

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 220

23 APRIL 2014

PAGES 27070 TO 27225



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1 [PROCEEDINGS ON 23 APRIL 2014]
 2 [09:13] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 OMPHILE JOSEPH MERAFA: (s.u.o.)
 5 CROSS-EXAMINATION BY MR WESLEY (CONTD.):
 6 Thank you, Chair. Colonel, you and I did a bit of
 7 homework. The first matter which I'd like to address is
 8 exhibit Z1 and if you can just confirm that what I'm saying
 9 is correct. We sat this morning, you and I, and we went
 10 through exhibit Z1 and we counted shotguns that could be
 11 seen to be carried on the video by SAPS members at the
 12 scene by the railway line on the 13th of August.
 13 COLONEL MERAFA: That's correct, Chair.
 14 MR WESLEY: And we agreed on a figure,
 15 after some debate, on 16, 16 visible shotguns.
 16 COLONEL MERAFA: It is correct.
 17 MR WESLEY: There was also a question –
 18 CHAIRPERSON: You're both giving evidence
 19 at the same time, can I ask both of you this question? At
 20 what time, what stage of the operation, as it were, were
 21 these 16 shotguns visible?
 22 MR WESLEY: Chair, the time period that
 23 we looked at on exhibit Z1, on the video it runs from nine
 24 minutes all the way through to 23 minutes and 29 seconds.
 25 So we're using that as the reference of the time period

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1 that we have covered, so it is – that's more or less in the
 2 middle of the operation, well, not in the middle of the
 3 operation, that's – let me put it to you this way, Chair,
 4 23 minutes and 29 seconds, that, what one sees at that
 5 moment – you'll remember, Chair, it's the scene where the
 6 crowd has come around a rock and they are entering the
 7 field and there's a SAPS member who is standing in front of
 8 them with a shotgun which he's pointing at them. That is
 9 the last moment that the video runs at the scene by the
 10 road and that is the last shotgun that we in fact counted,
 11 so it's in that period of time.
 12 CHAIRPERSON: Yes, but at what stage does
 13 it start? You give us nine minutes but is General Merafe –
 14 sorry, General Mpembe still addressing the people?
 15 MR WESLEY: Yes, it's before his address.
 16 CHAIRPERSON: Has he started counting
 17 yet?
 18 MR WESLEY: Yes.
 19 CHAIRPERSON: As they arrive at the scene
 20 –
 21 MR WESLEY: At nine minutes, that's when
 22 we started counting. The General is giving his, he is
 23 starting his talk to the crowd at that point in time.
 24 CHAIRPERSON: Okay.
 25 MR WESLEY: And one sees, the first thing

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1 one sees is members starting – well, one begins, when you
 2 begin there are no members visible on the left of the video
 3 by the railway line and then one sees, as the video
 4 progresses, NIU members and some POP members start to
 5 spread themselves out down the line –
 6 CHAIRPERSON: Ja.
 7 MR WESLEY: - and later on members, POP
 8 members join at the back of the crowd.
 9 CHAIRPERSON: Yes. Now, in a minute I'll
 10 ask you to confirm what Mr Wesley is saying because he's
 11 not under oath, you are, but at what stage is it said that
 12 some of the members may have put their shotguns in the
 13 vehicles? Is it after the period that you watched on the
 14 video?
 15 MR WESLEY: We looked at the video – I
 16 said, Chair, we ran from nine minutes through to 23 minutes
 17 and 29 seconds. At 20 minutes and 59 seconds into the
 18 video there is a short clip where one sees General Mpembe
 19 on the cell phone. He is surrounded by four members. They
 20 are standing from left to right, it's General Mpembe, then
 21 there is a Lonmin person whom the Colonel, he cannot
 22 remember his name, he has his back to the camera, then it
 23 is Lieutenant-Colonel Merafe and then it is Captain Diole,
 24 if I'm not mistaken that's his rank, it's Captain Diole.
 25 The Colonel says at that time, that is when he confronted

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1 General Mpembe and he uttered the words, he's the senior
 2 POP commander, he'll be taking over and it's at that time
 3 that the Colonel, the General would have said, no, he
 4 doesn't want another Tatane incident and that is then when
 5 some members went and put shotguns back in the vehicles.
 6 Colonel, is that correct? Is that correct?
 7 COLONEL MERAFA: Chairperson, it is so.
 8 COMMISSIONER HEMRAJ: Mr Wesley, is there
 9 not a break in this, in the video just before we see
 10 General Mpembe on the telephone?
 11 MR WESLEY: Yes.
 12 COMMISSIONER HEMRAJ: There is a break in
 13 the video?
 14 MR WESLEY: Yes.
 15 COMMISSIONER HEMRAJ: And the second
 16 point is, do we know that all the POP members were captured
 17 by the video?
 18 MR WESLEY: No. That's one thing the
 19 Colonel is going to explain. Colonel –
 20 MS BALOYI: Chairperson, it would
 21 certainly be helpful to me if we could see the video. I'm
 22 having to try – I wasn't part of this exercise, as would be
 23 expected, and I'm trying to place things as Mr Wesley is
 24 speaking. I'm trying to picture it in my –
 25 CHAIRPERSON: That seems a reasonable

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1 request. Mr Wesley, do you intend showing the video
 2 because if you don't intend it, maybe you will change your
 3 intention?
 4 MR WESLEY: Yes, I've absolutely no
 5 objection to showing the video but may I just say that SAPS
 6 were invited to attend this meeting this morning that I had
 7 with the Colonel. There was an invitation extended.
 8 MS BALOYI: Chairperson, my attorney did
 9 sit in. I didn't sit in deliberately and I would like it -
 10 CHAIRPERSON: No, I think you acted
 11 properly in not sitting in and I think your attorney acted
 12 sensibly in sitting in, so both of you escape without any
 13 criticism. Mr Wesley also escapes without criticism also.
 14 So now that we've got that straight, would you like to
 15 start asking your questions?
 16 MR WESLEY: Yes.
 17 CHAIRPERSON: But wht I'm interested in,
 18 these 16 – apart from the 16th one which is the man near the
 19 rock – were the other firearms, shotguns seen prior to this
 20 gap in the video?
 21 MR WESLEY: Some of them are seen prior
 22 to the gap but we need to complete the whole picture. The
 23 other thing the Colonel had to do was get the number of
 24 members that were at the scene and this will explain and
 25 put into context the number of shotguns that we see. If I

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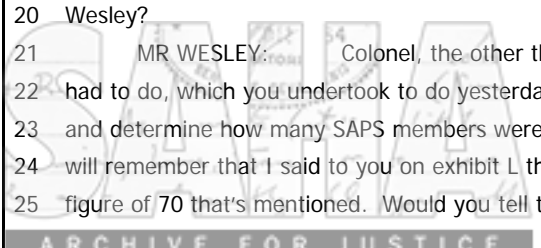
1 can ask him some questions –
 2 CHAIRPERSON: I'm just trying to get
 3 something clear in my mind. I think the point is, by the
 4 way, wasn't the evidence that Botes was the man from
 5 Lonmin? Maybe the Colonel doesn't know but I seem to
 6 remember we were given the name of the person from Lonmin
 7 who refused to bring an interpreter along, remember?
 8 MR WESLEY: Yes. I do suspect it was
 9 Botes. Oh no, it was Blaauw, sorry.
 10 COMMISSIONER HEMRAJ: Blaauw.
 11 MR WESLEY: Blaauw.
 12 CHAIRPERSON: Anyway, the witness doesn't
 13 know but when Mr Van As comes he can confirm it. He is
 14 here. Mr Van As, it was Mr Blaauw, was it not?
 15 MR VAN AS: I haven't seen the video but
 16 to the best of my recollection it was Mr Blaauw who was
 17 with the SAPS on the Monday, Mr Commissioner.
 18 CHAIRPERSON: There is assurance awaiting
 19 you, you're going to see the video. Shall we carry on, Mr
 20 Wesley?
 21 MR WESLEY: Colonel, the other thing you
 22 had to do, which you undertook to do yesterday, was to go
 23 and determine how many SAPS members were deployed. You
 24 will remember that I said to you on exhibit L there's a
 25 figure of 70 that's mentioned. Would you tell the

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1 Commissioners what it is that you found?
 2 COLONEL MERAFAE: I did what I was asked
 3 to do, Chairperson. On the 13th of August 2012 in the
 4 morning, 40 from Rustenburg composed of the main unit and
 5 the satellite unit were 40, were joined by 15 from the POP
 6 in KwaMhlanga, nine from the POPS Pretoria, six from
 7 Pretoria/Johannesburg and seven from East Rand. The total
 8 figure of members – there were 77 members of the POP
 9 deployed at the railway crossing in the Karee Mine area.
 10 There were 15 NIU members and members of the TRT were 11.
 11 We were later on joined by four members from the air wing.
 12 The total number was 107 members on the 13th of August 2012,
 13 Chairperson. Supporting document, HHH28, exhibit HHH28
 14 page 13, that is the exhibit number where I refer to,
 15 Chairperson, and also the SAP15s of the particular day, Mr
 16 Chairperson.
 17 MR WESLEY: Colonel, now I'm asking these
 18 questions to be fair to you. We went through the video,
 19 where were – you tell the Commissioners, if one takes that
 20 you are standing in front of the crowd looking at the
 21 crowd, that's more or less the angle that the video is
 22 taken from, where were the POPS members distributed?
 23 COLONEL MERAFAE: My members were behind
 24 us, some of them standing behind the protesters. Eight of
 25 them were along the railway crossing together with members

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1 of the NIU.
 2 MR WESLEY: So it's fair to say that a
 3 fair number, we can't get an exact figure but a fair number
 4 of POP members are not in fact visible on the video.
 5 COLONEL MERAFAE: It is so, Chairperson,
 6 because they were inside the Nyalas that were parked behind
 7 us.
 8 MR WESLEY: Chair, now I'm in a quandary.
 9 I don't intend to in fact take the Colonel through exhibit
 10 Z1. What we know now from Z1 is that one can count, we've
 11 agreed, 16 shotguns but we also know, as the Colonel has
 12 explained, that a large number of POP members were behind,
 13 some were in front, behind him so they're not visible to
 14 the eye. The video in fact doesn't take the point that I
 15 was making any further and I don't intend myself to take it
 16 any further.
 17 CHAIRPERSON: Ms Baloyi, if Mr Wesley
 18 isn't going to use the video to take the point further you
 19 don't have to look at it at this stage, do you agree with
 20 that?
 21 MS BALOYI: Yes, Chair, if he's not
 22 taking that point, he's not going to use that point at all,
 23 the statements that he made earlier, I'm happy for him to
 24 do that.
 25 CHAIRPERSON: No, so we can proceed



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1 without the video. We've seen the video before and most of
 2 us have it on our computers so if we want to do that
 3 privately, we can do that.
 4 MR WESLEY: Yes, that was one of the
 5 earlier exhibits, Chair. Might I just correct, it's not
 6 not taking the point at all, it's not taking it any
 7 further.
 8 COMMISSIONER HEMRAJ: Mr Wesley, how many
 9 POPS members are visible as opposed to 16 shotguns? Are
 10 you saying 50 of them with only 16 shotguns or 16 persons
 11 with 16 shotguns?
 12 MR WESLEY: We see 16 persons with 16
 13 shotguns whom we identify as POP members who can be seen.
 14 COMMISSIONER HEMRAJ: So there aren't any
 15 POPS members without shotguns?
 16 MR WESLEY: No, there are. There are
 17 POPS members without shotguns, there's one or two –
 18 COMMISSIONER HEMRAJ: How many?
 19 MR WESLEY: We can, I can do the figure.
 20 Let me do that exercise, I'll do it with the Colonel and
 21 we'll come up with a figure there. There's also POPS
 22 members, one or two who for instance don't have a helmet
 23 on, they've got a cap. They seem to be dressed in various
 24 stages but I'll do that exercise then with the Colonel.
 25 Colonel, you understand we're going to then, we'll sit with

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1 the video and –
 2 CHAIRPERSON: [Microphone off, inaudible]
 3 important, I mean the real point, as I understand, relates
 4 to the POP people who haven't got shotguns.
 5 MR WESLEY: Ja.
 6 CHAIRPERSON: Now I'm pleased to hear
 7 that we confirm that 16 we see with shotguns but the real
 8 question always has been, how many haven't got shotguns?
 9 Now obviously you can't say in respect of the POP members
 10 we can't see at all, but a key question is how many POP
 11 members can be seen without guns at a time prior to any
 12 suggestion that they were put away in the vehicles?
 13 Anyway, that's going to be the subject of further
 14 investigation.
 15 MR WESLEY: We will do that exercise,
 16 Chair. Colonel, if we can then move on. We finished off
 17 yesterday with the plan I showed you that – on QQ2 you
 18 discuss disarming the people because we have them cornered
 19 there. In QQQ1 paragraph 13.5 you suggest dispersing and
 20 disarming the marchers. Now, Major-General Mpembe admitted
 21 that when the SAPS deployed to that scene, SAPS didn't have
 22 a plan that they wanted to execute at the railway line. Do
 23 you confirm that?
 24 COLONEL MERAFFE: It is so, sir, that what
 25 happened there was not planned.

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1 MR WESLEY: And it follows if SAPS didn't
 2 have a plan, that the members who attended the scene
 3 weren't briefed on a plan, what they were going to be
 4 doing.
 5 COLONEL MERAFFE: Chairperson, if
 6 something happens in the area, there is what we usually
 7 call a contingency plan. It's a plan that we have ready so
 8 that we can tell the police what it is that they are going
 9 to do when they go on such an errand. I have mentioned,
 10 Chairperson, that when I paraded them in the morning, my
 11 members, I briefed them. There is no such thing that they
 12 just went there unbriefed.
 13 MR WESLEY: But in the morning you didn't
 14 know that this march was going to happen so you couldn't
 15 have briefed them on what you were going to be doing later
 16 that day on the railway line?
 17 COLONEL MERAFFE: The duty of the police
 18 there, Mr Chairperson, was general crime prevention duties.
 19 I told the police that they would be meeting people that
 20 are armed that would be roaming the streets, they were sent
 21 out to do patrols on the street and to keep a proper
 22 lookout, which means anything that would appear along their
 23 duties on the road, they would be prepared, they were
 24 prepared for it.
 25 COMMISSIONER HEMRAJ: They weren't

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1 briefed to do a dispersal later on that day?
 2 COLONEL MERAFFE: Chairperson, the
 3 operational commander was the person to take the decision
 4 on operation mode at the time this happened.
 5 CHAIRPERSON: That's not an answer to the
 6 question. The question is, were the members briefed that
 7 morning that they might have to perform a dispersal
 8 operation?
 9 COLONEL MERAFFE: No – no, they were not
 10 briefed that way, Chairperson.
 11 CHAIRPERSON: What exactly was the
 12 briefing? I understand you say they were told they must do
 13 crime prevention duties, they must go along the roads, look
 14 out for people who are carrying dangerous weapons and deal
 15 with them but was anything else said to them by way of a
 16 briefing before you people set out with General Mpembe to
 17 that place near the railway line?
 18 COLONEL MERAFFE: When we got word that
 19 there were these people marching from Karee Mine, Mr
 20 Chairperson, we did not have time, sufficient time to brief
 21 the police about it.
 22 COMMISSIONER HEMRAJ: Do I understand
 23 that when the operational commander would take a decision
 24 to disperse, that the members would then be briefed?
 25 COLONEL MERAFFE: They will actually be

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1 told what to do by then.

2 MR MAHLANGU: Chairperson, as he says,

3 they will be told by then what to do.

4 COMMISSIONER HEMRAJ: That will be a

5 briefing.

6 COLONEL MERAFAE: When you don't know what

7 is going to happen, you can't brief people about what is

8 going to happen because you don't have a clue of what is

9 going to happen. So the briefing that we have, it's in the

10 morning people are parading, we tell them, we prepare them

11 mentally and otherwise that guys, we are going out there.

12 Out there, there are people that are having dangerous

13 weapons. Those people should be armed when they are seen,

14 we are not saying to them there are groups of people that

15 are gathered somewhere because that information did not

16 come to us, we don't have it at all. So we can't predict.

17 COMMISSIONER HEMRAJ: Yes, Colonel. The

18 question was, when the operational commander would have

19 taken the decision to disperse, it would be at that stage

20 that they would get a briefing.

21 COLONEL MERAFAE: That's correct,

22 Chairperson.

23 COMMISSIONER HEMRAJ: Now what about the

24 time constraints about briefing? Would the members simply

25 understand that if you said to them you were going to

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1 disperse this crowd, or would you need to spell it out?

2 COLONEL MERAFAE: In my evidence,

3 Chairperson, I explained that the POP members are trained

4 in these tactics. When they speak of dispersal they know

5 what it is, when we speak of a block they know what it is.

6 When I talk about canalising, they know exactly what is

7 canalising all about. So it won't take us even five

8 minutes to know what formation we should be in, in order

9 for us to act accordingly.

10 [09:33] COMMISSIONER HEMRAJ: Yes, thank you.

11 CHAIRPERSON: There are two things I

12 don't understand. My understanding is that the fact that

13 there was this group of marchers coming back from Karee was

14 picked up in the JOC by looking at the closed circuit TV,

15 that's correct, isn't it?

16 COLONEL MERAFAE: Correct, Chairperson.

17 CHAIRPERSON: And the decision was taken

18 by General Mpembe to take a group of people to deal with

19 them. That's right too, isn't it?

20 COLONEL MERAFAE: Correct, Chair, but not

21 forgetting the fact that other members in the morning

22 already were already deployed down there at Wonderkop and

23 at Karee. We were having members on the ground.

24 CHAIRPERSON: Yes. No, I understand, I'm

25 interested in what happened at the railway line. Now at

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1 what time approximately, as far as you can remember, was

2 this group of marchers seen on the closed circuit TV in the

3 JOC?

4 COLONEL MERAFAE: Past 11, Chair.

5 CHAIRPERSON: At time did General Mpembe

6 and the others, including you, leave the vicinity of the

7 JOC to go to the railway line, to the place near the

8 railway line?

9 COLONEL MERAFAE: It was immediately, we

10 did not even spend 10 minutes after they were seen but

11 according to us it was a crisis that was happening. We

12 were also afraid that these people might reach the informal

13 settlement before we stop them so it was a crisis of, you

14 get members, you go and stop those members.

15 MR MAHLANGU: He said it was immediately,

16 Chairperson, it did not even take 10 minutes after these

17 people were seen on TV – and then he further explained in

18 English.

19 CHAIRPERSON: Thank you, I understood the

20 Tswana as he gave it. Now approximately what time did you

21 arrive at the area near the railway line and meet up with

22 this group of marchers?

23 COLONEL MERAFAE: From Lonmin, eight

24 minutes, Chairperson.

25 CHAIRPERSON: Thank you. Yes, Mr Wesley?

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1 MR WESLEY: Colonel, if I can just pick

2 up from what Commissioner Hemraj in fact asked you about

3 briefing the members and we're talking theory here. Where

4 you were standing facing the crowd and you told Major-

5 General Mpembe you are taking control, let's assume that he

6 says yes, I'm standing back and you then decide we must do

7 a dispersal, you have members who are behind the crowd from

8 where you're standing. The crowd is in front of you, you

9 have POP members behind the crowd. You have NIU and POP

10 members to the left of the crowd on the other side of the

11 railway line and you have other members, including POP

12 members, behind you in Nyalas and standing around Nyalas.

13 How are you going to tell those members where they must go

14 and what they must do? Practically, how does one do that?

15 How would you do it?

16 COLONEL MERAFAE: Chairperson, we have

17 what we call section commanders. They are the people that

18 assist the operational commander to brief the people under

19 their command. I call the section commanders to tell them

20 what it is that is going to happen in order for them to go

21 and brief their members, whilst I am talking to the

22 protesters.

23 MR WESLEY: So the section commanders

24 must come to you, you brief them and then they must return

25 to the members and brief the members about what it is

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1 that's going to happen?

2 COLONEL MERAFAE: Ja, but not necessarily

3 be coming to me because we've got radios, we communicate

4 through the radio. I will talk to the members at the rear

5 through the radio to say now we are going to do one, two,

6 three, prepare your members, then they will do it.

7 MR WESLEY: Now I understand. Now, SAPS

8 could be criticised that SAPS wasn't in fact prepared to

9 execute any plan at the scene, at the scene at the moment,

10 let us say just prior to the moment when the crowd stood

11 up, take that as the moment. And I want to – there are

12 seven reasons why I say that. One I'm going to reserve

13 because it concerns the equipment that the POP members were

14 wearing and we're going to clarify that, but there are six

15 other reasons I say why SAPS weren't properly prepared to

16 exercise or do a crowd control operation. The first one is

17 that after having received the figures from you, you had 30

18 non-POP members who were at the scene who weren't properly

19 trained or who aren't properly trained in public order

20 policing. Some of them may have incidentally received some

21 training at some point in time but you've got 30 non-POP

22 members who'd have to take part in the operation, 30 out of

23 107 and the 107 includes four air wing, so let's take 30

24 out of 103, leave the four air wing aside. 30 of the 103

25 police members who would have to execute the operation are

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1 not POP. Do you agree with me, that's a problem?

2 COLONEL MERAFAE: It is so, Chairperson,

3 yes but they knew what their role would have been.

4 MR WESLEY: I've conflated the first two.

5 One is that they're not POP members but secondly, they are

6 not specifically trained for public order policing.

7 COLONEL MERAFAE: Yes, Chairperson.

8 MR WESLEY: And they're not specifically

9 equipped for public order policing like a POP member is.

10 COLONEL MERAFAE: It is correct, sir.

11 MR WESLEY: And you didn't have, not just

12 a detailed plan, you didn't have a plan at all.

13 COLONEL MERAFAE: I have that explained

14 that, I don't think I have to explain again why there was

15 no plan.

16 MR WESLEY: And we know how things work

17 out on the day, members were in fact not briefed, nobody

18 went to the members and said this is what we're going to be

19 doing now.

20 COLONEL MERAFAE: It is so, Chairperson,

21 though the question is a bit confusing, I don't really

22 understand it clearly.

23 MR WESLEY: Nobody went – you've

24 explained the briefing that would have occurred. You call

25 second commanders together, sometime you'd brief them, they

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1 would receive a briefing while maybe the crowd is being

2 addressed, others might receive instructions via radio, the

3 fact is that didn't happen.

4 MS BALOYI: Chairperson, objection to the

5 question. We know from the evidence that what was decided

6 on that day was to escort the strikers. Now when Mr Wesley

7 proceeds on a line that there was no plan, there was no

8 briefing, the things that the Colonel has described didn't

9 happen, I'm not clear whether it is in respect of a plan to

10 disperse, which decision was never made. I need to be

11 clear, Chairperson, to be able to follow and to know what

12 we need to meet, at least in re-examination or in argument.

13 CHAIRPERSON: I think there's some

14 substance in that point.

15 MR WESLEY: Yes –

16 CHAIRPERSON: I understood his evidence

17 to be that if he'd been in charge he would have given an

18 order to disarm and so on. He would then have got his

19 commanders to do the necessary briefing, which would have

20 been very short because he was simply going to tell the

21 members to do what they are trained to do and use a couple

22 of the key words which would have activated in their minds

23 all the training that they'd received. That's basically

24 his evidence, is that right?

25 COLONEL MERAFAE: Correct, Chairperson.

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1 MR WESLEY: I'm not challenging the

2 objection. I can in fact clarify it with the witness.

3 CHAIRPERSON: So the objection is upheld,

4 carry on.

5 MR WESLEY: Colonel, General Mpembe, his

6 instruction that we are going to escort the strikers, when

7 the General we will escort them, are the section commanders

8 told this or are they in the area and given this

9 instruction and do they then go and brief other members and

10 are other members told by the radio, this is what we're

11 going to be doing, we're going to be escorting them?

