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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Marikana Commission of Inquiry

Page 2707		Page 27072
1 [PROCEEDINGS ON 23 APRIL 2014]	1	one sees is members starting – well, one begins, when you
2 [09:13] CHAIRPERSON: The Commission resumes		begin there are no members visible on the left of the video
3 Colonel, you're still under oath.	3	by the railway line and then one sees, as the video
4 OMPHILE JOSEPH MERAFE: (s.u.o.)	4	progresses, NIU members and some POP members start to
5 CROSS-EXAMINATION BY MR WESLEY (CONTD.):	5	spread themselves out down the line –
6 Thank you, Chair. Colonel, you and I did a bit of	6	CHAIRPERSON: Ja.
7 homework. The first matter which I'd like to address is	7	MR WESLEY: - and later on members, POP
8 exhibit Z1 and if you can just confirm that what I'm saying	g 8	members join at the back of the crowd.
9 is correct. We sat this morning, you and I, and we went	9	CHAIRPERSON: Yes. Now, in a minute I'll
10 through exhibit Z1 and we counted shotguns that could be		ask you to confirm what Mr Wesley is saying because he's
11 seen to be carried on the video by SAPS members at the	11	not under oath, you are, but at what stage is it said that
12 scene by the railway line on the 13th of August.	12	some of the members may have put their shotguns in the
13 COLONEL MERAFE: That's correct, Chair.	13	vehicles? Is it after the period that you watched on the
14 MR WESLEY: And we agreed on a figure,	14	video?
15 after some debate, on 16, 16 visible shotguns.	15	MR WESLEY: We looked at the video – I
16 COLONEL MERAFE: It is correct.	16	said, Chair, we ran from nine minutes through to 23 minutes
17 MR WESLEY: There was also a question –	17	and 29 seconds. At 20 minutes and 59 seconds into the
18 CHAIRPERSON: You're both giving evidence	18	video there is a short clip where one sees General Mpembe
19 at the same time, can I ask both of you this question? At	19	on the cell phone. He is surrounded by four members. They
20 what time, what stage of the operation, as it were, were	20	are standing from left to right, it's General Mpembe, then
21 these 16 shotguns visible?	21	there is a Lonmin person whom the Colonel, he cannot
22 MR WESLEY: Chair, the time period that	22	remember his name, he has his back to the camera, then it
23 we looked at on exhibit Z1, on the video it runs from nine	23	is Lieutenant-Colonel Merafe and then it is Captain Diole,
24 minutes all the way through to 23 minutes and 29 second	s. 24	if I'm not mistaken that's his rank, it's Captain Diole.
25 So we're using that as the reference of the time period	25	The Colonel says at that time, that is when he confronted
Page 2707 1 that we have covered, so it is – that's more or less in the	1	Page 27073 General Mpembe and he uttered the words, he's the senior
2 middle of the operation, well, not in the middle of the	2	POP commander, he'll be taking over and it's at that time
 3 operation, that's – let me put it to you this way, Chair, 	3	that the Colonel, the General would have said, no, he
4 23 minutes and 29 seconds, that, what one sees at that	4	doesn't want another Tatane incident and that is then when
5 moment – you'll remember, Chair, it's the scene where the		some members went and put shotguns back in the vehicles.
6 crowd has come around a rock and they are entering the	6	Colonel, is that correct? Is that correct?
 field and there's a SAPS member who is standing in front of 		COLONEL MERAFE: Chairperson, it is so.
8 them with a shotgun which he's pointing at them. That is	8	COMMISSIONER HEMRAJ: Mr Wesley, is there
	9	not a break in this, in the video just before we see
9 the last moment that the video runs at the scene by the		General Mpembe on the telephone?
10 road and that is the last shotgun that we in fact counted,	10	
 so it's in that period of time. CHAIRPERSON: Yes, but at what stage does 	11	MR WESLEY: Yes.
	12	COMMISSIONER HEMRAJ: There is a break in
13 it start? You give us nine minutes but is General Merafe –	13	the video?
14 sorry, General Mpembe still addressing the people?	14	MR WESLEY: Yes.
15 MR WESLEY: Yes, it's before his address.	15	COMMISSIONER HEMRAJ: And the second
16 CHAIRPERSON: Has he started counting	16	point is, do we know that all the POP members were captured
17 yet?	17	by the video?
18 MR WESLEY: Yes.	18	MR WESLEY: No. That's one thing the
19 CHAIRPERSON: As they arrive at the scene	19	Colonel is going to explain. Colonel –
	20	MS BALOYI: Chairperson, it would
21 MR WESLEY: At nine minutes, that's when	21	certainly be helpful to me if we could see the video. I'm
22 we started counting. The General is giving his, he is	22	having to try – I wasn't part of this exercise, as would be
23 starting his talk to the crowd at that point in time.	23	expected, and I'm trying to place things as Mr Wesley is
24 CHAIRPERSON: Okay.	24	speaking. I'm trying to picture it in my –
25 MR WESLEY: And one sees, the first thing	25	CHAIRPERSON: That seems a reasonable
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1	Page 27074 request. Mr Wesley, do you intend showing the video	1	Page 27076 Commissioners what it is that you found?
		2	COLONEL MERAFE: I did what I was asked
2	because if you don't intend it, maybe you will change your	2	
3	intention?		to do, Chairperson. On the 13th of August 2012 in the
4	MR WESLEY: Yes, I've absolutely no	4	morning, 40 from Rustenburg composed of the main unit and
5	objection to showing the video but may I just say that SAPS	5	the satellite unit were 40, were joined by 15 from the POP
6	were invited to attend this meeting this morning that I had	6	in KwaMhlanga, nine from the POPS Pretoria, six from
7	with the Colonel. There was an invitation extended.	7	Pretoria/Johannesburg and seven from East Rand. The total
8	MS BALOYI: Chairperson, my attorney did	8	figure of members – there were 77 members of the POP
9	sit in. I didn't sit in deliberately and I would like it -	9	deployed at the railway crossing in the Karee Mine area.
10	CHAIRPERSON: No, I think you acted	10	There were 15 NIU members and members of the TRT were 11.
11	properly in not sitting in and I think your attorney acted	11	We were later on joined by four members from the air wing.
