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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Page 27226	Page 2722
1 [PROCEEDINGS ON 24 APRIL 2014]	1 place. But inasmuch as –
2 [09:35] CHAIRPERSON: I'm sorry we're starting	2 MS LE ROUX: Then, Chair, we have –
3 late again but we had housekeeping matters to attend to in	3 CHAIRPERSON: That's not a matter that
4 chambers. Colonel, you're still under oath.	4 need worry you. So we've marked that one, alright.
5 COLONEL MERAFE: Thank you, Chairperson.	5 MS LE ROUX: Then, Chair, we have a
6 CHAIRPERSON: Oh I understand Ms Le	6 supplementary statement from the Brigadier. So I'm not
7 Roux, you are next to cross-examine. I thought it was	7 sure if you want to do 14.1, 14.2.
8 going to be Mr Bizos but I was told that you were going to	8 CHAIRPERSON: Yes, I think so. QQQ14.2
9 go first. Is that correct?	9 is?
10 MS LE ROUX: Yes, Chair.	10MS LE ROUX:Will be the supplementary
11 CHAIRPERSON: For the Human Rights	11 statement of Brigadier Seboloke dated 12 September 2013
12 Commission.	12 CHAIRPERSON: Now did he and the
13 MS LE ROUX: That's correct, Chair.	13 Commissioner get together on the same day as far as this
14 CHAIRPERSON: We received some material	14 statement?
15 from you which –	15 MS LE ROUX: It appears so, Chair.
16 MS LE ROUX: Yes, Chair, there are –	16 COMMISSIONER HEMRAJ: It's actually on
17 CHAIRPERSON: I trust the witness has	17 the same page too.
18 received it as well?	18 CHAIRPERSON: - enough he starts by
19 MS LE ROUX: Yes, he has, Chair. Perhaps	19 saying I'm making this statement for the purposes of
20 if you would like to do the housekeeping there are then	20 supplementing my statement of 19 July. Anyway
21 five new exhibits we should mark.	21 supplementary statement dated 12th September.
22 CHAIRPERSON: Right now what are the, we	22 MS LE ROUX: Yes. Then –
23 got as far as QQQ13.	23 CHAIRPERSON: That's QQQ14.1 and 14.2.
24 MS LE ROUX: Right, so the –	24 The next one?
25 CHAIRPERSON: So what will be QQQ14?	25 MS LE ROUX: Then QQQ15 will be the CAL
Page 27227 1 MS LE ROUX: Would be the statement of	Page 2722 1 letter to the SAPS attorney of record dated 24 January
2 Brigadier Seboloke 19 July 2013.	2 2013.
3 CHAIRPERSON: Statement of Brigadier	3 CHAIRPERSON: CAL's letter to Van der
4 Seboloke dated 19, what you've got on your schedule is 19.	4 Velden and Duffy?
5 19 July 2013. Let's see whether that was the 19th.	5 MS LE ROUX: Yes.
6 COMMISSIONER HEMRAJ: The statement says	6 CHAIRPERSON: Van Velden and Duffy,
7 22nd July 2013, Ms Le Roux on page 4.	7 dated?
8 CHAIRPERSON: No, look at page 2, the	8 MS LE ROUX: 24 January 2013.
9 foot –	9 CHAIRPERSON: Yes.
10 MS LE ROUX: Yes, Chair, we're using the	10MS LE ROUX:Then Chair, there's an
11 foot of page 2.	11 annexure which is a table. That should then be, I think
12 CHAIRPERSON: It says 19, presumably	12 we'll make these 15.1, 2 and 3. So the letter 15.1, 15.2
13 when the typed version was prepared.	13 the annexure, the one that says request and feedback.
14 MS LE ROUX: Yes, Chair.	14 CHAIRPERSON: We've got a document her
15 CHAIRPERSON: And then it was attested	15 headed response to CALS.
16 on the 22nd.	16 MS LE ROUX: No, Chair, there's a –
17 MS LE ROUX: Yes, Chair.	17 CHAIRPERSON: - sorry.
18 CHAIRPERSON: So it's dated 19-7-2013	18 MS LE ROUX: Then there's an annexure –
19 and attested on, what's the date?	19 CHAIRPERSON: I see that.
20 COMMISSIONER HEMRAJ: 22nd.	20 MS LE ROUX: It looks like a table.
21 MS LE ROUX: The 22nd.	21 CHAIRPERSON: I see that, headed request
22 CHAIRPERSON: 22nd, now the interesting	22 and then feedback.
23 question is whether this is a repetition of what happened	23 MS LE ROUX: And then feedback.
earlier in the commission. Where the Commissioner of Oathsand the deponent were present at the same time and the same	CHAIRPERSON: Now the document headedwhich I misread is response to call is response to CAL.

1	Page 27230 MS LE ROUX: Then that would be 15.3,	1	Page 27232 Chairperson.
	that's from the SAPS.	2	MS LE ROUX: And Chair, for the record
2 3	CHAIRPERSON: That's 15.3?	2	the reference is day 216 page 26620, we don't need to go
	MS LE ROUX: Yes.	4	there. You said "that it was an operational plan which we
4	CHAIRPERSON: So 15.2 is the table?	-	
5		5	draw to prepare ourselves for anything to prepare ourselves
6	MS LE ROUX: Yes.	6	for any action that might happen and you also said it was
7	CHAIRPERSON: QQQ15.2 what do I call it?	7	not a proper plan, it's something that's been done to take
8	MS LE ROUX: Annexure –	8	care of the situation as at the time to intervene" and I
9	CHAIRPERSON: Table headed request-	9	just want to be clear that we understand what you mean by
10	feedback.	10	that. Do you mean that this is a plan drawn up quickly to
11	MS LE ROUX: Yes. Annexure, it relates	11	deal with an unfolding and uncertain situation?
12	to a discovery request. So annexure regarding –	12	COLONEL MERAFE: Chairperson, it's a plan
13	CHAIRPERSON: So how do I call it? What	13	that we draw without having sufficient information about
14	about document headed request/feedback?	14	the unfolding situation.
15	MS LE ROUX: That's fine, Chair, and	15	MS LE ROUX: And therefore it's quite
16	Chair, it's dated the 26th of January. It was attached to	16	broad and general, correct?
17	an email, sorry February 26th February 2013.	17	COLONEL MERAFE: Correct, Chair.
18	CHAIRPERSON: Well there's no –	18	MS LE ROUX: And am I also correct that
19	MS LE ROUX: It was forwarded to us, we	19	ordinarily plan like this would be revised as you get more
20	didn't give you the covering letter.	20	information and further detail?
21	CHAIRPERSON: We don't need that in	21	COLONEL MERAFE: That's correct, Chair.
22	describing the exhibits.	22	MS LE ROUX: Now before you signed this
23	MS LE ROUX: Alright.	23	first plan dated the 10th of August you hadn't yet been to
24	CHAIRPERSON: Then the last one is	24	Marikana, correct?
25	QQQ15.3 document –	25	COLONEL MERAFE: It is so, Chairperson,
	Page 27231		Page 27233
1	MS LE ROUX: SAPS response to CALS.	1	even if the position is I am not on the scene but I had
2	CHAIRPERSON: SAPS response to CALS and	2	sent police over there, I would have the plan in the
3	has that got a date on? Any way SAPS response to CALS -	3	office.
4	MS LE ROUX: The 8th of –	4	MS LE ROUX: Alright and the other
5	CHAIRPERSON: We know what that is.	5	officer who signed the plan was Brigadier Seboloke and am I
6	MS LE ROUX: Right.	6	also correct that he hadn't been at Marikana either before
7	CHAIRPERSON: So I'll mark that one	7	he signed the plan?
8	QQQ15.3. I will, it looks like you've got two tables. The	, 8	COLONEL MERAFE: Yes, it is so.
9	request-feedback document is QQQ –	9	MS LE ROUX: Chair, then we don't need to
10	MS LE ROUX: 15.2.	, 10	go to the statements that we've just marked but for the
11	CHAIRPERSON: 15.2 and the CALS' letter	11	record QQQ14.1 and 14.2 and in particular paragraph 3 of
12	is 15.1. It's QQQ15.1. Now that the homework has been	12	14.1 and paragraph 2.3 of 14.2 indicates that Brigadier
12	done. Now you can –	12	Seboloke in his statement indicates he wasn't yet at
13	MS LE ROUX: Thank you, Chair.	13 14	Marikana by the 10th of August. So Lieutenant Colonel, can
14	CHAIRPERSON: Start asking questions and	14 15	I therefore ask you to confirm the following
	getting his answers.		
		16	characteristics about how this plan was drawn up. Firstly
16		17	that
16 17	CROSS-EXAMINATION BY MS LE ROUX: Thank	17	that -
16 17 18	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel.	18	CHAIRPERSON: Sorry to interrupt you.
16 17 18 19	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel. COLONEL MERAFE: Morning, Miss.	18 19	CHAIRPERSON: Sorry to interrupt you. My understanding is the police were going to hand these
16 17 18 19 20	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel. COLONEL MERAFE: Morning, Miss. MS LE ROUX: If I could start with	18 19 20	CHAIRPERSON: Sorry to interrupt you. My understanding is the police were going to hand these affidavits in any way as evidential material before us so
16 17 18 19 20 21	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel. COLONEL MERAFE: Morning, Miss. MS LE ROUX: If I could start with exhibit SS3 which is the contingency plan for the SAPS, it	18 19 20 21	CHAIRPERSON: Sorry to interrupt you. My understanding is the police were going to hand these affidavits in any way as evidential material before us so no harm has been done by the fact that they've come in
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 16 17 18 19 20 21 22 23 24 	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel. COLONEL MERAFE: Morning, Miss. MS LE ROUX: If I could start with exhibit SS3 which is the contingency plan for the SAPS, it commences dated the 10th of August 2012 and just, I just have a few clarification questions about this plan. In chief you said you had not written plan, correct?	 18 19 20 21 22 23 24 	CHAIRPERSON: Sorry to interrupt you. My understanding is the police were going to hand these affidavits in any way as evidential material before us so no harm has been done by the fact that they've come in prematurely through you. MS LE ROUX: Thank you, Chair. So, Lieutenant Colonel, am I correct that the plan is drawn up
 16 17 18 19 20 21 22 23 24 25 	CROSS-EXAMINATION BY MS LE ROUX: Thank you, Chair. Good morning, Lieutenant Colonel. COLONEL MERAFE: Morning, Miss. MS LE ROUX: If I could start with exhibit SS3 which is the contingency plan for the SAPS, it commences dated the 10th of August 2012 and just, I just have a few clarification questions about this plan. In	18 19 20 21 22 23	CHAIRPERSON: Sorry to interrupt you. My understanding is the police were going to hand these affidavits in any way as evidential material before us so no harm has been done by the fact that they've come in prematurely through you. MS LE ROUX: Thank you, Chair. So,

1	Page 27234 COLONEL MERAFE: No, it's not so,	1	Page 27236 briefing. Mr White states here "the operational plan
2	, ,	2	guiding the police action between 10 to 13 August is marked
	Chairperson.	2	
3	MS LE ROUX: So who drew up this plan?		contingency plan as is dated 10 August 2012. The state
4	COLONEL MERAFE: It's a member of the	4	admission is that public order to be maintained and crime
5	rank of Warrant Officer. Chairperson, I'm saying this is	5	be prevented. As a strategic aim this objective provides
6	not a junior official in that a person with the rank of	6	little useful direction to the police involved in the
7	Warrant Officer who arrives on a scene can take charge of	7	operation. In the risk analysis section there is no
8	the operation.	8	reference to the risk of an attack on the police. While
9	MS LE ROUX: Right, I understand that but	9	that may be appropriate on 10 August the plan was not
10	-	10	updated as the situation on the ground changed on 11 and 12
11	COLONEL MERAFE: In terms of standing	11	August. The annexures marked Saturday and Sunday are
12	order 262.	12	simply a photocopy of the plan applying on 10 August. In
13	MS LE ROUX: Right I understand that, but	13	my view that failure to update the plan suggests a lack of
14	am a correct that a Warrant Officer is not a commissioned	14	ongoing planning where police adjusted the plan in
15	officer?	15	accordance with the information that they were receiving or
16	COLONEL MERAFE: Yes, it's true but the,	16	the events that were occurring on the ground. It is clear
17	in the planning it's not about commissioning.	17	that the situation developed over the weekend of 10 to 12
18	MS LE ROUX: Right, and I understand your	18	August to the extent that additional resources were
19	answer about standing order 262. Am I also correct that	19	required to be deployed. Violence occurred on Friday 10
20	the plan was drawn up quickly so that you could respond to	20	and Saturday 11 August which led to the shooting of at
21	a developing and uncertain situation?	21	least two mine workers. Four deaths had occurred by the
22	COLONEL MERAFE: Chairperson, even if	22	end of Sunday 12 August. It is obvious that additional
23	there is no plan written we are able to respond to a	23	police action was taken in response to the heightening
24	developing situation. We are trained, we have been trained	24	levels of violence but no amendment appeared to have been
25	to deal with situation that can arise at any time.	25	made to the operational plans guiding the public order
20		20	
	Page 27235		Page 27237
1	Page 27235 MS LE ROUX: Lieutenant Colonel, I	1	Page 27237 operation or to the risk assessments. Suggesting that the
1 2		1 2	0
	MS LE ROUX: Lieutenant Colonel, I		operation or to the risk assessments. Suggesting that the
2	MS LE ROUX: Lieutenant Colonel, I understand that. But my question is this particular plan,	2	operation or to the risk assessments. Suggesting that the updated information was not being disseminated to officers
2 3	MS LE ROUX: Lieutenant Colonel, I understand that. But my question is this particular plan, because you had an uncertain developing situation you	2 3	operation or to the risk assessments. Suggesting that the updated information was not being disseminated to officers on the ground."