12 COLONEL MERAFAE: Chairperson, when

13 General Mpembe said that, the unit commanders of the TRT

14 and the NIU were next to him and they told the other

15 commanders what was going to be done.

16 MR WESLEY: And the POP –

17 COLONEL MERAFAE: POP Rustenburg, myself I

18 was there, Colonel Tsiloane from Pretoria as a commander of

19 Gauteng POPS was there – so everyone knew what's happening.

20 MR WESLEY: Everybody who was there knew.

21 Did you then go and relay that instruction to the members?

22 COLONEL MERAFAE: Through the radio,

23 Chairperson.

24 MR MAHLANGU: As said in English.

25 MR WESLEY: Okay, so that members did in

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1 fact receive the instruction so when I criticise and I say
 2 that SAPS, there wasn't a proper briefing, you say in fact
 3 there was sufficient briefing. Are you satisfied there was
 4 sufficient briefing of the members of the plan now to
 5 escort?
 6 COLONEL MERAPE: Certain things are
 7 referred to as instruction, Chairperson, like you would say
 8 to members we do this, you instruct. It's not giving them
 9 starting briefing. What was said to them was the
 10 instruction from the General that we are going to escort
 11 these people, it's an instruction.
 12 MR WESLEY: Okay but that raises more
 13 questions. So what the members are told, and we're dealing
 14 here with the instruction to escort the strikers, the
 15 protesters, the crowd, you're saying that the members are
 16 instructed, this is what we're going to do.
 17 COLONEL MERAPE: Correct, Chairperson.
 18 MR WESLEY: Are they told how you're
 19 going to be doing it, in other words what formation they
 20 must take up, where they must take up this formation, what
 21 route you're going to follow?
 22 COLONEL MERAPE: Yes, we told them,
 23 Chairperson, because the Nyalas which were moved in, on the
 24 side of the informal settlement came as a result of the
 25 instruction that protesters were being escorted. Now

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1 members of the police knew what to do when this is to be
 2 done and how it is to be done.
 3 MR WESLEY: How would they know where
 4 they must form up? I understand what you say about the
 5 Nyalas but the ordinary SAPS member, NIU member, TRT member
 6 who is standing around who gets, he receives an
 7 instruction, we are going to escort them. How is he going
 8 to know where he must go and where he must form up with his
 9 fellow SAPS members?
 10 COLONEL MERAPE: I have explained that
 11 the commanders of these members have responsibility of
 12 telling their members how we are going to move, escorting
 13 these people. I take it that since they were standing
 14 along the railway line with their members, they must have
 15 told their members this is how we are going to move along,
 16 taking these people to the koppie.
 17 MR WESLEY: You said you take it, you
 18 can't, you don't know as a fact what in fact was told to
 19 the individual members on the ground there?
 20 COLONEL MERAPE: It is so, yes.
 21 COMMISSIONER HEMRAJ: Colonel, what would
 22 have been the instruction that led to the formation of the
 23 line some distance behind the protesters?
 24 COLONEL MERAPE: Chairperson, the overall
 25 commander General Mpenbe – actually the operational

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1 commander by then was supposed to see to it that the
 2 formation following the protesters should, they must do,
 3 have at least a distance between themselves and the
 4 protesters, so that one was not my terrain.
 5 MR MAHLANGU: That one was not my
 6 terrain, it was for General Mpenbe who was the overall
 7 commander and then operational commander, to tell the
 8 people to be a distance away from these people.
 9 COMMISSIONER HEMRAJ: Yes, I understand
 10 you have the criticism about that distance but the question
 11 really was, what was the instruction that led to the
 12 formation of that line behind the protesters?
 13 COLONEL MERAPE: Basically we were
 14 escorting them, Chairperson, escorting means following
 15 people, directing them in a certain way, direction. So the
 16 instruction was we escort them, and that is basically what
 17 was happening.
 18 MR WESLEY: In QQQ2 paragraph 13, I'll
 19 read the sentence again, you say "Myself and other officers
 20 suggested that we disarm the people there and then because
 21 we have cornered them." Who are these other officers?
 22 COLONEL MERAPE: Colonel Tsiloane of POP
 23 Pretoria, Colonel Diole also agreed with me that we do the
 24 POP as they are supposed to. Officers of the POP who were
 25 also in the vicinity were in agreement that I take over the

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1 operation. That is why I say me and other officers.
 2 MR WESLEY: I agree. I've got Colonel
 3 Tsiloane, Colonel Diole. You mention other officers, can
 4 you give us any names?
 5 COLONEL MERAPE: Captain Thupe.
 6 MR WESLEY: Captain Thupe.
 7 COLONEL MERAPE: Captain Tsiloane of NIU.
 8 MR MAHLANGU: That is the one, Tsiloane
 9 of NIU.
 10 MR WESLEY: Yes?
 11 COLONEL MERAPE: I end there -
 12 MR WESLEY: Okay and they were all in
 13 agreement with what you were proposing.
 14 COLONEL MERAPE: I speak the truth, sir.
 15 MR WESLEY: Now in the documents that I
 16 asked you to look at, the tenth document is exhibit S,
 17 exhibit S. Now we've dealt with this before. I'll remind
 18 you, prior to this document the prevailing instruction was,
 19 exhibit T which was the letter from the National
 20 Commissioner of 20 December 2011, that was then withdrawn
 21 and this letter replaced it. This is the instruction that
 22 existed at the time of 13 August, this was the prevailing
 23 instruction, is that correct?
 24 COLONEL MERAPE: That is so, sir.
 25 MR WESLEY: If we can quickly go through

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1 it, I really don't want to spend –
 2 CHAIRPERSON: What was the date again? I
 3 can't see the date on the document.
 4 MR WESLEY: Chair, no. The date one
 5 finds at the end on the last page of the document, it's 20
 6 July 2012. It's written in manuscript –
 7 CHAIRPERSON: No, it can't be 20 July
 8 2012 – oh, 20 July 2012?
 9 MR WESLEY: Yes.
 10 CHAIRPERSON: I see.
 11 MR WESLEY: 20 July 2012.
 12 CHAIRPERSON: I've got it.
 13 MR WESLEY: It's written in manuscript
 14 under the signature of General Phiyega on the very last
 15 page of the document. One doesn't find the date on the
 16 heading. The first paragraph, I'll read it to you, "The
 17 evenly numbered letter dated 20 December 2011 has reference
 18 and it is hereby withdrawn and replaced by this
 19 instruction." Paragraph 2, "In terms of the operational
 20 function of POP, particularly in terms of the use of force,
 21 the following is relevant. The use of force must adhere to
 22 a gradual police response that must be appropriate to the
 23 situation, proportional to the threat, reasonable to the
 24 circumstances and minimal to accomplish the intended
 25 objective. 2.2 The continuum of force must consist of the

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1 following phases." The first phase that you've got to
 2 apply is physical presence and according to this letter,
 3 "This consists of the image of professionalism with the
 4 numbers of members which act as a visual deterrent. It may
 5 not always be cost effective to have more members on the
 6 scene that appears to be necessary but it nevertheless
 7 serves as an effective visual deterrent. Equipment
 8 includes helmet, gas mask, overall, shield, gloves, body
 9 protection (arms, body and legs) and would also include the
 10 visible presence of personnel carriers for POPS sections,
 11 Nyala armoured vehicles and water cannon." So the first
 12 phase, just to understand this, the first phase requires
 13 physical presence, POPS being on the scene, being seen on
 14 the scene and having their equipment and vehicles with
 15 them.
 16 [09:53] COLONEL MERAFAE: Correct, Chairperson.
 17 MR WESLEY: Now the one item that isn't
 18 mentioned there which to me stands out in that list is
 19 shotguns. What are you supposed to do with shotguns, when
 20 you have the physical presence. What are you supposed to
 21 as a POPS member, what are you supposed to do with your
 22 shotgun, must you have it with you or mustn't you have it
 23 with you?
 24 COLONEL MERAFAE: The circumstances will
 25 determine. Chairperson, we approach people we do not have

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1 to have the weapons displayed because this would be showing
 2 aggression towards them.
 3 COMMISSIONER HEMRAJ: As specifically set
 4 out in standing order 262?
 5 COLONEL MERAFAE: It is correct,
 6 Chairperson.
 7 MR WESLEY: Okay and then we go to phase
 8 2 now. The phase 2, the second phase in the force
 9 continuum is soft skills negotiation phase. "This consists
 10 of opening a channel of communication between role players
 11 in order to negotiate the needs, demands and limits of both
 12 police and conveyor/role-player. This requires
 13 establishing a relationship in order to cooperate and find
 14 a mutual resolution to potential conflict and
 15 confrontation. The member undertaking the negotiation must
 16 be approachable, fair and firm. During negotiation the
 17 process should be conducted one on one or alternatively
 18 with a record keeper supporting the negotiator and with
 19 another representative assisting the conveyor. It is
 20 recommended not to allow more than four people to
 21 participate in negotiations". So the second phase then is
 22 these negotiations that you must have?
 23 COLONEL MERAFAE: Yes, I hear that.
 24 MR WESLEY: Now Colonel Vermaak testified
 25 that the criticism that he raised or a concern of his that

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1 he raised during his testimony was the training of these
 2 negotiators, he mentioned that in the past and I need your
 3 comment on this, there were specifically trained
 4 negotiators for crowd management. What do you know about
 5 this? What can you tell us about this?
 6 COLONEL MERAFAE: Chairperson, no there is
 7 no such a thing.
 8 MR WESLEY: Okay.
 9 COLONEL MERAFAE: Myself, Chair, with so
 10 many years of experience I do not have any POP negotiation.
 11 I have not seen such a course. Members of the POP,
 12 Chairperson members of the POP that deals with crowds have
 13 the ability to negotiate crowds based on the experiences of
 14 their jobs. When you deal with crowds you learn to
 15 understand the crowd dynamics. Negotiation in terms of POP
 16 does not, is not the same as the negotiator.
 17 COMMISSIONER HEMRAJ: I'm sorry I just
 18 missed that. Do you mind repeating it please.
 19 COLONEL MERAFAE: In POP negotiation it's
 20 different from the negotiator who has undergone course of
 21 hostage negotiator because in that way you are taught how
 22 to, you know the other way of negotiation but the one of
 23 POP as and when you gain this experience in your field of
 24 work you become you know a better person to negotiate with
 25 these people because you know their dynamics.

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1 MR WESLEY: So in a crowd control
 2 operation you're the operational commander we're talking
 3 fictitiously now again in theory, you'd get yourself or
 4 another experienced POP member to go and do these
 5 negotiations?
 6 COLONEL MERAFAE: Yes, Chair. Operational
 7 Commander is the one that must negotiate.
 8 MR WESLEY: Okay. Just out of interest
 9 do you ever send somebody else or would you always do it
 10 yourself if you were the operational commander?
 11 COLONEL MERAFAE: My officers, the
 12 officers that works with me sometimes they do the
 13 negotiation.
 14 MR WESLEY: Okay, and these officers
 15 they're POP members, Public Order Policing?
 16 COLONEL MERAFAE: Experienced POP members,
 17 not ordinary POP members.
 18 MR WESLEY: Okay, yes. So you wouldn't
 19 even send an ordinary POP member, you'd want an experienced
 20 Public Order Policing Officer to go and do your
 21 negotiations?
 22 COLONEL MERAFAE: Correct, Chairperson.
 23 MR WESLEY: And would you send a hostage
 24 negotiator for example?
 25 COLONEL MERAFAE: I would not do that,

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1 Chairperson.
 2 MR WESLEY: The third phase is then on
 3 the force continuum if I go back to exhibit S, minimum
 4 force. "This consists of the following (Tactical actions)
 5 measures to encourage or coerce required behaviour or
 6 actions. One Tonfa and shield (pushback) two stun
 7 grenades/thunder flashes, three CS gas grenades, four
 8 pepper spray, and water cannon (water foam diet pepper and
 9 CS) five 40 millimetre rounds (soft impact/impulse rounds
 10 (SIR) CS long and short range rounds, six use of shotguns
 11 rubber rounds then blue and white rounds". So and then it
 12 carries on, it says "the choice of action option or
 13 combination thereof is dependent on situational
 14 appropriateness. The above measures have a restricted
 15 application and are to be used only on command of section
 16 leader, platoon commander/operational commander whose on
 17 the scene". So the third phase then if one looks at the
 18 force continuum is, if I can summarise it Public Order
 19 Policing using these specialised public order policing
 20 tools, equipment that you have to do whatever it is that
 21 they're ordered to do. But even then you have a very
 22 restricted application according to this letter?
 23 COLONEL MERAFAE: It is so, Chair.
 24 MR WESLEY: And the restriction is there
 25 must be an order. You must give orders.

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1 COLONEL MERAFAE: That is very correct,
 2 Sir.
 3 MR WESLEY: Then paragraph 3 deals with
 4 the use of shotguns. I just want to go to 3.6. "As
 5 mentioned in paragraph 11.4C of standing order general 262
 6 rubber rounds may only be used to disperse a crowd in
 7 extreme circumstances. Should other less forceful methods
 8 prove ineffective". This means that the use of rubber
 9 rounds is only as a last resort.
 10 COLONEL MERAFAE: That is correct.
 11 MR WESLEY: So one then applies what I've
 12 read to you, the Tonfa, stun grenades etcetera, etcetera,
 13 etcetera and then only if any of that doesn't work then you
 14 go to rubber rounds.
 15 COLONEL MERAFAE: You forgot, Chairperson,
 16 all these things they are sometimes used on the situational
 17 appropriateness. Meaning if the situation does not allow
 18 you to follow them you will put others aside and do what is
 19 relevant. So the situation before you will determine the
 20 force, will determine the force that you must apply.
 21 MR WESLEY: Yes the words situational
 22 appropriateness does appear. So what it in fact means is
 23 that you must look at what you've got in front of you, see
 24 what you're dealing with and then decide which of these
 25 you're going to apply and in what order and how you're

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1 going to apply them.
 2 COLONEL MERAFAE: As an operational
 3 commander –
 4 MR WESLEY: Yes as an operational
 5 commander.
 6 COLONEL MERAFAE: Platoon commander,
 7 section commander.
 8 MR WESLEY: You have some form, you have
 9 a discretion more or less determined by the situation to
 10 apply whatever you think is appropriate?
 11 COLONEL MERAFAE: Yes.
 12 MR WESLEY: Alright, okay I understand
 13 that. Now the gathering that you attended on the 13th that
 14 crowd we know that the, it's a, the gathering or a march
 15 depending on whether they're walking or standing still, but
 16 we know that they didn't give notification in terms of the
 17 regulation of Gatherings Act that they're going to be
 18 walking on that road or gathering in that area. There was
 19 no notification?
 20 COLONEL MERAFAE: That's correct, Chair.
 21 MR WESLEY: If we know then, then what
 22 has to be applied, you're got to look at the standing order
 23 262 it's paragraph 14, is that correct?
 24 COLONEL MERAFAE: Correct, Chair.
 25 MR WESLEY: This covers then what is

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1 termed in paragraph 14 of standing order 262 an unforeseen
 2 or spontaneous gathering?
 3 COLONEL MERAPE: That is so.
 4 MR WESLEY: This provides "the first
 5 member who arrives at the scene or venue of an unforeseen
 6 or spontaneous gathering, must seek to preserve the peace
 7 and protect and help the community". I understand the
 8 situation here was slightly different you saw on a video
 9 screen and then the crowd was marching and then you went
 10 off in a convoy to go and attend to them. But then sub
 11 paragraph 2 says what you're going to do when you get
 12 there. If we can briefly just look at that. "The first
 13 member who arrives at the scene must follow the following
 14 procedure. The first step is contact the operational
 15 centre and request backup by personnel trained in crowd
 16 management". That step wasn't followed because it really
 17 wasn't necessary, you attended the scene with the backup
 18 that you had?
 19 COLONEL MERAPE: That is so.
 20 MR WESLEY: "Two, set up a mobile JOC and
 21 notify ACCU who will take operational command on arrival".
 22 A mobile JOC was that necessary at that time? You just
 23 came from a JOC. There wasn't one at the scene, did you
 24 feel it necessary to set up a mobile JOC there?
 25 COLONEL MERAPE: Chairperson, a mobile

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1 JOC, Chairperson is placed where the scene is static, where
 2 people are not moving around, we could not put a mobile JOC
 3 where people were moving along the road.
 4 MR WESLEY: Okay. No it seems as well
 5 but you had a JOC already. There was a JOC –
 6 COLONEL MERAPE: The JOC was established
 7 long ago.
 8 MR WESLEY: So you didn't need a mobile
 9 JOC as well and we know then step two, "ACCU will take
 10 operational command", we know what happened there.
 11 COLONEL MERAPE: You know, I wanted to
 12 take over as an ACCU so discovered.
 13 MR WESLEY: We know that. "Step three,
 14 attempt to create an atmosphere which is conducive to
 15 negotiations by refraining from the display of aggression
 16 such as for instance the brandishing of firearms and
 17 special equipment".
 18 COLONEL MERAPE: That is correct,
 19 Chairperson.
 20 MR WESLEY: Now that's what Commissioner
 21 Hemraj referred to when we were discussing shotguns, having
 22 shotguns with you in terms of exhibit S.
 23 COLONEL MERAPE: That is exactly what I
 24 was referring you to, Sir when I referred to standing order
 25 262.

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1 MR WESLEY: Right. Then you've got a
 2 step four, "identify the leadership element in order to
 3 establish communications and start negotiations". We know
 4 that General Mpembe spoke to the gentleman who's referred
 5 to as Mambush, there was negotiations that ensued –
 6 COLONEL MERAPE: That is so.
 7 MR WESLEY: Step five, "set the highest
 8 standards of tolerance and do not use any firearm against
 9 the demonstrators except in the case of private defence
 10 should lives be in serious danger". Tolerance, are you
 11 satisfied with the level of tolerance displayed, we're
 12 talking about at the scene at the railway line?
 13 COLONEL MERAPE: I am satisfied, Sir.
 14 MR WESLEY: And we know that at that
 15 scene there, there were no firearms used.
 16 COLONEL MERAPE: That is correct. During
 17 the negotiations there were no firearms.
 18 MR WESLEY: Yes.
 19 CHAIRPERSON: That's not quite right as
 20 far as your satisfaction with the standard of tolerance.
 21 The impression I get from your evidence is you thought that
 22 General Mpembe was too tolerant. That's why he was
 23 prepared to escort them to the koppie. You wanted to
 24 disarm them. So he in fact adopted a higher standard of
 25 tolerance then you would have done if you were in charge,

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1 is that right?
 2 COLONEL MERAPE: Maybe I didn't
 3 understand the question so well what it was, I was asked
 4 about the tolerance, Chairperson, I understood the
 5 tolerance between the protestors and the police at the
 6 time. The discussions, the discussion that was there, Sir,
 7 I, the police were talking and the, talking to the
 8 protestors, I was not referring to General Mpembe.
 9 MR WESLEY: Let me ask you the question.
 10 In your opinion was General Mpembe too tolerant? That's
 11 what the Chair was getting at, we understand SAPS were
 12 tolerant but was General Mpembe in your view too tolerant?
 13 COLONEL MERAPE: It is so, Chair.
 14 MR WESLEY: Step six, "consult with the
 15 local authorities and authorised members concerning the
 16 gathering and the purpose of the gathering". No mention
 17 has been made of this before. What happened with regard to
 18 step six?
 19 COLONEL MERAPE: Chairperson, step six
 20 did not take place in that, where we speak of the
 21 authority, the authority there was the employer of these
 22 people who were to come and talk to them. They referred to
 23 them as Malongo and he did not want to talk to me.
 24 MR WESLEY: Okay. Now I just want to
 25 understand because this is very important for step seven

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1 and I imagine you know exactly where I'm going. But you
 2 wanted to disperse the crowd. One of the things, if you
 3 had wanted you would have dispersed the crowd.
 4 COLONEL MERAFAE: I wanted to amicably
 5 request the crowd to lay down their arms if not I will
 6 disperse and disarm them.
 7 MR WESLEY: Okay. Right now the step
 8 seven, that says "bring the contents of Section 9.1C of the
 9 Act to the attention of the leadership element". Now the
 10 act that's referred to there is the regulation of
 11 gatherings act. I gave you a copy of section 9 and as luck
 12 would have it my copy is now missing but I have some of it
 13 here. It's on the screen.
 14 CHAIRPERSON: [indistinct].
 15 MR WESLEY: No, no, I've got another
 16 copy, thanks Chair, I've been given one. 9.1C now, Section
 17 9 of the Regulation of Gatherings Act the heading is
 18 police, powers of police. What step seven says, "is you
 19 must bring the contents of Section 9.1C to the attention of
 20 the leadership". If one reads it, and I'm going to read it
 21 in the way that it should then be read. What it says is
 22 this. "If a gathering or demonstration is to take place
 23 whether or not in compliance with the provisions of this
 24 act a member of the police may in the case of a responsible
 25 officer not receiving notice in terms of section 3.2 more

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1 than 48 hours before the gathering restrict the gathering
 2 to a place or guide the participants along a route to
 3 ensure that vehicular or pedestrian traffic, especially
 4 during traffic rush hours is least impeded or an
 5 appropriate distance between participants in the gathering
 6 and rival gatherings or access to property and workplaces
 7 or the prevention of injury to persons or damage to
 8 property".
 9 [10:12] What this subsection is in fact speaking of is
 10 the power that's given to the police to restrict a
 11 gathering to a place or guide participants along a route,
 12 that's the power that the police has.
 13 COLONEL MERAFAE: That is correct,
 14 Chairperson, and I believe this was done.
 15 MR WESLEY: Well let me just ask you then
 16 immediately who told the participants about Section 91C of
 17 the Act?
 18 COLONEL MERAFAE: General Mpembe did,
 19 Chairperson, he did not explain to them that they had not
 20 applied for the march, he told them they were not supposed
 21 to be there carrying weapons. He told them that he was
 22 going to allow them to proceed to where they wanted but as
 23 police we would accompany them, we would escort them.
 24 MR WESLEY: Well that actually brings me
 25 to the point I wanted to make. Now we know General Mpembe

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1 wanted to escort the protesters and this section in fact
 2 permits one of the things that General Mpembe could do at
 3 that stage was either to restrict them to a place which
 4 would maybe be the place that they were or escort them
 5 along the route, take them along the route. So he was in
 6 fact authorised by the Act to do what he intended which was
 7 escorting the group. Do you agree with that?
 8 COLONEL MERAFAE: I agree with you where
 9 you say you choose the one which was chosen by General
 10 Mpembe but I chose the other which is says restrict them.
 11 MR WESLEY: Yes we'll get to what you
 12 chose but the point is what General Mpembe intended, what
 13 he wanted to do which is escort the protestors, that is
 14 permitted by the regulation of Gatherings Act. It actually
 15 says it's one of the things he could do.
 16 COLONEL MERAFAE: I agree with you 100%
 17 there. The same law also agrees with the one that says
 18 they could be restricted.
 19 MR WESLEY: Yes, no it does. It says
 20 restrict to a place or guide the participants along the
 21 route, I know. So now we've got you, General Mpembe wants
 22 to guide them along the route, you want to restrict them to
 23 that place where they are and disarm them.
 24 COLONEL MERAFAE: I agree with that
 25 correct, Chairperson.

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1 MR WESLEY: Now you've spoken – let's
 2 just get the steps, it's very important that we get the
 3 steps. General Mpembe wants to take them along the route,
 4 you didn't want to. You would have them, you wanted to
 5 restrict them to that area and then disarm them and then
 6 disperse them, is that the process that you wanted to
 7 follow?
 8 COLONEL MERAFAE: I have already explained
 9 the process that I was going to follow and I'm scared of
 10 repeating it because I might start confusing myself.
 11 MR WESLEY: No I understand that, let's
 12 stop it there but let me ask you this then. Why did you
 13 want them dispersed, the reason why you wanted them
 14 dispersed, what was it? What was in your mind, what were
 15 you thinking?
 16 COLONEL MERAFAE: Chairperson, these
 17 people had sharp weapons, dangerous that could be used to
 18 injure people. In terms of law going about with a
 19 dangerous weapon is a transgression of the law. So these
 20 people had committed criminal acts. So I was enforcing the
 21 law as a policeman.
 22 MR WESLEY: Okay, now you've got the act
 23 with you, we've gone through section 91. You know from
 24 section 92 that the police may not simply go to a crowd and
 25 disperse them. You know that.

