIZOS SC: Well if that is what you

15 recorded we'll leave it there. Were you there, obviously

16 you were there because you wrote down what the Commissioner

17 said.

18 COLONEL MERAPE: That's true, Sir.

19 MR BIZOS SC: Yes. Did you yourself

20 express any reservations about what happened in the

21 presence of the Commissioner?

22 CHAIRPERSON: I take it you mean the

23 Commissioner, I think you mean Commissioner, you mean the

24 National Commissioner?

25 MR BIZOS SC: The National Commissioner.

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1 CHAIRPERSON: Did you express any

2 reservations about what had happened in the presence of the

3 National Commissioner, that's the question.

4 COLONEL MERAPE: I did mention something

5 in the presence of the National Commissioner, Chair.

6 MR BIZOS SC: What did you say?

7 COLONEL MERAPE: I was talking of

8 training.

9 MR BIZOS SC: You were talking of?

10 COLONEL MERAPE: That the police should

11 be trained to deal with, that the training should also

12 involve training of the members to deal with different

13 kinds of terrains like mountains and so on. One of the

14 things that I remember saying, Mr Chair. Some of, one of

15 the things I mentioned was because of the shortage of this

16 equipment at Marikana I mentioned that there should be

17 additional videos and other equipment. Yes, those were

18 some of the Merafe inputs.

19 MR BIZOS SC: Did you know, do you know

20 the date of this meeting by the way where you recorded it?

21 COLONEL MERAPE: If the page would be

22 taken down I'll show you the date. Down, I say down, not

23 up. Yes the date was the 6th, up there, 2012 September 6th.

24 MR BIZOS SC: By then you had heard

25 reports of what was said happened on the 16th?

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1 COLONEL MERAPE: It is correct, Chair.

2 MR BIZOS SC: Was that the last day at

3 Potchefstroom?

4 COLONEL MERAPE: No, it wasn't the last

5 day, Chair.

6 MR BIZOS SC: No. But now by the time

7 the speech was made by the Commissioner there were

8 allegations of improper conduct by the police on,

9 throughout the period of the Marikana, what has become

10 known as the Marikana Massacre.

11 COLONEL MERAPE: I hear what you say,

12 Sir.

13 MR BIZOS SC: On the concessions that you

14 have made before the Commission you couldn't have been

15 happy with the complete exoneration claimed by senior

16 police officers that nothing wrong was done by the police

17 on the 16th. You couldn't have been happy with it, having

18 regard to your evidence.

19 COLONEL MERAPE: Chair, I wasn't happy.

20 As it is I am not happy, I haven't been claimed to be happy

21 at any stage.

22 MR BIZOS SC: I'm sorry, I can't hear

23 you. It's not your fault but my age.

24 COLONEL MERAPE: Thanks, I appreciate

25 that. I have not been happy, I wasn't happy, I have not

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1 been happy even now I am not happy.

2 MR BIZOS SC: Did you express your

3 unhappiness to anyone above your rank?

4 COLONEL MERAPE: I am being questioned

5 about things that I really do not understand much. What

6 I'm saying is that I'm unhappy because there was a loss of

7 life.

8 MR BIZOS SC: I'm sorry, Mr Interpreter.

9 COLONEL MERAPE: I am saying I am not

10 happy because there were deaths. There was loss of life.

11 MR BIZOS SC: Yes.

12 CHAIRPERSON: The witness is actually

13 distressed at the moment. We'll take an adjournment and

14 when he has recovered we will resume.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]

16 [14:57] CHAIRPERSON: The Commission resumes.

17 When we were in chambers Ms Baloyi came to see us and said

18 she wished to move an application.

19 MS BALOYI: Thank you, Chair.

20 Chairperson, I am applying and seeking a leave that the

21 witness be allowed to stand down in the light of his

22 distress, for the rest of the afternoon, and he be allowed

23 to resume his evidence, or his examination tomorrow

24 morning.

25 CHAIRPERSON: Colonel, we can see that

1 you are very upset and you've not found this last section
2 of the cross-examination very easy to handle and we
3 understand you prefer to get the opportunity till tomorrow
4 morning to continue. That's correct, isn't it?

5 COLONEL MERAPE: It's not anger,
6 Chairman, that has affected me. It is I felt very
7 heartbroken about this.

8 CHAIRPERSON: I used the upset.
9 Heartbroken is probably –

10 COLONEL MERAPE: Upset.

11 CHAIRPERSON: - probably an accurate word
12 in the circumstances. Very well, we will adjourn till
13 tomorrow morning at 9 o'clock. Mr Bizos, before we do
14 that, you also told me in chambers that – well, repeat I
15 think what you told me there.

16 MR BIZOS SC: Mr Chairman, I am
17 sympathetic to the witness's condition. I had a
18 consultation with my colleagues. We have decided to thank
19 the witness for his evidence thus far. We do not want to
20 ask him anymore questions. The one topic that I was going
21 to go on to related to his presence when the so-called
22 Mkhwanazi report was drawn. I have given due consideration
23 to the request that I should hand my notes over to Mr
24 Mpfu, who is going to examine the witness tomorrow, and I
25 have no further questions.

1 CHAIRPERSON: Thank you, Mr Bizos. In
2 the circumstances we cannot continue with the sitting this
3 afternoon, and as I've said we'll adjourn till 9 o'clock
4 tomorrow morning.

5 [COMMISSION ADJOURNED]

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