2 3 4	MS LE ROUX: Lieutenant Colonel, I understand that. But my question is this particular plan, because you had an uncertain developing situation you didn't have a lot of time to prepare the plan that was produced?	2 3 4	operation or to the risk assessments. Suggesting that the updated information was not being disseminated to officers on the ground." Now, Lieutenant Colonel, would you agree with Mr
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2 3 4 5 6 7	MS LE ROUX: Lieutenant Colonel, I understand that. But my question is this particular plan, because you had an uncertain developing situation you didn't have a lot of time to prepare the plan that was produced? COLONEL MERAFE: Well as I'm explaining, whether there is one at the moment or none we are able to	2 3 4 5 6 7	operation or to the risk assessments. Suggesting that the updated information was not being disseminated to officers on the ground." Now, Lieutenant Colonel, would you agree with Mr White's criticism set out there, that the plan was clearly not taking into account what happened over the weekend from 10 to 12 August because in those two days, the 11th and the
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1	Page 27238		Page 27240
1	COLONEL MERAFE: Chairperson, I am saying	1	at it now because it's your cross-examination, and I don't
2	the plan would have been changed if the, there was	2	want to tell you how to do it and in what order, but if I
3	escalation in the protests, in the JOC. I am referring to	3	may make a suggestion, it might be helpful at some stage,
4	the officers who were in the JOC, if they had had this	4	sooner or later, to look at that. Let the witness deal
5	information they would have then seen to it that the plan	5	with it because I think it's relevant to the point that you
6	be revised.	6	 or may be relevant to the point you make.
7	CHAIRPERSON: According to the statement	7	MS LE ROUX: Chair, I think I'm dealing
8	that we have from Brigadier Engelbrecht information had	8	with a slightly different point, but if – I mean I think if
9	been received, he had spoken to General Mpembe about it.	9	he would like to explore Brigadier Engelbrecht's statement
10	General Mpembe apparently passed it on. General Mpembe	10	with the Lieutenant Colonel now, I think let's do that
11	later after the events on the 12th told him that he was,	11	while we're on the point.
12	that he was, I forget the exact word he used but was	12	CHAIRPERSON: I'd like to get his
13	dissatisfied with the response which wasn't what he had	13	response. Alright so can we –
14	expected would happen and if there had been more police	14	MS LE ROUX: Yes.
15	sent, the matter had been dealt with the way it should, the	15	CHAIRPERSON: What did you say? It's
16	way he wanted it dealt with, the suggestion is that what	16	JJJ167? Could we have that please on the screen? Alright
17	happened on the 12th might not, on the morning, you know two	17	and we better scroll through it quickly. Can we – yes.
18	security guards were killed might not have happened. Now	18	Alright, can we go back now. Let's just go back to the
19	have you read that statement of Brigadier Engelbrecht? He	19	foot of I think on page 2. No, it starts there. Paragraph
20	said there were insufficient people on patrol but his point	20	- no, could we have paragraph 2, please? Can we have
21	is that he had received information which he passed on. I	21	paragraph 2? He says "on 11 August", this is now Brigadier
22	think to General Mpembe amongst others and General Mpembe	22	Engelbrecht talking, "11 August" that's to say the Saturday
23	passed it on further to the people on the ground. So it's	23	"I received information pertaining information about the
24	not quite as simple as you've just told us. But are you	24	gathering that had taken place the previous day at
25	aware of what Brigadier Engelbrecht says in that regard and	25	Marikana". That's the 10th. "Information I received is
	Page 27239		Page 27241
1	what he says about what General Mpembe said to him?	1	contained in paragraph 5 of Exhibit TTT5. I received this
2	what he says about what General Mpembe said to him? [09:55] COLONEL MERAFE: Chairperson, I will try	2	contained in paragraph 5 of Exhibit TTT5. I received this report from a handler, also called a collector, who is the
2 3	what he says about what General Mpembe said to him? [09:55] COLONEL MERAFE: Chairperson, I will try to explain that I as a unit commander of the POP in	2 3	contained in paragraph 5 of Exhibit TTT5. I received this report from a handler, also called a collector, who is the person who deals with the primary human sources
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10telephone Major-General Mpembe and conveyed the content of10updated when it's about the question of the plan be11the report that I had received to him. I also raised my11updated.	ing not
12 concern with Major-General Mpembe concerning the killing of 12 CHAIRPERSON: If you had received the	nat
13 the two security guards at Wonderkop. My concern being why 13 information would the plan have been updated?	iat
14 people had been killed when I had asked the previous day 14 COLONEL MERAFE: Chairperson, this i	ic.
15 for visible policing to be deployed. Major-General Mpembe 15 difficult for me to say. If I was in the JOC, I wasn't	
16 replied that he was attending to the issue and that visible 16 the JOC, if I was possibly there I could have mention	
17 police had not be employed as he would've wanted them to be 17 and - I only reported on duty on the morning of the	
18 deployed". This is where I get the idea he was 18 August.	, 13010
19deprojedFills is where Figer the local he was10August19dissatisfied. "I again forwarded the SMS that I had19CHAIRPERSON:I put the question	
20 received from the handler to Major-General Mpembe. I then 20 differently. Do you think, is it your opinion, that the	ے
21 received a follow-up report from the handler by way of sms 21 plan should have been updated in the light of the	2
22 saying that information indicated that AMCU supporters 22 information which is set out in Brigadier Engelbrech	ıt's
23 would also target employees who supported NUM in the area 23 statement?	15
24 of Nkaneng, Marikana West and Karee Mine hostel. The 24 COLONEL MERAFE: Chair, you consider	۲
25 report was also that all employees who were not supporting 25 there's a difference between a contingency plan and	
	age 27245
1 the stay-away or strike and the demand for salary increases 1 proper plan, Chairperson. If we get information like	
2 would be targeted. When I received this report I forwarded 2 got from Brigadier Engelbrecht, it is proper for us to	
3 the SMS to Major-General Mpembe without further discussion 3 the proper plan. Like I'm explaining now, it only su	rtacod
4 because I had already had a discussion with him". Then he 4 to us on the night and then I posted members on the	ne
 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 5 instructions of Brigadier Calitz nightshift, on the night 	ne ht I
 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 4 to us on the night and then I posted members on the 5 instructions of Brigadier Calitz nightshift, on the night 6 then placed Sefiki with members there on the night 	ne ht I
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1	a risk or a possibility of an attack on the police that	1	have received on the morning of the 12th and I sent the
2	should've been recorded in the plan. Do you accept that	2	members to go and assist in that aspect. But I did not get
3	the murder of the security guards should have made the	3	any information that suggest to me there will be a march on
4	police think that possibly there was a risk that they were	4	the morning. So that if there will be a march I will
5	facing as well?	5	obviously post the members before.
6	COLONEL MERAFE: I don't seem to agree	6	CHAIRPERSON: Let me just make sure I
7	here, Chair. The killing on the security – because the	7	understand you correctly. The position is there was a
8	killing of the security, no information was received prior	8	prediction as to what might happen contained in the
9	to the incident taking place.	9	information which Brigadier Engelbrecht had but you didn't
10	MS LE ROUX: But, Colonel, there was a	10	receive. Right. Then Mr Sinclair spoke to you, was it
11	video taken of the march prior to that, prior to the	11	after the security guards had been – after the march
12	security guards' killing and the way it played out was very	12	towards the NUM office on the Sunday morning and the
13	clear on that video. So that information was available	13	killing of the security guards. He spoke to you after that
14	from the 12th.	14	-
15	COLONEL MERAFE: From the 12th in the	15	COLONEL MERAFE: Yes.
16	evening, Chairperson, it is so, yes, from the 12th in the	16	CHAIRPERSON: - and reported that to you.
17	evening. But before the incident information was not there	17	So obviously you couldn't prevent it on the basis –
18	to place members to present the information. That is my	18	COLONEL MERAFE: Yes.
19	argument, to say I can't say if members were there this	19	CHAIRPERSON: - that he told you because
20 21	could not happen if I don't have the information. For me to – we are information driven. For us to operate to go to	20 21	it already happened. Is that what you're saying? COLONEL MERAFE: That is what I'm
22	point A, information must say to us, Merafe, here is the	22	explaining, Chairperson, yes.
23	hotspot, post members there, but if there is no information	22	CHAIRPERSON: But the point I think Ms Le
23	it doesn't happen.	24	Roux is making, if I misinterpreting her - the intention
25	CHAIRPERSON: Are you saying that there	25	she will I'm sure will tell me, is that you had information
	Page 27247		Page 27249
1	was breakdown in communication? That the information which	1	then from Mr Sinclair that there had been an attack two
2	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General	2	then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I
	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General Mpembe wasn't passed on to you. Because that's what you've		then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I think, is that the bar be lifted, the intensity of the
2 3 4	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General Mpembe wasn't passed on to you. Because that's what you've said already. If it had been passed on then you would've	2 3 4	then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I think, is that the bar be lifted, the intensity of the problem had increased and what I – what is now a matter
2 3 4 5	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General Mpembe wasn't passed on to you. Because that's what you've said already. If it had been passed on then you would've been able to take steps to prevent or to endeavour to	2 3 4 5	then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I think, is that the bar be lifted, the intensity of the problem had increased and what I – what is now a matter that one must look at is did it not occur to the police at
2 3 4 5 6	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General Mpembe wasn't passed on to you. Because that's what you've said already. If it had been passed on then you would've been able to take steps to prevent or to endeavour to prevent – is that correct?	2 3 4 5 6	then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I think, is that the bar be lifted, the intensity of the problem had increased and what I – what is now a matter that one must look at is did it not occur to the police at that stage that look the next people to be attacked may be
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2 3 4 5 6 7 8 9	was breakdown in communication? That the information which Brigadier Engelbrecht received, passed on to Major-General Mpembe wasn't passed on to you. Because that's what you've said already. If it had been passed on then you would've been able to take steps to prevent or to endeavour to prevent – is that correct? COLONEL MERAFE: That is correct. CHAIRPERSON: And it's quite clear, I take it, that from what you tell us that if you had	2 3 4 5 6 7 8 9	then from Mr Sinclair that there had been an attack two security guards who had been killed. It was suggested, I think, is that the bar be lifted, the intensity of the problem had increased and what I – what is now a matter that one must look at is did it not occur to the police at that stage that look the next people to be attacked may be the police. They have attacked security guards employed by Lonmin, but the next people who may well come into, literally and metaphorically called the firing line, would
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	Page 27250		Page 27252
1	the police to a Marikana place where there was space.	1	dealing with the incident at the railway line and you're
2	Captain Sefiki who's an officer of public order police in	2	saying the miners sat down while Major-General Mpembe was
3	Rustenburg went and work nightshift with members - Captain	3	talking to them, they were, however, still very aggressive
4	Sefiki, who is a member of the POP in Rustenburg was put in	4	and demanded the mine management to come and talk to them.
5	the JOC to work there with members from Mafikeng. So it	5	Major-General Mpembe was the most senior officer at the
6	shows we were aware that this thing is growing up then.	6	scene and in command as the overall commander. "I was the
7	From the police we sent the members to go and deal with the	7	operational commander at that stage." So that was your
8	situation, even in the night, until the morning of the 13th.	8	understanding, correct?
9	COMMISSIONER HEMRAJ: So would you agree	9	COLONEL MERAFE: My understanding and the
10	that as at the end, evening of the 12th, it was known that	10	General also was aware of this.
11	the levels of violence had risen by a considerable number	11	MS LE ROUX: So at the time that you go
12 13	of degrees? COLONEL MERAFE: That's correct. Chair.	12	to intercept the strikers at the railway line the
	COLONEL MERAFE: That's correct, Chair. MS LE ROUX: Thank you, Lieutenant	13	operational plan had not yet been updated. You don't remember a 13th of August plan before you go to the railway
14 15	Colonel. So if we can now pick up the chronology on the	14 15	line.
16	13th of August. Now it's not clear when the next plan that	16	COLONEL MERAFE: Chairperson, I explained
17	we see in SS3 which is dated the 13th of August, we're not	17	that. About the updating of the plan on the 13th was done
18	clear when that was actually produced. You don't know do	18	by Brigadier Calitz and General Mpembe. So I don't
19	you?	19	remember seeing them sitting down updating it when we went
20	COLONEL MERAFE: I do not know,	20	to the railway crossing.
21	Chairperson. It was between Brigadier Calitz and General	21	MS LE ROUX: And before you left for the
22	Mpembe.	22	railway crossing not only had you not seen them updating
23	MS LE ROUX: Right and just to recap,	23	it, you hadn't seen an update.
24	Major-General Mpembe was clear he hadn't – he didn't have a	24	COLONEL MERAFE: No I know that there is
25	plan, hadn't seen a plan before he went to the railway line	25	a condition to plan that we draw on the 10th that is in
	Page 27251		Page 27253
1	on the 13th. Chair, the reference for that is Day 103, page	1	place to cater for anything that happens until the dating.