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1 COLONEL MERAPE: I do know, Sir.
 2 MR WESLEY: Before you disperse a crowd
 3 if one has regard to section 92 of the Act. I'll read it.
 4 "In circumstances contemplated in section 6, sub 6" and
 5 just for the record that's if a gathering has been
 6 prohibited by a responsible officer, the Minister or the
 7 court which wasn't the case here of and this is the
 8 important part "If a member of the police of or above the
 9 rank of Warrant Officer has reasonable grounds to believe
 10 that danger to persons and property as a result of the
 11 gathering or demonstration cannot be averted by the steps
 12 referred to in sub section 1, if the gathering or
 13 demonstration proceeds. The police or such member as the
 14 case may be may and only then take the following steps.
 15 The first thing is to call on the protestors participating
 16 in the gathering to disperse and for that purpose he shall
 17 endeavour to obtain the attention of those persons by such
 18 lawful means as he deems most suitable and then in a loud
 19 voice order them in at least two of the official languages
 20 and if possible in a language understood by the majority of
 21 the persons present to disperse and depart from the place
 22 of gathering or demonstration within a specified time which
 23 shall be reasonable. And then if in that time so specified
 24 the persons gathered have not so dispersed or have made no
 25 preparations to disperse such a member of the police may

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1 order the members of police under his command to disperse
 2 the persons concerned and may for that purpose order the
 3 use of force excluding the use of weapons likely to cause
 4 serious bodily injury or death." So in short what you're
 5 looking at here is before you disperse them the person
 6 who's from the rank of Warrant Officer and above must have
 7 a reasonable ground to believe that danger to persons or
 8 property as a result of a gathering cannot be averted by
 9 the steps referred to in sub section 1 which we briefly
 10 looked at.
 11 CHAIRPERSON: Sorry, Mr Wesley, Ms Baloyi
 12 wants to make a point, yes.
 13 MS BALOYI: Thank you, Chair.
 14 Chairperson, I held off with the last question which was
 15 why did you want to disperse them. Now we seem to be
 16 proceeding now on a line that discusses and interrogate
 17 issues about dispersal when there was no decision to
 18 disperse the strikers. Chair, I am not sure if we are
 19 using the time usefully.
 20 CHAIRPERSON: Okay this is a hypothetical
 21 question.
 22 MR WESLEY: Chair, it's a hypothetical
 23 question, it informs what an experienced public order
 24 policing member knows about the law and how one deals with
 25 crowds. This testimony can inform the Commission about how

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1 one should look at happened on the 16th.
 2 CHAIRPERSON: Yes I understand but the
 3 section tells us, we can read the section. In fact I've
 4 been thinking about this section for some time and I think
 5 there's something to be said for the proposition, that
 6 Brigadier Calitz should have applied the section at scene
 7 2. It's certainly relevant there, I'm not sure that it's
 8 relevant here and that's not hypothetical, that's genuine,
 9 that's realistic. It's a matter on which I hope we'll get
 10 argument at the end of the day but as far as this witness
 11 is concerned it is purely hypothetical. If he had been the
 12 member in charge and if he had had the reasonable grounds
 13 set out in 2, sub 2 he then would have had to do certain
 14 things out of the section, we know that. But he wasn't the
 15 member in charge, there's something to be said for the
 16 proposition maybe but it's a matter of argument but General
 17 Mpembe decided either consciously or subconsciously as it
 18 were not to apply 2 because he didn't think that there were
 19 reasonable grounds to think that danger to persons and
 20 property as a result of the gathering could not be averted
 21 by the steps in 1 because he decided to take steps in 1 and
 22 he thought that that would avert danger to the person and
 23 property. But that's a matter which relates to understand
 24 why General Mpembe did what he did. The fact this witness
 25 disagreed doesn't really matter because his disagreement

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1 was overruled. You know time is precious in this
 2 Commission particularly now –
 3 MR WESLEY: Chairperson, it can be
 4 argued.
 5 CHAIRPERSON: - I'm inclined to think
 6 that these are matters can be better ventilated in
 7 argument.
 8 MR WESLEY: Absolutely, Chair. Then I
 9 have got – we'll leave that for argument, Chair.
 10 CHAIRPERSON: It is 20 past 10, it's time
 11 to take the comfort break.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [10:45] CHAIRPERSON: The Commission resumes. I
 14 gather that the equipment has now been put in working order
 15 so we'll carry on for as long as it remains in working
 16 order. Colonel, you're still under oath. Mr Wesley?
 17 OMPHILE JOSEPH MERAPE: (s.u.o.)
 18 CROSS-EXAMINATION BY MR WESLEY (CONTD.):
 19 Thank you, Chair. Colonel, the planning exercise with
 20 Colonel Scott, that's what I want to look at now. You deal
 21 with the planning exercise that you went through in exhibit
 22 QQ3 in paragraphs 5 and 6 and in QQ1 in paragraphs 5.25 to
 23 5.28. It's perhaps best that I must read them for the
 24 record. QQ3 paragraphs 5 and 6, QQQ3 rather, paragraphs 5
 25 and 6. "It is correct that I was ordered to help Colonel

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1 Scott draft the SAPS plan. I knew the area so I was tasked
 2 to assist Colonel Scott. Brigadier Calitz, my commander,
 3 tasked me. The input that I gave was to inform Colonel
 4 Scott of the terrain, the number of participants that were
 5 gathering earlier in the day, i.e. Monday 13 August 2012
 6 (the number being 300), that they were armed, that some of
 7 the people had been killed. Colonel Scott located the
 8 place on Google Maps and we talked about the area, routes
 9 of approach, et cetera and the approach to be adopted as to
 10 how we were going to deal with the crowd. We decided that
 11 our approach was going to be to disperse, disarm and arrest
 12 the protesters. The idea was that we were going to start
 13 with negotiations, after that give them warning to disperse
 14 on their own and then show force with armoured vehicles to
 15 demonstrate that SAPS had the resources to disperse them.
 16 That is what we discussed the Monday night, Tuesday
 17 morning. We were going to attend the JOC meeting on the
 18 morning of 14 August 2012 to discuss the plan and to get
 19 input from other commanders and generals.”
 20 Paragraph 6, “At the JOC meeting on the morning
 21 of 14 August 2012, CI, being crime intelligence, gave us a
 22 threat assessment and told us what was happening. CI told
 23 us that the people were armed and that their numbers were
 24 increasing. We then discussed what SAPS was going to do.
 25 Colonel Scott presented the draft plan which he displayed,

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1 after which everyone was asked to give their inputs as to
 2 how we were going to implement the plan. We all gave our
 3 input.
 4 The plan was that barbed wire was going to be
 5 used to encircle the koppie and I wanted to understand how
 6 this barbed wire was going to be used because when you
 7 disperse people, you should give them space to move to (to
 8 disperse to), whereas when you encircle people you don't
 9 give them place to disperse. I was told that the barbed
 10 wire was there for purposes of forming a barrier between
 11 people and the police. I was also told that the whole
 12 koppie would not be encircled, with the barbed wire being
 13 placed on just one side. The barbed wire was to be placed
 14 on the eastern side of the koppie in a form of a line.
 15 After the JOC meeting on the morning of 14 August 2012, I
 16 did nothing more in respect of the plan.”
 17 Then in QQ1, I'll read that for the record, “On
 18 14 August 2012” – that's paragraph 5.25 – “On 14 August
 19 2012 reinforcements arrived from other provinces. General
 20 Annandale also arrived from the national office. Our first
 21 JOC meeting was held that morning, chaired by Major-General
 22 Mpembe. At the meeting crime intelligence was tasked to
 23 gather information on the people gathered at the koppie.
 24 Brigadier Calitz instructed me to check how many barbed
 25 wire trailers we have at the unit and to bring them to

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1 Lonmin. Later Colonel Scott arrived and I was instructed
 2 to sit with him and assist in the drawing of a plan and we
 3 then met in a room separate from the JOC. Up to this stage
 4 we were operating on a contingency plan which was drawn up
 5 by my unit. 5.26 During the preparation of the plan I made
 6 inputs about the area of the operation and identified the
 7 key points to be policed. We also discussed the approach
 8 to take in dealing with the unfolding situation. We also
 9 discussed about the resources that we would have to use and
 10 their deployment – water cannon, barbed wire and Nyalas.
 11 We also discussed the deployment of specialised units in
 12 the operation. 5.27 As part of the plan it was decided
 13 there would be negotiation with the strikers to get them to
 14 disarm and that the police would deploy Nyalas at the
 15 koppie as a show of force. This was done from 14 August
 16 2014. 5.28 After the plan exercise with Colonel Scott, we
 17 did the slide presentation and briefed members on the same
 18 day about what the plan would be. The brief was that we
 19 wanted to involve the unions to assist with the situation
 20 to help disarm the strikers. It was also that we would do
 21 a show of force and get them to start talking to the
 22 police. After the presentation of the plan, members were
 23 deployed to the koppie as per the plan. I remained at the
 24 JOC the whole day and at some point I heard that there was
 25 a body found near the koppie and that the police attended

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1 to the body without incident.” That's where you deal with
 2 the planning process.
 3 Now there is one matter here that I need clarity
 4 on. It's exactly when you started this planning exercise.
 5 I'll read to you what Colonel Scott says. He says in
 6 paragraph 6.29 of exhibit HHH20, 6.29 of HHH20, he's
 7 talking here about what happened on Tuesday the 14th August.
 8 He says, “During the early hours of Tuesday morning,
 9 Brigadier Calitz introduced me to Lieutenant-Colonel Merafe
 10 who is the POP unit commander of Rustenburg. Brigadier
 11 Calitz informed us to conceptualise an operational strategy
 12 to deal with the situation. I subsequently was made to
 13 understand that Major-General Annandale and Major-General
 14 Mpembe had spoken and instructed Brigadier Calitz to have
 15 the POP commander sit with me and develop a strategy for
 16 presentation the following day at the JOCCOM.”
 17 What we have is in fact three times when you
 18 would have done this planning process. In QQQ1, QQQ3
 19 rather, you would have done the planning process Monday
 20 night through to Tuesday morning. On QQQ1, according to
 21 paragraph 5.25, you would have only started the planning
 22 process with Lieutenant-Colonel Scott after the JOC meeting
 23 in the morning and then Lieutenant-Colonel Scott, he says
 24 you started in the early hours of Tuesday morning. When
 25 exactly did you then start the planning process with

<p style="text-align: right;">Page 27118</p> <p>1 Colonel Scott?</p> <p>2 COLONEL MERAFAE: Before the JOC meeting</p> <p>3 Tuesday morning.</p> <p>4 MR WESLEY: And the JOC meeting was at</p> <p>5 six o'clock that morning, so it's the early hours of</p> <p>6 Tuesday morning.</p> <p>7 COLONEL MERAFAE: That's correct, Chair.</p> <p>8 MR WESLEY: Now one other thing I need</p> <p>9 some clarity on. You talk about drafting a plan and a</p> <p>10 planning exercise, drawing a plan rather, that's your</p> <p>11 words, drawing a plan and a planning exercise. Colonel</p> <p>12 Scott talks about conceptualising an operational strategy</p> <p>13 and developing a strategy for presentation. What exactly</p> <p>14 was it that you were preparing? Was it a strategy or was</p> <p>15 it a plan, a detailed plan?</p> <p>16 COLONEL MERAFAE: The instructions I was</p> <p>17 given was to assist Colonel Scott in preparing a detailed</p> <p>18 plan.</p> <p>19 MR WESLEY: And what did you do with</p> <p>20 them? Did you then – what you prepared, according to you</p> <p>21 was it a detailed plan or was it a strategy, if you think</p> <p>22 back what you did with Colonel Scott?</p> <p>23 COLONEL MERAFAE: I've explained the part</p> <p>24 that I took. I saw with Colonel Scott, whereby for us to</p> <p>25 draw the plan we need to get information and I supplied the</p>	<p style="text-align: right;">Page 27120</p> <p>1 and discussed it with him.</p> <p>2 COLONEL MERAFAE: Correct, Chairperson.</p> <p>3 MR WESLEY: And you would have sorted out</p> <p>4 those problems before the plan then gets presented.</p> <p>5 COLONEL MERAFAE: As I've explained, it's</p> <p>6 not only me but all the others who were part of the meeting</p> <p>7 of the 14th.</p> <p>8 MR WESLEY: Yes, you and all the others</p> <p>9 who gave the input, I understand that but you, I'm talking</p> <p>10 about you, you would also then have known what the plan</p> <p>11 was.</p> <p>12 COLONEL MERAFAE: That is correct. As has</p> <p>13 been mentioned, one of the things I raised is that we</p> <p>14 cannot surround the whole koppie with barbed wire, there</p> <p>15 has got to be a place where they would be able to move out</p> <p>16 if they disperse.</p> <p>17 MR WESLEY: Yes, it's exactly that</p> <p>18 because according to QQQ3, and I've read it to you, after</p> <p>19 the JOC meeting, paragraph 6 of QQQ3 you state that</p> <p>20 "Colonel Scott presented the draft plan which he displayed,</p> <p>21 after which everyone was asked to give their inputs. We</p> <p>22 all gave our input, the plan was that barbed wire was going</p> <p>23 to be used to encircle the koppie" and you say "and I</p> <p>24 wanted to understand how this barbed wire was going to be</p> <p>25 used because when you disperse people, you should give them</p>
<p style="text-align: right;">Page 27119</p> <p>1 necessary information to enable us to have a plan in place.</p> <p>2 So the difference between drawing a plan and an operational</p> <p>3 strategy might be terminology that was used by then. He</p> <p>4 says strategy, I say a plan but I think, I believe the fact</p> <p>5 of the matter is we talk the same language.</p> <p>6 MR WESLEY: Okay. Your input was then to</p> <p>7 explain the area to Lieutenant-Colonel Scott, is that what</p> <p>8 you did? Was that your input?</p> <p>9 COLONEL MERAFAE: Not to explain but to</p> <p>10 show him the actual places I was referring to because I am</p> <p>11 a resident, I know the area.</p> <p>12 MR WESLEY: Right. Now in this process,</p> <p>13 the planning process that you went through with Lieutenant-</p> <p>14 Colonel Scott, did you reach a point where you actually got</p> <p>15 down to agreeing on a plan, a plan, you know, that you can</p> <p>16 put in writing and say this is the plan that we're going to</p> <p>17 implement?</p> <p>18 COLONEL MERAFAE: As I've explained,</p> <p>19 Chairman, yes, we met, I gave him the inputs that I did.</p> <p>20 Later we met other commanders who also had to remark, make</p> <p>21 certain inputs.</p> <p>22 MR WESLEY: And we can assume that in</p> <p>23 this process that you were with, all this time that you</p> <p>24 were with Lieutenant-Colonel Scott, if you saw a problem or</p> <p>25 a difficulty you would have told him, raised it with him</p>	<p style="text-align: right;">Page 27121</p> <p>1 space to move to, whereas when you encircle people you</p> <p>2 don't give them place to disperse." That's the difficulty</p> <p>3 you're referring to.</p> <p>4 COLONEL MERAFAE: That is correct, Chair.</p> <p>5 MR WESLEY: Why didn't you raise that and</p> <p>6 sort that out during the planning process with him? Why</p> <p>7 did you wait until after the presentation of the plan to</p> <p>8 raise that?</p> <p>9 COLONEL MERAFAE: Information that we get</p> <p>10 will determine the direction in which we must take, meaning</p> <p>11 the plan needed to be updated on information that is coming</p> <p>12 forward.</p> <p>13 CHAIRPERSON: Just to ask you about</p> <p>14 something else that's relevant on the topic while we're</p> <p>15 busy with it, that JOCCOM meeting on the Tuesday morning,</p> <p>16 were minutes kept as far as you're aware? I take it</p> <p>17 minutes are normally kept of JOCCOM meetings, aren't they?</p> <p>18 COLONEL MERAFAE: That is so, Chair. I</p> <p>19 believe, I believe minutes were taken.</p> <p>20 CHAIRPERSON: Ja, I don't think we've</p> <p>21 ever seen them but anyway, that's a matter which perhaps we</p> <p>22 can raise with the police people later.</p> <p>23 MS BALOYI: Chair, I do apologise. I</p> <p>24 didn't hear what it is that the Chair said needs to be</p> <p>25 raised with the police.</p>

<p style="text-align: right;">Page 27122</p> <p>1 CHAIRPERSON: I asked him were minutes 2 kept of the Tuesday morning JOCCOM meeting, he said yes, as 3 I understood him. And I said we've never seen them, I've 4 been asking for them repeatedly and they haven't been 5 produced and there was at one stage a suggestion that 6 minutes weren't kept but I'm afraid my experience in this 7 Commission has been such that I keep on asking for the 8 minutes and hope that one day they may become available. 9 Anyway, that's the answer to your question.</p> <p>10 MS BALOYI: Chair, in that regard I think 11 we submitted statements of Brigadier Pretorius and the 12 person that General Mpembe had testified was taking minutes 13 and that person in that statement which was submitted said 14 he didn't take any minutes.</p> <p>15 CHAIRPERSON: However, General Mpembe 16 said minutes were kept.</p> <p>17 MS BALOYI: Yes.</p> <p>18 CHAIRPERSON: So which of them is 19 correct? Anyway, I just asked this witness what light he 20 could throw on it and he agrees with General Mpembe that 21 minutes were kept, so the ball is back in SAPS court but 22 let's carry on with the cross-examination.</p> <p>23 MR WESLEY: Thank you, Chair. Colonel, 24 now I understand, you raise the difficulty after the JOC 25 meeting and the presentation of the plan but you spoke now</p>	<p style="text-align: right;">Page 27124</p> <p>1 was on the wall, we got information from other commanders 2 that, the plan as it is with the situation they have seen – 3 I don't see anything wrong in it being amended after it was 4 brought there.</p> <p>5 MR WESLEY: No, please, I'm not saying 6 something was wrong. I'm trying to understand this. So as 7 information comes in, the plan was being changed to cater 8 then for the new circumstances, information that you 9 received. That's the process that you followed.</p> <p>10 COLONEL MERAFAE: That is correct, 11 Chairperson, where it was necessary.</p> <p>12 MR WESLEY: Where it was necessary.</p> <p>13 COLONEL MERAFAE: Mm.</p> <p>14 MR WESLEY: So circumstances were 15 changing and as they were changing, the plan is changed to 16 cater for that circumstance. Now –</p> <p>17 COLONEL MERAFAE: When we checked the 18 plan, it was over days. It talks to the days, what was 19 going to happen. On the 14th, the 15th, those show of force 20 and the like, they are within our plan.</p> <p>21 MR WESLEY: Now, you state that after 22 that JOC meeting on the 14th you had nothing more to do with 23 the plan, preparing the plan.</p> <p>24 COLONEL MERAFAE: About the updating part 25 of it, yes, because –</p>
<p style="text-align: right;">Page 27123</p> <p>1 about, and correct me if I'm wrong, the situation changing. 2 Please explain that again, why you raised this difficulty.</p> <p>3 COLONEL MERAFAE: I'm saying, Chairperson, 4 in the plan that was being prepared I kept, I say we kept 5 on changing certain things as a result of information that 6 kept coming in that we were receiving, like the issue of 7 the barbed wire which was not sufficient to surround the 8 koppie and the reasons were two different reasons given, 9 the use of the very same barbed wire. So there is an 10 explanation that says the barbed wire was to be used as a 11 barricade. The first suggestion was, the barbed wire was 12 to be used to isolate the koppie so that people should not 13 come to the koppie in the morning, only to find that it was 14 abandoned because some people were sleeping on top of that 15 koppie so it was going to be a problem to go and isolate 16 it.</p> <p>17 MR WESLEY: And then the second 18 explanation you read, it was going to be a barrier, I think 19 was the term you used.</p> <p>20 COLONEL MERAFAE: Yes, a barrier.</p> <p>21 MR WESLEY: Now this information that you 22 were receiving, you would have received that up to the JOC 23 meeting or before that JOC meeting where you raised this 24 difficulty.</p> <p>25 COLONEL MERAFAE: I take it as the plan</p>	<p style="text-align: right;">Page 27125</p> <p>1 MR WESLEY: Ja.</p> <p>2 COLONEL MERAFAE: - Colonel Scott was 3 doing it. The other officers and the people that were 4 supplying information, end up just there, yes.</p> <p>5 MR WESLEY: No, no, I'm talking about 6 you. You stopped. After that you had no more input.</p> <p>7 COLONEL MERAFAE: Yes.</p> <p>8 CHAIRPERSON: So the plan, as it was 9 agreed to at the Tuesday morning JOCCOM meeting, would have 10 been recorded in the minutes.</p> <p>11 COLONEL MERAFAE: It is so, Chairperson.</p> <p>12 COMMISSIONER HEMRAJ: I'm sorry, I don't 13 understand that. Do you say that at that six o'clock JOC 14 meeting, that was the last time you were involved with 15 making inputs into the plan or did this happen at some 16 later stage? I'm not sure about your answer.</p> <p>17 COLONEL MERAFAE: I'm saying so, 18 Chairperson, 14 in the morning at the JOCCOM I made my 19 input there and that was that.</p> <p>20 MR MAHLANGU: I made my input, the last 21 input on the 14th morning JOCCOM, that was it.</p> <p>22 [11:05] MR WESLEY: You see, Colonel, when Major- 23 General Annandale was cross-examined by my learned friend 24 Mr Ntsebeza about the plan, I don't know if you heard it, 25 reference was made to Scott's plan and whether it can be</p>