12	sensibly in sitting in, so both of you escape without any	12	The total number was 107 members on the 13th of August 2012,
13	criticism. Mr Wesley also escapes without criticism also.	13	Chairperson. Supporting document, HHH28, exhibit HHH28
14	So now that we've got that straight, would you like to	14	page 13, that is the exhibit number where I refer to,
15	start asking your questions?	15	Chairperson, and also the SAP15s of the particular day, Mr
16	MR WESLEY: Yes.	16	Chairperson.
17	CHAIRPERSON: But wht I'm interested in,	17	MR WESLEY: Colonel, now I'm asking these
18	these 16 – apart from the 16th one which is the man near the	18	questions to be fair to you. We went through the video,
19	rock – were the other firearms, shotguns seen prior to this	19	where were - you tell the Commissioners, if one takes that
20	gap in the video?	20	you are standing in front of the crowd looking at the
21	MR WESLEY: Some of them are seen prior	21	crowd, that's more or less the angle that the video is
22	to the gap but we need to complete the whole picture. The	22	taken from, where were the POPS members distributed?
23	other thing the Colonel had to do was get the number of	23	COLONEL MERAFE: My members were behind
24	members that were at the scene and this will explain and	24	us, some of them standing behind the protesters. Eight of
25	put into context the number of shotguns that we see. If I	25	them were along the railway crossing together with members
	Page 27075		Page 27077
1	Page 27075 can ask him some questions –	1	Page 27077 of the NIU.
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	Page 27078		Page 27080
1	without the video. We've een the video before and most of	1	MR WESLEY: And it follows if SAPS didn't
2	us have it on our computers so if we want to do that	2	have a plan, that the members who attended the scene
3	privately, we can do that.	3	weren't briefed on a plan, what they were going to be
4	MR WESLEY: Yes, that was one of the	4	doing.
5	earlier exhibits, Chair. Might I just correct, it's not	5	COLONEL MERAFE: Chairperson, if
6	not taking the point at all, it's not taking it any	6	something happens in the area, there is what we usually
7	further.	7	call a contingency plan. It's a plan that we have ready so
8	COMMISSIONER HEMRAJ: Mr Wesley, how many	8	that we can tell the police what it is that they are going
9	POPS members are visible as opposed to 16 shotguns? Are	9	to do when they go on such an errand. I have mentioned,
10	you saying 50 of them with only 16 shotguns or 16 persons	10	Chairperson, that when I paraded them in the morning, my
11	with 16 shotguns?	11	members, I briefed them. There is no such thing that they
12	MR WESLEY: We see 16 persons with 16	12	just went there unbriefed.
13	shotguns whom we identify as POP members who can be seen.	13	MR WESLEY: But in the morning you didn't
14	COMMISSIONER HEMRAJ: So there aren't any	14	know that this march was going to happen so you couldn't
15	POPS members without shotguns?	15	have briefed them on what you were going to be doing later
16	MR WESLEY: No, there are. There are	16	that day on the railway line?
17	POPS members without shotguns, there's one or two –	17	COLONEL MERAFE: The duty of the police
18	COMMISSIONER HEMRAJ: How many?	18	there, Mr Chairperson, was general crime prevention duties.
19	MR WESLEY: We can, I can do the figure.	19	I told the police that they would be meeting people that
20	Let me do that exercise, I'll do it with the Colonel and	20	are armed that would be roaming the streets, they were sent
21	we'll come up with a figure there. There's also POPS	21	out to do patrols on the street and to keep a proper
22	members, one or two who for instance don't have a helmet	22	lookout, which means anything that would appear along their
23	on, they've got a cap. They seem to be dressed in various	23	duties on the road, they would be prepared, they were
24	stages but I'll do that exercise then with the Colonel.	24	prepared for it.
25	Colonel, you understand we're going to then, we'll sit with	25	COMMISSIONER HEMRAJ: They weren't
	Page 27079		Page 27081
1	Page 27079 the video and –	1	Page 27081 briefed to do a dispersal later on that day?
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	Page 27082		Page 27084
1	told what to do by then.	1	what time approximately, as far as you can remember, was
2	MR MAHLANGU: Chairperson, as he says,	2	this group of marchers seen on the closed circuit TV in the
3	they will be told by then what to do.	3	JOC?
4	COMMISSIONER HEMRAJ: That will be a	4	COLONEL MERAFE: Past 11, Chair.
5	briefing.	5	CHAIRPERSON: At time did General Mpembe
6	COLONEL MERAFE: When you don't know what	6	and the others, including you, leave the vicinity of the
7	is going to happen, you can't brief people about what is	7	JOC to go to the railway line, to the place near the
8	going to happen because you don't have a clue of what is	8	railway line?
9	going to happen. So the briefing that we have, it's in the	9	COLONEL MERAFE: It was immediately, we
10	morning people are parading, we tell them, we prepare them	10	did not even spend 10 minutes after they were seen but
11	mentally and otherwise that guys, we are going out there.	11	according to us it was a crisis that was happening. We
12	Out there, there are people that are having dangerous	12	were also afraid that these people might reach the informal
13	weapons. Those people should be armed when they are seen,	13	settlement before we stop them so it was a crisis of, you
14	we are not saying to them there are groups of people that	14	get members, you go and stop those members.
15	are gathered somewhere because that information did not	15	MR MAHLANGU: He said it was immediately,
16	come to us, we don't have it at all. So we can't predict.	16	Chairperson, it did not even take 10 minutes after these
17	COMMISSIONER HEMRAJ: Yes, Colonel. The	17	people were seen on TV – and then he further explained in
18	question was, when the operational commander would have	18	English.
19	taken the decision to disperse, it would be at that stage	19	CHAIRPERSON: Thank you, I understood the
20	that they would get a briefing.	20	Tswana as he gave it. Now approximately what time did you
21	COLONEL MERAFE: That's correct,	21	arrive at the area near the railway line and meet up with
22	Chairperson.	22	this group of marchers?
23	COMMISSIONER HEMRAJ: Now what about the	23	COLONEL MERAFE: From Lonmin, eight
24	time constraints about briefing? Would the members simply	24	minutes, Chairperson.
25	understand that if you said to them you were going to	25	CHAIRPERSON: Thank you. Yes, Mr Wesley?
	, , , , , , , , , , , , , , , , , , ,		ju ju ju
		-	
	Page 27083		Page 27085
1	Page 27083 disperse this crowd, or would you need to spell it out?	1	Page 27085 MR WESLEY: Colonel, if I can just pick
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	Page 27086		Page 27088
1	that's going to happen?	1	would receive a briefing while maybe the crowd is being
2	COLONEL MERAFE: Ja, but not necessarily	2	addressed, others might receive instructions via radio, the
3	be coming to me because we've got radios, we communicate	3	fact is that didn't happen.