2	on the 13th. Chair, the reference for that is Day 103, page 11082 and Day 110, page 11756 to 757. And then Brigadier	2	place to cater for anything that happens until the dating. MS LE ROUX: All right. But if we look
2 3	on the 13th. Chair, the reference for that is Day 103, page 11082 and Day 110, page 11756 to 757. And then Brigadier Calitz's statement, JJJ107, page 6, paragraph 28 and 29, he	2 3	place to cater for anything that happens until the dating. MS LE ROUX: All right. But if we look at that plan that was then produced on the 13th, that's also
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		1	
1	Page 27254	1	Page 27256
1	COLONEL MERAFE: - Chair, there's no	1	placing of the barbed wire I said all the commanders were
2	specific mention of a police being at risk.	2	there and we were looking at this thing, discussing it,
3	MS LE ROUX: All right so then	3	advising each other. So I don't see any mistake that I
4	Lieutenant-Colonel if we could move on to the planning of	4	committed there by seeing something and then raising it.
5	the operation from the 13th of August onwards there's one	5	MS LE ROUX: Lieutenant-Colonel, I just
6	issue I want to pick up from the cross-examination by my	6	want to clarify what you've just testified to, so you were
7	learned friend, Mr Wesley. He put to you the discrepancy	7	involved with Lieutenant-Colonel Scott in creating the plan
8	between your initial statement which is exhibit QQQ2, page	8	then he's chosen to present the plan but surely you had
9	4 where you said that on the morning of the 14th you were	9	explored how the barbed wire was going to be used if you
10	briefed by Lieutenant-Colonel Scott and then he put to you	10	were part of the planning session.
11	the discrepancy with your more recent statement, exhibit	11	COLONEL MERAFE: On the 14th, Chairman,
12	QQQ1, paragraph 5.28 where you say that you briefed the	12	the plan that was there was subject to be signed, approved
13	members with Lieutenant-Colonel Scott. Do you remember	13	and we got the buy in of other commanders that was there.
14	that discrepancy that he put to you? Where on the one you	14	So it was necessary that it be displayed so that everybody
15	say you were briefed and on the other one you say you did	15	who were present would discuss it because it won't be one
16	the briefing with Lieutenant-Colonel Scott. I'd like you	16	man's plan, it's our plan. As he says it wasn't a one man
17	to also look on the same point at your third statement QQQ3	17	plan, it was our plan.
18	and if we could put that up on the screen. So QQQ3 and if	18	MS LE ROUX: Thank you. Lieutenant-
19	we go to page 3 of that document, paragraph 6. This is	19	Colonel, let me move on.
20	dealing with the JOC meeting on the morning of the 14th of	20	COMMISSIONER HEMRAJ: Before you do that,
21	August, "CI" being Crime Intelligence "gave us a threat	21	just before you do that, Ms Le Roux, the plan that was
22	assessment, told us what was happening. CI told us the	22	presented was one that had been agreed upon by both of you.
23	people were armed and their numbers were increasing. We	23	COLONEL MERAFE: Yes, both of us were
24	then discussed what SAPS were going to do. Colonel Scott	24	tasked to go and draft a plan.
25	presented the draft plan which he displayed after which	25	COMMISSIONER HEMRAJ: Yes, yes I
20			
	Page 27255		Page 27257
1	Page 27255 everyone was asked to give their input as to how we were	1	Page 27257 understand that.
1 2		1 2	-
	everyone was asked to give their input as to how we were		understand that.
2	everyone was asked to give their input as to how we were going to implement the plan. We all gave our input. The	2	understand that. COLONEL MERAFE: It was a draft by then,
2 3	everyone was asked to give their input as to how we were going to implement the plan. We all gave our input. The plan was that the barbed wire was going to be used to	2 3	understand that. COLONEL MERAFE: It was a draft by then, then it will be a plan after the authority has approved it.
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1	COMMISSIONER HEMRAJ: Do I understand	1	end say we also agree that now that we've got limited
2	that the availability of the barbed wire made the	2	numbers of the barbed wire, barbed wires are going to be
3	encirclement problematic?	3	used as a barrier to prevent – between the police and these
4	COLONEL MERAFE: Yes, that is why I raise	4	people. So there is nothing in dispute to what Scott is
5	it that we make it, we are going to encircle it don't work	5	saying, Chairperson.
6	then I raise it there and then because I was part of the	6	CHAIRPERSON: Well there are two by point
7	planners, we should all talk about it.	7	that. The first is that at one stage a question was
8	COMMISSIONER HEMRAJ: Yes, thank you,	8	raised, going according to the evidence that there wasn't
9	Colonel, I understand that, thank you.	9	enough barbed wire and Lonmin were asked to provide more
10	CHAIRPERSON: Sorry, I don't understand	10	barbed wire which they agreed to do and there was barbed
11	your evidence. If one looks at paragraph 6 of exhibit	11	wire available which according to the evidence, that Lonmin
12	QQQ3, there you say that – you talk about Colonel Scott	12	was prepared to provide. That's the one point and I'll put
13	presenting the draft plan and you say the plan was barbed	13	the other point when you've answered the point I've just
14	wire was going to be used to encircle the koppie. Now	14	put to you. Okay, you don't answer that, I'll move on.
15	encircle means go right around, it's a circle, right?	15	COLONEL MERAFE: I did not hear whether
16	COLONEL MERAFE: Correct, Chair. Right	16	there is a question, Chairperson.
17	around, yes.	17	CHAIRPERSON: What is your comment? I
18	CHAIRPERSON: That was the evidence of	18	put to you that the evidence was that at stage, a bit later
19 20	Colonel Scott, he said there was a gap they were going to leave in the circle so that they could get in or the people	19 20	on in fact, not on the Tuesday morning, there was a question as to whether there was enough barbed wire and a
21 22	inside could get out. That was the evidence he gave quite	21 22	request was made to Lonmin if they could provide more barbed wire and they agreed to do so. And there was barbed
22	clearly. COLONEL MERAFE: Correct, Chairperson,	22	wire available apparently from Lonmin and we saw
23 24		23	photographs actually of the scene of where the barbed wire
24	yes. CHAIRPERSON: Right, you now say that,	24	was. But that apparently was later. Perhaps I should add
23	CHAIR ERSON. Right, you now say that,	20	was but that apparently was later. Terhaps I should add
	Page 27259		Page 27261
1	Page 27259 further down in that paragraph, "I was also told the whole	1	Page 27261 this that according to Colonel Scott originally the plan on
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2	further down in that paragraph, "I was also told the whole koppie would not be encircled with the barbed wire being	2	this that according to Colonel Scott originally the plan on the Tuesday morning was a very tight circle around the
2 3	further down in that paragraph, "I was also told the whole koppie would not be encircled with the barbed wire being placed just on one side." Now that sounds to me to be	2 3	this that according to Colonel Scott originally the plan on the Tuesday morning was a very tight circle around the koppie and there was enough barbed wire for that, that was
2 3 4	further down in that paragraph, "I was also told the whole koppie would not be encircled with the barbed wire being placed just on one side." Now that sounds to me to be nonsense. You can't have a circle just on one side, if	2 3 4	this that according to Colonel Scott originally the plan on the Tuesday morning was a very tight circle around the koppie and there was enough barbed wire for that, that was is evidence. Do you quarrel with that?
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Page 27262Page 272621discussed on the Tuesday morning?1CHAIRPERSON: Well it couldn't have –2COLONEL MERAFE:I agree, Chairperson.2sorry carry on.3CHAIRPERSON:You see the big problem I3COLONEL MERAFE:I think that was my4have and I've had it for a long time in this Commission is5Ceneral Mpembe said there were minutes kept to the meeting,6COLONEL MERAFE:I think that was my6you confirmed that but the minutes have not been6COMMISSION ADJOURNSCOMMISSION RESUMES]8there's a contradiction there.Clearly minutes are8[10:51]CHAIRPERSON:The Commission resumes.9normally kept to these meetings aren't they, it's10OMPHILE JOSEPH MERAFE:(s.u.o.)11important that there should be minutes kept. Am I correct?11CHAIRPERSON:Ms Le ROUX (CONTD.):13CHAIRPERSON:So there should be minutes13Thank you, Chair. Lieutenant-Colonel, you've produced four14and you say there were minutes but you agree with me that14statements to the Commission and you understood when you15there certainly should be minutes of that meeting.15were drafting each one of those that you reedlection16COLONEL MERAFE:I agree with the16all the relevant important information of your recollection16COLONEL MERAFE:I agree with the14COLONEL MERAFE:It is correct, Chair.17Chairperson that minutes should have been kept.
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22 were kept. 22 statement in QQQ6, which is of course your contemporaneous,
23 COLONEL MERAFE: Both General Annandale 23 most contemporaneous statement, that has no mention of stun
24 and General Mpembe were alternating in chairing the meeting 24 grenades or teargas at all. There's no mention of the use
25 and they had the duty of seeing to it. 25 of teargas or stun grenades in that statement.
Page 27263 Page 27265
1 CHAIRPERSON: All right well we're going 1 If I could ask you then to turn to your next
2 to take the first comfort break in a minute but I said I'd 2 statement, QQQ2, which is your statement of 30 November
3 tell you why the plan was changed according to the evidence 3 2012, that statement, if we could put that up, and if we go
4 that we've heard. Evidence we have heard was this that the 4 to page 3 of it and then paragraph 3 on that page, there's
5 encirclement plan could only work early in the morning when 5 a mention there about teargas, but nothing about stun
6 there were relatively few strikers on the koppie. Most of 6 grenades. So there we – let me just read, "Some members
7 the strikers used to go home at night and come back in the 7 followed the group on foot, accompanied by the General and
8 morning, that's the evidence. The evidence that we heard 8 other officers. I got inside my vehicle, turned it around
9 was that the encirclement plan couldn't be implemented 9 to follow the Nyalas that were going to block the people.
10unless it was implemented early in the morning and the10Whilst on the way I saw people starting to run and a
11 Thursday because the encirclement plan couldn't be 11 teargas cloud amongst the people and the police who were in
12 implemented because the police were waiting to see whether 12 front of the people retreated." In that statement that's
13 the strikers would lay down their arms. It only became 13 the only mention we can find of teargas and nowhere in that
14 clear later on that they weren't going to lay down their 14 statement do we find any mention of stun grenades being
15 arms and by that time there were lots and lots of people on 15 used.
16 If we then go to your next statement in time, 17 The second statement in time,
17 anymore. That was some of the evidence we got. Now you 17 which is GGG15, that's 20th of December 2012, and in that
18 don't know about because you weren't there on the Thursday. 18 statement if we go to paragraph 20, here we see teargas and
19 Am I right? 19 the mention of one stun grenade, singular. So we see in 22 USE MEDATE 23 this statement stutistic
20 COLONEL MERAFE: I know about this, 20 this statement, "While driving next to the marching
21 Chair. 21 mineworkers I noticed from a distance that teargas was
22 CHAIRPERSON: You do know about it. What 22 discharged. I also heard the sound of a stun grenade and 22 the sound of sums sheating. I did not see who throw the
23 do you know about it? 23 the sound of guns shooting. I did not see who threw the 24 stup and tearges grandes as I use too for from the members
24 COLONEL MERAFE: What I know is the 24 stun and teargas grenades as I was too far from the members 25 in front "
25 encirclement did not take place. 25 in front."

	Page 27266		Page 27268
1	Then in your most recent statement, QQQ1, which	1	MS LE ROUX: - our exhibit that analysed
2	is dated 10 April 2014, in that if we go to paragraph 5.18	2	Z2 and Z3 where you can see the two stun grenades being
3	and 19, now we have teargas and two stun grenades. So	3	used. That's exhibit OOO20, the CALS analysis of exhibits
4	we've gone from no mention of either to a mention of	4	Z2 and Z3. That's the slide presentation where we take
5	teargas only, then a mention of teargas and one stun	5	screen grabs from –
6	grenade. Now in your statement made most recently we see	6	COMMISSIONER HEMRAJ: Yes, and having –
7	teargas and two stun grenades. So 5.18 and 19 you state	7	MS LE ROUX: - the videos. Those show
8	there, "As the police and marchers were walking someone at	8	the two stun grenade explosions.
9	the front on the right of the strikers fired a teargas	9	COMMISSIONER HEMRAJ: And during which
10	canister. The marchers didn't appear to be affected by the	10	witness's cross-examination was that? Was it General
11	teargas and continued walking. I saw members retreating	11	Mpembe?
12	away from the teargas. The teargas was immediately	12	MS LE ROUX: Vermaak.