<p style="text-align: right;">Page 27126</p> <p>1 called Scott's plan and whatnot and I don't want to bore 2 you with that, but on day 95 at page 10117 is an 3 appropriate place to start. Day 95, page 10117 line 13. 4 The crux that I'm getting at is your involvement. What I'm 5 going to put to you, it appears from this – you'll see the 6 passage later – is that General Annandale was satisfied 7 that the plan, he was happy and pleased that you had taken 8 part in the plan, being an experienced POPS member and let 9 me read the whole passage. Mr Ntsebeza says from line 13, 10 "Ja, we'll come to what General Mpembe says, but you know, 11 we can't give words 15 meanings that they do not have. 12 When Scott says 'I conceptualise,' and doesn't say anywhere 13 thereafter that Major-General Annandale said, no, you can't 14 do this, General Mpembe critiqued this, nowhere. 15 Throughout he 16 conceptualises. He takes it to the JOC, the JOC 17 approves, yes, we implement it. That is what is remarkable 18 about the plan. You can put your inputs in the strategy, 19 but in the plan no-one ever contributes anything." General 20 Annandale, he says in Afrikaans, "Voorsitter, ek het reeds 21 getuig dat luitenant-kolonel Scott kan duidelikheid daaroor 22 gee hoekom hy dit is sy verklaring vermeld het of nie 23 vermeld het nie. Hy kan ook meld wase insette hy in ag 24 geneem het. Ek weet, en ek was 25 teenwoordig toe dit voorgelê was by 'n JOCCOM</p>	<p style="text-align: right;">Page 27128</p> <p>1 CHAIRPERSON: Okay, let's – 2 MR WESLEY: Page 1018. 3 CHAIRPERSON: I know that each one of the 4 officers present had the opportunity to deliver or give 5 their inputs, whether it was something new, they didn't 6 agree or added something and I know that as chairman, if 7 you make a proposal and no-one has any objection against 8 it, then it carries their total support in terms of what 9 was presented. And I know also that Lieutenant-Colonel 10 Merafe, who is a very experienced public order policing 11 official or officer, worked together with Colonel Scott on 12 the night of the 13th and I know also that we had a variety 13 of senior officers present who jointly have decades of 14 experience in public order policing. No-one less than 15 Brigadier Calitz himself, Colonel Makhubela, Pitsi and Mere 16 and others whom I've already mentioned. 17 MR WESLEY: Thank you, Chair. So you see 18 the point is, and he restricts it to the 13th, General 19 Annandale emphasised your input as an experienced POPS 20 member, in the plan. 21 COLONEL MERAFA: I agree, sir. 22 MR WESLEY: But your input stopped after 23 the JOC meeting of the 14th, that's what you have testified. 24 COLONEL MERAFA: I explained, sir, that 25 as it is in the statement, that I personally did not have</p>
<p style="text-align: right;">Page 27127</p> <p>1 vergadering met sowat 30-plus bevelvoerders. Ek weet, en 2 ek was teenwoordig toe hy met myself in gesprek getree het, 3 ook met generaal Mpembe in gesprek getree het en met 4 generaal Naidoo en brigadier Calitz." And this is the 5 important part, he says "Ek weet dat elkeen van die 6 offisiere teenwoordig die geleentheid gehad het om hul 7 insette te lewer, hetsy dit dan iets nuut was, nie saamstem 8 nie of byvoeg, en ek weet dat as voorsitter, as jy 'n 9 voorstel maak en niemand het enige objeksie teen dit nie, 10 is dit hulle totale ondersteuning in terme van dit wat 11 voorgedra word; en ek weet ook dat luitenant-kolonel 12 Merafe, wie 'n baie ervare Openbare Orde Polisiëring 13 beampte is, saam met kolonel Scott gewerk het die nag van 14 die 13de." The important part here is that General 15 Annandale stressed that you, an experienced POP member, had 16 assisted Colonel Scott in the plan, preparing the plan. 17 CHAIRPERSON: Do you want me to translate 18 the whole answer? 19 MR WESLEY: Chair, I don't think it's 20 necessary to translate the entire answer. 21 CHAIRPERSON: Alright, what part do you 22 want me to translate? 23 MR WESLEY: It's just, if we can – 24 CHAIRPERSON: From line what? 25 MR WESLEY: From line 7.</p>	<p style="text-align: right;">Page 27129</p> <p>1 anything to do with the plan. I must also mention that 2 there were more than five Colonels in the POP who were also 3 making inputs and making certain statements during the 4 planning. 5 MR WESLEY: Well, I can't address what 6 they may have said or what they were thinking. I can only 7 restrict myself to yourself. You see, Colonel, this had an 8 effect and the effect – 9 CHAIRPERSON: Sorry to interrupt you. 10 That's not what General Annandale said. He in fact says 11 that all these people there, they didn't raise objections. 12 That's the point that is in the passage that I translated 13 to you. It's not suggested by General Annandale that any 14 of them made any inputs at all. The suggestion is that you 15 had worked with Colonel Scott during the night of the 13th 16 and then it was presented to the meeting, no-one had any 17 objections and therefore it carries their support. Now do 18 you disagree with what General Annandale says in that 19 passage? 20 COLONEL MERAFA: No, I'm not disagreeing 21 with him, Chairperson. Possibly that's why they did not 22 make any inputs, because there were in agreement with what 23 was being put forward. 24 MR WESLEY: Colonel, I want to go back to 25 the effect here. You've spoken already, you've testified</p>

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1 about circumstances that change over time and the plan
 2 having to change. Now remember you stop on the 14th having
 3 any input and I want to show you the effect from your
 4 perspective. In exhibit HHH20, that's Lieutenant-Colonel
 5 Scott's consolidated statement, paragraph 8.1.2, he's now
 6 dealing with what happened at the JOC meeting on the
 7 morning of the 15th of August. So now we've got the next
 8 day. 8.12, this paragraph reads, "After I explained the
 9 operational concept, Major-General Annandale assigned the
 10 available forces to their roles and functions. I recall
 11 when he asked for comments or inputs thereafter that
 12 Lieutenant-Colonel Merafe raised the concern that he was
 13 not tasked appropriately and did not know what to tell his
 14 members their role was. I explained that POP had several
 15 tactical options and he was seeking clarity on which one to
 16 brief and prepare his personnel on. Major-General
 17 Annandale then clarified Lieutenant-Colonel Merafe's
 18 group's role again as being a reserve and needing to wait
 19 for deployment instructions as all POP groups were doing
 20 while negotiations were taking place." From this, and you
 21 must correct me if I'm wrong, you haven't taken part in the
 22 plan, any planning after the JOC meeting on the 14th – 24
 23 hours later there is a discussion and input about what is
 24 referred to by Lieutenant-Colonel Scott as the operational
 25 concept. We're not going to debate that again and he

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1 explains roles, but things had changed such then that you
 2 raised a concern about the tasking that was being given to
 3 your members and you didn't know what to tell the members.
 4 Do you see the effect? The plan is changing, Colonel, and
 5 a day later you are concerned about your tasking and you
 6 didn't know what to tell your members.
 7 CHAIRPERSON: Well, the first question
 8 is, do you agree with what Colonel Scott says in that
 9 passage in his statement or don't you agree?
 10 COLONEL MERAFE: I agree with it, Chair.
 11 Chairperson, if I may explain, police members were being
 12 posted as to what their duties were, what they were going
 13 to do on that particular day. So from POP's side members
 14 were not told exactly what they were going to do during the
 15 briefing because people were posted. Now I was just
 16 concerned about what to tell members if I don't know what
 17 they are going to do. Then I got an answer that they are
 18 reserves and I think it was well taken and I went and
 19 briefed them that, guys, you are reserves, you are going to
 20 be at the holding area number so and so and then that was
 21 then.
 22 MR WESLEY: Thank you, Colonel. We'll
 23 leave the point there, thank you, Colonel. Colonel,
 24 there's only two things I want to quickly clarify with you
 25 then. If you look at JJJ186, that's your operational diary

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1 for 16 August at 15H30, JJJ186 if you can go to the 16th.
 2 Or actually can we stop there? Can you just go back one
 3 page? Colonel – down a bit - you address it in your – I
 4 think it's only fair to do this now. The point might be
 5 taken with you later. I recall you address, the very last
 6 sentence there, this is dealing with the 13th, the very last
 7 line, "Attackers killed by the police in retaliation." Do
 8 you see that?
 9 COLONEL MERAFE: I see, Chair.
 10 MR WESLEY: Do you want to explain your
 11 use and understanding of the word "retaliation," what you
 12 meant there? Right at the bottom of the page.
 13 COMMISSIONER HEMRAJ: The full sentence
 14 reads "three attackers" –
 15 MR WESLEY: Yes, three.
 16 COMMISSIONER HEMRAJ: - killed by the
 17 police.
 18 MR WESLEY: That's correct, three
 19 attackers killed by the police in realisation. What do you
 20 mean to be saying by that?
 21 COLONEL MERAFE: Retaliation was supposed
 22 to be, I was supposed to say in self-defence, actually in
 23 private defence because their colleagues were being chopped
 24 at, then they shot at the attackers, so it's the attacker,
 25 three attackers were killed by the police in, not

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1 retaliation, but in private defence. So not in retaliation
 2 because retaliation means you hit me, I hit you back, it's
 3 retaliation. If I am under –
 4 CHAIRPERSON: Tell me, tell me –
 5 COLONEL MERAFE: - it's a wrong word that
 6 was used, Chairperson.
 7 CHAIRPERSON: Yes. We know that you're
 8 Setswana-speaking, that's your home language.
 9 COLONEL MERAFE: Yes, Chairperson.
 10 CHAIRPERSON: Now is the same word used
 11 in Setswana for retaliation as for self- or private
 12 defence? If you think in Tswana, you might well use,
 13 choose the wrong English word to convey what you're
 14 thinking in Tswana. Is that the case here?
 15 COLONEL MERAFE: Chairperson – I Tswana-
 16 rised it.
 17 CHAIRPERSON: I won't understand it, I'm
 18 afraid.
 19 MR WESLEY: And just to round off this
 20 point, you deal with that specifically –
 21 CHAIRPERSON: He hasn't answered, he
 22 hasn't Tswana-rised it yet. Shall we have that exercise
 23 before, the linguistic exercise?
 24 MR WESLEY: Could you Tswana-rise it,
 25 please, for us?

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1 COLONEL MERAPE: The three attackers were
 2 killed by the police, Mr Chairperson, who were acting in
 3 private defence of their colleagues.
 4 MR WESLEY: And just to round off the
 5 point, in exhibit QQQ3 paragraph 10 you in fact address it
 6 as well. Now, if we could go to –
 7 CHAIRPERSON: Sorry, before we move away
 8 from that page of his diary could we please have it again
 9 on the screen? Higher up – no, no, sorry, okay – it's
 10 round about between 11:30 and 12:00, what you wrote was
 11 this, now this is written on the 13th, am I right?
 12 "Gathering at the mountain, people who march on Friday" – I
 13 take it that means "marched" because you're talking about
 14 the previous Friday, the 10th – "people who march on Friday
 15 to be identified and to be arrested tonight." Now –
 16 COLONEL MERAPE: During the meeting in
 17 the morning, in some of the facts that was said then I
 18 diarised it here, I put it in my diary, ja, I wrote it.
 19 People to be identified actually and then they should be –
 20 because they armed we cannot go and arrest them now, we
 21 will make later arrests, so we must identify them with our
 22 videos, try to see or maybe follow them when they are away
 23 from the hill. It was something that I wrote just to
 24 remind me of what was happening. It was said in the
 25 meeting, Chairperson.

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1 CHAIRPERSON: Now this – I said I take it
 2 this entry was on the 13th, I'm wrong. This was the 15th,
 3 was it? What's the date of this entry?
 4 COLONEL MERAPE: The 13th in the morning.
 5 CHAIRPERSON: I'm sorry, it is the 13th.
 6 COLONEL MERAPE: Ja.
 7 CHAIRPERSON: It is the 13th. Okay, I was
 8 right and someone else was wrong. Now, what is set out
 9 here is your notes on the meeting in the morning –
 10 COLONEL MERAPE: Correct.
 11 CHAIRPERSON: - between the Provincial
 12 Commissioner, the other generals and a few other officers
 13 like yourself and the Lonmin management and there, these
 14 are notes, I take it, as to what they told you. "NUM
 15 officials were fired last year at Karee." What did they
 16 say about those NUM officials? Did they say – well, let me
 17 not ask you a leading question. Can you remember what
 18 exactly they said about these NUM officials who had been
 19 fired the previous year at Karee? How was that relevant in
 20 what was being discussed on the morning of the 13th?
 21 COLONEL MERAPE: I would not be telling
 22 the truth, I don't remember well when that was mentioned.
 23 I didn't understand it correctly.
 24 CHAIRPERSON: The point is they did
 25 mention the NUM officials – sorry, NUM officials had been

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1 fired the last year at Karee, so when the NUM people come
 2 we can ask them whether they mentioned that and what the
 3 context was and what they were conveying but you can't help
 4 us, no. The other thing is, going back to the people who
 5 had marched on the Friday who were to be arrested that
 6 night it says, you say they were to be identified. Now who
 7 was going to identify them? I understood you to say that
 8 they were to be identified from videos that had been taken
 9 but who was going to help to identify the people and say,
 10 that person on that video is so and so and that person is
 11 somebody else?
 12 COLONEL MERAPE: My members who were
 13 present at Marikana during the march, Chairperson, had seen
 14 the protesters. We also had a video clip for the Friday
 15 where people could be seen, this is so and so. So there we
 16 were also having the members of crime intelligence – patrol
 17 the area to see who are armed and maybe tried to see where
 18 they sleep and then we can –
 19 MR MAHLANGU: - who were covering the
 20 area, seeing the people who were armed and trying to verify
 21 where they were staying.
 22 CHAIRPERSON: Was Lonmin going to assist
 23 in any way in identifying the people and saying where they
 24 could be found, where they lived, whether in shacks or in
 25 hostels and, if so, where?

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1 COLONEL MERAPE: Management did try to
 2 ask Lonmin who those people are and it was said they are
 3 unknown people who are not their workers. We asked the
 4 securities who were together with us there to assist in
 5 this identification.
 6 CHAIRPERSON: Please carry on, Mr Wesley.
 7 MR WESLEY: If we can then just go to the
 8 16th, please? Next page down to 15H30. The entry there
 9 against 15H30 is, "Lieutenant Kgwadibana sent 4 000 rounds
 10 of R5 to Marikana for Lonmin conflict."
 11 COLONEL MERAPE: I wrote that,
 12 Chairperson, it is so.
 13 MR WESLEY: Now you wrote that, you've
 14 testified you received a telephone call from Brigadier
 15 Calitz saying that you should send 4 000 rounds of
 16 ammunition.
 17 COLONEL MERAPE: Correct, Chairperson.
 18 MR WESLEY: Now you deal with this in
 19 paragraph 5.30 of your statement, your statement being
 20 QQQ1. What you say is, "When Brigadier Calitz asked for
 21 the rounds I did not think that it was unusual because I
 22 knew that there were other units from other provinces and
 23 thought that he wanted to equip members who had not brought
 24 ammunition of their own or that he wanted to deploy to
 25 other areas." So for those reasons you didn't think it was

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1 unusual that Brigadier Calitz was asking for 4 000 rounds
 2 of R5 ammunition.
 3 COLONEL MERAFAE: It is so, Chair.
 4 MR WESLEY: In your experience, have you
 5 ever before, before that day been asked to arrange
 6 anything, the delivery of anything approaching 4 000 rounds
 7 of R5 ammunition to a public order policing crowd control
 8 or crowd management situation?
 9 COLONEL MERAFAE: No, it never happened.
 10 MR WESLEY: And since that day have you
 11 ever been asked to do something like this again?
 12 COLONEL MERAFAE: No, it has not happened.
 13 MR WESLEY: It was odd then, you must
 14 agree with that at least. You said it wasn't unusual but
 15 it really was unusual wasn't it?
 16 [11:24] COLONEL MERAFAE: Yes well that was as a
 17 result of question that was put to me, Chairperson, was it
 18 usual or unusual. I made the statement when I was being
 19 asked questions and responded.
 20 COMMISSIONER HEMRAJ: Any idea why he
 21 would have asked you to do this, Colonel?
 22 COLONEL MERAFAE: I do not know,
 23 Chairperson, but we had other members like the TRT, NIU and
 24 the others, I think they wanted to use those, ammunition
 25 was to be used by those.

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1 COMMISSIONER HEMRAJ: And what time would
 2 this request have been of you, Sir?
 3 COLONEL MERAFAE: Half past three, the
 4 time I wrote in my diary I believe. I had a diary, when he
 5 phoned me something said to me record this, so I wrote it
 6 at that time.
 7 COMMISSIONER HEMRAJ: And you were off
 8 duty by then Colonel?
 9 COLONEL MERAFAE: I was at the memorial
 10 service of the late Warrant Officer Lepaaku.
 11 CHAIRPERSON: At the service at the time
 12 you received the call?
 13 COLONEL MERAFAE: That's correct,
 14 Chairperson.
 15 CHAIRPERSON: And did you then phone
 16 Lieutenant Kwagadibane to tell him to do the necessary?
 17 COLONEL MERAFAE: Do the necessary as
 18 instructed by the Brigadier, Chairperson.
 19 CHAIRPERSON: Now do we have your
 20 telephone records or alternatively Brigadier Calitz's
 21 telephone records?
 22 MR WESLEY: Chair, I wasn't going to
 23 refer to it but we can. I've got here a document which
 24 refers to Brigadier Calitz's telephone records. We can
 25 hand it in and I can - in fact I'll take you to the

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1 relevant places. If we could hand these out, I'll bring it
 2 to the Chair.
 3 CHAIRPERSON: It's not already an
 4 exhibit?
 5 MR WESLEY: Chair, I've asked one of our
 6 staff to check and Ms Pillay says no it hasn't been.
 7 MS PILLAY: Chair, it's not an exhibit
 8 yet.
 9 CHAIRPERSON: If she says it's not an
 10 exhibit I'll accept that.
 11 COMMISSIONER HEMRAJ: While Mr Wesley is
 12 going to direct our attention to that can I just ask you,
 13 this conversation that you had with him, it was just one
 14 telephone call and it was only about the ammunition.
 15 COLONEL MERAFAE: On that day it was the
 16 only thing, Chair. I remember this one. If there's any
 17 other one it might have had reference to something else.
 18 COMMISSIONER HEMRAJ: Yes, thank you.
 19 CHAIRPERSON: Now we'll mark it exhibit
 20 QQQ13 and describe it as Brigadier Calitz's phone records
 21 for period from 15-8-2012 to 16-8-2012. Mr Wesley, you say
 22 you can identify telephone conversations between Brigadier
 23 Calitz and the witness.
 24 MR WESLEY: That's right. Colonel, your
 25 cell phone number ends in 6067.

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1 COLONEL MERAFAE: Correct, Chair.
 2 MR WESLEY: Could you go to the third
 3 page of this document, the second last line, do you see
 4 that?
 5 COLONEL MERAFAE: I see, Chair.
 6 MR WESLEY: This is a record of telephone
 7 calls, of Brigadier Calitz's telephone calls, his cell
 8 phone. There is a call that's recorded, it lasted 66
 9 seconds at 12h50.05 made to the cell phone number ending
 10 6067, that's you. So he phoned you at 12h50.05 and spoke
 11 to you for 66 seconds. Do you see that.
 12 COLONEL MERAFAE: I see, Chair.
 13 MR WESLEY: And if you go over to the
 14 next page, the second line from the top, you'll see there's
 15 an SMS that is sent at 12h56.46 to the number ending 6067.
 16 COLONEL MERAFAE: It is so.
 17 MR WESLEY: I haven't found any other
 18 references to any telephone calls or SMSs that were sent
 19 from Brigadier Calitz to you that day, these are the only
 20 two that there's a record of.
 21 COLONEL MERAFAE: I agree with you.
 22 MR WESLEY: Now there was one telephone
 23 call then at 12:50 approximately and then five minutes or
 24 six minutes later there's an SMS. That's the only
 25 telephone call that Brigadier Calitz made to you that day.

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1 COLONEL MERAPE: I repeat I agree with
 2 that.
 3 MR WESLEY: So when you made the entry
 4 and you wrote in your operational diary being 15h30 as
 5 being the time that you would have received a telephone
 6 call from Brigadier Calitz that's not correct.
 7 COLONEL MERAPE: Possibly the time not
 8 being correct, I did receive such an instruction and I did
 9 note it. So to be precise in time because I was not
 10 knowing this is coming. I make an entry on my diary the
 11 time might differ, so long as the time says it's before. I
 12 got that information, I complied to the instructions.
 13 MR WESLEY: You did comply with the
 14 instructions but it's the time. It wasn't at half past
 15 three in the afternoon, in fact you would have spoken to
 16 him at approximately ten to one a couple of hours earlier.
 17 COLONEL MERAPE: I said the evidence that
 18 I spoke to Brigadier Calitz is there.
 19 CHAIRPERSON: According to this exhibit
 20 he sent you an SMS shortly after that telephone call at
 21 12:56. Can you remember receiving an SMS and if so can you
 22 remember what the contents of the SMS were?
 23 COLONEL MERAPE: As I said Brigadier
 24 spoke of his need for the rounds, I take it the SMS and the
 25 phone were delivering the same message. There were 4000

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1 rounds of R5 ammunition necessary at Marikana.
 2 MR WESLEY: Would you still have the SMS
 3 on your cell phone?
 4 COLONEL MERAPE: This has happened two
 5 years ago. My SMS at one stage had 186 SMSs, I deleted
 6 some of them.
 7 MR WESLEY: Would you mind just checking
 8 your phone and reverting to us as to whether you've still
 9 got this one or whether it is one of the ones that you
 10 erased? Would you mind checking for us?
 11 CHAIRPERSON: Miss Baloyi.
 12 MS BALOYI: Chair, the request for the
 13 cell phone, if it is to check whether there's a message
 14 that says that the request for 4000 bullets has been made
 15 I'm not sure that it's necessary to do that. The witness
 16 said I received that instruction and I recorded it and I
 17 acted on it. So I'm not sure why do we do –
 18 CHAIRPERSON: Miss Baloyi, Brigadier
 19 Calitz denies it.
 20 MS BALOYI: I'm aware of that, Chair.
 21 CHAIRPERSON: It's a very important
 22 factor reflecting on either the credibility of this witness
 23 or Brigadier Calitz. If Brigadier Calitz asked for these
 24 rounds then there may well be an argument, I don't know
 25 whether it will be a good argument but there may well be an

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1 argument that he ordered these extra bullets or rounds
 2 because he foresaw a conflict as described in the diary
 3 which would have an important bearing on some of the
 4 findings of this Commission. I'm not saying it would be a
 5 good argument but it's an argument that I imagine would be
 6 raised. Equally if we find that he did give that request,
 7 make that request to the witness and he now denies it then
 8 very often – and if we find that he's giving false evidence
 9 in that respect then sometimes false evidence points in the
 10 direction of the truth. And the truth to which that false
 11 evidence, if it is false evidence, I'm not saying it is,
 12 would also be significant for the findings of the
 13 Commission. So it's a very relevant matter and I think I
 14 must allow these questions to be questions.
 15 MS BALOYI: Chair, I wasn't saying it's
 16 irrelevant.
 17 MR BUDLENDER SC: I'm sorry to interrupt.
 18 Could we know does the SAPS have a case on this, is there a
 19 case that it was requested or it was not requested? If the
 20 SAPS accept that it was requested then that line of enquiry
 21 may come to an end. But what is the SAPS case?
 22 CHAIRPERSON: I think that's legitimate
 23 question, sorry. You see - first answer the question then
 24 I want to put a comment to you depending on the answer.
 25 What is the SAPS's case as we sit here today? If you're

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1 not able to answer the question now without consulting with
 2 those are appearing with you, I'll allow you to do that.
 3 But it's quite an important one, perhaps I should tell you
 4 now what my concern is about. The police decided not to
 5 call Vermaak, Colonel Vermaak because they disagree with
 6 certain of his evidence, they want to cross-examine him. I
 7 can understand that attitude but what the police has done
 8 is they've called Brigadier Calitz and in his evidence he
 9 said I did not give that instruction, repeatedly denied it.
 10 The police have now called another witness who says
 11 precisely the opposite. Now what is the police's case? Is
 12 Calitz going to come back to recant what he said or if we
 13 make a finding against Calitz based on the evidence of this
 14 witness then will not be able to object that he didn't have
 15 a chance to deal with what this witness has to say? There
 16 are all sorts of problems and I may also, while I'm about
 17 it make the same point in relation to Captain Thupe. The
 18 State says they're now going to call Captain Thupe who's
 19 going to say that – sorry the police, I beg your pardon,
 20 the police are going to call Captain Thupe who's going to
 21 say that Major Mpembe was lying when he told this
 22 Commission that he never gave the order. Now if we believe
 23 that evidence we will disbelieve General Mpembe with
 24 possibly serious consequences for him. So it's also very
 25 unsatisfactory, the police can't call a variety of