4	through the radio. I will talk to the members at the rear	4	MS BALOYI: Chairperson, objection to the
5	through the radio to say now we are going to do one, two,	5	question. We know from the evidence that what was decided
6	three, prepare your members, then they will do it.	6	on that day was to escort the strikers. Now when Mr Wesley
7	MR WESLEY: Now I understand. Now, SAPS	7	proceeds on a line that there was no plan, there was no
8	could be criticised that SAPS wasn't in fact prepared to	8	briefing, the things that the Colonel has described didn't
9	execute any plan at the scene, at the scene at the moment,	9	happen, I'm not clear whether it is in respect of a plan to
10	let us say just prior to the moment when the crowd stood	10	disperse, which decision was never made. I need to be
11	up, take that as the moment. And I want to – there are	11	clear, Chairperson, to be able to follow and to know what
12	seven reasons why I say that. One I'm going to reserve	12	we need to meet, at least in re-examination or in argument.
13	because it concerns the equipment that the POP members were	13	CHAIRPERSON: I think there's some
14	wearing and we're going to clarify that, but there are six	14	substance in that point.
15	other reasons I say why SAPS weren't properly prepared to	15	MR WESLEY: Yes –
16	exercise or do a crowd control operation. The first one is	16	CHAIRPERSON: I understood his evidence
17	that after having received the figures from you, you had 30	17	to be that if he'd been in charge he would have given an
18	non-POP members who were at the scene who weren't properly	18	order to disarm and so on. He would then have got his
19	trained or who aren't properly trained in public order	19	commanders to do the necessary briefing, which would have
20	policing. Some of them may have incidentally received some	20	been very short because he was simply going to tell the
21	training at some point in time but you've got 30 non-POP	21	members to do what they are trained to do and use a couple
22	members who'd have to take part in the operation, 30 out of	22	of the key words which would have activated in their minds
23	107 and the 107 includes four air wing, so let's take 30	23	all the training that they'd received. That's basically
24	out of 103, leave the four air wing aside. 30 of the 103	24	his evidence, is that right?
25	police members who would have to execute the operation are	25	COLONEL MERAFE: Correct, Chairperson.
	Page 27087		Page 27089
1	Page 27087 not POP. Do you agree with me, that's a problem?	1	Page 27089 MR WESLEY: I'm not challenging the
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1	Page 27090 fact receive the instruction so when I criticise and I say	1	Page 27092 commander by then was supposed to see to it that the
2	that SAPS, there wasn't a proper briefing, you say in fact	2	formation following the protesters should, they must do,
3	there was sufficient briefing. Are you satisfied there was	3	have at least a distance between themselves and the
4	sufficient briefing of the members of the plan now to	4	protesters, so that one was not my terrain.
5	escort?	5	MR MAHLANGU: That one was not my
6	COLONEL MERAFE: Certain things are	6	terrain, it was for General Mpembe who9 was the overall
7	referred to as instruction, Chairperson, like you would say	7	commander and then operational commander, to tell the
8	to members we do this, you instruct. It's not giving them	, 8	people to be a distance away from these people.
9	starting briefing. What was said to them was the	9	COMMISSIONER HEMRAJ: Yes, I understand
10	instruction from the General that we are going to escort	10	you have the criticism about that distance but the question
11	these people, it's an instruction.	11	really was, what was the instruction that led to the
12	MR WESLEY: Okay but that raises more	12	formation of that line behind the protesters?
13	questions. So what the members are told, and we're dealing	13	COLONEL MERAFE: Basically we were
14	here with the instruction to escort the strikers, the	14	escorting them, Chairperson, escorting means following
15	protesters, the crowd, you're saying that the members are	15	people, directing them in a certain way, direction. So the
16	instructed, this is what we're going to do.	16	instruction was we escort them, and that is basically what
17	COLONEL MERAFE: Correct, Chairperson.	17	was happening.
18	MR WESLEY: Are they told how you're	18	MR WESLEY: In QQQ2 paragraph 13, I'll
19	going to be doing it, in other words what formation they	19	read the sentence again, you say "Myself and other officers
20	must take up, where they must take up this formation, what	20	suggested that we disarm the people there and then because
21	route you're going to follow?	21	we have cornered them." Who are these other officers?
22	COLONEL MERAFE: Yes, we told them,	22	COLONEL MERAFE: Colonel Tsiloane of POP
23	Chairperson, because the Nyalas which were moved in, on the	23	Pretoria, Colonel Diole also agreed with me that we do the
24	side of the informal settlement came as a result of the	24	POP as they are supposed to. Officers of the POP who were
25	instruction that protesters were being escorted. Now	25	also in the vicinity were in agreement that I take over the
	Page 27091		Page 27093
1	members of the police knew what to do when this is to be	1	operation. That is why I say me and other officers.
2	done and how it is to be done.	2	MR WESLEY: I agree. I've got Colonel
3	MR WESLEY: How would they know where	3	Tsiloane, Colonel Diole. You mention other officers, can
4	they must form up? I understand what you say about the	4	you give us any names?
5	Nyalas but the ordinary SAPS member, NIU member, TRT member	5	COLONEL MERAFE: Captain Thupe.
6	who is standing around who gets, he receives an	6	MR WESLEY: Captain Thupe.
7	instruction, we are going to escort them. How is he going	7	COLONEL MERAFE: Captain Tsiloane of NIU.
8	to know where he must go and where he must form up with his	8	MR MAHLANGU: That is the one, Tsiloane
9	fellow SAPS members?	9	of NIU.
10	COLONEL MERAFE: I have explained that	10	MR WESLEY: Yes?
11	the commanders of these members have responsibility of	11	COLONEL MERAFE: I end there -
12	telling their members how we are going to move, escorting	12	MR WESLEY: Okay and they were all in
13	these people. I take it that since they were standing	13	agreement with what you were proposing.
14	along the railway line with their members, they must have	14	COLONEL MERAFE: I speak the truth, sir.
15	told their members this is how we are going to move along,	15	MR WESLEY: Now in the documents that I
16	taking these people to the koppie.	16	asked you to look at, the tenth document is exhibit S,
17	MR WESLEY: You said you take it, you	17	exhibit S. Now we've dealt with this before. I'll remind
18	can't, you don't know as a fact what in fact was told to	18	you, prior to this document the prevailing instruction was,
19	the individual members on the ground there?	19 20	exhibit T which was the letter from the National
20	COLONEL MERAFE: It is so, yes.	20	Commissioner of 20 December 2011, that was then withdrawn
21	COMMISSIONER HEMRAJ: Colonel, what would	21	and this letter replaced it. This is the instruction that
22	have been the instruction that led to the formation of the	22	existed at the time of 13 August, this was the prevailing
23	line some distance behind the protesters?	23	instruction, is that correct?