13	followed by the sound of a stun grenade from somewhere in	13	COMMISSIONER HEMRAJ: Vermaak.
14	the same direction where the teargas was fired from." It	14	CHAIRPERSON: Actually just to be clear,
15	carries on. If we then turn the page to 5.19, "I also	15	there were two stun grenades. I'm not talking about the
16	heard the sound of a second stun grenade thrown from the	16	one thrown from the helicopter. There were two stun
17	front on the extreme left. I this stage I was still	17	grenades on the ground.
18	driving on the road. The time that I heard the sound of	18	MS LE ROUX: Yes.
19	the second stun grenade I saw police members retreating	19	CHAIRPERSON: And the witness didn't
20	from smaller groups of strikers who were charging at them.	20	mention that in his earlier statements, but he did mention
21	The second stun grenade is the one that was thrown in the	21	it in his last one. He is obviously supported by the video
22	direction where Lieutenant-Colonel Baloyi was later found	22	information.
23	injured."	23	MS LE ROUX: And Chair, that's what I'm
24	Now several questions come out of this for the	24	interested in, is Lieutenant-Colonel, as we understand what
25	Human Rights Commission. So the first is until this most	25	could have happened here, there are only sort of two
	Dage 27267		Dage 27260
1	Page 27267 recent statement, QQQ1, the 10th of April statement, no	1	Page 27269 explanations for why in your most recent final statement in
1		1	Page 27269 explanations for why in your most recent final statement in April 2014 you finally mention the two stun grenades.
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	Page 27270		Page 27272
1	COLONEL MERAFE: If I could possibly	1	barbed wire between koppie and the squatter camp, when was
2	explain to the Commission the two statements that you are	2	that made? It says 13 August on the top, but when was it
3	referring to, that could be of assistance.	3	actually made?
4	MS BALOYI: Chairperson, thank you to Ms	4	COLONEL MERAFE: Early morning of the
5	Pillay; she's pointed out to me exhibit L57, which is a	5	14th.
6	consolidation of what happened on the 13th, that in fact the	6	MS LE ROUX: Lieutenant-Colonel, when
7	SAPS account for 12 stun grenades, and we know from the	7	were these notes first submitted to the Commission?
8	evidence of Colonel Vermaak that he fired 10 stun grenades.	8	COLONEL MERAFE: These were taken by my
9	-	9	legal team the last time when we were busy with my
	So it is not correct to say it was never put to the		consolidated statement.
10	Commission.	10	
11	CHAIRPERSON: We were clearly under the	11	MS LE ROUX: So your statement of 10
12	impression that earlier on we'd realised that there were	12	April 2014?
13	two stun grenades used on the ground and we were trying to	13	COLONEL MERAFE: It's not long, yes, that
14	work out where it came from, but Ms Pillay has put her	14	they were brought to the Commission.
15	finger on the point clearly, so there's an omission as it	15	MS LE ROUX: And when were you first
16	were by the police that this was obviously based on their	16	asked if you had any such notes?
17	stun grenade count before and after, that 10 were thrown	17	COLONEL MERAFE: I was not asked for such
18	from the air by Lieutenant-Colonel Vermaak, two were on the	18	notes. What I was asked for was my diary, which I
19	ground. Lieutenant Baloyi admits that he was responsible	19	submitted, and the IRIS documents that were done in the
20	for one of them. Who was responsible for the other is a	20	unit, and my statements. This came up on the day of the
21	mystery which we may or may not solve before the end of the	21	last consultation. I have been writing this as my private
22	Commission.	22	document that I was using for my work.
23	COMMISSIONER HEMRAJ: There was also –	23	MS LE ROUX: So you were never asked for
24	MS LE ROUX: Yes, Chair, and –	24	any notes? You were only asked for your diary?
25	COMMISSIONER HEMRAJ: There was also	25	COLONEL MERAFE: Correct, Chairperson,
	Page 27271		Page 27273
1	cross-examination of Mr Chaskalson which deals with this	1	had it been requested I would have given it over.
2	cross-examination of Mr Chaskalson which deals with this issue of two stun grenades being seen on one of the videos,	2	had it been requested I would have given it over. MS LE ROUX: Chair, if we can then turn
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Pretoria

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1	Page 27274 document.	1	Page 27276 you understood him to be explaining? Because we're not
2		2	sure if he was saying everyone who discharged their weapons
3	then go to QQQ15.3, this is the SAPS response to the CALS	3	should be replaced, or whether everyone who was involved in
4	discovery request on the 8th of February 2013, and if we	4	the incident at all in Marikana needs to be replaced. What
5	look at paragraph 5 there, this is where the SAPS is	5	do you remember was Brigadier Calitz saying around it?
6	responding to the request in paragraph 5.5 of the CALS	6	COLONEL MERAFE: There was training,
7	letter, the SAPS says, "A callout has been made to all	7	firearm training taking place. I was requested to send
8	officers who provided statements to make available any	8	members for this training. I was then told that the people
9	contemporaneous notes each may have. Please note these	9	who were involved in Marikana who had fired shots and whose
10	members are spread out the country. As and when such notes	10	firearms had been taken, these should not be sent to this
11	are made available we will immediately forward to	11	training. I did exactly that.
12	yourselves," and then if you look at paragraph 13, which is	12	[11:11] MS LE ROUX: And do you have any idea why
13	the one that responds to paragraph 5.13 in the Human Rights	13	that wasn't followed through, do you know why members
14	Commission's request, it says, "Please see the response in	14	didn't go for that training?
15	respect of paragraph 5.5." So the SAPS response was we've	15	COLONEL MERAFE: Normally, Chairperson,
16	put a call out for any contemporaneous notes and members	16	in our employment as police officers, when I have used my
17	are around the country and as soon as we get anything we	17	firearm and there is some investigation about it on me, the
18	will forward it.	18	members of the IPID take that firearm from the policeman.
19	If we then look at QQQ15.2, this is the annexure,	19	During that time, whilst the firearm is taken we cannot
20	the schedule with the columns "Request" and "Feedback."	20	post that police officer anywhere or issue a firearm to
21	This, if you look at paragraph 4.2 which requested	21	him. I then could understand why these policemen were
22	contemporaneous notes of all officers present in Marikana,	22	excluded from that training. Another reason was that some
23	the feedback was, "Requests were sent out to all members	23	of the policemen were still undergoing counselling after
24	for any contemporaneous notes. Feedback received back from	24	the shooting. During that counselling, Chairperson, we
25	members indicate that no such notes are available."	25	removed the firearms to them give them a chance to undergo
			,
	Page 27275		Page 27277
1	Page 27275 Lieutenant-Colonel Merafe, in February, January	1	Page 27277 this counselling.
1 2		1 2	-
	Lieutenant-Colonel Merafe, in February, January		this counselling.
2	Lieutenant-Colonel Merafe, in February, January or February of last year were you asked for any	2	this counselling. MS LE ROUX: But, Lieutenant-Colonel, as
2 3	Lieutenant-Colonel Merafe, in February, January or February of last year were you asked for any contemporaneous notes?	2 3	this counselling. MS LE ROUX: But, Lieutenant-Colonel, as a matter of fact we know that members who fired their
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	Page 27278	1	Page 27280
1	requested to do, so that I could remember these things	1	want to clarify that, did you, were you removed after the
2	rightly.	2	13th in order to support the family and be involved in
3	MS LE ROUX: Alright, but your	3	organising the memorial service or was it because of the
4	recollection of what Brigadier Calitz was ordering was that	4	effect of the 13th?
5	if they had been involved in a Marikana shooting on the 13th	5	COLONEL MERAFE: Chairperson, it was only
6	they needed to be replaced, meaning they shouldn't be on	6	on the 15th that I left Marikana in order to be of
7	duty on the 16th, is that right?	7	assistance to the Lepaakus. There was any reason, there
8	MS BALOYI: Chairperson, -	8	was no reason for my being removed there because of my
9	COMMISSIONER HEMRAJ: Isn't the context	9	involvement. Let me say, the reason for my going was not
10	of that the firearm training, they need to be replaced for	10	because of my involvement.
11	the firearm training?	11	MS LE ROUX: Do you know of any SAPS
12	MS BALOYI: Chair, if I may, Ms Le Roux	12	member that was removed because of the effect of the
13	speaks about this note suggesting that Brigadier Calitz	13	incident on the 13th on them?
14	spoke about people that shot on the 13th. This note doesn't	14	COLONEL MERAFE: Members of the POP,
15	mention any date, in fact the note appears to have been	15	members of my unit and the Klipgat were removed and some
16	made on the 21st of August and I'm not sure –	16	were removed for attending the Lepaaku funeral. Some POPS
17	MS LE ROUX: No, no, but Chair, the	17	members from KwaMhlanga were removed for that reason, the
18	answer –	18	burial of Warrant-Officer Monene.
19	CHAIRPERSON: The phrase Marikana	19	MS LE ROUX: So you don't know of any
20	shooting is ambiguous, I suppose, it could include the 13th	20	SAPS member that was removed from service because of
21	as well as the 16th, or it could merely be the 16th. I'm	21	emotional, psychological, any other reasons arising from
22	not sure that you can put positively that Brigadier Calitz'	22	the 13th?
23	instruction amounted to this, that those who were involved	23	COLONEL MERAFE: I don't remember,
24	in the shooting on the 13th –	24	because for some time I was away.
25	MS LE ROUX: But, Chair, –	25	MS LE ROUX: In your notes, if we could
	Page 27279		Page 27281
1	CHAIRPERSON: - also had to be -	1	then go down to page 7, there is a reference here to, - ja,
2	MS LE ROUX: - as I understood it, this	2	if we could just go down, yes, there is an entry just above
3	is what I'm trying to clarify because, Lieutenant-Colonel,		
4		3	the date, 2012/09/05, command and control. Now as we
	as I understood your evidence, when I asked you what the	3 4	the date, 2012/09/05, command and control. Now as we understand this, this is the note taken in relation to your
5			
5 6	as I understood your evidence, when I asked you what the	4	understand this, this is the note taken in relation to your
	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that	4 5	understand this, this is the note taken in relation to your interaction with the team of experts, that in your
6	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the	4 5 6	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1
6 7	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm	4 5 6 7	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1,
6 7 8	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your	4 5 6 7 8	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you
6 7 8 9	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your answer a few moments ago to be, is that incorrect?	4 5 6 7 8 9	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you cast your eye over 7.1 through to 7.3, this is where you
6 7 8 9 10	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your answer a few moments ago to be, is that incorrect? COLONEL MERAFE: If I had said that,	4 5 6 7 8 9 10	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you cast your eye over 7.1 through to 7.3, this is where you say the session at Roots, you met a team comprising Mr Ali,
6 7 8 9 10 11	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your answer a few moments ago to be, is that incorrect? COLONEL MERAFE: If I had said that, Chairperson, then that could not have been. If I was	4 5 7 8 9 10 11	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you cast your eye over 7.1 through to 7.3, this is where you say the session at Roots, you met a team comprising Mr Ali, Brigadier Mkhwanazi, Colonel Twala, Colonel Mkhari, you've
6 7 8 9 10 11 12	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your answer a few moments ago to be, is that incorrect? COLONEL MERAFE: If I had said that, Chairperson, then that could not have been. If I was referring to the 13th I would have made mention of it, I was	4 5 7 8 9 10 11 12	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you cast your eye over 7.1 through to 7.3, this is where you say the session at Roots, you met a team comprising Mr Ali, Brigadier Mkhwanazi, Colonel Twala, Colonel Mkhari, you've met them in Potch and then if we can just skim through
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	as I understood your evidence, when I asked you what the note referred to you said the shooting on the 13th, that Brigadier Calitz said members who had been involved in the shooting on the 13th needed to stand down, go for firearm training and be replaced, that's what I understood your answer a few moments ago to be, is that incorrect? COLONEL MERAFE: If I had said that, Chairperson, then that could not have been. If I was referring to the 13th I would have made mention of it, I was talking of Marikana in general, the operation from the beginning to the end. MS LE ROUX: Okay, well, then let me move on. Brigadier Calitz in his evidence, for the record Chair, it is day 170, page 19941, we don't need to go there. He was asked whether any officers, any members were removed because of, the question that was put by the chair was, the effect of the 13th and Brigadier Calitz' evidence seemed to be that you were one of the members that had been removed because of the effect of the 13th and then he went	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	understand this, this is the note taken in relation to your interaction with the team of experts, that in your consolidated statement, QQQ1, this appears in paragraph 7.1 and 7.3 of that statement, so perhaps if we can go to QQQ1, paragraph 7. So the task team of POP experts and if you cast your eye over 7.1 through to 7.3, this is where you say the session at Roots, you met a team comprising Mr Ali, Brigadier Mkhwanazi, Colonel Twala, Colonel Mkhari, you've met them in Potch and then if we can just skim through really, 7.2, the team asked you about seven things. The team asked me about whether what happened in the operation was in accordance with the training of POP, two, about the use of barbed wire, whether the use of barbed wire was wise, three, command and control, four, whether there were sufficient POP commanders deployed, five, the use of force on 16 August, six, my involvement in the preparation of the plan and seven, why the POP did not draw the plan. In 7.3 you then set out your answers where you said, I answered that one, on 13 and 16 August there was

	D		D 07001
1	Page 27282 and the police and that this was an appropriate use of it.	1	Page 27284 COLONEL MERAFE: Chairperson, I was
2	Three, I explained my involvement in the drawing of the	2	commenting about the command and control of the officers
3	plan on 14 August. As I was not present on the 16th I was	3	that were placed in Marikana on the 16th. I was asked,
4	unable to give any comment about issues of command and	4	since there were different units, how communication was
5	control, use of force on that day. I had become aware	5	between the commanders and the operation and the person in
6	during evidence presented to the Commission that a document	6	command. I mentioned that there were experienced officers,
7	was handed in which is supposed to be a report of the team	7	speaking now on behalf of the POP, that they had a
8	that interviewed me. I saw the document for the first time	8	operational commander who could liaise with any of the
	during the preparation of this statement. So the team	9	commanders. I also explained clearly that other
9			
10	included Brigadier Mkhwanazi, that's correct? COLONEL MERAFE: Correct, Chair.	10	components, there were commanders who were communicating
11		11	with the operational commander. I was explaining that,
12	MS LE ROUX: And we're interested in this	12	Chairperson, although I wasn't there at the time I was
13	because it references one of the criticisms that Brigadier	13	explaining that they were present there on the ground. So
14	Mkhwanazi made mention of in his oral evidence to the	14	I also said I couldn't say much because I was not there to
15	Commission. Chair, the reference is page 29, - sorry, day	15	witness what was happening on the ground, that I also
16	29, page 3044 to 3045, and if we could go to that because	16	mentioned.