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1 witnesses to get different stories and then ask us to pick
 2 which of those is correct surely. I don't expect you to
 3 answer now, I mean you can if you want to. You may wish to
 4 consider and give me a considered reply after the lunch
 5 adjournment. But it is a matter of concern that has been
 6 exercising my mind for some time, it's just as well it's
 7 raised its head now out of the clench so we can deal with
 8 it or mention it.
 9 MS BALOYI: Yes, Chairperson, it may well
 10 be that I want to reflect on some of the things but it is
 11 important I think, with respect, Chair, that at the outset
 12 I respond to the first issue which the Chairperson put.
 13 It's never been the position of SAPS or of the legal team
 14 that we do not call Colonel Vermaak because we do not agree
 15 with any part of his evidence, that is not so. We have
 16 consulted throughout the process with him with the
 17 intention to call him as a witness. Chairperson, we got to
 18 a point whereas Colonel Vermaak testified, his evidence
 19 here in chief was that the legal team, as I understood it
 20 then was that he was being required to take blame for
 21 certain things. That is the only point at which a decision
 22 was made that perhaps to give him peace of mind let him
 23 rather obtain his own counsel if that's what he's happy
 24 with. It was never the position of the SAPS or of this
 25 legal team on record that he's not represented because the

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1 SAPS did not agree with his case, Chair. It's never been
 2 the case. Now, Chairperson, the Chairperson alludes to the
 3 difficulty –
 4 CHAIRPERSON: It's not as easy as that.
 5 My understanding is that SAPS want to cross-examine him and
 6 that's going to happen, they're going to cross-examine him.
 7 And I also understood they weren't going to cross-examine
 8 him solely on that issue, they want to cross-examine him on
 9 other issues where and in fact evidence has been led now
 10 subsequently to contradict him on various things, extra
 11 statements have been filed from witnesses to some extent
 12 appear prima facie to depart to earlier statements made by
 13 him. The new material in the new statements appears which
 14 has more designed after Colonel Vermaak gave his evidence
 15 in chief appears to be designed, this is a prima facie view
 16 which may be wrong, designed to discredit his evidence and
 17 encourage us to disbelieve him. Now I'm sorry I don't
 18 understand, I think perhaps it might be advisable if I may
 19 say so for you to reserve what you have to say on this
 20 point and take full instructions about that because it's
 21 quite a serious matter and you see it puts us at a
 22 disadvantage as Commissioners. Police call witnesses
 23 saying different things, not at saying different things but
 24 in effect, not perhaps directly, but in effect accusing
 25 each other of deliberately not telling the truth. Now it

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1 puts us in a very awkward position to handle that sort of
 2 situation and we, as you know, are concerned to get the
 3 truth and we don't mind what the consequences are. But
 4 we've got to get the truth and it may be hampered in that
 5 where the police present two different conflicting versions
 6 of the truth and then how we'd handle it. Anyway do you
 7 understand my problem?
 8 MS BALOYI: Yes, Chairperson, I do and,
 9 Chairperson, I accept the invitation to reflect –
 10 Chairperson, I accept the invitation that we should reflect
 11 and I will leave it to Mr Semenya to deal with it and I'm
 12 sure we do have an answer to that. What was important to
 13 deal with immediately, Chairperson, was to correct the
 14 statement that the SAPS decided not to call Colonel Vermaak
 15 because we didn't like his case. It was important that I
 16 immediately correct that. That's not the position of the
 17 SAPS.
 18 MR BUDLENDER SC: Sorry to interrupt.
 19 CHAIRPERSON: Yes all right.
 20 MR BUDLENDER SC: Can I ask in relation
 21 to Colonel – I don't to make this a debate but in relation
 22 to Lieutenant-Colonel Vermaak, he gave evidence that he was
 23 told by the SAPS team that they terminated their services
 24 to him and they did not wish to call him as a witness.
 25 It's rather different from what my colleague has just said

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1 that this was done for his comfort. He was told we don't
 2 want you anymore and in fact we want to cross-examine you.
 3 COMMISSIONNER HEMRAJ: He said he was
 4 fired by his legal team.
 5 CHAIRPERSON: He said – I've heard of
 6 cases where clients have fired the legal team but I've
 7 never heard a case before where the legal team has fired
 8 the client. So, Miss Baloyi, I understand you gave us your
 9 impressions of the matter but perhaps you must take my
 10 offer to reserve any further reaction to what I put until
 11 your learned leader returns and he can deal with it. I
 12 don't say that as a reflection on you at all but you know
 13 you understand our concern is just to get the truth, that's
 14 all.
 15 MS BALOYI: Chairperson, I appreciate
 16 that. If I may perhaps say that we should not forget that
 17 whatever it is that Colonel Vermaak put to this Commission
 18 it is still going to be the subject of the cross-
 19 examination and that is in direct response to what Mr
 20 Budlender says now that I don't understand that to be the
 21 position, his evidence has been accepted by the Commission
 22 as in fact the final word on the allegations that he makes.
 23 He is still to be cross-examined and what Mr Budlender said
 24 must be treated just as that, evidence in chief that is
 25 still to be subjected to cross-examination.

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1 MR BUDLENDER SC: Chair, I'm sorry to
 2 prolong this but I think we need it on record and we need
 3 to know either now or after the adjournment whether the
 4 SAPS are going to cross-examine Colonel Vermaak on what he
 5 says they said to him during consultation with him.
 6 Because if the version is going to – if he's going to be
 7 cross-examined to say we didn't fire you, you fired us or
 8 we invited you to leave then it's a cross-examination of a
 9 witness on what happens in consultation with counsel and it
 10 becomes a rather difficult matter.
 11 MS BALOYI: Chairperson, this is out of
 12 order what Mr Budlender is doing. We didn't enter into a
 13 discussion about Colonel Vermaak and the reasons that we
 14 are going to cross-examine him and the material we are
 15 going to cross-examine him about, Chair. All I was dealing
 16 with when I spoke to Colonel Vermaak was in response to the
 17 Chairperson's statement that we made the decision not to
 18 lead him because we didn't like his evidence, that's all I
 19 dealt with, Chairperson. I mean all of these comments are
 20 out of order.
 21 CHAIRPERSON: Well I don't know if
 22 they're out of order but anyway let's not go there now.
 23 You've accepted my offer for the matter to stand over till
 24 later and I suggest we leave it there for the moment. I'm
 25 reminded that I'm failing in my duty to those present. We

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1 must take the tea adjournment at this point which we will
 2 now do. Mr Wesley you've appealed against the tea
 3 adjournment, all right.
 4 MR WESLEY: One minute, Chair. Can I put
 5 my question, my last question to the Colonel now, give him
 6 time to reflect on it and come back with an answer after
 7 tea. I'd like him to have a moment just to think about it.
 8 CHAIRPERSON: It sounds like more than a
 9 moment you want to give him but never mind ask the question
 10 and then we'll take the tea adjournment.
 11 MR WESLEY: Colonel, the very last issue
 12 I want to address with you. In paragraph 6.4 of QQQ1. You
 13 say "At Roots we discussed what happened with the
 14 operation. I gave my account of the incident. I recall
 15 that amongst other things I raised the issue that POPs
 16 training that we received never prepared us of
 17 confrontation with armed strikers such as we were faced
 18 with at Marikana." I need you to - well it's actually then
 19 two questions.
 20 [11:44] Is this position still the same as if it is what
 21 must be done to prepare public order policing in future or
 22 at present to address armed strikers like you faced at
 23 Marikana. Thank you.
 24 CHAIRPERSON: The whole tea adjournment,
 25 is that, that's the only question, that's the whole

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1 question and there's a whole tea adjournment to think about
 2 the answer to that. We'll take the tea adjournment now.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [12:08] CHAIRPERSON: You're still under oath,
 5 Colonel.
 6 OMPHILE JOSEPH MERAFE: (s.u.o.)
 7 CHAIRPERSON: Before I ask Mr Wesley to –
 8 well, I can't exactly ask him to resume his cross-
 9 examination, he's already asked the question – before I ask
 10 the witness to give the answer to the question we'll have
 11 to wait for the return of the SAPS who are absent from the
 12 chamber.
 13 You may now give the answer to the question you
 14 were asked. Can you remember what the question was or
 15 would you like Mr Wesley to repeat it?
 16 COLONEL MERAFE: I'm asking Adv Wesley to
 17 please repeat the question, sir.
 18 CHAIRPERSON: Let's hope he can remember.
 19 CROSS-EXAMINATION BY MR WESLEY (CONTD.):
 20 No problem. Colonel, in paragraph 6.4 of QQQ1 you write
 21 that, amongst other things you raised at Roots, one of the
 22 things was – this is the quote, "The issue that the POP
 23 training that we received never prepared us for
 24 confrontation with armed strikers such as we were faced
 25 with in Marikana" and my question to you is, what must be

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1 done? You say here your training was not sufficient to
 2 prepare you for a confrontation with armed strikers such as
 3 you faced at Marikana. What must be done to fix that?
 4 COLONEL MERAFE: Chair, I was talking
 5 here about in terms of improving the training of the police
 6 so that at the end of the day, Chairperson, we do not
 7 involve other units of the SAPS in such gatherings. I
 8 raised this issue when the National Commissioner arrived,
 9 to draw attention to the fact that there is something
 10 lacking in the training of the POP.
 11 COMMISSIONER HEMRAJ: Do you think,
 12 Colonel, that as at August 2012 that it was outside POP
 13 capability of dealing with the armed strikers as they were
 14 and that's why the other tactical units were necessary?
 15 COLONEL MERAFE: Yes, Chairperson, the
 16 management that was there decided that it was not only POP
 17 that was to work there, the bringing of the other units
 18 became necessary.
 19 COMMISSIONER HEMRAJ: Sorry, I'm asking
 20 you what your view is, Colonel?
 21 COLONEL MERAFE: That was my view,
 22 Chairperson, that we have got to be strengthened as the POP
 23 so that we do not involve other units when we have such
 24 operations to attend to.
 25 CHAIRPERSON: Has that happened? You

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1 wanted the training that the – POP training that your
 2 members were to receive in the future, prepare you, to use
 3 your words, for confrontation with armed strikers such as
 4 you were faced with at Marikana. Now has the training that
 5 is received now since Marikana by members of the POP been
 6 upgraded or amplified or – to deal with the situation?
 7 COLONEL MERAPE: Chairperson – we put
 8 some people there and try to remove them from the hills, we
 9 tried to go there, we are moving to that direction –
 10 MR MAHLANGU: Chairperson, yes, since
 11 Marikana the police training, the POP training, they are
 12 undergoing refresher courses in an endeavour to upgrade
 13 them and he used the word like “hills.” We train them –
 14 koppies and hills.
 15 COLONEL MERAPE: Normally when we train,
 16 we train in an environment – flat area. We never, even in
 17 my experience when we found a crowd sitting there and you
 18 know we struggled to deal with it on top of a hill. It was
 19 for the first time really.
 20 MR MAHLANGU: What he was explaining,
 21 that in the past they trained on flat places but since
 22 this, they are taking the people now to be trained in
 23 places like it was in Marikana where there are hills and
 24 mountains.
 25 MR WESLEY: Thank you, Chair.

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1 CHAIRPERSON: The parties were going to
 2 agree among themselves as to the order in which they were
 3 to cross-examine. I did indicate I think I was going to
 4 call on Mr Gumbi first. Mr Gumbi, are you ready? Unless
 5 Mr Ntsebeza wants to utilise his seniority as a basis for
 6 cross-examining first, before you. What's the position?
 7 MR GUMBI: Yes, Chairperson, I wouldn't
 8 mind to allow Mr Ntsebeza to proceed before me.
 9 CHAIRPERSON: That sounds like the kind
 10 of offer you can't resist.
 11 CROSS-EXAMINATION BY MR NTSEBEZA SC: Mr
 12 Chairman, it's not often that I pull rank. This is one
 13 occasion that I will be happy to do so. Thank you, Mr
 14 Chairman and this Commission. Colonel, good morning or
 15 good day. I want us to talk about the events on the 13th of
 16 August 2012, particularly at the railway line and I'll be
 17 very short with you because a significant part of that has
 18 been covered by Mr Wesley already and – but there are just
 19 one or two aspects thereat that I want to explore with you.
 20 Mr Chairman, could we please have exhibit Z1, the video put
 21 up, especially from 20:53.
 22 CHAIRPERSON: 21:53?
 23 MR NTSEBEZA SC: It's 20:53.
 24 CHAIRPERSON: 20:53, alright. Do you
 25 want the sound as well?

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1 MR NTSEBEZA SC: Mr Chairman, this video
 2 has been played several times and I don't know, even the
 3 witness probably has heard it played to him in the course
 4 of his testimony but –
 5 CHAIRPERSON: If you don't want the sound
 6 I won't ask the operator to give it to us.
 7 MR NTSEBEZA SC: Yes, Mr Chairman, I
 8 think the sound should be played.
 9 CHAIRPERSON: Mr Ntsebeza has asked for
 10 the sound, could he be given the sound?
 11 [VIDEO IS SHOWN]
 12 MR NTSEBEZA SC: It's 20:53 actually.
 13 [VIDEO IS SHOWN]
 14 MR NTSEBEZA SC: Yes, can you stop it
 15 there? Stop it. Now –
 16 CHAIRPERSON: What we can see, for those
 17 who one day read the transcript, is General Mpembe on his
 18 cell phone speaking to somebody.
 19 MR NTSEBEZA SC: Yes.
 20 CHAIRPERSON: Surrounded, well,
 21 accompanied by three other people, two of whom are facing
 22 away from the camera and the other one is looking sideways
 23 towards the camera.
 24 MR NTSEBEZA SC: Now, Colonel, I know
 25 that from your testimony you were present at the scene when

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1 General Mpembe had the conversation with the group of
 2 mineworkers next to the railway line. Is that you, the
 3 bald-headed man there with his back towards the camera? I
 4 think it is you.
 5 COLONEL MERAPE: That is me, Chairperson,
 6 yes.
 7 MR NTSEBEZA SC: Now during the
 8 conversation, now that we at least can put you there,
 9 during the conversation with General Mpembe you will
 10 recall, and this probably you would recall without us
 11 having to play the video, that the strikers made a number
 12 of important points to General Mpembe. Firstly, would you
 13 agree that they repeatedly stated that they were not
 14 fighting with anybody?
 15 COLONEL MERAPE: That is correct, Chair.
 16 MR NTSEBEZA SC: Now secondly, would you
 17 agree that they said that they were carrying their weapons
 18 to protect themselves because they had been shot at by
 19 Lonmin security and by NUM personnel?
 20 COLONEL MERAPE: That is true, sir.
 21 MR NTSEBEZA SC: Now, in exhibit QQ2, if
 22 we could have that put up, Mr Chairman, which is the
 23 transcript of the video clip exhibit Z1 relating to this
 24 incident on the 13th of August – no, it's QQ2, that's what I
 25 want put up.

<p style="text-align: right;">Page 27158</p> <p>1 CHAIRPERSON: Is there a particular 2 passage to which you wish to refer us? 3 MR NTSEBEZA SC: Yes, on page 9, Mr 4 Chairman, just to confirm what the witness has already 5 ostensibly acceded to, just so that – on page 9, “On 6 Saturday when we came back, mine security shot at us 7 together with the people from NUM and killed two of our 8 people,” that was what they thought at the time. 9 CHAIRPERSON: We haven't got the relevant 10 passage on the screen, it's line 18. 11 MR NTSEBEZA SC: Yes. 12 CHAIRPERSON: It's passages underlined, 13 in fact. 14 MR NTSEBEZA SC: Yes, Mr Chairman, thank 15 you very much, Mr Chairman. There you are, you see that, 16 Colonel? 17 COLONEL MERAFAE: I see, Chair. 18 MR NTSEBEZA SC: It actually confirms 19 what you have already agreed to with me. Now if you will 20 recall, and this is what I want a confirmation from you, 21 these mineworkers also repeatedly asked the police to 22 escort them to the koppie, do you recall that? 23 COLONEL MERAFAE: I agree, sir, it is so. 24 MR NTSEBEZA SC: They didn't want to go 25 alone, they wanted to be escorted by the police, is that</p>	<p style="text-align: right;">Page 27160</p> <p>1 indicated that we'd like to go with you there, we request 2 that you do not ask us for these things,” and I suppose 3 these things refers to their weaponry, “and that we all go 4 and if you still want to take these weapons then you can 5 take all of - there. We ask you to come with us because we 6 are not going to fight, we are not fighting.” And confirm 7 that this conversation reflects the spirit that was 8 obtaining at the railway line when there was this exchange 9 of conversation between General Mpenbe and the workers. 10 COLONEL MERAFAE: I agree, sir. 11 MR NTSEBEZA SC: Further, and I would 12 like to get your view on this, they also said that it 13 didn't have to be the koppie, it could be a location of 14 your choice, for example a stadium, as long as you escorted 15 them back to their group and called their employer to speak 16 to them, they would meet you in a location of your choice 17 and hand over their weapons and for this, if we for 18 instance could go to page 10 of exhibit QQ2. You see where 19 it says, “We are at the mountain but if you want us, we 20 will come to the location of your choice, we will come to 21 the stadium” – 22 CHAIRPERSON: This is line 20 and 23 following. Yes, we now have that on the screen. 24 MR NTSEBEZA SC: Oh, thank you very much, 25 Mr Chairman. You see that, “We are at the mountain but if</p>
<p style="text-align: right;">Page 27159</p> <p>1 correct? 2 COLONEL MERAFAE: That is true. 3 MR NTSEBEZA SC: In fact, if we look at 4 exhibit QQ2, page 6 line 7, you can see there where the 5 transcript says, “Lonmin walker 1,” I mean “Lonmin worker 1 6 speaks, we did not come here to fight but if you think we 7 came here with malicious intentions then it is better that 8 you should go with us, our weaponry in hand, all the way to 9 where we have settled and show you that we are not 10 fighting.” That was the spirit, isn't it? 11 CHAIRPERSON: Sorry, before the witness 12 answers. There's a passage at the foot of page 9, going on 13 to page 10 where Lonmin worker 2 says, “Our only request is 14 that you come with us to where we are gathering. We have 15 spoken. We will relinquish our weapons only at the place 16 we are going, all of us will go together.” 17 MR NTSEBEZA SC: Indeed, Mr Chairman. 18 Now – 19 CHAIRPERSON: The witness, I interrupted 20 the witness, he was going to answer. 21 COLONEL MERAFAE: I agree with counsel, 22 Chair. 23 MR NTSEBEZA SC: Yes. On page 7 for 24 instance, starting from line 4 where “Lonmin worker 3, 25 there it is, “I'm asking you, sir, just as we have</p>	<p style="text-align: right;">Page 27161</p> <p>1 you want us, we'll come to the location of your choice, we 2 will come to the stadium to hear what our employer says 3 regarding your request.” 4 COLONEL MERAFAE: I see, Chairperson. 5 MR NTSEBEZA SC: Now it seems to me, and 6 this is what I put to you, that it would be strange for the 7 mineworkers to ask the police to escort them back to the 8 mountain if they intended to injure, kill or maim the 9 people who lived in the informal settlement along the way. 10 Don't you agree with that? It seems logical enough. Do 11 you understand the question? 12 COLONEL MERAFAE: If you could please 13 repeat that question. I want to understand it clearly, 14 sir, if you could repeat the question. 15 MR NTSEBEZA SC: Yes. What I'm saying 16 is, given what we have now gone through in the transcript 17 of what happened there, with which you have agreed without 18 qualification, it seems to us it would be strange for the 19 mineworkers to have requested the police to escort them to 20 the koppie if it was their intention, as was alleged by 21 some other witnesses, to injure or to kill or maim people 22 especially if they went into the informal settlement along 23 the way. Do you agree with that? 24 CHAIRPERSON: Do you agree with that? 25 COLONEL MERAFAE: Chairperson, I do not</p>

<p style="text-align: right;">Page 27162</p> <p>1 understand that because if that is true, there was a road 2 leading to the koppie and not getting into the informal 3 settlement so we have to look at both of these. 4 [12:28] MR NTSEBEZA SC: Perhaps let me give you 5 a little bit of background so that we can contextualise the 6 question. I understand your answer, you see we, the 7 commission has heard evidence whether through statements or 8 through oral evidence that at one stage whilst you, I mean 9 collectively whilst the SAPS were there on the 13th of 10 August at that railway line were escorting these people to 11 the mine workers to the koppie as had been agreed between 12 General Mpembe and all of you. At some stage and this 13 seems to be the reason that is being given for why the 14 teargas canisters thrown at or shot at the mine workers. 15 The evidence is that at some stage the mine workers 16 deviated from the route that they were taking in order to 17 get into the informal settlement and the apparent 18 justification for the use of tear gas is that they were now 19 going to go into the informal settlement and they would 20 harm the people in the informal settlement which is where 21 they live incidentally. Now I'm asking you the question is 22 that probable that people who asked you as the armed police 23 to escort them to the koppie that they would suddenly think 24 of going into the informal settlement to harm people, 25 injure people who are living in the informal settlement.</p>	<p style="text-align: right;">Page 27164</p> <p>1 could go back again, Mr Chairman and put up on the screen 2 exhibit Z1 at the place where we have the Colonel, yes. 3 CHAIRPERSON: That's 2100, we see the 4 general on the telephone, the Colonel next to him and two 5 other people. Can you recognise the other two? 6 COLONEL MERAFAE: The one is Colonel 7 Diole, the other gentleman for Lonmin Mr – 8 CHAIRPERSON: I think we've been told 9 his name is Blou. 10 COLONEL MERAFAE: Mr Blou yes. 11 CHAIRPERSON: Colonel Diole is a 12 Colonel, he's the other person in uniform and then Mr Blou 13 is the gentleman with his hands on his hips wearing a black 14 jersey, is that right? 15 COLONEL MERAFAE: Ja, the one with the, on 16 the extreme right is Colonel Diole, the one facing our, to 17 me it's myself and then this gentleman who is looking that 18 side is Mr Blou from Lonmin. 19 CHAIRPERSON: He's the one in the black 20 jersey with his hands on his hips. Diole is the one in 21 uniform? 22 COLONEL MERAFAE: Ja, the one with the 23 uniform is Colonel Diole, Chairperson. 24 CHAIRPERSON: Okay so we know who all 25 the people were. Now Mr Ntsebeza wants to ask you about</p>
<p style="text-align: right;">Page 27163</p> <p>1 Do you now understand where I am coming from? 2 COLONEL MERAFAE: I do understand you, 3 Sir. Again I explain looking at the important issue that 4 you are now raising. There was a road that was leading 5 straight to the hill and not to the squatter settlement. 6 Chairperson, I agree that they could have gone into the 7 squatter camp and not injure people but there was an 8 agreement between us and them that that is the way to 9 follow to the koppie. 10 MR NTSEBEZA SC: Yes. As you have seen 11 from the transcripts the mine workers were giving you a 12 variety of options. You can escort us to the location of 13 your choosing, it doesn't have to be the koppie, the 14 critical question for them and this is what they conveyed 15 to you was that you should call the employer because they 16 want the employer to request, I mean to respond to their 17 request and on that basis they were prepared to hand over 18 their weapons. Would that be a fair summary of the kinds 19 of exchanges that took place at the railway line which is 20 why in the end you as the police under the command of 21 General Mpembe decided to move and escort the mine workers? 22 COLONEL MERAFAE: That is true, yes. 23 MR NTSEBEZA SC: Now I want us to talk 24 about a phone call that has been the subject of debate in 25 this commission which was made at that railway line. If we</p>	<p style="text-align: right;">Page 27165</p> <p>1 that telephone conversation. 2 MR NTSEBEZA SC: Yes, Chair. 3 CHAIRPERSON: In which General Mpembe 4 was speaking to somebody else. Do you know to whom he was 5 speaking? Colonel, do you know to whom Major General 6 Mpembe was speaking? 7 COLONEL MERAFAE: Whilst we were there, 8 Chairperson, with these people, General Mpembe was phoning 9 the Provincial Commissioner giving her a situation report. 10 MR NTSEBEZA SC: Alright, now so what did 11 he say to you? Did he say anything to you about who he was 12 calling or who had called him, I don't know, do you know 13 who had called who, was it General Mpembe who called the 14 Provincial Commission General Mbombo or was it General 15 Mbombo who had called or don't you know? 16 COLONEL MERAFAE: Who called who, 17 Chairperson, I don't remember so well who called who. What 18 I do remember is that at one stage he was talking to her 19 giving a situation report. 20 MR NTSEBEZA SC: The situation report do 21 you know what it was that he was reporting to her? 22 COLONEL MERAFAE: Chair, the situation 23 report could be something like we are seeing people that 24 are armed, the protestors. Another one could have been 25 what we intend doing, are we going to disarm them on all</p>