24	COLONEL MEDAEE. Chairporson the overall	24	COLONEL MEDALE. That is an air
24 25	COLONEL MERAFE: Chairperson, the overall	24 25	COLONEL MERAFE: That is so, sir.
25	COLONEL MERAFE: Chairperson, the overall commander General Mpembe – actually the operational	24 25	COLONEL MERAFE: That is so, sir. MR WESLEY: If we can quickly go through

1	Page 27094		Page 27096
1	it, I really don't want to spend –	1	to have the weapons displayed because this would be showing
2	CHAIRPERSON: What was the date again? I	2	aggression towards them.
3	can't see the date on the document.	3	COMMISSIONER HEMRAJ: As specifically set
4	MR WESLEY: Chair, no. The date one	4	out in standing order 262?
5	finds at the end on the last page of the document, it's 20	5	COLONEL MERAFE: It is correct,
6	July 2012. It's written in manuscript –	6	Chairperson.
7	CHAIRPERSON: No, it can't be 20 July	7	MR WESLEY: Okay and then we go to phase
8	2012 – oh, 20 July 2012?	8	2 now. The phase 2, the second phase in the force
9	MR WESLEY: Yes.	9	continuum is soft skills negotiation phase. "This consists
10	CHAIRPERSON: I see.	10	of opening a channel of communication between role players
11	MR WESLEY: 20 July 2012.	11	in order to negotiate the needs, demands and limits of both
12	CHAIRPERSON: I've got it.	12	police and conveyor/role-player. This requires
13	MR WESLEY: It's written in manuscript	13	establishing a relationship in order to cooperate and find
14	under the signature of General Phiyega on the very last	14	a mutual resolution to potential conflict and
15	page of the document. One doesn't find the date on the	15	confrontation. The member undertaking the negotiation must
16	heading. The first paragraph, I'll read it to you, "The	16	be approachable, fair and firm. During negotiation the
17	evenly numbered letter dated 20 December 2011 has reference	17	process should be conducted one on one or alternatively
18	and it is hereby withdrawn and replaced by this	18	with a record keeper supporting the negotiator and with
19	instruction." Paragraph 2, "In terms of the operational	19	another representative assisting the conveyor. It is
20	function of POP, particularly in terms of the use of force,	20	recommended not to allow more than four people to
21	the following is relevant. The use of force must adhere to	21	participate in negotiations". So the second phase then is
22	a gradual police response that must be appropriate to the	22	these negotiations that you must have?
23	situation, proportional to the threat, reasonable to the	23	COLONEL MERAFE: Yes, I hear that.
24	circumstances and minimal to accomplish the intended	24	MR WESLEY: Now Colonel Vermaak testified
25	objective. 2.2 The continuum of force must consist of the	25	that the criticism that he raised or a concern of his that
	Page 27095		Page 27097
1	following phases." The first phase that you've got to	1	he raised during his testimony was the training of these
2	apply is physical presence and according to this letter,	2	negotiators, he mentioned that in the past and I need your
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		1	
1	Page 27098 MR WESLEY: So in a crowd control	1	Page 27100 COLONEL MERAFE: That is very correct,
2	operation you're the operational commander we're talking	2	Sir.
2	fictitiously now again in theory, you'd get yourself or	2	
	another experienced POP member to go and do these		1 5 1
4		4	the use of shotguns. I just want to go to 3.6. "As
5	negotiations?	5	mentioned in paragraph 11.4C of standing order general 262
6	COLONEL MERAFE: Yes, Chair. Operational	6	rubber rounds may only be used to disperse a crowd in
7	Commander is the one that must negotiate.	7	extreme circumstances. Should other less forceful methods
8	MR WESLEY: Okay. Just out of interest	8	prove ineffective". This means that the use of rubber
9	do you ever send somebody else or would you always do it	9	rounds is only as a last resort.
10	yourself if you were the operational commander?	10	COLONEL MERAFE: That is correct.
11	COLONEL MERAFE: My officers, the	11	MR WESLEY: So one then applies what I've
12	officers that works with me sometimes they do the	12	read to you, the Tonfa, stun grenades etcetera, etcetera,
13	negotiation.	13	etcetera and then only if any of that doesn't work then you
14	MR WESLEY: Okay, and these officers	14	go to rubber rounds.
15	they're POP members, Public Order Policing?	15	COLONEL MERAFE: You forgot, Chairperson,
16	COLONEL MERAFE: Experienced POP members,	16	all these things they are sometimes used on the situational
17 18	not ordinary POP members. MR WESLEY: Okay, yes. So you wouldn't	17 18	appropriateness. Meaning if the situation does not allow
18	MR WESLEY: Okay, yes. So you wouldn't even send an ordinary POP member, you'd want an experienced	_	you to follow them you will put others aside and do what is
20	Public Order Policing Officer to go and do your	19 20	relevant. So the situation before you will determine the force, will determine the force that you must apply.
20	negotiations?	20	MR WESLEY: Yes the words situational
22	COLONEL MERAFE: Correct, Chairperson.	21	appropriateness does appear. So what it in fact means is
22	MR WESLEY: And would you send a hostage	22	that you must look at what you've got in front of you, see
24	negotiator for example?	23	what you're dealing with and then decide which of these
25	COLONEL MERAFE: I would not do that,	24	you're going to apply and in what order and how you're
		20	jouro going to apply and in that or doi and now youro
	Page 27099		Page 27101
1	Page 27099 Chairperson.	1	Page 27101 going to apply them.
1 2		1 2	
	Chairperson.		going to apply them.