17	it is a little unclear, precisely what he was saying about	17	MS LE ROUX: Lieutenant-Colonel, other
18	command and control at Marikana. Can you, and I understand	18	than what's in your note and the reference to this meeting
19	of course where you say you weren't there but can you help	19	with the team of experts, that included Brigadier
20	the Commission at all in relation to the entry in your	20	Mkhwanazi, have you on any other occasion discussed the
21	notes, command and control, as to what the criticism was	21	command and control of the Marikana operation with anyone
22	that you were debating with Brigadier Mkhwanazi, because if	22	else, or is this the only time you were asked for your view
23	we look at the transcript, his answer, it appears from line	23	about command and control at Marikana?
24	21, this is where he is asked you know for any criticisms	24	COLONEL MERAFE: Command and control, as
25	of how things went and he says, command and control.	25	far as I am concerned, we don't only discuss it in relation
	Dogo 27202		Dogo 27205
1	Page 27283 Under command and control. I'll clarify why I'm	1	Page 27285 to Marikana, we normally are discussing it even before or
1	Under command and control, I'll clarify why I'm	1	to Marikana, we normally are discussing it even before or
2	Under command and control, I'll clarify why I'm saying that, it is the magnitude of the operation, provided	2	to Marikana, we normally are discussing it even before or after and during, there must be command and control because
2 3	Under command and control, I'll clarify why I'm saying that, it is the magnitude of the operation, provided important information in terms of managing operations in	2 3	to Marikana, we normally are discussing it even before or after and during, there must be command and control because we know without command and control things won't be done
2 3 4	Under command and control, I'll clarify why I'm saying that, it is the magnitude of the operation, provided important information in terms of managing operations in future in the sense, the unified command and a span of	2 3 4	to Marikana, we normally are discussing it even before or after and during, there must be command and control because we know without command and control things won't be done accordingly. So we discussed it, yes.
2 3 4 5	Under command and control, I'll clarify why I'm saying that, it is the magnitude of the operation, provided important information in terms of managing operations in future in the sense, the unified command and a span of control, to address the issues of accountability and the	2 3 4 5	to Marikana, we normally are discussing it even before or after and during, there must be command and control because we know without command and control things won't be done accordingly. So we discussed it, yes. MS LE ROUX: But specifically with
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1	Page 27286	1	Page 27288
1	experts and you said it was discussed at Roots. Other than those two occasions have you discussed Marikana command and	1	the approval or even the knowledge of the overall commander and the chief planner, so neither Major-General Mpembe nor
3	control with anyone else?	3	Lieutenant-Colonel Scott were aware that the layout of the
4	COLONEL MERAFE: Chairperson, as I say we	4	barbed wire had changed, did you know that?
5	do discuss about it but to say today where did I discuss it	5	COLONEL MERAFE: The question is did I
6	and when, the next thing I'll be asked for minutes and I'll	6	know or do I know it now?
7	be in trouble.	7	MS LE ROUX: Do you know –
8	MS LE ROUX: Well, that's not the reason	8	COLONEL MERAFE: I did not know.
9	not to tell us if you have discussed it some other time.	9	MS LE ROUX: Can I ask you to go then, in
10	COLONEL MERAFE: The truth is, normally	10	the statement of Mr Gary White, JJJ178 and ask you to turn
11	we discuss it.	11	to page 81. We're going to look at paragraph 6.5.18
12	MS LE ROUX: And then any of these	12	through to 6.5.20. Chair, this is where Mr White deals
13	conversations, the one with the team of experts at Roots,	13	with the deployment of resources at Marikana. So going
14	when you've discussed it in your unit, when you've	14	through this, Mr White states, starting at paragraph 6.5.18
15	discussed command and control at Marikana, did you reach a	15	"since submitting his provisional statement I've received a
16	conclusion that there was a failure of command and control	16	significant amount of new information in respect of the
17	in Marikana?	17	development of the operational plan. In light of that new
18	COLONEL MERAFE: Except where we've been	18	information I've amended and added to my judgments in
19	assisted by experts internal and external experts, without	19	respect of deployment of resources in relation to the
20	being assisted by experts internally and, by virtue of us	20	positive attraction of Nkaneng. When Nyala 6 was
21	being assisted by experts from outside and within the	21	redeployed adjacent to the kraal around midday on 16 August
22	country, we are aware of some criticism that has been made	22	that created a fundamental change to the positive
23	against command and control at Marikana. It is at our	23	attraction of Nkaneng. Below I show three alternative
24	disposal due to the fact that I read newspapers, I've read	24	deployments indicating the effect of the attraction of
25	the criticism that experts have said about the command and	25	Nkaneng. On page 82 there's the original stage 2 plan and
1	Page 27287	1	Page 27289
1	control, so yes.	1	in that original plan there's the semi circle of barbed
2	control, so yes. MS LE ROUX: If I can ask you to go back	2	in that original plan there's the semi circle of barbed wire in orange making it difficult for any protestor to
2 3	control, so yes. MS LE ROUX: If I can ask you to go back in your final statement, QQQ1 and if we can look at, if we	2 3	in that original plan there's the semi circle of barbed wire in orange making it difficult for any protestor to reach Nkaneng and acting as a clear deterrent from the
2 3 4	control, so yes. MS LE ROUX: If I can ask you to go back in your final statement, QQQ1 and if we can look at, if we can call up paragraph 7.3 again, this is where you set out	2 3 4	in that original plan there's the semi circle of barbed wire in orange making it difficult for any protestor to reach Nkaneng and acting as a clear deterrent from the positive attraction it would otherwise hold". If we then
2 3 4 5	control, so yes. MS LE ROUX: If I can ask you to go back in your final statement, QQQ1 and if we can look at, if we can call up paragraph 7.3 again, this is where you set out your response to the team of experts you met with and I	2 3	in that original plan there's the semi circle of barbed wire in orange making it difficult for any protestor to reach Nkaneng and acting as a clear deterrent from the positive attraction it would otherwise hold". If we then turn the page to page 83 we see the 2 o'clock amendment on
2 3 4 5 6	control, so yes. MS LE ROUX: If I can ask you to go back in your final statement, QQQ1 and if we can look at, if we can call up paragraph 7.3 again, this is where you set out your response to the team of experts you met with and I want to explore with you your response around the use of	2 3 4 5	in that original plan there's the semi circle of barbed wire in orange making it difficult for any protestor to reach Nkaneng and acting as a clear deterrent from the positive attraction it would otherwise hold". If we then turn the page to page 83 we see the 2 o'clock amendment on the 16th of August. Mr White states "in the amended plan
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		1	
	Page 27290		Page 27292
1	not prevent protestors from reaching Nkaneng and does not	1	be that you don't want people that you have identified to
2	act as a deterrent from the positive attraction point and	2	take action against, to be mixed with the whole community.
3	because the POP, TRT, NIU and STF are not yet deployed to	3	It's going to be a trouble. People that you have
4	the north of the koppie this L shape invites or channels	4	identified as being attackers that are going to attack you
5	protestors to move towards the informal settlement until	5	to get involved with the whole community there would be
6	such time as the members move into position to the north	6	turmoil. That is why I said, Chairperson, I am going to
7	west of the kraal". Concluding then at paragraph 6.5.20	7	answer with the greatest caution not to get myself into
8	"it does not appear that the consequences of the movement	8	trouble and give one the benefit of the doubt. Because a
9	of Nyala 6 were properly considered by the overall	9	person who is in charge by then thinks the way he sees
10	commander or by Lieutenant Colonel Scott. Lieutenant	10	things who is not there will come and criticise or will
11	Colonel Scott explains that in his briefing to commanders	11	come and give, you know positive and negative points about
12	he said that, 'the razor wire would assist the police to	12	your action.
13	canalise the dispersion towards the west and away from the	13	MS LE ROUX: Lieutenant Colonel, let me
14	east.' On Mr White's assessment that is correct on the	14	go back then to, if we could go back to page 82. This is
15	original deployment of the razor wire depicted in the stage	15	the original stage 2 plan. You'll agree that the barbed
16	2 plan, shown at the 1:30 JOCCOM however after the	16	wire deployed as it's shown on this, the orange semi circle
17	redeployment of Nyala 6 the razor wire would if anything	17	that blocks Nkaneng for the protestors. The protestors are
18	canalise protestors towards Nkaneng. So if the police	18	unlikely to try to get to Nkaneng if the barbed wire is
19	intended to prevent dispersal towards Nkaneng the	19	where it's shown on this plan, you'll agree with me?
20	redeployment of Nyala 6 created a potential flash point at	20	COLONEL MERAFE: I agree, Chair.
21	the northern end of the wire". Lieutenant Colonel, do you	21	MS LE ROUX: And if we then turn to page
22	agree with that criticism by Mr White?	22	84 which is the depiction of phase 1 of stage 3 of the
23	COLONEL MERAFE: Chairperson, yes I want	23	amended plan, you'd agree with me that the barbed wire
24	to be very careful in my response here. We're talking of	24	shown on this plan, the L shape that with this deployment
25	the possible attraction point being Nkaneng.	25	of barbed wire people will try to go through to Nkaneng,
	Page 27291		Page 27293
1	MS LE ROUX: Lieutenant Colonel, can I	1	Page 27293 they would look at how the barbed wire is close to the
1 2	•	1 2	5
	MS LE ROUX: Lieutenant Colonel, can I		they would look at how the barbed wire is close to the
2	MS LE ROUX: Lieutenant Colonel, can I interrupt you because I know there's a difference in how	2	they would look at how the barbed wire is close to the koppie and then peeling away and they would think I can get
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	Page 27294		Page 27296
1	witnesses –	1	asked to consider the adequacy of the record keeping at the
2	CHAIRPERSON: Don't keep us in suspense,	2	Marikana operation from 13 to 16 August 2012? That
3	who is it?	3	specific operation, have you reflected on whether there's
4	MS LE ROUX: Chair, I'm, we'll provide it	4	been adequate record keeping of that operation, those days.
5	to the Commission. We can put the list together. I want	5	COLONEL MERAFE: Yes, Chair.
6	to move on in my cross-examination.	6	MS LE ROUX: And can you tell me what
7	CHAIRPERSON: Okay.	7	you, were you asked to consider it or have you done it
8	MS LE ROUX: I'm nearly finished.	8	independently, let's start with that?
9	CHAIRPERSON: That's fine.	9	COLONEL MERAFE: As I have mentioned,
10	MS LE ROUX: Lieutenant Colonel –	10	Chairperson, that about the issue of Marikana a number of
11	CHAIRPERSON: You're not persisting with	11	units came from different stations with their commanders
12	the point so the objection doesn't have to be ruled on	12	and because of my not being the operational commander one
13	because it's effectively conceded.	13	looks at what is actually facing him at the point in time.
14	MS LE ROUX: Chair, if we can return then	14	In my unit my members who will have operational diaries
15	to QQQ1 and if I could ask you to turn to paragraphs 8.3.4.	15	with them every time for record keeping. That is why when
16	Starting there and if we can just run through it to 8.3.6.	16	I was asked about diaries my response was that I in my unit
17	Lieutenant Colonel, in these paragraphs you take issue with	17	see to it that they have this. If for instance in the
18	Lieutenant Colonel Vermaak's criticisms of certain aspects	18	Marikana incident people coming from KwaMhlanga did not ask
19	of record keeping in the POP operation. So 8.3.4 deals	19	for me or did not have it then it would not be my problem.