<p style="text-align: right;">Page 27166</p> <p>1 those options. Not to ask the superior to tell you what to 2 do but the situation report to tell the person, the senior 3 what you are observing on the ground. 4 MR NTSEBEZA SC: You see what, if we had 5 to play this clip you will see that up to that point, right 6 up to the point where he receives a telephone or he makes a 7 telephone call it had been at a point where, and this we'll 8 argue, General Mpembe was beginning to understand what the 9 mine workers were putting to him. Namely please one, we 10 are not fighting with you. We don't want to fight with 11 you. We want the employer, we are carrying these weapons 12 because we were shot at by Lonmin workers, security and 13 NUM. We are prepared to hand over the weapons to you but 14 please escort us firstly to the koppie, it doesn't have to 15 be the koppie, you can escort us to a place of your own 16 choosing and we'll hand you over, and we'll hand the 17 weapons over to you. Now if we played that clip trust me 18 up to that point where you see General Mpembe that is what 19 had happened and I want to suggest to you that the 20 situation report that he was giving to the provincial 21 commissioner was to tell her that I think at this stage we 22 need to change tact because these people whom we were to 23 disarm have put a suggestion and the suggestion is that we 24 must escort them to the mountain or wherever we can, a 25 venue of our choice and that, and this is what we will</p>	<p style="text-align: right;">Page 27168</p> <p>1 General Mpembe said. 2 MR NTSEBEZA SC: Yes. 3 CHAIRPERSON: Whether you must do it 4 immediately or whether you must do it at some stage is a 5 matter for your choice. But her point is that at some 6 stage the witness should be told what General Mpembe said 7 that he can bear that in mind. 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: Anyway you're the cross- 10 examiner. 11 MR NTSEBEZA SC: Yes, yes Mr Chairman. 12 CHAIRPERSON: I'm sure you'll strive not 13 to be unfair. 14 MR NTSEBEZA SC: Yes. 15 CHAIRPERSON: Carry on. 16 MR NTSEBEZA SC: Yes, now, thank you, Mr 17 Chairman, I propose to put what the evidence was later on. 18 But as a person who was there, Colonel, I just want to test 19 what you remember to have been the situation. There you 20 are, you are standing there with General Mpembe on the 21 phone and you are unequivocal about who he is phoning and 22 of course we'll also led evidence about who those, you say 23 he was phoning have said in testimony here. But let's go 24 to, your evidence thusfar is that you know that when he was 25 on the phone as you see him on the phone in that clip, he</p>
<p style="text-align: right;">Page 27167</p> <p>1 argue and that that is what General Mpembe was reporting to 2 General Mbombo because to him it appeared to make sense. 3 Would you disagree with that kind of assessment of what 4 General Mpembe was saying given that you were saying he was 5 giving a situation report to General Mbombo. 6 CHAIRPERSON: Advocate Baloyi wishes to 7 make a point. 8 MS BALOYI: Yes. Chairperson, it's just 9 so that the witness is not confused. Perhaps it should be 10 put to him what General Mpembe testified about that 11 telephone call. I understand that Mr Ntsebeza will submit 12 something else in argument. But perhaps in fairness to the 13 witness he should be alerted to what General Mpembe said 14 about that telephone call. 15 CHAIRPERSON: You questioned him on it 16 and he dealt with the matter in his evidence. So what do 17 you say about the point Ms Baloyi makes? 18 MR NTSEBEZA SC: Mr Chairman, we will 19 perhaps if my learned friend would rather I said what 20 General Mpembe said about that telephone call. I can put 21 several passages in the script. Both in examination-in- 22 chief when he was being led by Mr Ngalwana as well as in 23 cross-examination. Perhaps, Mr Chairman, let us go there. 24 CHAIRPERSON: That's essentially what Ms 25 Baloyi would like you to do to put to the witness what</p>	<p style="text-align: right;">Page 27169</p> <p>1 was talking to General Mbombo. 2 COLONEL MERAFE: That is so, Chair. 3 MR NTSEBEZA SC: And he was giving 4 General Mbombo a situation report. 5 COLONEL MERAFE: That is so, Sir. 6 MR NTSEBEZA SC: And you know unless you 7 want us to replay the clip, which is what I was putting to 8 you earlier on, before my learned friend objected, not an 9 objection really, a suggestion that I should put to you 10 what happened during this. But I am saying if you want us 11 to play the clip up to that point we will. But if the clip 12 is being played to you several times as I think it may have 13 been, when General Mpembe takes that telephone call it is 14 after there has been this discussion between him and the 15 mine workers and where the mine workers have said all the 16 things that I've referred you to in exhibit QQQ2 would you 17 agree with that? 18 COLONEL MERAFE: I agree with that, Sir. 19 MR NTSEBEZA SC: And the summary of what 20 is contained in QQQ2 is what we have referred to in 21 canvassing the evidence with you and the sum total of it 22 was that when he makes that call he has reached a stage 23 with the mine workers where the mine workers have at least 24 put to him that their proposal for the reasons that they 25 state is that they should be escorted rather than being</p>

<p style="text-align: right;">Page 27170</p> <p>1 disarmed at that place. Now I'm putting it to you that 2 that situation report would have contained that situation 3 as at that point. Namely we have a situation here where 4 now the mine workers whom I am here to disarm are putting a 5 proposal to me that we must escort them to the koppie or to 6 any venue of our choice, would you disagree with that? 7 COLONEL MERAFAE: I am not disagreeing 8 with you, it is in fact so. 9 MR NTSEBEZA SC: Now if we could get to 10 21:11 in the clip. You see there he finishes the call. 11 You see that? 12 COLONEL MERAFAE: I see, Chair. 13 MR NTSEBEZA SC: And he seems to be 14 turning to you. Where suddenly he is now finishing the 15 call and, can I ask you what he said to you? 16 COLONEL MERAFAE: The pronoun you, does it 17 refer to me or us in plural. Because there were three of 18 us and – 19 CHAIRPERSON: He used singular, are you 20 asking you singular or you plural? When you say what did 21 he say you, do you mean to, what did he say to the witness 22 or do you mean what did he say to the three of you at the 23 witness, Colonel Diole and Mr Blou? 24 MR NTSEBEZA SC: Mr Chairman, it could 25 have been to you or to you collectively because you were</p>	<p style="text-align: right;">Page 27172</p> <p>1 CHAIRPERSON: That is Mr Ngalwana's 2 question. 3 MR NTSEBEZA SC: That's Mr Ngalwana's 4 question. 5 COLONEL MERAFAE: I see, Chairperson. 6 MR NTSEBEZA SC: And the General says, 7 "Correct, Chairperson." Mr Ngalwana, "With whom are you 8 communicating there?" Do you see that? 9 COLONEL MERAFAE: I see, Chair. 10 MR NTSEBEZA SC: And General Mpembe 11 responds, "I was communicating with the JOC and also 12 informing the Provincial Commissioner about the situation 13 that I'd encountered." Do you see that? 14 COLONEL MERAFAE: I see, Chairperson. 15 MR NTSEBEZA SC: Then Mr Ngalwana wants 16 to know, "in precise terms what the nature of the 17 conversation was, the content of what you were telling 18 them?" And then he responds and I think this is the part 19 that my learned friend would have loved for me to have put 20 to you. Now that response must obviously be weighed 21 against your recent response as to what he had told you 22 after he had completed that telephone call, namely, that 23 we'll escort these people and we must just make sure that 24 they don't get into the township. Do you recall that was 25 your –</p>
<p style="text-align: right;">Page 27171</p> <p>1 assembled at that place and I'm simply taking advantage of 2 you being in the witness box to, do you recall what he was 3 saying to you after he had finished. Whether to you as 4 Colonel or to you as the collective of SAPS and or Lonmin 5 personnel. 6 COLONEL MERAFAE: Chairperson, after 7 dropping the phone he said that he has decided that we 8 escort the workers, the protestors to the koppie. 9 [12:48] But that they should not be allowed to get into 10 the informal settlement. 11 MR NTSEBEZA SC: That's what he said to 12 you? 13 COLONEL MERAFAE: Correct, Chairperson. 14 MR NTSEBEZA SC: Now, you see he 15 testified about that event on day 103 when he was being led 16 by Mr Ngalwana for the SAPS, it would be page 11126 to page 17 11127. 18 CHAIRPERSON: Do you want that on the 19 screen? 20 MR NTSEBEZA SC: Yes, Mr Chairman. Mr 21 Ngalwana was showing General Mpembe the video of the 22 interchange between the General and the strikers next to 23 the railway line and – now if you read from line 23 of page 24 11126, "Can you stop the – is that you seemingly on the 25 telephone, General?"</p>	<p style="text-align: right;">Page 27173</p> <p>1 COLONEL MERAFAE: I remember that, sir. 2 MR NTSEBEZA SC: Now he says here, "I 3 informed the JOC that the strikers seem not to co-operate 4 to hand over their weapons, precisely the reason that I 5 have given to the Commission, that I have taken a decision 6 that we will escort them. The same I did communicate to 7 the Provincial Commissioner and she said to me I am the 8 best placed person on the ground to take a decision and she 9 agreed with me." Do you see that? 10 COLONEL MERAFAE: I see that, Chair. 11 MR NTSEBEZA SC: So you took the decision 12 that you took. Can you continue with the clip? Okay, 13 right. Now, so it seems to me that General Mpembe and you 14 are in agreement that the decision that was taken was to 15 escort the mineworkers as had been the agreement as a 16 consequence of the exchange of conversation between the 17 mineworkers and General Mpembe. Do you agree with that? 18 COLONEL MERAFAE: It's true, sir. 19 MR NTSEBEZA SC: Now, if we went to day 20 145 just again to try and see what has been the testimony 21 so far about that telephone call, day 145 page 16035 22 starting from line 2, somebody was putting questions to 23 General Mpembe and from line 2 he responds, "I spoke to 24 Brigadier Calitz and I spoke to General Mbombo." Do you 25 see that?</p>

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1 COLONEL MERAFAE: It is so, Chair.
 2 MR NTSEBEZA SC: "And I later spoke to
 3 the commanders that were around me." And then the Chairman
 4 says, "I think the question relates to the telephone
 5 conversation that you had. So you had one telephone
 6 conversation with General Mbombo, and then another one with
 7 Brigadier Calitz. Is that right?" Major-General Mpembe,
 8 "Correct." Do you see that?
 9 COLONEL MERAFAE: I see, Chair.
 10 MR NTSEBEZA SC: And then it goes on up
 11 to line 24 where General Mpembe seems to clarify the
 12 questions that the Chairman sought some clarification in
 13 relation to, you see that?
 14 COLONEL MERAFAE: I see that, Chair.
 15 MR NTSEBEZA SC: Now, I think we now know
 16 from your evidence that General Mpembe had told you that he
 17 had been making a situation report to General Mbombo. Now,
 18 I don't know if you have, while sitting there, testified
 19 that he had also spoken to General, I mean to Brigadier
 20 Calitz. Did he tell you whilst you were there that he had
 21 also spoken to Brigadier Calitz and that he told them that
 22 he had decided to escort the workers to the koppie and that
 23 they were happy with his decision to do so?
 24 COLONEL MERAFAE: I do not remember that
 25 about Brigadier Calitz but what I do know is the one about

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1 General, the Provincial Commissioner.
 2 MR NTSEBEZA SC: So whilst you are quite
 3 clear about the communication with the Provincial
 4 Commissioner, General Mbombo, is your evidence that you do
 5 not recall General Mpembe telling you that he had also made
 6 a telephone call to Brigadier Calitz?
 7 COLONEL MERAFAE: It is so, Chair.
 8 MR NTSEBEZA SC: Well, Brigadier Calitz
 9 also had no recollection of receiving a telephone call. If
 10 we could go to day 174, page 20662 lines 1 to 13, now do
 11 you see that, that General – I mean Brigadier Calitz,
 12 between lines 1 to 13, doesn't seem to have any
 13 recollection of having received a telephone call from
 14 General Mpembe. Do you see that?
 15 COLONEL MERAFAE: I see, Chair.
 16 MR NTSEBEZA SC: However, and you may or
 17 may not want to make a comment relevant hereto, on day 183
 18 which was the day on which General Mbombo, the Provincial
 19 Commissioner, was testifying, one of the days, line 22086 –
 20 I mean 22086 starting from line 18 to page 22091 line 13.
 21 Now, she was being asked by my learned friend on behalf of
 22 AMCU, Ms Barnes, starting from line 18, "General, if we
 23 could go now to your amplified statement which is exhibit
 24 LLL1 to paragraph 35. If I could read paragraphs 35 and 36
 25 to you. We are now, General, to orientate you, on the 13th

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1 of August 2012. Paragraph 35 reads 'Having given the
 2 instruction to Mpembe and made OB entry as above, I've left
 3 for Potchefstroom with Naidoo.' So this is now you giving
 4 the instruction to General Mpembe to go and deal with the
 5 strikers at the railway line. Then 36 reads as follows,
 6 'While on the way to Potchefstroom I received a telephone
 7 call from Mpembe who informed me that members of SAPS were
 8 attacked and that one was severely injured and two killed.
 9 That two protestors were shot dead apparently by the police
 10 and one person had died apparently from a stab wound.' So
 11 there you are giving evidence about the telephone call that
 12 you received from General Mpembe after the incident on the
 13 13th. Now, General, what you don't mention in your
 14 statement or indeed in your evidence in chief is the
 15 telephone call that you received from General Mpembe before
 16 the confrontation on the 13th while he was still at the
 17 railway line." General Mbombo, "I don't remember that
 18 call, the call you are referring to. Not that I'm denying
 19 that he could possibly have phoned me." Do you see that?
 20 COLONEL MERAFAE: I see, Chair.
 21 MR NTSEBEZA SC: "Okay, let's look at
 22 General Mpembe's evidence about that telephone call." So,
 23 but as far as you are concerned and this was confirmed by
 24 General Mpembe, you know from what General Mpembe told you
 25 that there had been the conversation between him, on the

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1 telephone, and General Mbombo. General Mbombo doesn't
 2 remember it but she's careful enough to say she's not
 3 denying it.
 4 COLONEL MERAFAE: I see that, yes.
 5 CHAIRPERSON: You see the answer that
 6 General Mbombo gave to what Ms Barnes put there and she was
 7 putting to him what General Mpembe had said in the passage
 8 we've just looked at and she said that he didn't remember
 9 the call. Adv Barnes then put to her what General Mpembe
 10 had said and what is her answer to that? No, it's on the
 11 other side. Yes, we'll have to go on a bit more and along
 12 – no, no, down, down further. She said, her answer is –
 13 remember he said that she had said that she agreed with him
 14 and he was, as the person on the ground he was in a better
 15 position to decide and her answer is, "I do not remember a
 16 discussion between me and him pertaining to that but I
 17 would not dispute that it did take place and truly if it
 18 did, as he says, he was in the position on the ground, he
 19 was the person on the ground who was in a better position
 20 to see what the situation" – so that's what General Mbombo
 21 said on that point. So she didn't disagree with what
 22 General Mpembe had said, so General Mpembe's evidence was
 23 quite clear that he'd made up his mind, a decision, he'd
 24 communicated it to the Provincial Commissioner and she had
 25 said she agreed with him and he could carry on, he was the

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1 person on the ground. So that's quite important, isn't it,
 2 because it means that it wasn't just his decision, it was
 3 now backed by the decision of the Provincial Commissioner
 4 herself.
 5 COLONEL MERAFAE: That is correct, Chair.
 6 CHAIRPERSON: When it's appropriate for
 7 us to take the lunch adjournment, you'll let me know, Mr
 8 Ntsebeza.
 9 MR NTSEBEZA SC: Mr Chairman, this would
 10 be an appropriate time.
 11 CHAIRPERSON: We have a meeting with the
 12 representatives of the SAPS and the evidence leaders, or
 13 some of them, at half past one so we will adjourn now until
 14 two o'clock.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [14:13] CHAIRPERSON: You're still under oath,
 17 Colonel. Mr Ntsebeza, do you have any more questions for
 18 the witness?
 19 MR NTSEBEZA SC: Thank you, Mr Chairman.
 20 Colonel, I still want to find a place in the video before
 21 General Mpebe got or made the telephone call which was the
 22 subject matter of our debate just now. I just want us to
 23 be locating the part where, if I recall he seems to be
 24 suggesting, seems to be having a conversation with the mine
 25 workers where he seeks to understand exactly what it is

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1 that they are proposing. We have not located that but that
 2 is where I wanted to play that clip and then the phone call
 3 and then immediately thereafter. But whilst we are trying
 4 to find the place I just want to ask you just two questions
 5 on, which come out of your operational handbook JJJ186.
 6 Operational diary. Mr Chair, I am aware that I am seeking
 7 to ask –
 8 CHAIRPERSON: That wasn't on your list
 9 of documents –
 10 MR NTSEBEZA SC: Yes, Mr Chair.
 11 CHAIRPERSON: But provided you keep the
 12 point short I'll allow you to –
 13 MR NTSEBEZA SC: No, it will be. It will
 14 be fairly short, Mr Chairman. Two points –
 15 CHAIRPERSON: Maybe your definitely of
 16 fairly short and mine may differ, but proceed for the time
 17 being. Two points you say?
 18 MR NTSEBEZA SC: Yes, just two points.
 19 There is somewhere where you talk about AMCU having wanted
 20 to come back to intimidating everyone -
 21 CHAIRPERSON: It's on the page –
 22 MR NTSEBEZA SC: And -
 23 CHAIRPERSON: It's on the page we're
 24 looking at now.
 25 MR NTSEBEZA SC: They are now

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1 intimidating everyone. That's your entry, do you see that?
 2 COLONEL MERAFAE: It is so, Chair.
 3 MR NTSEBEZA SC: Just one thing in
 4 relation to that. You must have gathered that from
 5 somebody, where did you get that sense that AMCU are now
 6 intimidating –
 7 CHAIRPERSON: He's told us already. He
 8 said that these notes relates to what was said by Lonmin
 9 management –
 10 MR NTSEBEZA SC: Oh.
 11 CHAIRPERSON: To the meeting of the PC,
 12 and the other gentlemen in the offices including himself on
 13 the Monday morning at the Lonmin offices.
 14 MR NTSEBEZA SC: No, thank you, Mr
 15 Chairman, thank you very much. That is where I just wanted
 16 to make sure that it was actually from Lonmin that he got
 17 that, Mr Chairman, thank you very much. Is that so?
 18 COLONEL MERAFAE: It is correct,
 19 Chairperson.
 20 MR NTSEBEZA SC: Now, maybe let's go back
 21 to the clip. Mr Chairman, maybe it would be quicker if we
 22 just, as I say I just want to get to the place firstly
 23 where General seems to confirm with the mine workers what
 24 is it that they are proposing to him.
 25 CHAIRPERSON: Well, I don't want to tell

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1 you what to do, but I don't know that you have to
 2 necessarily –
 3 MR NTSEBEZA SC: Okay.
 4 CHAIRPERSON: Put it to this witness
 5 because it was put to a previous witness.
 6 MR NTSEBEZA SC: Yes.
 7 CHAIRPERSON: That, and you may remember
 8 there was a debate about the correct translation.
 9 MR NTSEBEZA SC: Yes.
 10 CHAIRPERSON: And then we had an
 11 amplified translation and –
 12 MR NTSEBEZA SC: And a bit of a debate
 13 about the amplified transcript.
 14 CHAIRPERSON: It seemed to me to be more
 15 or less agreed that certainly what was said was ambiguous,
 16 it might have been interpreted in another way and I think
 17 as far as I recall one of the mine workers was hear saying
 18 something like you have agreed.
 19 MR NTSEBEZA SC: Yes.
 20 CHAIRPERSON: So we have that already on
 21 record.
 22 MR NTSEBEZA SC: Okay.
 23 CHAIRPERSON: I don't know that you have
 24 got to deal with it with this witness because I think the
 25 point's already before us in the form of an amplified

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1 agreed translation of the relevant transcripts.
 2 MR NTSEBEZA SC: Yes. Now maybe let me
 3 just put without even playing, thank you very much, Mr
 4 Chairman, Colonel, I just want to put a proposition or a
 5 suggestion to you and you may or may not agree with that.
 6 It seems to me that up to the point, I think we clarified
 7 that and you agreed with that, that up to the point when
 8 the General received his telephone call and this is
 9 confirmed by what he said, he said to General Mbombo that
 10 he had understood that the mine workers proposition was
 11 that they should be escorted by the police to the koppie or
 12 to wherever the police would be keen to, to escort them and
 13 that he told you that in fact that is what he proposes to
 14 do. Subject to your understanding him to be saying that
 15 they shouldn't be allowed to get into the informal
 16 settlement. Are we together as far as that goes?
 17 COLONEL MERAFAE: Yes, we are together.
 18 MR NTSEBEZA SC: Now after the call and
 19 this is what I want to canvas with you because this is what
 20 we will argue. After the call he seems to have come back
 21 to the mine workers in what I would argue was in a
 22 surprisingly aggressive manner where he simply said "listen
 23 here I'm going to count now, I want those weapons". I see
 24 you nod. Do you recall that to have been the position?
 25 COLONEL MERAFAE: Yes, it is so, Chair.

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1 MR NTSEBEZA SC: Which would be
 2 surprising given that what he had told that he's not going
 3 to ask for their disarming at that point, that he had
 4 decided to escort them and the only condition is that they
 5 shouldn't be allowed to get into the township. Would you
 6 agree it was, it must have been quite a surprise for him to
 7 suddenly change as he did given what you said he had said
 8 to you.
 9 COLONEL MERAFAE: Chairperson, there was
 10 that discussion where the General wanted them to put their
 11 weapons down and they wanted to proceed to that place
 12 together with their weapons. There was that discussion
 13 that went on. It was not like they put their case, he just
 14 say agree, there were deliberation because it was not even
 15 one speaker from themselves, there were three to four
 16 people that stood out, talk the same thing that was talked
 17 by the first speaker and then the other one will also put
 18 more pressure, also put more you know appeal to say we are
 19 not fighting, we just want to go to our colleagues at the
 20 koppie and the General will just say I want you to put
 21 these thing down, I will not allow you to go.
 22 MR NTSEBEZA SC: Yes, I think we have
 23 past that. Because both in terms of what you say the
 24 General had reported to you after he had made a situation
 25 report to General Mbombo namely that he had decided that

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1 the mineworkers should be escorted to the koppie provided
 2 they will not seek to go into the informal settlement. It
 3 seems and I put this as a suggestion to you that when once
 4 he had said that to you what we see in the clip where he,
 5 against that backdrop, against what you say he suddenly now
 6 says listen I want those weapons, give me those weapons,
 7 I'm not, I'm going to count. That seems to have been a
 8 sudden change of attitude on his part, would you agree?
 9 COLONEL MERAFAE: That is a bit difficult
 10 for me, for me to agree to that. Except that you would
 11 understand, Chair, that it was the General who was
 12 discussing with these people and that was his way of doing
 13 it.
 14 MR NTSEBEZA SC: Now I'm just asking you
 15 from the point of you saying that you were there and you
 16 had been given a report. But I understand your response.
 17 It's something that will probably be left to argument.
 18 That his attitude is surprisingly aggressive given where he
 19 seems to have gone to with the mineworkers by way of
 20 agreement that they will be escorted to the koppie. Now
 21 the last point that I want to raise with you again comes
 22 out of the diaries, the second point, Mr Chairman, arising
 23 out of the diary and that is where you referred to
 24 retaliation and you seem to want to gloss over what was
 25 meant by that inscription by you. You want to, and this is

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1 what we'll argue. That, what you put there is pregnant
 2 with meaning. It is not as innocuous as you wanted the
 3 commission to accept it to be. Whether you summarise it or
 4 you don't, let's read that again. "Approximately 100 armed
 5 men at Donkerhoek with sticks and Pangas -
 6 CHAIRPERSON: I think it's Donkerhoek.
 7 "Plus minus a 100 odd men at Donkerhoek with sticks Pangas
 8 and sharpened instruments, police tried to disarm them,
 9 they attacked us. Three of our members wounded Warrant
 10 Officer Monene and Lepaaku died and Lieutenant Baloyi
 11 injured. Four crossed out and replaced by three attackers
 12 killed by the police -
 13 MR NTSEBEZA SC: In retaliation.
 14 CHAIRPERSON: Retaliation.
 15 MR NTSEBEZA SC: Now I just want to say
 16 this. That in English which you wrote your, that part of
 17 your diary that what that means is inconsistent with
 18 defence. You cannot have meant that the police attacked
 19 and that the attackers were killed by the police in private
 20 defence. I put it to you that just that it is absolutely
 21 incongruous with any notion that the police killed whoever
 22 they killed in self defence. They did exactly what you say
 23 in that clip they did, they killed them in retaliation. In
 24 revenge or in avenging the lives of those whom they believe
 25 had been unlawfully killed by the mineworkers.