2	Chairperson. MR WESLEY: The third phase is then on	2	going to apply them. COLONEL MERAFE: As an operational
2 3	Chairperson. MR WESLEY: The third phase is then on the force continuum if I go back to exhibit S, minimum	2 3	going to apply them. COLONEL MERAFE: As an operational commander –
2 3 4	Chairperson. MR WESLEY: The third phase is then on the force continuum if I go back to exhibit S, minimum force. "This consists of the following (Tactical actions)	2 3 4	going to apply them. COLONEL MERAFE: As an operational commander – MR WESLEY: Yes as an operational
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Chairperson. MR WESLEY: The third phase is then on the force continuum if I go back to exhibit S, minimum force. "This consists of the following (Tactical actions) measures to encourage or coerce required behaviour or actions. One Tonfa and shield (pushback) two stun grenades/thunder flashes, three CS gas grenades, four pepper spray, and water cannon (water foam diet pepper and CS) five 40 millimetre rounds (soft impact/impulse rounds (SIR) CS long and short range rounds, six use of shotguns rubber rounds then blue and white rounds". So and then it carries on, it says "the choice of action option or combination thereof is dependent on situational appropriateness. The above measures have a restricted application and are to be used only on command of section leader, platoon commander/operational commander whose on the scene". So the third phase then if one looks at the force continuum is, if I can summarise it Public Order Policing using these specialised public order policing tools, equipment that you have to do whatever it is that they're ordered to do. But even then you have a very restricted application according to this letter? COLONEL MERAFE: It is so, Chair. MR WESLEY: And the restriction is there	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	going to apply them. COLONEL MERAFE: As an operational commander – MR WESLEY: Yes as an operational commander. COLONEL MERAFE: Platoon commander, section commander. MR WESLEY: You have some form, you have a discretion more or less determined by the situation to apply whatever you think is appropriate? COLONEL MERAFE: Yes. MR WESLEY: Alright, okay I understand that. Now the gathering that you attended on the 13th that crowd we know that the, it's a, the gathering or a march depending on whether they're walking or standing still, but we know that they didn't give notification in terms of the regulation of Gatherings Act that they're going to be walking on that road or gathering in that area. There was no notification? COLONEL MERAFE: That's correct, Chair. MR WESLEY: If we know then, then what has to be applied, you're got to look at the standing order 262 it's paragraph 14, is that correct? COLONEL MERAFE: Correct, Chair.
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	Page 27102		Page 27104
1	termed in paragraph 14 of standing order 262 an unforeseen	1	MR WESLEY: Right. Then you've got a
2	or spontaneous gathering?	2	step four, "identify the leadership element in order to
3	COLONEL MERAFE: That is so.	3	establish communications and start negotiations". We know
4	MR WESLEY: This provides "the first	4	that General Mpembe spoke to the gentleman who's referred
5	member who arrives at the scene or venue of an unforeseen	5	to as Mambush, there was negotiations that ensued –
6	or spontaneous gathering, must seek to preserve the peace	6	COLONEL MERAFE: That is so.
7	and protect and help the community". I understand the	7	MR WESLEY: Step five, "set the highest
8	situation here was slightly different you saw on a video	8	standards of tolerance and do not use any firearm against
9	screen and then the crowd was marching and then you went	9	the demonstrators except in the case of private defence
10	off in a convoy to go and attend to them. But then sub	10	should lives be in serious danger". Tolerance, are you
11	paragraph 2 says what you're going to do when you get	11	satisfied with the level of tolerance displayed, we're
12	there. If we can briefly just look at that. "The first	12	talking about at the scene at the railway line?
13		13	
	member who arrives at the scene must follow the following		
14	procedure. The first step is contact the operational	14	MR WESLEY: And we know that at that
15	centre and request backup by personnel trained in crowd	15	scene there, there were no firearms used.
16	management". That step wasn't followed because it really	16	COLONEL MERAFE: That is correct. During
17	wasn't necessary, you attended the scene with the backup	17	the negotiations there were no firearms.
18	that you had?	18	MR WESLEY: Yes.
19	COLONEL MERAFE: That is so.	19	CHAIRPERSON: That's not quite right as
20	MR WESLEY: "Two, set up a mobile JOC and	20	far as your satisfaction with the standard of tolerance.
21	notify ACCU who will take operational command on arrival".	21	The impression I get from your evidence is you thought that
22	A mobile JOC was that necessary at that time? You just	22	General Mpembe was too tolerant. That's why he was
23	came from a JOC. There wasn't one at the scene, did you	23	prepared to escort them to the koppie. You wanted to
24	feel it necessary to set up a mobile JOC there?	24	disarm them. So he in fact adopted a higher standard of
25	COLONEL MERAFE: Chairperson, a mobile	25	tolerance then you would have done if you were in charge,
	Page 27103		Page 27105
1	Page 27103 JOC, Chairperson is placed where the scene is static, where	1	Page 27105 is that right?
1 2	6	1 2	
-	JOC, Chairperson is placed where the scene is static, where		is that right?
2	JOC, Chairperson is placed where the scene is static, where people are not moving around, we could not put a mobile JOC	2	is that right? COLONEL MERAFE: Maybe I didn't
2 3	JOC, Chairperson is placed where the scene is static, where people are not moving around, we could not put a mobile JOC where people were moving along the road.	2 3	is that right? COLONEL MERAFE: Maybe I didn't understand the question so well what it was, I was asked
2 3 4	JOC, Chairperson is placed where the scene is static, where people are not moving around, we could not put a mobile JOC where people were moving along the road. MR WESLEY: Okay. No it seems as well	2 3 4	is that right? COLONEL MERAFE: Maybe I didn't understand the question so well what it was, I was asked about the tolerance, Chairperson, I understood the
2 3 4 5	JOC, Chairperson is placed where the scene is static, where people are not moving around, we could not put a mobile JOC where people were moving along the road. MR WESLEY: Okay. No it seems as well but you had a JOC already. There was a JOC –	2 3 4 5	is that right? COLONEL MERAFE: Maybe I didn't understand the question so well what it was, I was asked about the tolerance, Chairperson, I understood the tolerance between the protestors and the police at the
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	Page 27106	1	Page 27108
1	and I imagine you know exactly where I'm going. But you	1	wanted to escort the protesters and this section in fact
2	wanted to disperse the crowd. One of the things, if you	2	permits one of the things that General Mpembe could do at
3	had wanted you would have dispersed the crowd.	3	that stage was either to restrict them to a place which
4	COLONEL MERAFE: I wanted to amicably	4	would maybe be the place that they were or escort them
5	request the crowd to lay down their arms if not I will	5	along the route, take them along the route. So he was in
6	disperse and disarm them.	6	fact authorised by the Act to do what he intended which was
7	MR WESLEY: Okay. Right now the step	7	escorting the group. Do you agree with that?
8	seven, that says "bring the contents of Section 9.1C of the	8	COLONEL MERAFE: I agree with you where
9	Act to the attention of the leadership element". Now the	9	you say you choose the one which was chosen by General
10	act that's referred to there is the regulation of	10	Mpembe but I chose the other which is says restrict them.
11	gatherings act. I gave you a copy of section 9 and as luck	11	MR WESLEY: Yes we'll get to what you
12	would have it my copy is now missing but I have some of it	12	chose but the point is what General Mpembe intended, what
13	here. It's on the screen.	13	he wanted to do which is escort the protestors, that is
14	CHAIRPERSON: [indistinct].	14	permitted by the regulation of Gatherings Act. It actually
15	MR WESLEY: No, no, I've got another	15	says it's one of the things he could do.
16	copy, thanks Chair, I've been given one. 9.1C now, Section	16	COLONEL MERAFE: I agree with you 100%
17	9 of the Regulation of Gatherings Act the heading is	17	there. The same law also agrees with the one that says
18	police, powers of police. What step seven says, "is you	18	they could be restricted.