20	with video recording, 8.3.5 deals with operational diaries,	20	MS LE ROUX: So, Lieutenant Colonel, if
21	SAPS15, see IRIS record keeping and then 8.3.6 is where you	21	we look at how you describe what should happen, so 8.3.4
22	deal with sitreps and the occurrence book. Now in these	22	the video recording that should happen, 8.3.5 where you set
23	paragraphs I just want to be clear, you're explaining	23	out how operational diaries, SAP15s and the IRIS system
24	what's done in your POP units, correct?	24	works and then 8.3.6 where you talk about Sitreps and how
25	COLONEL MERAFE: That is so, Chair.	25	things are recorded in the occurrence book. From what you
	D		5
1	Page 27295 MS LE ROUX: And you're not trying to say	1	Page 27297 know of the Marikana operation from 13 to 16 August do you
1	MS LE ROUX: And you're not trying to say	1	know of the Marikana operation from 13 to 16 August do you
2	MS LE ROUX: And you're not trying to say in these paragraphs that this is what happened at Marikana?	1 2 3	know of the Marikana operation from 13 to 16 August do you think the records were properly kept?
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	Page 27298		Page 27300
1	COLONEL MERAFE: It is so, Chair.	1	should repeat the question so that I understand it
2	MR BIZOS SC: This despite the fact that	2	correctly, so that I respond correctly.
3	your initial training in Bophuthatswana in the Riot Squad	3	MR BIZOS SC: Yes. Were very special
4	probably was not a good start in your career as to how	4	training programmes introduced from the early 90s right up
5	senior police officers should behave towards protesters.	5	to Mr Mandela's completion of his term in order to
6	COLONEL MERAFE: [African language] as a	6	demilitarise the police?
7	commander whether in the era of Bophuthatswana, I have been	7	COLONEL MERAFE: Yes, I was present
8	observing the law. I have been disciplined. I have been	8	during this time. I also attended such trainings as a
9	doing things accordingly.	9	member of the South African Police.
10	MR MAHLANGU: Said in English, Sir. "I	10	MR BIZOS SC: Yes. Now did you by any
11	don't agree," he said, started by saying "I don't agree	11	chance know of the presence of Mr Eddie Hendrickx in the
12	with what counsel is saying."	12	country, leading this programme of demilitarising the
13	MR BIZOS SC: In your statement you say	13	police?
14	that you did four years' service in the Riot Squad.	14	COLONEL MERAFE: It is correct, I heard
15	COLONEL MERAFE: That is correct, Sir.	15	about him, Chair.
16	MR BIZOS SC: You see, it's perhaps	16	MR BIZOS SC: Did you by any chance meet
17	significant that it was called the Riot Squad because in	17	him?
18	apartheid South Africa and the supposedly independent	18	COLONEL MERAFE: No, I did not meet him,
19	Bophuthatswana demonstrators were regarded as rioters.	19	but met the people that he trained in order to retrain us.
20	COLONEL MERAFE: [African language] but	20	MR BIZOS SC: Yes. You were given
21	now from the onset joining the police I have known	21	notice, and I hope you were given copies of the two
22	demonstrators are fellow human beings.	22	statements that he has made to this Commission.
23	MR BIZOS SC: Well, it's to your credit	23	COLONEL MERAFE: Correct, Chairperson.
24	and I accept it without reservation. Now you know that	24	MR BIZOS SC: Did you read them?
25	there was a fundamental change made in the police training	25	COLONEL MERAFE: I read them.
1	Page 27299 shortly after Mr Mandela's release in 1990	1	Page 27301
1	shortly after Mr Mandela's release in 1990.	1	MR BIZOS SC: Carefully?
2	shortly after Mr Mandela's release in 1990. COLONEL MERAFE: I am aware and I am one	2	MR BIZOS SC: Carefully? COLONEL MERAFE: Very carefully.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 27302 as and when I respond, really I must be knowing exactly what I'm talking about. MR BIZOS SC: Now you told us that you studied the documents very carefully and you made marks. In order to shorten the proceedings would you like to tell us what criticisms, if any, do you have of Mr Hendrickx's views or statements that he has made to the Commission? You can have a look at the documents that were made available to you and we can take the criticism in which you disagree with or you have some doubts of or you would like some explanation, or to say something about a criticism. Are you prepared for us to follow that procedure? COLONEL MERAFE: Chairperson, I would like to be taken through and for questions to be asked directly to what I have to respond to in order for me to respond – CHAIRPERSON: Mr Bizos, I can understand your desire to save time, but I think the witness's request is not one that is unreasonable. So perhaps you could refer him pertinently to major criticism and see what he says. MR BIZOS SC: The option is his. I don't	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 27304 operation at Marikana." Do you agree with that? I think you've already expressed an opinion to my predecessor that it may have. What is your answer? COLONEL MERAFE: I agree, Chairperson. MR BIZOS SC: You agree? COLONEL MERAFE: It is so, Sir. MR BIZOS SC: On page 12, paragraph 26, he says, "After the events of the 13th of August the SAPS drew the conclusion that the group of striking mineworkers were intent on confrontation with the SAPS at a level that had previously not been experienced in labour and service delivery unrest." Do you agree or disagree with that? COLONEL MERAFE: I do agree, Chairperson. MR BIZOS SC: You agree with that. Paragraph 27 on page 13, "The claim by some commanders of the SAPS that the levels of threat or violence posed by the group of strikers at Marikana was unprecedented, is not reasonably sustained by the evidence of the events." I think that you have already expressed a view in relation to that, and do you agree with $Mr =$ MS BALOYI: Chair, I can't see where Mr Bizos is reading in paragraph 27.
22	want to deprive him of that –	22	CHAIRPERSON: What he read a minute ago
24	CHAIRPERSON: That's what I'm saying.	24	was the first sentence of paragraph 27. The sentence he
25	I'm saying –	25	read before that is not on the screen. It's probably 26.
	Page 27303		Page 27305
1	MR BIZOS SC: - of exercising the option,	1	Perhaps I –
2	because I do have a list on which, I don't want to go	2	MR BIZOS SC: I'm reading a summary, if
3	through everything that he has said, but we can take it one	3	the -
4	by one and I think it will probably be fairer to the	4	CHAIRPERSON: The last sentence that you
5	witness, rather than –	5	uttered was the first sentence in paragraph 27 which we
6	From your evidence so far it would seem that you	6	see. What you said before that wasn't on Mr Hendrickx's
7	accept the crowd management principles and rules are	7	report –
8	outlined by Mr Hendrickx in his provisional statement in	8	MR BIZOS SC: I see.
9 10	CCC2 is there anything that you disagree with the general	0	
	GGG2. Is there anything that you disagree with the general principles?	9 10	CHAIRPERSON: It was presumably your
11	principles?	10	CHAIRPERSON: It was presumably your summary of what he said, but the main point is that
11 12	principles? COLONEL MERAFE: There is nothing that I		CHAIRPERSON: It was presumably your summary of what he said, but the main point is that paragraph 27 says that the police conclusions, which were
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12	principles? COLONEL MERAFE: There is nothing that I want to dispute there, Chair.	10 11 12	CHAIRPERSON: It was presumably your summary of what he said, but the main point is that paragraph 27 says that the police conclusions, which were summarised by way of quotation in any event in 26, were not
12 13	principles? COLONEL MERAFE: There is nothing that I want to dispute there, Chair. MR BIZOS SC: There's nothing that you	10 11 12 13	CHAIRPERSON: It was presumably your summary of what he said, but the main point is that paragraph 27 says that the police conclusions, which were summarised by way of quotation in any event in 26, were not reasonably sustained by the evidence and he then is
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1	Page 27306 conflict and ensuing violence, and then he proceeds to	1	Page 27308 Provincial Commissioner, decided to do, although he made on
2	-	2	last effort to get them to hand over their weapons. All
	motivate that in 28 and following. So I don't think it's fair to say to the witness "Do you agree with 27?" He's		-
3	5 5 5	3	this is there, you see. Now what Mr Hendrickx says.
4	got to have a chance to deal with the motivation and so	4	[12:42] He mentioned those facts and he says therefore he
5	forth in 28 and following. Is that right, Colonel?	5	concludes the passage we had earlier that they weren't
6	COLONEL MERAFE: That is correct,	6	intending to act violently towards the police on the 13th,
7	Chairperson.	7	is that the summary, Mr Bizos, that you agree with?
8	CHAIRPERSON: He proceeds in the passage	8	MR BIZOS SC: Thank you.
9	which follows on what's on the screen to indicate his	9	CHAIRPERSON: That you agree with what
10	reasons for saying that the group, this is the group on the	10	Mr Hendrickx says?
11	13th at the railway line were orderly and these reasons are	11	COLONEL MERAFE: I agree with that,
12	not yet on the screen, but the witness has obviously read	12	Chair.
13	them. But I think to be fair he has to have an opportunity	13	MR BIZOS SC: Yes, thank you. Then page,
14	to deal with them.	14	paragraph 31 at page 15. Have a look because I want to
15	MR BIZOS SC: Yes. Well, read paragraph	15	rely merely on the summary that, of the question that I –
16	27. Do you agree with what he says?	16	CHAIRPERSON: Okay, no I understood,
17	CHAIRPERSON: Mr Bizos, I just made the	17	sorry Mr Bizos, I understood that previously when you were
18	point; you can't expect him to answer the general statement	18	cross-examined by Mr Wesley and others that you essentially
19	in 27 without dealing with what Mr Hendrickx describes as	19	agreed with what is said in paragraph 31, that this
20	the more probable and important conclusions to be drawn as	20	incident was precipitated by the teargas and the stun
21	to the causes of the conflict and ensuing violence, which	21	grenades, is that, they weren't misbehaving themselves
22	are different from those set out by the police, as	22	before that, they didn't hand over their weapons but they
23	summarised in 26, and then he proceeds to deal with that in	23	weren't using them and if the teargas and the stun grenades
24	28. So I don't think you can just say to him well before	24	hadn't been fired then in all probability this incident
25	you look at 28 and 29, tell me do you agree with 27. I	25	wouldn't have happened. I understood you to agree with
-			
1	Page 27307	1	Page 27309
1	think you must, I'm afraid – I know it's a bit longer than	1	that, am I right?
2	think you must, I'm afraid – I know it's a bit longer than the way you want to do it, but I don't see how you can	2	that, am I right? COLONEL MERAFE: I have agreed with that,
2 3	think you must, I'm afraid – I know it's a bit longer than the way you want to do it, but I don't see how you can escape it. The first point is this; you were at the	2 3	that, am I right? COLONEL MERAFE: I have agreed with that, Chairperson.
2 3 4	think you must, I'm afraid – I know it's a bit longer than the way you want to do it, but I don't see how you can escape it. The first point is this; you were at the railway line on the 13th?	2 3 4	that, am I right? COLONEL MERAFE: I have agreed with that, Chairperson. CHAIRPERSON: He agrees with 31, Mr
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	Page 27310		Page 27312
1	understand how was, how did it change from being a crowd	1	evidence correctly?
2	management to something else.	2	COLONEL MERAFE: Very correct,
3	CHAIRPERSON: Can I come in here.	3	Chairperson, those were my actual words.
4	You'll remember when Mr Wesley cross-examined you. He put	4	MR BIZOS SC: In paragraph 38 on page 18
5	to you that some others had talked about the hybrid.	5	he says that there was deficiency of command and control in
6	COLONEL MERAFE: Hybrid, ja.	6	the SAPS operation on the 13th of August. Do you agree with
7	CHAIRPERSON: And you said that you	7	that?
8	didn't agree with that, you said it was a crowd management	8	COLONEL MERAFE: Ja, I see where it goes,
9	operation.	9	where the other officer says do this, the other says do
10	COLONEL MERAFE: Yes.	10	this. At the end of the day the higher in rank, the
11	CHAIRPERSON: It was perhaps a	11	operational commander decided and we all have to follow
12	particular kind of crowd management operation but it fell	12	him. So the issue of saying there was lack of clarity and
13	within standing order 262 and you rejected the concept of	13	understanding of operational strategy relating to
14	hybrid, that's correct isn't it?	14	intercepting the group at the railway line there was
15	COLONEL MERAFE: That is why I am still	15	command and control and the commander in chief took a
16	maintaining that, Chairperson, in my response to the	16	decision and we all obey and follow that instruction. So I
17	question that was posed that that it is crowd management.	17	don't agree with it.
18	MR BIZOS SC: Let me ask you this. You	18	CHAIRPERSON: Where Mr Hendrickx says
19	are a great believer in order 262 being obeyed?	19	there was confusion in the ranks of SAPS as to whether the
20	COLONEL MERAFE: It is so, Chair.	20	group were to be allowed to proceed under escort or to be
21	MR BIZOS SC: If the senior officers says	21	dispersed and disarmed, that's not correct, there was no
22	that the standing orders were not applicable to the	22	confusion. As far as you tell us everybody there should
23	situation which appeared to be developing on the 16th, do	23	have known what General Mpembe's decision was. It was to
24	you agree or disagree with them?	24	be an escorting exercise to the koppie.