<p style="text-align: right;">Page 27186</p> <p>1 COLONEL MERAFA: I do not agree with the 2 counsel here, Chairperson. If what he is saying, 3 Chairperson, is if what counsel is putting to me the 4 killing would not have taken place at the scene where this 5 happened and that the killing would not have taken place at 6 the time that our members were being attacked. This is why 7 I am saying, that is why I am saying, Sir, the words 8 retaliation is not read as it is intended to avenge or 9 anything. I tried to explain it. I also tried to explain 10 what the difference is between private defence and 11 retaliation. Retaliation is avenging and avenge you can 12 take days, it's things that take time after the other, 13 Retaliation is an act of avenging, Chairperson that can be 14 done a few days or many days after the first incident had 15 taken place. I tried to explain as much as I could that is 16 my explanation, Mr Chairperson.</p> <p>17 MR NTSEBEZA SC: You see, Colonel, in 18 that response is very clear to anyone listening to you that 19 at the time you wrote that and even as you sit there you 20 understand exactly that there is something called self 21 defence or private defence and there's something called 22 retaliation and that if you wanted anyone reading that 23 entry to understand what was in your mind, what was your 24 state of mind, if it was so that you wanted anyone to 25 understand that the police acted in self defence you would</p>	<p style="text-align: right;">Page 27188</p> <p>1 happened at the same time and the meaning of things that 2 are happening simultaneously may not be a revenge per se. 3 MR NTSEBEZA SC: Whatever you mean by per 4 se, it seems to me it is very clear to you that self- 5 defence is something that was clear in your mind as to when 6 it can be used in describing, when you are sitting there, 7 not fighting, giving a report of what had happened. You 8 don't say those police persons acted in self-defence, they 9 acted in retaliation. And I don't take it any further with 10 you, I'll simply argue that it is very clear to me and 11 we'll seek to convince the Commission that you are now 12 prevaricating when it comes to this and that you're 13 resorting to seeking to say it is in line with the 14 vernacular languages that you would say retaliation means 15 self-defence but this is not so, not even in any of the 16 African languages can self-defence be equated with 17 retaliation, not in any language.</p> <p>18 CHAIRPERSON: What do you say about that? 19 COLONEL MERAFA: I am going to ask senior 20 counsel to repeat the question, if he could – he said 21 something so long that I might not be able to respond to 22 everything. 23 CHAIRPERSON: What Mr Mpopu – what Mr 24 Ntsebeza put to you was to say that you used the word 25 "retaliation" when you meant "self-defence" or "private</p>
<p style="text-align: right;">Page 27187</p> <p>1 have written self defence there. You chose to write in 2 English and now that you are confronted by an English word 3 whose meaning is exact opposite of what you want us now to 4 accept you seek to hide behind the vernacular and which is 5 why it is and we will argue it is ridiculous for you to 6 seek to suggest that in isiTswana retaliation is self 7 defence.</p> <p>8 COLONEL MERAFA: Unless I do not 9 understand what I'm saying, Chairperson. I saw these 10 things happening, Chairperson, it's not something that I 11 had - might be something different but now I saw members, 12 an incident happening and writing can be different. I saw 13 members being chopped at and I saw members of the police 14 using their firearms to their attackers, during the attack 15 when the attack is taking place. 16 [14:33] I saw that with my own eyes so writing 17 "retaliation" there and I tried to explain and it cannot be 18 accepted, I don't know what to do, what to say furthermore 19 but that is what happened.</p> <p>20 MR NTSEBEZA SC: Exactly. That's exactly 21 the point. You saw members of the SAPS being chopped and 22 stabbed by assegais and pangas and then you saw SAPS 23 persons killing those who had done this.</p> <p>24 COLONEL MERAFA: That was exactly the 25 things that happened at the same time, Chairperson. It</p>	<p style="text-align: right;">Page 27189</p> <p>1 defence" can't be accepted because he says it's not correct 2 in English and it's not correct, he put it, he said in any 3 of the African languages. That's the question he asked 4 you. Am I right, Mr Ntsebeza? 5 MR NTSEBEZA SC: Yes, Mr Chairman. 6 CHAIRPERSON: I'm putting it a bit more – 7 than you did, but I think I captured the essence of what 8 you were putting. 9 MR NTSEBEZA SC: You did, Mr Chairman. 10 CHAIRPERSON: Now how do you answer that? 11 MR NTSEBEZA SC: Experience. 12 COLONEL MERAFA: I still disagree, 13 Chairperson. 14 MR NTSEBEZA SC: What is the Tswana word 15 and please spell it for the record, what is the Tswana word 16 for self-defence? In IsiXhosa self-defence means U-K-U-Z- 17 I-K-A-U-S-E-L-A, ukuzikausela. That's the IsiXhosa, 18 IsiZulu and isiSwati. The Nguni languages, that is what 19 they have for self-defence. What is it isiTswana? 20 Spell the Tswana to me? 21 COLONEL MERAFA: Self-defence [speaking 22 Tswana] – 23 MR NTSEBEZA SC: My junior agrees – 24 COLONEL MERAFA: - where one defends 25 himself, private defence vis-à-vis retaliation.</p>

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1 MR MAHLANGU: As said in English, that
2 was our argument.

3 COLONEL MERAFAE: Self is your own but
4 when you talk private is when you save another person's
5 life by means of acting. So maybe if – because you have
6 been taking me through a long speech and thereafter the
7 question came.

8 CHAIRPERSON: No, well, I did try to
9 capture the essence of it in my repetition of it. What are
10 the Tswana words that you rely on? I think you said, you
11 did say it but I think you should spell it for the benefit
12 of the transcribers –

13 MR NTSEBEZA SC: Yes.

14 CHAIRPERSON: - what the Tswana word is
15 for self-defence, what the Tswana word is for private
16 defence and what the word is for retaliation, if it's a
17 different word?

18 COLONEL MERAFAE: Okay. Self-defence,
19 goitsiretsa, but if you do the same -

20 MR MAHLANGU: Goitsiretsa would be
21 G-O-I-T-S-I-R-E-T-S-A.

22 CHAIRPERSON: That's self-defence.
23 What's private defence?

24 COLONEL MERAFAE: Private defence,
25 goitsiretsa motho omong.

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1 MR MAHLANGU: That is the same word,
2 goitsiretsa, motho means another person, M-O-T-H-O, omong,
3 O-M-O-N-G.

4 MR NTSEBEZA SC: In other words, to
5 defend somebody else.

6 CHAIRPERSON: No, no, Mr Ntsebeza, he is
7 still answering. Let him finish his answer and then you
8 can question him further. And you were going to say
9 something else?

10 COLONEL MERAFAE: Retaliation - to
11 revenge, to avenge – [

12 MR MAHLANGU: That is, to retaliate is to
13 avenge he says, in Setswana goiposolitsetsa.

14 MR NTSEBEZA SC: I rest my case.

15 CHAIRPERSON: Let's have it spelt for the
16 benefit of the transcribers before you rest your case.

17 MR NTSEBEZA SC: Indeed.

18 MR MAHLANGU: And the last word would be
19 spelt G-O-I-P-O-S-O-L-I-T-S-E-T-S-A, goiposolitsetsa.

20 MR NTSEBEZA SC: Mr Chairman, I really
21 rest my case.

22 CHAIRPERSON: Okay. May I ask you a
23 question before Mr Gumbi asks you a couple of questions.
24 You mentioned in your diary that three attackers were
25 killed by the police.

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1 COLONEL MERAFAE: It is so, Chairperson.

2 CHAIRPERSON: Now, according to the
3 evidence, one of them was killed on the field, as it were,
4 where the fighting took place, another was killed some
5 distance away on the other side of a stream as one is
6 moving towards the koppie, across the stream, another one
7 was killed there and the third one was killed by being
8 stabbed in the upper part of his leg in the informal
9 settlement nearer a shack. Now when the first person was
10 killed, this was, I take it, during what one can call the
11 fight on the field, where were you at that stage?

12 COLONEL MERAFAE: Chair, I was a distance
13 of about 10 metres from where the attack took place, Chair.

14 CHAIRPERSON: And you were in a Nyala,
15 were you, at that stage?

16 COLONEL MERAFAE: No, I was in a Ford
17 Escort, white in colour, just nearby.

18 MR MAHLANGU: Said in English.

19 CHAIRPERSON: Alright. Well, we
20 understood what you said.

21 COLONEL MERAFAE: Thank you, Chairperson.

22 CHAIRPERSON: When the second person was
23 killed on the other – well, I'm assuming the person who was
24 killed on the other side of the stream was killed before
25 the person at the informal settlement but that may not be

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1 right, but let's concentrate on the person killed on the
2 other side of the stream, where were you or do you know
3 where you were when the person was killed on the other side
4 of the stream?

5 COLONEL MERAFAE: Two of the killings,
6 Chairperson, I only realised that the two had been killed,
7 they were lying there at the time that we removed Lepaaku.
8 I would not be able to say when and how they were killed
9 but I take it – during that process of the engagement, the
10 fight between the protesters and the police.

11 MR MAHLANGU: As it must have happened,
12 as he says, during –

13 CHAIRPERSON: Well, that's not right.
14 That's not right. According to the evidence that we've
15 heard, which is undisputed, the three people, the three
16 strikers who were killed, were killed as follows. One was
17 killed on what we can call the field where the fighting
18 took place between strikers and the police where the
19 teargas was thrown and so on. One was killed some distance
20 away as one moves towards the koppie, on the other side the
21 stream, not at the field where the fighting took place and
22 the third one was killed in front of a shack in the
23 informal settlement and he was stabbed in the upper part of
24 his leg and appears to have bled to death. So you say you
25 were in a Ford Escort, white in colour as you put it, 10

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1 metres away from where the fight took place. So that would
 2 have been where the first person was killed, is that – that
 3 would be right?
 4 COLONEL MERAFAE: Correct, Chairperson,
 5 yes.
 6 CHAIRPERSON: And do you have any
 7 knowledge of your own about how the person who was shot on
 8 the other side of the stream was shot and died? Do you
 9 know anything about that?
 10 COLONEL MERAFAE: No, Chairperson, I do
 11 not have that evidence.
 12 CHAIRPERSON: And do you know anything
 13 about how the person who was stabbed in the upper part of
 14 his leg and bled to death in front of a shack in the
 15 informal settlement, do you know anything about that?
 16 COLONEL MERAFAE: Not there either, Chair.
 17 CHAIRPERSON: So your statement in your
 18 diary that three attackers were killed by the police,
 19 obviously in the case of the first one, the one who was
 20 killed at the field of battle, if one can call it that,
 21 that's based upon what you saw from this Ford Escort, white
 22 in colour, is that right?
 23 COLONEL MERAFAE: Correct, Chair.
 24 CHAIRPERSON: As far as the others are
 25 concerned, what was the statement based on?

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1 COLONEL MERAFAE: This report,
 2 Chairperson, I did later as an overall report in order to
 3 open up a case. When I went back to the scene I saw, I
 4 could see the three bodies and then made the entry that
 5 appears on the screen, Chairperson.
 6 CHAIRPERSON: So as far as the other two
 7 bodies were concerned, the one over the stream and the one
 8 in the informal settlement, your statement that they were
 9 killed by the police, what was that based on? Was it based
 10 on what someone told you, based upon what you inferred from
 11 the fact that you saw the dead bodies at the scene or what
 12 was it based on?
 13 COLONEL MERAFAE: Chairperson, because I
 14 believed that the mineworkers at the end of the day ended
 15 up fighting with the police, they were not fighting amongst
 16 themselves, that is why I made the decision that because
 17 they were fighting with the police, the killing must have
 18 come from the police. That is why I wrote in this manner,
 19 Mr Chairman.
 20 CHAIRPERSON: I think that you told us
 21 that shortly after what I call the fight on the field you
 22 went away with, was it Colonel Diole, to take Warrant
 23 Officer Lepaaku to the Marikana Clinic, is that right?
 24 COLONEL MERAFAE: That is true. That is
 25 true, Chair.

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1 CHAIRPERSON: And you then, and you came
 2 back later?
 3 COLONEL MERAFAE: I came back later, then
 4 I did this report.
 5 CHAIRPERSON: Yes, and when you came back
 6 were these two bodies, these extra two bodies you're
 7 talking about, were they there? That's when you saw them?
 8 COLONEL MERAFAE: They were there,
 9 Chairperson. There were cones which showed that the scene
 10 had been cordoned.
 11 CHAIRPERSON: I see, thank you. Now that
 12 Mr Ntsebeza has finished, I understand the parties have
 13 agreed among themselves as to who is to cross-examine. Are
 14 you the next one, Mr Gumbi?
 15 MR GUMBI: Yes, Chairperson.
 16 CHAIRPERSON: Please proceed with your
 17 cross-examination.
 18 CROSS-EXAMINATION BY MR GUMBI: Yes,
 19 thank you very much, Chairperson and the Commissioners.
 20 Good afternoon, Colonel.
 21 COLONEL MERAFAE: Afternoon, Advocate.
 22 MR GUMBI: As you know, Colonel, I
 23 represent Lieutenant Baloyi who was injured on the 13th of
 24 August, and the family of the late Warrant Officer Lepaaku.
 25 There are two topics I wanted to briefly canvass with you,

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1 in brief. The first topic I wanted to canvass with you,
 2 Colonel, I'm going to deal with the version of Lieutenant
 3 Baloyi.
 4 MR NTSEBEZA SC: Mr Chair, I don't know –
 5 CHAIRPERSON: Mr Ntsebeza, I was saying
 6 something to my colleague, Mr Tokota, I didn't realise you
 7 had your red light on. What did you want to say?
 8 MR NTSEBEZA SC: No, Mr Chairman, I was
 9 wondering when Mr Chairman was intending to take the – at 3
 10 o'clock?
 11 CHAIRPERSON: Yes, I'm going to take the
 12 tea adjournment in quarter of an hour at 3 o'clock. Is
 13 that inconvenient to you?
 14 MR NTSEBEZA SC: Yes –
 15 CHAIRPERSON: Would you like me to
 16 adjourn now?
 17 MR NTSEBEZA SC: If we could, Mr
 18 Chairman.
 19 CHAIRPERSON: Well, of course. Do you
 20 want a comfort break or a tea adjournment?
 21 MR NTSEBEZA SC: Yes, I will be coming
 22 back, it's just that –
 23 CHAIRPERSON: Alright, we'll take the
 24 comfort break/tea break now.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [15:08] CHAIRPERSON: Colonel, you're still under
 2 oath, Mr Gumbi.
 3 MR GUMBI: Thank you very much,
 4 Chairperson. Colonel, before we adjourned I was busy
 5 explaining to some points I'm going to converse with you.
 6 The first point I wanted to briefly converse with you,
 7 Colonel, revolve around sharing of intelligence information
 8 before intercepting the strikers near the railway line.
 9 And the second one revolve around this aspect of line of
 10 command between General Mpmembe and the police officers near
 11 the railway line. In doing so, Colonel, I'm going to put
 12 the version of Lieutenant Baloyi who's an experience POP
 13 officer who was there near the railway line and then in
 14 that I will solicit your comments on or your views on that
 15 line. Do you understand, Colonel?
 16 COLONEL MERAFAE: I understand you, Sir.
 17 MR GUMBI: Let's deal with this first
 18 aspect of lack of Intelligence information before
 19 intercepting strikers near the railway line. When we
 20 cross-examined General Mpmembe on the 20th of August 2013 on
 21 behalf of Lieutenant Baloyi and the family of the late
 22 Warrant Officer Lepaaku General Mpmembe testified that
 23 before he confronted strikers near the railway line he was
 24 informed by Intelligence that is Brigadier Engelbrecht that
 25 strikers went through rituals with sangoma on the previous

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1 days and they believed that they could not be shot at by
 2 police or mine security. On Tuesday, yesterday when you
 3 were cross-examined by Mr Wesley I think he refer you to
 4 exhibit GGG5, that's the Intelligence information related
 5 to the police before the 13th. Will I be correct, Colonel,
 6 that on the 13th of August 2012 you were aware about this
 7 information?
 8 COLONEL MERAFAE: Chairperson, I did not
 9 have the information that these people had undergone
 10 rituals.
 11 MR GUMBI: Will I be correct that even in
 12 that morning when you paraded your unit even your unit's
 13 members they didn't have this information?
 14 COLONEL MERAFAE: That is so, yes.
 15 MR GUMBI: The version of Lieutenant
 16 Baloyi is that on the 13th you still remember that
 17 Lieutenant was mobilised from Pretoria, that on the 13th of
 18 August 2012 before they were deployed near the railway line
 19 General Mpmembe by virtue of the fact that he had this
 20 information, he ought to have shared this information with
 21 all the members that were there before any deployment of
 22 members. Do you agree with him on that?
 23 COLONEL MERAFAE: I agree with him, yes.
 24 MR GUMBI: And even though that gathering
 25 was a spontaneous gathering General Mpmembe ought to have

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1 convened what we normally call, what he called an emergency
 2 parade then he ought to have conveyed this information. Do
 3 you agree with him on that?
 4 COLONEL MERAFAE: I agree.
 5 MR GUMBI: Again when you check exhibit
 6 SS3 the operational plan of the 13th and Mr Wesley took you
 7 through that operational plan in his cross-examination,
 8 this intelligence information that on the previous day the
 9 strikers or a certain group performed the rituals and they
 10 believed that they could not be shot at by the police is
 11 not factored on that operational plan. Do you see that?
 12 COLONEL MERAFAE: I agree with you yes.
 13 MR GUMBI: As an experienced POP
 14 commander is it possible to draw up an operational plan if
 15 you had this information without factoring it on that
 16 operational plan?
 17 COLONEL MERAFAE: Chairperson, in our
 18 operational plan we had to put these things down, the
 19 behaviour and how these people appear, the people that we
 20 are going to face.
 21 MR GUMBI: So there is no way that you
 22 can ignore it.
 23 COLONEL MERAFAE: It was important yes, if
 24 there was such a thing.
 25 MR GUMBI: Can I also refer to another

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1 critical –
 2 CHAIRPERSON: Before you move onto
 3 another point can I ask the witness?
 4 MR GUMBI: Yes.
 5 CHAIRPERSON: If this factor that you
 6 were mentioning, had been mentioned, had been stated would
 7 that have altered the plan in any way? What could be done
 8 in other words to counteract the fact that if it is
 9 correct, it's disputed, but let's assume for the moment
 10 it's correct, what could be done to counteract the fact
 11 that the people you were dealing with, the strikers had
 12 apparently undergone rituals which it is thought might have
 13 induced them to believe that they were invincible? And
 14 that they couldn't be injured in any way by police action,
 15 what could you have done about it in your plan?
 16 COLONEL MERAFAE: Chairperson, it wasn't
 17 so important as to be put into the plan but to brief the
 18 police about the undergoing of the rituals was important,
 19 to brief the police in order to prepare them mentally for
 20 the operation.
 21 COMMISSIONER HEMRAJ: Yes but to what
 22 effect?
 23 COLONEL MERAFAE: The police had to be
 24 given all this information, Chairperson, before we went to
 25 the operation, to prepare them that these people have used

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1 these rituals and –

2 MR GUMBI: But how does it help them?

3 COLONEL MERAFA: It helps them to know

4 how to approach them because if for instance you – it would

5 prepare them, Chairperson, in the sense that if a police

6 person believes in these rituals himself, some of them

7 believe that, I do not have to handle, to catch, to put my

8 hands on that kind of a person.

9 COMMISSIONER HEMRAJ: Yes, but in dealing

10 with them in either dispersing them or whatever action

11 you're taking how would that fact influence the approach of

12 the policemen?

13 COLONEL MERAFA: I don't think it would

14 have had any difference in their – or influence them in any

15 way.

16 CHAIRPERSON: I'm going to put something

17 to you. Part of the police tactics appears to have been

18 the belief that a show of force, force continuum could

19 somehow influence the strikers to desist from what they

20 were doing. That you come with a big gun which can blow up

21 a house even though it's got no bullets in it and you bring

22 this around on the back of a truck do you think that will

23 make them scared or run away? You fire rubber balls at

24 them, you have stun grenade, now if they think they're

25 invincible, they're invulnerable and a stun grenade doesn't

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1 actually do any damage to them. And the rubber balls if

2 they've got thick jackets will just bounce off and the big

3 gun that hasn't really got any bullets and can't do

4 anything, we'll they'll just laugh. It's not going to make

5 any difference to us, we can carry on. So surely it would

6 have some effect in a sense that if you knew that a show of

7 force isn't going to work, if you're going to try to bluff

8 them into being frightened because you're showing force all

9 the time, they're just going to laugh. And they're going

10 to let it run off their backs, you know like rain water

11 then wouldn't you then adopt a different plan and realise

12 that a reliance on a show of force isn't going to work? So

13 you'll have to have something else that will work, isn't

14 that correct? Or am I misunderstanding something?

15 COLONEL MERAFA: It is true as you say,

16 Chairperson, that is why I'm saying it was necessary for

17 the police to be told that these people had - they've

18 undergone these rituals, washing with this muti. If the

19 police were not told about this they would just proceed as

20 though this was just a normal crowd.

21 CHAIRPERSON: You see the further point

22 is that the belief on the police side that a show of force

23 could be effective to disperse the people would have been

24 totally unfounded, isn't that right?

25 COLONEL MERAFA: I'm saying show of

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1 force, Chairperson, was done on the 14th and the 15th and

2 not on the 13th. What we're talking about now is what

3 Lieutenant Baloyi is saying that he wasn't told of the

4 rituals on the 13th. This show of force came after when we

5 were now going for the strikers who were at the koppie

6 later on. The show of force continued on the koppie on the

7 14th.

8 CHAIRPERSON: The point is that you

9 remember what Lieutenant Baloyi did because he threw a stun

10 grenade at the people and presumably we're going to hear

11 from him in due course. How he got the stun grenade and

12 what he thought he was doing with it but we won't worry you

13 with that, we'll worry him with it when he comes. But he

14 threw a stun grenade, I take it thinking the stun grenade

15 would help, give the people a fright, they can turn around

16 and run away. Why do you use a stun grenade, what do you

17 use a stun grenade for? Surely to frighten people, to make

18 them stop getting up to the mischief that they're getting

19 up to, isn't that right?

20 COLONEL MERAFA: That's correct, Chair.

21 CHAIRPERSON: So Lieutenant Baloyi if he

22 had known that a stun grenade wouldn't have any effect

23 might presumably not have thrown the stun grenade in the

24 first place. Is that right?