19	must bring the contents of Section 9.1C to the attention of	19	MR WESLEY: Yes, no it does. It says
20	the leadership". If one reads it, and I'm going to read it	20	restrict to a place or guide the participants along the
21	in the way that it should then be read. What it says is	21	route, I know. So now we've got you, General Mpembe wants
22	this. "If a gathering or demonstration is to take place	22	to guide them along the route, you want to restrict them to
23	whether or not in compliance with the provisions of this	23	that place where they are and disarm them.
24	act a member of the police may in the case of a responsible	24	COLONEL MERAFE: I agree with that
25	officer not receiving notice in terms of section 3.2 more	25	correct, Chairperson.
	Page 27107		Page 27109
1	than 48 hours before the gathering restrict the gathering	1	MR WESLEY: Now you've spoken – let's
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2 3	than 48 hours before the gathering restrict the gathering to a place or guide the participants along a route to ensure that vehicular or pedestrian traffic, especially	2 3	MR WESLEY: Now you've spoken – let's just get the steps, it's very important that we get the steps. General Mpembe wants to take them along the route,
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	Page 27110		Page 27112
1	COLONEL MERAFE: I do know, Sir.	1	one should look at happened on the 16th.
2	MR WESLEY: Before you disperse a crowd	2	CHAIRPERSON: Yes I understand but the
3	if one has regard to section 92 of the Act. I'll read it.	3	section tells us, we can read the section. In fact I've
4	"In circumstances contemplated in section 6, sub 6" and	4	been thinking about this section for some time and I think
5	just for the record that's if a gathering has been	5	there's something to be said for the proposition, that
6	prohibited by a responsible officer, the Minister or the	6	Brigadier Calitz should have applied the section at scene
7	court which wasn't the case here of and this is the	7	2. It's certainly relevant there, I'm not sure that it's
8	important part "If a member of the police of or above the	8	relevant here and that's not hypothetical, that's genuine,
9	rank of Warrant Officer has reasonable grounds to believe	9	that's realistic. It's a matter on which I hope we'll get
10	that danger to persons and property as a result of the	10	argument at the end of the day but as far as this witness
11	gathering or demonstration cannot be averted by the steps	11	is concerned it is purely hypothetical. If he had been the
12	referred to in sub section 1, if the gathering or	12	member in charge and if he had had the reasonable grounds
13	demonstration proceeds. The police or such member as the	13	set out in 2, sub 2 he then would have had to do certain
14	case may be may and only then take the following steps.	14	things out of the section, we know that. But he wasn't the
15	The first thing is to call on the protestors participating	15	member in charge, there's something to be said for the
16	in the gathering to disperse and for that purpose he shall	16	proposition maybe but it's a matter of argument but General
17	endeavour to obtain the attention of those persons by such	17	Mpembe decided either consciously or subconsciously as it
18	lawful means as he deems most suitable and then in a loud	18	were not to apply 2 because he didn't think that there were
19	voice order them in at least two of the official languages	19	reasonable grounds to think that danger to persons and
20	and if possible in a language understood by the majority of	20	property as a result of the gathering could not be averted
21	the persons present to disperse and depart from the place	21	by the steps in 1 because he decided to take steps in 1 and
22	of gathering or demonstration within a specified time which	22	he thought that that would avert danger to the person and
23	shall be reasonable. And then if in that time so specified	23	property. But that's a matter which relates to understand
24	the persons gathered have not so dispersed or have made no	24	why General Mpembe did what he did. The fact this witness
25	preparations to disperse such a member of the police may	25	disagreed doesn't really matter because his disagreement
1	Page 27111	1	Page 27113
1	order the members of police under his command to disperse	1	was overruled. You know time is precious in this
2	order the members of police under his command to disperse the persons concerned and may for that purpose order the	2	was overruled. You know time is precious in this Commission particularly now –
2 3	order the members of police under his command to disperse the persons concerned and may for that purpose order the use of force excluding the use of weapons likely to cause	2 3	was overruled. You know time is precious in this Commission particularly now – MR WESLEY: Chairperson, it can be
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1	Page 27114 Scott draft the SAPS plan. I knew the area so I was tasked	1	Page 27116 Lonmin. Later Colonel Scott arrived and I was instructed
2	to assist Colonel Scott. Brigadier Calitz, my commander,	2	to sit with him and assist in the drawing of a plan and we
3		3	
	tasked me. The input that I gave was to inform Colonel		then met in a room separate from the JOC. Up to this stage
4	Scott of the terrain, the number of participants that were	4	we were operating on a contingency plan which was drawn up
5	gathering earlier in the day, i.e. Monday 13 August 2012	5	by my unit. 5.26 During the preparation of the plan I made
6	(the number being 300), that they were armed, that some of	6	inputs about the area of the operation and identified the
7	the people had been killed. Colonel Scott located the	7	key points to be policed. We also discussed the approach
8	place on Google Maps and we talked about the area, routes	8	to take in dealing with the unfolding situation. We also
9	of approach, et cetera and the approach to be adopted as to	9	discussed about the resources that we would have to use and
10	how we were going to deal with the crowd. We decided that	10	their deployment – water cannon, barbed wire and Nyalas.
11	our approach was going to be to disperse, disarm and arrest	11	We also discussed the deployment of specialised units in
12	the protesters. The idea was that we were going to start	12	the operation. 5.27 As part of the plan it was decided
13	with negotiations, after that give them warning to disperse	13	there would be negotiation with the strikers to get them to
14	on their own and then show force with armoured vehicles to	14	disarm and that the police would deploy Nyalas at the
15	demonstrate that SAPS had the resources to disperse them.	15	koppie as a show of force. This was done from 14 August
16	That is what we discussed the Monday night, Tuesday	16	2014. 5.28 After the plan exercise with Colonel Scott, we
17	morning. We were going to attend the JOC meeting on the	17	did the slide presentation and briefed members on the same
18	morning of 14 August 2012 to discuss the plan and to get	18	day about what the plan would be. The brief was that we
19	input from other commanders and generals."	19	wanted to involve the unions to assist with the situation
20	Paragraph 6, "At the JOC meeting on the morning	20	to help disarm the strikers. It was also that we would do
21	of 14 August 2012, CI, being crime intelligence, gave us a	21	a show of force and get them to start talking to the
22	threat assessment and told us what was happening. CI told	22	police. After the presentation of the plan, members were
23	us that the people were armed and that their numbers were	23	deployed to the koppie as per the plan. I remained at the
24	increasing. We then discussed what SAPS was going to do.	24	JOC the whole day and at some point I heard that there was
25	Colonel Scott presented the draft plan which he displayed,	25	a body found near the koppie and that the police attended
	Page 27115		Page 27117
1	Page 27115 after which everyone was asked to give their inputs as to	1	Page 27117 to the body without incident." That's where you deal with
1 2		1 2	0
	after which everyone was asked to give their inputs as to		to the body without incident." That's where you deal with
2	after which everyone was asked to give their inputs as to how we were going to implement the plan. We all gave our	2	to the body without incident." That's where you deal with the planning process.