25	COLONEL MERAFE: Chairperson, the	25	COLONEL MERAFE: That is so, Chair.
1	Page 27311 question is not very clear to me, it confuses me a bit. I	1	Page 27313 CHAIRPERSON: And the fact that some
1	question is not very clear to me, it confuses me a bit, I	1	CHAIRPERSON: And the fact that some
2	question is not very clear to me, it confuses me a bit, I don't know what is expected of me.	2	CHAIRPERSON: And the fact that some people thereupon took it upon themselves to depart from
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1	Page 27314 CHAIRPERSON: Sorry to interrupt you, Mr	1	Page 27316
1	3	2	I understand it that if you're negotiating you shouldn't
2	Bizos, somebody has got a cell phone on and if, unless it's		just have a, you should not have a whole lot of other
3	turned off now, if we hear it again I'll ask that the owner	3	Nyalas there apart from the negotiating Nyala, I think
4	thereof to please leave the chamber. Please carry on.	4	that's the point made. But the other, but I can understand
5	MR BIZOS SC: May I proceed and then if	5	the point, I'm not sure it's right, but let's see what the
6	we go to paragraph 39 on page 20 summarised "the failure of	6	witness says about it. The suggestion is you were there on
7	SAPS to conduct an investigation into the threats made	7	the, during the time when the negotiation took place, you
8	against General Mpembe by members of the day if necessary	8	and Lieutenant Colonel Macintosh came I think on the
9	to take disciplinary action against those who have issued	9	Tuesday and he also, he negotiated in this manner, you
10	them". Do you agree with that?	10	agree with the criticism. It wasn't appropriate to
11	COLONEL MERAFE: Obviously if there are	11	negotiate through the window hole of an Nyala using a
12	threats, disciplinary action was supposed to be, actually	12	loudhailer, but the next point taken is that or made by Mr
13	criminal case because here we're talk about life.	13	Hendrickx was he said it was also inappropriate to do that
14	MR BIZOS SC: I'm sorry just repeat that.	14	with a lot of other Nyalas in the vicinity. That seems to
15	COLONEL MERAFE: What I'm saying,	15	be the point in 74.2 if we see the whole of it on the
16	Chairperson, is that if there was ever such a threat made	16	screen, am I right, Mr Bizos?
17	disciplinary action should have been taken those issuing	17	MR BIZOS SC: That is so.
18	the threats and I further said a criminal case should have	18	CHAIRPERSON: And he says that, I think
19	been opened.	19	there should be a plural there. "He says the deployment of
20	CHAIRPERSON: I think he said there was	20	large numbers of SAPS along with their armoured vehicle, I
21	a threat to life.	21	think it should be armoured vehicles, can have an
22	MR BIZOS SC: Yes, and you agree with Mr	22	unsettling and provocative effect on crowds and individuals
23	Hendrickx that if there was no such action or investigation	23	within the crowd". Now did you see what was happening
24 25	taken then that was – CHAIRPERSON: He has agreed already, Mr	24 25	there on the Tuesday and the Wednesday when the negotiations took place or can't you comment on that?
25		23	
	Page 27315		Page 27317
1	Bizos, I think you can move on to the next point.	1	COLONEL MERAFE: I saw it, Chairperson.
2	MR BIZOS SC: Yes.	2	The negotiations should be in a conducive manner whereby
2		~	
3	CHAIRPERSON: What is the next point you	3	
4	want to put?	4	the striking workers. So with the Nyalas it's negative
4 5	want to put? MR BIZOS SC: Yes. If we can go to page	4 5	the striking workers. So with the Nyalas it's negative according to him. So I do understand that and I agree with
4 5 6	want to put? MR BIZOS SC: Yes. If we can go to page 74 paragraph 34. Paragraph 74 page 34. "The manner in	4 5 6	the striking workers. So with the Nyalas it's negative according to him. So I do understand that and I agree with him in this criticism.
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	1	
Page 27318	1	Page 27320
1 at the same time because they're contradictory. Dispersal	1	You're still under oath, Colonel.
2 is one thing, scattering and spreading the crowd,	2	OMPHILE JOSEPH MERAFE: (s.u.o.)
3 disarmament and arrests requires containment and control.	3	CHAIRPERSON: Mr Bizos.
4 He says you can't do, he says this involves a dual tactical	4	CROSS-EXAMINATION BY MR BIZOS SC (CONTD.):
5 strategy and he appears to take the view that was an	5	Could we turn to page 43 of the report, paragraph 96,
6 inappropriate approach". Do you agree with that?	6	please? Now you read it. He's concerned about the
7 COLONEL MERAFE: I agree with it,	7	apparent inadequacy of the briefing provided to the members
8 Chairperson.	8	prior to the phase 3 tactical intervention on the 16th.
9 MR BIZOS SC: Then can we go to page 88,	9	Even though you were not there on the 16th, do you agree
10 paragraph 88 page 40.	10	with his criticism?
11 CHAIRPERSON: Here he comes with a rule	11	COLONEL MERAFE: Not altogether,
12 of thumb, you remember that. You should have, if you're	12	Chairperson, I don't agree altogether, because when the
13 busy with a defensive operation you should have one police	13	commander decided to go to the koppie on the 16th they said
14 officer for every three protestors. If you're having an	14	they wanted to go and disperse, disarm, and arrest. So the
15 offensive action which will include a disarming and arrest	15	concern about the tactical information plan which was
16 which is a tactical option where you, not just defending	16	inadequate, I don't know how in the plan because they
17 the situation. The ratio should change, you should have	17	planned that they are going to do that.
18 three police officers to one protestor. Do you agree with	18	MR BIZOS SC: You know what section 9(2)
19 that view?	19	of the standing order says? We'll just trace it for a
20 COLONEL MERAFE: That's how we're	20	moment. "For the purposes for preplanning the JOC must
21 trained, Chairperson, yes.	21	follow the following procedure – develop a comprehensive
22 MR BIZOS SC: Yes, Mr Hendrickx also says	22	written operational plan, see guidelines contained in model
23 on the same paragraph that STF, NIU and TRT were	23	2 of the Crowd Management for SAPS Management Module;
24 prioritised in the operation and outnumbered the POP units	24	submit the operational plan for approval to the Area
25 by nearly two to one. He's of the view that the POPS	25	Commissioner; advocate JOC to appoint an operations
Page 27319 1 people should have been in the majority and in greater	1	Page 27321 officer, taking into account the circumstances and the
2 control of the situation. Do you agree with that?	2	results of the threat assessment. In the event of level 3
3 COLONEL MERAFE: Unless the figures are	3	threats ACCU operational commander must be appointed in
4 displayed, Chairperson, members of POPS were more than the	4	consultation with the ACCU unit commander." Now that
5 number of the other units that I saw there. Unless those	5	procedure was not followed. Should it have been?
6 others arrived after I had left, Mr Chairperson.	6	COLONEL MERAFE: Chair, Brigadier Calitz,
7 [13:01] CHAIRPERSON: We are talking about the	7	who is the commander of the ORS North West was appointed as
8 16th now, aren't we, you weren't there on the 16th?	8	the operational commander. He is my commander in the POP
9 COLONEL MERAFE: Yes, I'm talking about	9	in the Rustenburg cluster, and I take it on the 16th they
10 the 16th, that's why I say unless the people arrived in my	10	did act in accordance with what the standing order says.
11 absentia, I need to be convinced by seeing the figures on	11	MR BIZOS SC: Yes, the view of Mr
12 the board that suggest that the task force and TRT were	12	Hendrickx is that there was no written comprehensive plan.
13 more than POP, because when I was there POP members were	13	The final plan was decided at some time, 3 o'clock in the
14 more than the other units that were there.	14	afternoon, no written plan was made available. It was an
15 CHAIRPERSON: Mr Bizos, it is now one	15	ad hoc thing. That is the criticism of Mr Hendrickx.
16 o'clock, may I suggest that we take the lunch adjournment,	16	CHAIRPERSON: Colonel Merafe, perhaps I
17 during the lunch adjournment you get the figures, to help	17	can add something before you answer the question. The
18 him with the figures that he has asked for and you can put	18	evidence of Brigadier Calitz was that at the 6 o'clock
19 them as soon as we resume. Are you almost done? Alright,	19	meeting in the morning, the JOCCOM meeting, it was decided
20 well, it is one o'clock now, you can almost do it, you can	20	that if the strikers didn't lay down their weapons, as had
21 finish just after lunch, alright, unless you want to finish	21	been indicated they might do, or rather in case they didn't
22 now, I'm in your hands? No, alright, let's take the lunch	22	lay down their weapons a contingency plan should be drafted
In I Print the Trial V	23	to deal with the situation, and he said it was expected
23 adjournment then and you can reconsider the position then.	1	
 adjournment then and you can reconsider the position then. [COMMISSION ADJOURNS COMMISSION RESUMES] 	24	that Colonel Scott would do that. Colonel Scott didn't do
	24 25	that Colonel Scott would do that. Colonel Scott didn't do it. Colonel Scott told us he couldn't remember what he did

Page 2224 Page 2224 Page 2224 1 on the Thursday monning, but by the time the moding wass 1 obsorting, in fact, summarising/obsorting correctly the 2 ideasi in his head of what could be done, but no more than 4 Amswer, Mr Chalman. 3 ideasi in his head of what could be done, but no more acked 6 couldet. It MR BIZOS SC: Trank you. We await the 4 ideasi in his head by the Provincial Commissioner the 6 couldet. It MR BIZOS SC: I was the in the bit in methore displayed we acked 6 exectually put phis hand and methore displayed we acked 1 i was challed with a we anything on paper and the JOCCOM. 10 side, go shoud, and If was deided that head Brigdefer 10 with the standing order. 12 relating 10 crowd management are. Am I right? 12 Le didn't have time, he said, to have anything printed. 12 colloped and particularly the sanding orders 12 14 been prepared for the previous plan, which is a different 16 that the posto appointed by the Gencal, talling us down and we didn't tally wore much about the sanding orders, was not given that as knowedge 16 that meres a document thick a different 16 we didm't rally wore with abo			I	
2 called, the special meeting at half past 1, he had some 2 point that's been made, ME BIZOS SC: Thank you. We await the 3 ideas in his head of what could be done, but no meet than ME BIZOS SC: Thank you. We await the 4 answer, MC Chairman. 5 COLONEL MEARE: If after all the 5 than, what do we do. Ne-one said anything, and he 6 reasone, Chairperson, the plan was on put in writing, then 6 eventually put up his hand and mentioned the thoughts that 6 Ferearce, Chairperson, the plan was on put in writing, then 10 said, go absed, and it was decided that he and Brigdler 10 with the standing order 10 12 14 He bad nothing on his campule except the diagram which had 10 WB ILOS SC: Yes in was a batalion hare 15 thing, and he said he went to see the units and he showed 14 MR BIZOS SC: Wake as abuation hare 16 the and nothing on his campule except the diagram which had 14 MR BIZOS SC: Wake as abuation hare 17 was in, Nith he was in, and he showed them on the screen of 16 He had moto the done meeting withis a ditharorat 18	1		1	
3 ideas in his head of what could be done, but no more than MR BIZOS SC: Thank you. We avail the 4 answer, Mr Chairman. COLONEL MEART: If effer all the 5 decided that, was said by the provincial Commissioner the is call, gain advailing, and he is result and the end one dimensioner the 8 eventually put up his hand and mentioned the thoughts that Phe had, but he dinch have anything on paper and the JOCCMM 9 opportunity to depart for a moment, one we are dealing 10 said, ga adhad, and it was detided that he and lightafer Prectorius would then their the various units at half past 11 them what had to be done. the sinding order. You see a good knowledge 12 14 beam prepared for the previous plan, which is a different 13 beam prepared for the previous plan, which is a different 14 the sinding order. You see a solution here 15 this taplog what had to be done. 16 the sinding order. You see a solution here 17 wet the you see to be the sinding order. You see a solution here 16 the sinding order. You see and you here as the wet the anong orders. You see assolution the solution the mathere solution here 16 the sinding order. Y				
4 Inst. and he then was – when it was, all the modeling it was 4 answer, Mr Chairman. 5 decided that, was said by the Provincial Commissioner the 5 COLONEL MERKE: If after all the 7 then what do we do. No-one said anything, and he 5 COLONEL MERKE: If after all the 8 eventually put up the hand and mentioned the thoughts that 7 If agree with the criticism. 9 eventually put up the hand and mentioned the thoughts that 8 MR BIZOS SC: Yes. I want to take this 10 said, go abeed, and it was decided that he and Prigader 10 of what the saiding orders. 10 of what the saiding and was not put in write had 12 2. He iddn't have three, he said, to have anything printed. 11 MR BIZOS SC: Yes. I want to take this 13 He had nothing on his computer except the diagram which had 14 MR BIZOS SC: What was a shaling norters 14 mask in With he was in, and he showed them on the screen of this propower to the the said ocument which contains 16 he diaft ranke the saids, or yona 12 hed that was in. 16 he diaft ranke was introduced about the standing orders. 14 antin was in. 16 he diaft ran				-
5 decided that, was said by the Provincial Commissioner the 5 COLONEL MERAFE: If after all the 6 textical option had to be implemented people were askid Figure 2014 8 eventually put up his hand and mentioned the thoughts that 8 9 be had, but dott Tawes unis, as anything on paper and the JOCCOM 8 10 said, go ahcad, and It was decided that he and Brigador 9 11 be had point have time, be said, to be anything printed. 9 12 be diff have time, be said, how was hild, and fifterent 13 14 been prepared for the previous plan, which is a different 14 15 that had to be done. 16 16 the stapts would be. Those weren't there yet. He hadrid 16 16 the stapts would be. Those weren't there yet. He hadrid 16 17 written operational plan for stage 3 at all, that for some 20 12 written operational plan for stage 3 at all, that for some 20 13 written operational plan for stage 3 at all, that for some 21 14 written operational plan for stage 3 at all, that for some 22 15 off the urititizem, that there warsono 25				-
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	Page 27326		Page 27328
1	COLONEL MERAFE: In the Roots meeting I	1	Colonel, your Commissioner, National Commissioner, our
2	was there for a week.	2	National Commissioner is recorded as having said on a
3	MR BIZOS SC: For a week?	3	document which we will produce a little later, that the
4	COLONEL MERAFE: Correct, Chairperson,	4	police is a family. Were you there when she said that?
5	and again I went for a day with the experts, the police	5	COLONEL MERAFE: [African language]
6	experts.	6	police is a family, as the National Commissioner of the
7	MR BIZOS SC: Did you make a contribution	7	police, I am falling under that very same family.
8	in the discussions at Potchefstroom?	8	MR BIZOS SC: Sorry?