25 COLONEL MERAFA: Correct, Chairperson.

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1 COMMISSIONER HEMRAJ: I'm so sorry but

2 you haven't answered the question of how the knowledge of

3 the crowd having undergone the ritual would effect the

4 approach of the police towards that crowd? If you had been

5 briefing your members to either disperse or take some

6 action what would you have advised them to do differently

7 had you known that the crowd had undergone the rituals?

8 COLONEL MERAFA: Chair, I think it's

9 important that if you have such information before we must

10 divulge it to the members for the members to know to

11 prepare them mentally because if you don't tell them they

12 find out later. Some members would be scared of going to

13 the line if they are being lined up. But if they have been

14 given this information and they are told to form a line

15 they would be brave to stand in a line because they have

16 been told in advance. So the importance of sharing

17 information prior, Intelligence prior to the operation is

18 mental preparedness of the members for operation because in

19 our operation we form formations. We want members to line

20 up, so members who are afraid we will be aware that this

21 person is affected and then he must stay at the back, we

22 can't put him the forefront.

23 COMMISSIONER HEMRAJ: So the knowledge

24 will not affect your approach at all.

25 COLONEL MERAFA: No the approach won't be

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1 affected, Chairperson.
 2 COMMISSIONER HEMRAJ: Thank you.
 3 MR GUMBI: Thanks very much. Can I refer
 4 you again to another document? I wanted to test your
 5 knowledge on that one. Can I refer you to exhibit HHH73?
 6 7.3 that's the statement of Mohammed Kassim, are you in
 7 possession of that document? When you go to paragraph 3 of
 8 that statement it's a statement that was deposed by the
 9 owner of the hardware shop RH Supermarket near the vicinity
 10 of Marikana.
 11 CHAIRPERSON: I think you're referring to
 12 paragraph 2. Paragraph 3 simply says I know and understand
 13 the contents of the statement. I think the point you're
 14 putting is 2 isn't it? Well 1 and 2. He made his
 15 statement before which was put before us, 1 doesn't take it
 16 much further. He's a general dealer, he runs a supermarket
 17 at Marikana and he amongst other things was selling pangas,
 18 axes and hatchets. And from the 11th onwards, 11th of
 19 August onwards that's the Saturday there was a sudden great
 20 demand for pangas, axes and hatchets. African males came
 21 and bought them, they did so for a whole week and he was
 22 running out of stock and he had to order some more and this
 23 is the first time he's ever sold so many pangas, axes and
 24 hatchets in a week. That's his evidence, affidavit he made
 25 which had been accepted by the Commission.

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1 MR GUMBI: Yes.
 2 CHAIRPERSON: Now why do you want the
 3 witness to deal with this?
 4 MR GUMBI: On the 13th were you aware of
 5 this information?
 6 COLONEL MERAFAE: I did not have it,
 7 Chairperson.
 8 MR GUMBI: When did you become aware of
 9 it?
 10 COLONEL MERAFAE: After I had been given
 11 this statement yesterday.
 12 CHAIRPERSON: Of course on the 13th when
 13 you saw the people by the railway line did you see pangas,
 14 axes and hatchets?
 15 COLONEL MERAFAE: I saw them but I was not
 16 aware where they got these things, Chairperson.
 17 CHAIRPERSON: Did it make a difference?
 18 COLONEL MERAFAE: For me it doesn't.
 19 MR GUMBI: Thanks, Chairperson.
 20 Lieutenant Baloyi as you are aware was mobilised from
 21 Pretoria, so all this information about strikers performing
 22 rituals on the previous day I wanted to know from you,
 23 Colonel, who was supposed to correlate the flow of
 24 information to members who have been mobilised from
 25 Pretoria as far as this information is concerned?

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1 COLONEL MERAFAE: The overall commander,
 2 because the CI usually share information with top
 3 management then it will flow down to the members who are
 4 operational on the ground. That means it was General
 5 Mpmembe who was to give down this information.
 6 MR GUMBI: The operational commander for
 7 a unit of Lieutenant Baloyi, do you have a knowledge
 8 whether he was aware of this information?
 9 COLONEL MERAFAE: Lieutenant-Colonel
 10 Tsiloane was not even aware of this information there.
 11 MR GUMBI: But these units including your
 12 unit you had Intelligence or information officer, each and
 13 every unit had its own information officer.
 14 COLONEL MERAFAE: That is true, yes.
 15 MR GUMBI: Would I be correct even those
 16 information officers they were not aware about this
 17 information?
 18 COLONEL MERAFAE: No they did not know,
 19 they would have shared it with us.
 20 MR GUMBI: Let's move on and deal with
 21 another aspect. You testified that on that day the 13th of
 22 August you paraded your members before deploying them. The
 23 other units that were mobilised from Pretoria, Kwamhlanga
 24 do you have knowledge whether their operational commanders
 25 or whoever is in charge of them paraded them before any

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1 deployment?
 2 COLONEL MERAFAE: The police from Gauteng,
 3 Chairperson, amongst whom Lieutenant Baloyi found us
 4 already at the scene, we did not meet him before. The
 5 people, the members that were briefed personally by me, the
 6 group from Kwamhlanga and Rustenburg. Kwamhlanga did not
 7 have an offers for that matter.
 8 [15:28] MR GUMBI: The orientation of those
 9 members that were mobilised out of North-West when we
 10 cross-examined General Mpmembe here he testified that you
 11 were orientating members on that day, members who were
 12 mobilised from other provinces. Do you confirm that?
 13 COLONEL MERAFAE: No, no, I disagree with
 14 that.
 15 MR GUMBI: Let us deal with the line of
 16 command before the police attack. Brigadier Mkhwanazi,
 17 firstly, who is a POP trainer, he testified before this
 18 Commission that POP members they are trained on
 19 negotiations or there is a module dealing conflict
 20 resolution of POP training. When we cross-examined General
 21 Mpmembe about how he conducted negotiations with strikers on
 22 the 13th, he testified that he did not talk directly to
 23 members. However, he talked via commanders and he expected
 24 commanders to talk directly to members on the 13th. Do you
 25 confirm that's how POP conduct negotiations wherein we have

<p style="text-align: right;">Page 27210</p> <p>1 different units involved, an operational commander can talk 2 through or via operational commanders without talking 3 directly to members? 4 COMMISSIONER HEMRAJ: Do you mean 5 briefing or negotiations? 6 MR GUMBI: Yes, briefing. 7 COMMISSIONER HEMRAJ: Briefing. 8 MR GUMBI: Briefing with members, yes, 9 when briefing members about what's to happen. 10 COLONEL MERAFAE: Ja, normally the overall 11 commander will talk to officers. Officers, but then they 12 have to brief their own members. 13 MR GUMBI: In all situations you're 14 supposed to do that? 15 COLONEL MERAFAE: In all situations, that 16 is the chain of command. 17 MR GUMBI: The version of Lieutenant 18 Baloyi is that if you assume a role of being an operational 19 commander and you have different units involved, you don't 20 talk via commanders because you are an operational 21 commander, you are in charge. You must talk directly to 22 members and on the 13th of August near the railway line, 23 General Mpembe was supposed to talk directly to members, 24 not talk via commanders. What is your comment on that? 25 COLONEL MERAFAE: That would have been</p>	<p style="text-align: right;">Page 27212</p> <p>1 MR MAHLANGU: As I am seated here he 2 indicates on the left-hand side, the far distance. 3 MR GUMBI: So you can't say whether he 4 had that argument or not? 5 COLONEL MERAFAE: Maybe he heard Colonel 6 Diole speaking but Colonel Diole was supporting my 7 statement. 8 MR GUMBI: Okay. When he made a decision 9 to escort, when General Mpembe made a decision to escort, 10 according to the version of Lieutenant Baloyi that we put 11 to General Mpembe is that when the tactical option to 12 escort is implemented by an operational commander, first of 13 all the operational commander must brief members clearly 14 that the tactical option to escort is implemented and which 15 route to be taken, which route to be used by the strikers 16 from point A to point B. Then on the 13th of August General 17 Mpembe did not inform the members that now he was escorting 18 the strikers from the railway line on their way to the 19 koppie. What is your comment on that? 20 COLONEL MERAFAE: There I would agree with 21 it. 22 MR GUMBI: And furthermore General 23 Mpembe, when he was testifying before this Commission, he 24 testified that there is a shaft within the vicinity of the 25 railway line and they wanted to protect that shaft also</p>
<p style="text-align: right;">Page 27211</p> <p>1 something unusual, Chairperson. The commanders there 2 represent the members on the ground and usually, 3 Chairperson, the members take their instructions direct 4 from the people commanding them. So General Mpembe, spoke 5 to the commanders who were with him, they in turn 6 transmitted the information to section commanders who would 7 then spread it to the people, the members on the ground. 8 MR GUMBI: Let's move on. When the 9 decision to escort was made by General Mpembe, when he took 10 a decision to escort, I wanted to check with you, among the 11 senior officers who were there – Colonel Diole, was he 12 there? 13 COLONEL MERAFAE: Correct, Colonel Diole 14 was there. 15 MR GUMBI: And according to the version 16 of Lieutenant Baloyi there was a disagreement between 17 Colonel Diole and General Mpembe. Colonel Diole was of the 18 view that it was better to disarm the strikers near the 19 railway line rather than disarming them at the koppie. Do 20 you confirm that? 21 COLONEL MERAFAE: Chairperson, I remember 22 that I am the person who disagreed with General Mpembe. 23 The two colonels only confirmed what I was saying, that it 24 should be done that way and at that stage Lieutenant Baloyi 25 was on the far left as we were facing in the direction.</p>	<p style="text-align: right;">Page 27213</p> <p>1 again, it's one of the key areas he took into 2 consideration. Do you confirm that, whether there was a 3 shaft that needed to be protected near the railway line. 4 COLONEL MERAFAE: Chair, I don't – I 5 didn't see. I haven't seen that shaft. I know the railway 6 crossing on our right-hand side and the squatter camp which 7 was ahead of us in front, not a shaft. 8 MR GUMBI: Okay. And again the version 9 of Baloyi is that when you implement a decision to escort 10 strikers you don't only, you don't brief the officers only 11 also again, you also inform the strikers. In this case 12 General Mpembe was supposed to use loudhailers mounted from 13 Nyalas to inform the strikers that now they are being 14 escorted from the railway line to koppie and on the 13th 15 that didn't happen. 16 COLONEL MERAFAE: It's true, it did not 17 happen. 18 MR GUMBI: Let's deal with the police 19 line that was formed behind the strikers. When General 20 Mpembe testified here he said that he instructed police to 21 form police lines behind the strikers, then we asked him 22 whether he issued instruction with regard to the distance 23 to be maintained between the strikers and the police and 24 then his answer was that he expected the commanders to 25 determine the reasonable distance to be maintained between</p>

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1 the strikers and the police. In this situation, when you
 2 take into consideration the incident of the 13th, we are
 3 having – you saw we had armed strikers. In that situation
 4 if you are an operational commander will you allow your
 5 members to follow armed strikers in such a distance when
 6 you take into consideration exhibit HHH16.1 and 16.2?
 7 COLONEL MERAFAE: Chairperson, the police
 8 were not supposed to be too close to people who were
 9 carrying weapons. They had to give them quite a distance,
 10 there should have been a space between them and the
 11 protesters.
 12 MR GUMBI: According to your analysis,
 13 Colonel, those members who were following these strikers on
 14 their way to the koppie, were they properly equipped or
 15 were they sufficient or were they properly protected to
 16 follow them in that fashion or in that way?
 17 COLONEL MERAFAE: Firstly, Chairperson,
 18 the police did not form a correct basic line as it is
 19 supposed to. They were just walking behind the people.
 20 Pertaining to arms, some had their mufflers and some were
 21 just walking there empty-handed.
 22 MR GUMBI: Okay. So while they were
 23 following those strikers, do you have knowledge whether
 24 General Mpembe was in touch with the JOC by then?
 25 COLONEL MERAFAE: He was talking to them

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1 over the radio.
 2 MR GUMBI: Could you hear what he was
 3 communicating to JOC?
 4 COLONEL MERAFAE: When the walk started I
 5 went into the vehicle, I could not hear what was said. The
 6 people who were walking with him behind are Captain Thupe,
 7 Diole and Tsiloane. They were the people who could clearly
 8 hear what he was saying.
 9 MR GUMBI: Okay. Let's deal with this,
 10 the decision to block the strikers from entering informal
 11 settlement. Would I be correct, Colonel, that the decision
 12 to block strikers from entering the informal settlement, if
 13 you are an operational commander in such a situation you
 14 must factor the safety of the members before you could even
 15 implement that decision.
 16 COLONEL MERAFAE: Yes, it is so.
 17 MR GUMBI: You must also factor some
 18 escape route or evacuation routes for members before
 19 implementing that decision?
 20 COLONEL MERAFAE: That I don't agree with.
 21 MR GUMBI: The decision to block strikers
 22 from entering that informal settlement, do you have a
 23 knowledge whether that decision was communicated to
 24 commanders or other members who were there, by General
 25 Mpembe?

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1 COLONEL MERAFAE: The members that were
 2 there and the commanders knew, yes. They were given those
 3 instructions – go and form a line just next to the road
 4 passing in front of the informal settlement.
 5 MR MAHLANGU: That is why they took their
 6 Nyalas and formed a line just in front of the settlement.
 7 COLONEL MERAFAE: They wouldn't have done
 8 that without any instruction. They were instructed to do
 9 so.
 10 MR GUMBI: So that decision, was it
 11 communicated over the radio by General Mpembe?
 12 COLONEL MERAFAE: He said so, yes. I also
 13 personally did it, I told them. I communicated with the
 14 members.
 15 MR GUMBI: So for the safety of the
 16 members is it possible to issue instructions to block while
 17 other police officers are still on foot, they are in close
 18 contact with the strikers who are armed?
 19 COLONEL MERAFAE: The members that were
 20 instructed to go there were inside an armoured vehicle.
 21 They were not walking and where they were exposed to
 22 danger. The police who were walking on foot were those
 23 that were coming behind the strikers and those that were on
 24 the side of the strikers.
 25 MR GUMBI: Yes, that's what I'm asking

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1 you, to say if you take a decision to block I understand
 2 that those members who go there and block they were inside
 3 the armoured Nyalas. So I'm saying that there were other
 4 members that were following those strikers. I'm saying
 5 that can you implement that decision while other police
 6 officers they are following the strikers who are armed, to
 7 take, to can implement that decision, it's possible?
 8 COLONEL MERAFAE: Chairperson, the
 9 situation was when the strikers started moving there was no
 10 fight whatsoever when they started walking. We did not
 11 think, we did not think there would be that attack on the
 12 police.
 13 MR GUMBI: Okay. Let me move on again to
 14 another aspect. According to Lieutenant Baloyi, he is
 15 saying that when you take a decision to disperse a crowd
 16 and up to so far we don't know the court's finding, I mean
 17 the Commission's finding on this one but his version is
 18 saying that when you take a decision to disperse, before
 19 you can do that it is very important as an operational
 20 commander to factor safety of your members before you could
 21 even implement that decision. Do you agree with him on
 22 that?
 23 COLONEL MERAFAE: I agree with that,
 24 Chair.
 25 MR GUMBI: And before you could even

<p style="text-align: right;">Page 27218</p> <p>1 disperse it's very important to check the location of your 2 members, where are they. 3 COLONEL MERAFAE: It is so. 4 MR GUMBI: Lieutenant-Colonel Vermaak, 5 when he testified before this Commission, his observation 6 was that the police didn't have helmets, gas masks and the 7 majority of them did not have protective clothing. Do you 8 confirm his version? 9 COLONEL MERAFAE: Yes, sir. 10 MR GUMBI: Would I be correct again, 11 Colonel, that before firing of that teargas and stun 12 grenade General Mpembe did not issue any instruction to any 13 member to wear a gas mask or keep a safe distance. 14 COLONEL MERAFAE: I agree with you, yes. 15 MR GUMBI: And no instruction was ever 16 issued by General Mpembe instructing member's maybe to 17 remain inside Nyalas for their safety. 18 COLONEL MERAFAE: The question wasn't 19 clear, sir, would you repeat it? 20 MR GUMBI: I'm saying General Mpembe 21 again did not issue any instruction to members, instructing 22 them to remain inside the Nyalas before firing of any 23 teargas and stun grenade. 24 COLONEL MERAFAE: No, there was no such 25 instruction.</p>	<p style="text-align: right;">Page 27220</p> <p>1 COLONEL MERAFAE: I am just as confused as 2 my interpreter. 3 MR GUMBI: I understand, Colonel. Maybe 4 if I can take it slowly. Can I refer you to exhibit 5 JJJ156? Are you in possession of that document? Are you 6 in possession of that document, Colonel? 7 [15:48] COLONEL MERAFAE: Oh, this one? I see it 8 on the screen, I see it on the screen. 9 MR GUMBI: If I can take you to page 18, 10 paragraph 2, if I can read it for you on record. It reads 11 as follows, that is the police version of the incident of 12 the 13th as of 5 September 2012. It reads as follows, "To 13 prevent them from entering the settlement the police 14 utilised teargas, stun grenades, to turn the protesters 15 away from there into the path. Captain Thupe (TRT 16 commander) heard Major-General Mpembe issue a command for 17 stun and teargas, after which Warrant Officer Kuhn fired a 18 shotgun CS rifle grenade." Did you see this document on 19 the 5th of September 2012? 20 COLONEL MERAFAE: I take it this document 21 came about as a result of the discussions that took place 22 at Roots because Captain Thupe heard Major-General Mpembe 23 issue a command to Warrant Officer Kuhn. It was said in my 24 presence during group discussion – General Mpembe and the 25 team.</p>
<p style="text-align: right;">Page 27219</p> <p>1 MR GUMBI: General Mpembe, when he 2 testified before this Commission we presented some 3 statement, extract from pocket book and diaries which 4 pointed him, some of them pointed him as the person who 5 issued instruction on the 13th of August near the railway 6 line. When you were at the road, were you in possession of 7 this statement or information I refer – this information 8 I'm referring you to? 9 COLONEL MERAFAE: I heard it for the first 10 time there. I did not have them. 11 MR GUMBI: I didn't hear? 12 COLONEL MERAFAE: I did not have the 13 information that members had made such statements. I heard 14 that allegation that he had given the instruction for the 15 stun grenade for the first time at Roots. 16 MR GUMBI: Okay. In conclusion, Colonel, 17 I wanted to canvass with you this aspect to test your 18 knowledge of a police version about the incident of the 13th 19 of August leading to the production of exhibit L presented 20 before this Commission. Were you aware of various draft 21 reports that were circulated among the senior police 22 officers dealing about this version of the 16th, of the 13th 23 of August leading to the production of exhibit L? 24 MR MAHLANGU: Leading to the corruption 25 or composition?</p>	<p style="text-align: right;">Page 27221</p> <p>1 MR MAHLANGU: In our group discussion 2 with General Mpembe I heard it. 3 MR GUMBI: I'm saying you saw this 4 document after Roots meeting. 5 COLONEL MERAFAE: No. 6 MR GUMBI: When you compare this document 7 with exhibit L, can you refer to exhibit L, slide 47? 8 COLONEL MERAFAE: If you could show me? 9 MR GUMBI: Slide 47, if I can read it for 10 you, Colonel. "To prevent them from entering the village 11 the police used teargas and stun grenades that produced two 12 light explosive sounds to disperse the protesters, 13 discouraging them from their intended path. With their 14 dangerous weapons, a group of protesters turned around and 15 charged at the members behind them. Two of the police, two 16 of the members of the police who died at the scene were 17 retreating and firing at their protesters with shotgun 18 rubber bullets until they were overpowered and hacked to 19 death." Do you see that? 20 COLONEL MERAFAE: I see, Chair. 21 MR GUMBI: Do you see there the name of 22 Captain Thupe and the name of General Mpembe and this 23 aspect of command is not included there, do you see that? 24 COLONEL MERAFAE: I see this has not been 25 included, yes.</p>

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1 MR GUMBI: Do you have a knowledge why
 2 this information is omitted?
 3 COLONEL MERAFA: I have no idea why it
 4 was omitted, Chair.
 5 CHAIRPERSON: Were you present at Roots
 6 when Major-General Mpembe, according to his evidence,
 7 denied that he'd given any such order?
 8 COLONEL MERAFA: I was present.
 9 MR GUMBI: In conclusion, Colonel, the
 10 version of Lieutenant Baloyi - know for a fact that he
 11 threw a stun grenade before he was attacked on the 13th -
 12 his version is that he threw a stun grenade because he
 13 wanted to protect himself as he was under attack by
 14 strikers. If it is his version as he is putting it, what
 15 is your comment? Will you dispute it?
 16 COLONEL MERAFA: I wouldn't deny that he
 17 is saying that. I don't disagree with him.
 18 MR GUMBI: Thank you very much,
 19 Chairperson.
 20 CHAIRPERSON: Are you in a position to
 21 either confirm or deny what Lieutenant Baloyi says in that
 22 regard? Do you know the circumstances in which he,
 23 firstly, threw a stun grenade and, secondly, was injured?
 24 Did you see anything yourself when he was -
 25 COLONEL MERAFA: I did not see any attack

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1 on Lieutenant Baloyi, Chair.
 2 CHAIRPERSON: Yes, thank you. Before we
 3 adjourn I'd like to ask you one question. In relation to
 4 the events of the 11th - do you remember the 11th of August
 5 was the Saturday when there was a group of people who
 6 marched on the NUM office and there was, various things
 7 happened including some shots were fired. You weren't
 8 there, as we know. Did anyone, any witness who was there
 9 describe to you later what he saw on the Saturday morning,
 10 the 11th of August in the vicinity of the NUM office?
 11 COLONEL MERAFA: I was phoned,
 12 Chairperson, by the station commander of Marikana, Masiza,
 13 who said there were people who were going past the
 14 Wonderkop Stadium towards the NUM offices and that there
 15 was shooting taking place and that's when he asked for my
 16 members to come and assist.
 17 CHAIRPERSON: Did he say anything else?
 18 COLONEL MERAFA: I did not hear anything
 19 further. What I did was to send police to go and assist
 20 there. I did not find out how many people were injured and
 21 when.
 22 CHAIRPERSON: But what you've told us
 23 about what he said, was that all that he said or did he say
 24 any more?
 25 COLONEL MERAFA: No - there is a group of

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1 people marching, passing Wonderkop Stadium and there were
 2 shots that were fired at that group. By whom, he never
 3 explained to me, Chairperson.
 4 CHAIRPERSON: He didn't give you any more
 5 details of the incident?
 6 COLONEL MERAFA: No, I did not get any
 7 details about that incident. It was only on Monday that I
 8 heard about it, Chair.
 9 CHAIRPERSON: What did you hear about -
 10 COLONEL MERAFA: He did not give me
 11 details about that.
 12 CHAIRPERSON: What details? Did you hear
 13 details on Monday about it?
 14 COLONEL MERAFA: Yes, on Monday when I
 15 got - remember on Saturday there was that march, on Sunday
 16 there was the burning of two vehicles and killing of the
 17 security and then Monday we went to the meeting. All the
 18 things starting from Friday the 10th, the 11th, the 12th,
 19 were brought to my attention.
 20 CHAIRPERSON: And did you then get an
 21 account from witnesses as to what had happened on the 11th?
 22 COLONEL MERAFA: No, no witness did come
 23 forward - no witness came forward to say what happened.
 24 CHAIRPERSON: Did you not get any further
 25 details as to what had happened on the 11th?

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1 COLONEL MERAFA: No, Chairperson.
 2 CHAIRPERSON: Thank you. I gather that
 3 the next cross-examiner is going to be Ms Le Roux who is
 4 not here at the moment. It is six minutes to four, so we
 5 will adjourn now until tomorrow morning at 9 o'clock.
 6 [COMMISSION ADJOURNED]
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