2 3	after which everyone was asked to give their inputs as to how we were going to implement the plan. We all gave our input.	2 3	to the body without incident." That's where you deal with the planning process. Now there is one matter here that I need clarity
2 3 4	after which everyone was asked to give their inputs as to how we were going to implement the plan. We all gave our input. The plan was that barbed wire was going to be	2 3 4	to the body without incident." That's where you deal with the planning process. Now there is one matter here that I need clarity on. It's exactly when you started this planning exercise.
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	Page 27118		Page 27120
1	Colonel Scott?	1	and discussed it with him.
2	COLONEL MERAFE: Before the JOC meeting	2	COLONEL MERAFE: Correct, Chairperson.
3	Tuesday morning.	3	MR WESLEY: And you would have sorted out
4	MR WESLEY: And the JOC meeting was at	4	those problems before the plan then gets presented.
5	six o'clock that morning, so it's the early hours of	5	COLONEL MERAFE: As I've explained, it's
6	Tuesday morning.	6	not only me but all the others who were part of the meeting
7	COLONEL MERAFE: That's correct, Chair.	7	of the 14th.
8	MR WESLEY: Now one other thing I need	8	MR WESLEY: Yes, you and all the others
9	some clarity on. You talk about drafting a plan and a	9	who gave the input, I understand that but you, I'm talking
10	planning exercise, drawing a plan rather, that's your	10	about you, you would also then have known what the plan
11	words, drawing a plan and a planning exercise. Colonel	11	was.
12	Scott talks about conceptualising an operational strategy	12	COLONEL MERAFE: That is correct. As has
13	and developing a strategy for presentation. What exactly	13	been mentioned, one of the things I raised is that we
14	was it that you were preparing? Was it a strategy or was	14	cannot surround the whole koppie with barbed wire, there
15	it a plan, a detailed plan?	15	has got to be a place where they would be able to move out
16	COLONEL MERAFE: The instructions I was	16	if they disperse.
17	given was to assist Colonel Scott in preparing a detailed	17	MR WESLEY: Yes, it's exactly that
18	plan.	18	because according to QQQ3, and I've read it to you, after
19	MR WESLEY: And what did you do with	19	the JOC meeting, paragraph 6 of QQQ3 you state that
20	them? Did you then - what you prepared, according to you	20	"Colonel Scott presented the draft plan which he displayed,
21	was it a detailed plan or was it a strategy, if you think	21	after which everyone was asked to give their inputs. We
22	back what you did with Colonel Scott?	22	all gave our input, the plan was that barbed wire was going
23	COLONEL MERAFE: I've explained the part	23	to be used to encircle the koppie" and you say "and I
24	that I took. I saw with Colonel Scott, whereby for us to	24	wanted to understand how this barbed wire was going to be
25	draw the plan we need to get information and I supplied the	25	used because when you disperse people, you should give them
1	Page 27119 necessary information to enable us to have a plan in place. So the difference between drawing a plan and an operational	1	Page 27121 space to move to, whereas when you encircle people you don't give them place to disperse." That's the difficulty
3	strategy might be terminology that was used by then. He	3	you're referring to.
4	says strategy, I say a plan but I think, I believe the fact	4	COLONEL MERAFE: That is correct, Chair.
5	of the matter is we talk the same language.	5	MR WESLEY: Why didn't you raise that and
6	MR WESLEY: Okay. Your input was then to	6	sort that out during the planning process with him? Why
7	explain the area to Lieutenant-Colonel Scott, is that what	7	did you wait until after the presentation of the plan to
8	you did? Was that your input?	8	raise that?
9	COLONEL MERAFE: Not to explain but to	9	COLONEL MERAFE: Information that we get
10	show him the actual places I was referring to because I am	10	will determine the direction in which we must take, meaning
11	a resident, I know the area.	11	the plan needed to be updated on information that is coming
12	MR WESLEY: Right. Now in this process,	12	forward.
13	the planning process that you went through with Lieutenant-	13	CHAIRPERSON: Just to ask you about
14	Colonel Scott, did you reach a point where you actually got	14	something else that's relevant on the topic while we're
15	down to agreeing on a plan, a plan, you know, that you can	15	busy with it, that JOCCOM meeting on the Tuesday morning,
			were minutes kept as far as you're aware? I take it
16	put in writing and say this is the plan that we're going to	10	
16 17	put in writing and say this is the plan that we're going to implement?	16 17	minutes are normally kept of JOCCOM meetings aren't they?
17	implement?	17	minutes are normally kept of JOCCOM meetings, aren't they? COLONEL MERAFE: That is so, Chair, I
17 18	implement? COLONEL MERAFE: As I've explained,	17 18	COLONEL MERAFE: That is so, Chair. I
17 18 19	implement? COLONEL MERAFE: As I've explained, Chairman, yes, we met, I gave him the inputs that I did.	17 18 19	COLONEL MERAFE: That is so, Chair. I believe, I believe minutes were taken.
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1	Page 27122 CHAIRPERSON: I asked him were minutes	1	Page 27124 was on the wall, we got information from other commanders
2	kept of the Tuesday morning JOCCOM meeting, he said yes, as		that, the plan as it is with the situation they have seen –
2	I understood him. And I said we've never seen them, I've		
		3	I don't see anything wrong in it being amended after it was
4	been asking for them repeatedly and they haven't been	4	brought there.
5	produced and there was at one stage a suggestion that	5	MR WESLEY: No, please, I'm not saying
6	minutes weren't kept but I'm afraid my experience in this	6	something was wrong. I'm trying to understand this. So as
7	Commission has been such that I keep on asking for the	7	information comes in, the plan was being changed to cater
8	minutes and hope that one day they may become available.	8	then for the new circumstances, information that you
9	Anyway, that's the answer to your question.	9	received. That's the process that you followed.
10	MS BALOYI: Chair, in that regard I think	10	COLONEL MERAFE: That is correct,
11	we submitted statements of Brigadier Pretorius and the	11	Chairperson, where it was necessary.