9	COLONEL MERAFE: I did, Chairperson, yes.	9	COLONEL MERAFE: As if she says the
10	MR BIZOS SC: Was the issue of what did	10	police are a family and she is the National Commissioner of
11	we do right and what we may have done wrong at Marikana one	11	Police, I fall in that family. I am part of her children,
12	of the issues?	12	members of the police force.
13	COLONEL MERAFE: Chair, what happened is	13	MR BIZOS SC: But you see, being member
14	everybody came and told what part he or she played at	14	of a family doesn't mean that you are obliged to support
15	Marikana. We were divided into groups. Some was a group	15	the views of people that have said different things to you,
16	of General Mpembe, talking about the incident of the 13th,	16	than you.
17	and others were divided in other groups according to what	17	COLONEL MERAFE: I agree with you, Chair.
18	happened. But the question of what is it that we did wrong	18	MR BIZOS SC: If the National
19	and what is it that we did right, this was not discussed in	19	Commissioner is recorded as having said that the police
20	detail.	20	must be proud of what happened on the 16th, would you be in
21	MR BIZOS SC: It was not discussed?	21	difficulty to contradict her on that?
22	COLONEL MERAFE: To summarise, as a	22	[14:27] CHAIRPERSON: Mr Bizos, is it
23	trained policeman who is serving the community and there is	23	appropriate to ask the witness a question, is it going to
24	loss of life, I would not say the operation was a success.	24	assist us at all that we can write our report dealing with
25	MR BIZOS SC: Sorry, I didn't hear the	25	the terms of reference.
	Page 27327		Page 27329
1	Page 27327 last bit.	1	Page 27329 MR BIZOS SC: Yes.
1 2	-	1 2	MR BIZOS SC: Yes. CHAIRPERSON: To have his answer to that
	last bit. COLONEL MERAFE: I would not say the operation was a success.		MR BIZOS SC: Yes. CHAIRPERSON: To have his answer to that question? I can understand the sort of question in a
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1	Page 27330	1	Page 27332
1	Nkwanazi report was drawn.	1	paragraph 106 was necessary in the circumstances
2	CHAIRPERSON: Wasn't drawn, he was	2	irrespective of whether the deployment was planned as a
3	questioned –	3	defensive measure or an offensive measure and he goes on to
4	MR BIZOS SC: Was discussed –	4	say that the SAPS evidence was the warning to take place
5	CHAIRPERSON: And he gave his answer.	5	after the deployment of the wire but that the unexpected
6	MR BIZOS SC: Was discussed.	6	response of the crowd to the SAPS deployment prevented the
7	COLONEL MERAFE: It's correct, Chair.	7	SAPS from issuing a warning. What was clear was that there
8	MR BIZOS SC: Yes. We'll come to it but	8	were certainly no warning to the whole crowd that this was
9	let's finish with Mr Hendricks. Yes at page 101 paragraph	9	going to happen and he says whether it was a defensive
10	102 Mr Hendrickx is also concerned –	10	measure or an offensive measure didn't make a difference
11	CHAIRPERSON: Mr Bizos, I think you	11	there should have been such communication". Now how do you
12	should wait to give the operator an opportunity to put –	12	respond to that?
13	MR BIZOS SC: I'm sorry.	13	COLONEL MERAFE: It's true, Sir, that the
14	CHAIRPERSON: On the screen. What was	14	protestors should have been told before the deployment of
15	the page and what was the paragraph number?	15	the barbed wire that there was going to be barbed wire
16	MR BIZOS SC: It's page 46, Mr Chairman.	16	deployed. So I agree with the criticism.
17	CHAIRPERSON: And paragraph number?	17	MR BIZOS SC: There is a document in your
18	MR BIZOS SC: Paragraph 101 and 102.	18	handwriting, exhibit QQQ5, have we got it. Yes that's it,
19	CHAIRPERSON: That's now on the screen,	19	could you please turn to page 9. Because it's in your
20	yes.	20	handwriting and I think with the court's permission I would
21	MR BIZOS SC: He is concerned about the	21	ask you to please read to us the full statement made by
22	inadequacy of the briefing. Read it and tell us whether	22	General Phiyega on page 9 and continued with the top of
23	you agree or disagree.	23	page 10. Would you read it out please so that it can go on
24	CHAIRPERSON: Isn't this what we	24	record and be legible.
25	discussed shortly before the lunch adjournment. When I	25	COLONEL MERAFE: I will proceed in
	Page 27331		Page 27333
1	summarised the evidence for the benefit of the Colonel.	1	English, Sir. "Genera Phiyega we are carrying a huge
2	MR BIZOS SC: Yes.	2	responsibility. We represent SAP family. We owe it to
3	CHAIRPERSON: Which is paragraph, which	3	generations that comes after us as a team let us take
4	is in turn summarised here in the reports and he gave us	4	responsibility as SAPS. Embrace the responsibility. Our
5	his views on the matter and he said it after lunch now as	5	institution at stake, remember I was writing this as
6	well. I mean I don't know that you should ask him a third	6	personnel notes. I did not complete the sentences
7	time you might get a different answer or you won't.	7	sometimes. WE have the opportunity but it's how we use it.
8	There's no point in asking the question three times.	8	We got to the summit, we go to summit the mountain. It is
9	MR BIZOS SC: I want to read it together	9	a long journey. We are a family and must work together.
10	with page 47 and paragraph 105 that there was failure to	10	Have a capacity to advise each other. We are a leadership
11	communicate clearly with the crowd prior to the deployment	11	team. Feel free, let us build the presentation together
12	of the razor wire is also criticised by Mr Hendrickx. Can	12	and tell us story. We have a constitutional
13	you read that. Do you agree or disagree with Mr Hendrickx?	13	responsibility, videos of negotiations during the Marikana
14	CHAIRPERSON: Perhaps I, for the benefit	14	incident, was there a reason for, to fire a stun and
15	of those listening put the point to you as Mr Hendrickx	15	teargas. Illegal march and armed people. Closure, what
16	makes. You remember, you weren't there of course but the	16	did we do right, what did we do wrong. Wearing of bullet
17	evidence, you are a POP expert. So that's why you've been	17	proof vests, why shooting few rubbers vis-à-vis sharp
18	asked the question. "The evidence indicates that the	18	ammunition. The press conference, the role of the
19	barbed wire barrier you know that was uncoiled from the	19	negotiator, gas mask, briefing to go to Marikana and the
20	barbed wire trailers to make the barrier between the	20	training that the members have". I don't know whether
21	strikers on the one side and the police and the media on	21	should I continue with the minutes that follow.
22	the other that was done without telling the crowd as such	22	MR BIZOS SC: To page 10 please.
23	that it was going to be done. They weren't given prior	23	COLONEL MERAFE: Oh page 10, the 10th of
24	notification it was being done and what Mr Hendrickx says,	24	September. "Meeting at Marikana JOC.
	he thinks that communication with the crowd, this is	25	MR BIZOS SC: Oh is that not, is that not
A	RCHIVE FOR JUSTICE		

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1	Page 27334	-	Page 27336
1	the, it's –	1	COLONEL MERAFE: It is correct, Chair.
2	CHAIRPERSON: That is something	2	MR BIZOS SC: Was that the last day at
3	different.	3	Potchefstroom?
4	MR BIZOS SC: If it's different.	4	COLONEL MERAFE: No, it wasn't the last
5	CHAIRPERSON: [inaudible, microphone	5	day, Chair.
6	off].	6	MR BIZOS SC: No. But now by the time
7	MR BIZOS SC: I'm sorry I –	7	the speech was made by the Commissioner there were
8	CHAIRPERSON: [Inaudible, microphone	8	allegations of improper conduct by the police on,
9	off].	9	throughout the period of the Marikana, what has become
10	MR BIZOS SC: Yes, no. It wasn't clear	10	known as the Marikana Massacre.
11	to me. I thought that it was finished with a line on the	11	COLONEL MERAFE: I hear what you say,
12	next page.	12	Sir.
13	CHAIRPERSON: [Inaudible].	13	MR BIZOS SC: On the concessions that you
14	MR BIZOS SC: Well if that is what you	14	have made before the Commission you couldn't have been
15	recorded we'll leave it there. Were you there, obviously	15	happy with the complete exoneration claimed by senior
16	you were there because you wrote down what the Commissioner	16	police officers that nothing wrong was done by the police
17	said.	17	on the 16th. You couldn't have been happy with it, having
18	COLONEL MERAFE: That's true, Sir.	18	regard to your evidence.
19	MR BIZOS SC: Yes. Did you yourself	19	COLONEL MERAFE: Chair, I wasn't happy.
20	express any reservations about what happened in the	20	As it is I am not happy, I haven't been claimed to be happy
21	presence of the Commissioner?	21	at any stage.
22	CHAIRPERSON: I take it you mean the	22	MR BIZOS SC: I'm sorry, I can't hear
23	Commissioner, I think you mean Commissioner, you mean the	23	you. It's not your fault but my age.
24	National Commissioner?	24	COLONEL MERAFE: Thanks, I appreciate
25	MR BIZOS SC: The National Commissioner.	25	that. I have not been happy, I wasn't happy, I have not
			·····
	Page 27335		Page 27337
1	CHAIRPERSON: Did you express any	1	been happy even now I am not happy.
2	reservations about what had happened in the presence of the	2	MR BIZOS SC: Did you express your
3	National Commissioner, that's the question.	3	unhappiness to anyone above your rank?
4	COLONEL MERAFE: I did mention something	4	COLONEL MERAFE: I am being questioned
5	in the presence of the National Commissioner, Chair.	5	about things that I really do not understand much. What
6	MR BIZOS SC: What did you say?	6	I'm saying is that I'm unhappy because there was a loss of
7	COLONEL MERAFE: I was talking of	7	life.
8	training.	8	MR BIZOS SC: I'm sorry, Mr Interpreter.
9	MR BIZOS SC: You were talking of?	9	COLONEL MERAFE: I am saying I am not
10	COLONEL MERAFE: That the police should	10	happy because there were deaths. There was loss of life.
11	be trained to deal with, that the training should also	11	MR BIZOS SC: Yes.
12	involve training of the members to deal with different	12	CHAIRPERSON: The witness is actually
13	kinds of terrains like mountains and so on. One of the	13	distressed at the moment. We'll take an adjournment and
14	things that I remember saying, Mr Chair. Some of, one of	14	when he has recovered we will resume.
15	the things I mentioned was because of the shortage of this	15	[COMMISSION ADJOURNS COMMISSION RESUMES]
16	equipment at Marikana I mentioned that there should be	16	[14:57] CHAIRPERSON: The Commission resumes.
17	additional videos and other equipment. Yes, those were	17	When we were in chambers Ms Baloyi came to see us and said
18	some of the Merafe inputs.	18	she wished to move an application.
19	MR BIZOS SC: Did you know, do you know	19	MS BALOYI: Thank you, Chair.
20	the date of this meeting by the way where you recorded it?	20	Chairperson, I am applying and seeking a leave that the
21	COLONEL MERAFE: If the page would be	21	witness be allowed to stand down in the light of his
22	taken down I'll show you the date. Down, I say down, not	22	distress, for the rest of the afternoon, and he be allowed
22	up. Yes the date was the 6th, up there, 2012 September 6th.	22	to resume his evidence, or his examination tomorrow
20			
	MR RIZOS SC - Ry then you had heard	11	
24	MR BIZOS SC: By then you had heard	24 25	CHAIRPERSON: Colonel we can see that
24 25	MR BIZOS SC: By then you had heard reports of what was said happened on the 16th?	24 25	CHAIRPERSON: Colonel, we can see that

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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 MERAFE: 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 MERAFE: 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	Mpofu, who is going to examine the witness tomorrow, and I
25	have no further questions.
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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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