12	person that General Mpembe had testified was taking minutes	12	MR WESLEY: Where it was necessary.
13	and that person in that statement which was submitted said	13	COLONEL MERAFE: Mm.
14	he didn't take any minutes.	14	MR WESLEY: So circumstances were
15	CHAIRPERSON: However, General Mpembe	15	changing and as they were changing, the plan is changed to
16	said minutes were kept.	16	cater for that circumstance. Now –
17	MS BALOYI: Yes.	17	COLONEL MERAFE: When we checked the
18	CHAIRPERSON: So which of them is	18	plan, it was over days. It talks to the days, what was
19	correct? Anyway, I just asked this witness what light he	19	going to happen. On the 14th, the 15th, those show of force
20	could throw on it and he agrees with General Mpembe that	20	and the like, they are within our plan.
21	minutes were kept, so the ball is back in SAPS court but	21	MR WESLEY: Now, you state that after
22	let's carry on with the cross-examination.	22	that JOC meeting on the 14th you had nothing more to do with
23	MR WESLEY: Thank you, Chair. Colonel,	23	the plan, preparing the plan.
24	now I understand, you raise the difficulty after the JOC	24	COLONEL MERAFE: About the updating part
25	meeting and the presentation of the plan but you spoke now	25	of it, yes, because -
1	Page 27123	1	Page 27125
1	about, and correct me if I'm wrong, the situation changing.	1	MR WESLEY: Ja.
2	about, and correct me if I'm wrong, the situation changing. Please explain that again, why you raised this difficulty.	2	MR WESLEY: Ja. COLONEL MERAFE: - Colonel Scott was
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Marikana Commission of Inquiry

1	Page 27126 called Scott's plan and whatnot and I don't want to bore	1	Page 27128 CHAIRPERSON: Okay, let's –
2	you with that, but on day 95 at page 10117 is an	2	MR WESLEY: Page 1018.
3	appropriate place to start. Day 95, page 10117 line 13.	3	CHAIRPERSON: I know that each one of the
4	The crux that I'm getting at is your involvement. What I'm	4	officers present had the opportunity to deliver or give
5	going to put to you, it appears from this – you'll see the	5	their inputs, whether it was something new, they didn't
6	passage later – is that General Annandale was satisfied	6	agree or added something and I know that as chairman, if
7	that the plan, he was happy and pleased that you had taken	7	you make a proposal and no-one has any objection against
8	part in the plan, being an experienced POPS member and let	8	it, then it carries their total support in terms of what
9	me read the whole passage. Mr Ntsebeza says from line 13,	9	was presented. And I know also that Lieutenant-Colonel
10	"Ja, we'll come to what General Mpembe says, but you know,	10	Merafe, who is a very experienced public order policing
11	we can't give words 15 meanings that they do not have.	11	official or officer, worked together with Colonel Scott on
12	When Scott says 'I conceptualise,' and doesn't say anywhere	12	the night of the 13th and I know also that we had a variety
13	thereafter that Major-General Annandale said, no, you can't	13	of senior officers present who jointly have decades of
14	do this, General Mpembe critiqued this, nowhere.	14	experience in public order policing. No-one less than
15	Throughout he	15	Brigadier Calitz himself, Colonel Makhubela, Pitsi and Mere
16	conceptualises. He takes it to the JOC, the JOC	16	and others whom I've already mentioned.
17	approves, yes, we implement it. That is what is remarkable	17	MR WESLEY: Thank you, Chair. So you see
18	about the plan. You can put your inputs in the strategy,	18	the point is, and he restricts it to the 13th, General
19	but in the plan no-one ever contributes anything." General	19	Annandale emphasised your input as an experienced POPS
20	Annandale, he says in Afrikaans, "Voorsitter, ek het reeds	20	member, in the plan.
21	getuig dat luitenant-kolonel Scott kan duidelikheid daaroor	21	COLONEL MERAFE: I agree, sir.
22	gee hoekom hy dit is sy verklaring vermeld het of nie	22	MR WESLEY: But your input stopped after
23	vermeld het nie. Hy kan ook meld watse insette hy in ag	23	the JOC meeting of the 14th, that's what you have testified.
24	geneem het. Ek weet, en ek was	24	COLONEL MERAFE: I explained, sir, that
25	teenwoordig toe dit voorgelê was by 'n JOCCOM	25	as it is in the statement, that I personally did not have
	Page 27127		Page 27129
1	vergadering met sowat 30-plus bevelvoerders. Ek weet, en	1	anything to do with the plan. I must also mention that
2	vergadering met sowat 30-plus bevelvoerders. Ek weet, en ek was teenwoordig toe hy met myself in gesprek getree het,	2	anything to do with the plan. I must also mention that there were more than five Colonels in the POP who were also
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1	Page 27130 about circumstances that change over time and the plan	1	Page 27132 for 16 August at 15H30, JJJ186 if you can go to the 16th.
2	having to change. Now remember you stop on the 14th having	2	Or actually can we stop there? Can you just go back one
3	any input and I want to show you the effect from your	3	page? Colonel – down a bit - you address it in your – I
4	perspective. In exhibit HHH20, that's Lieutenant-Colonel	4	think it's only fair to do this now. The point might be
4 5		4 5	taken with you later. I recall you address, the very last
	Scott's consolidated statement, paragraph 8.1.2, he's now		
6	dealing with what happened at the JOC meeting on the	6	sentence there, this is dealing with the 13th, the very last line, "Attackers killed by the police in retaliation." Do
7	morning of the 15th of August. So now we've got the next	7	5
8	day. 8.12, this paragraph reads, "After I explained the	8	you see that? COLONEL MERAFE: I see, Chair.
9	operational concept, Major-General Annandale assigned the	9	
10	available forces to their roles and functions. I recall	10	MR WESLEY: Do you want to explain your
11	when he asked for comments or inputs thereafter that	11	use and understanding of the word "retaliation," what you
12	Lieutenant-Colonel Merafe raised the concern that he was	12	meant there? Right at the bottom of the page.
13	not tasked appropriately and did not know what to tell his	13	COMMISSIONER HEMRAJ: The full sentence
14	members their role was. I explained that POP had several	14	reads "three attackers" –
15	tactical options and he was seeking clarity on which one to	15	MR WESLEY: Yes, three.
16	brief and prepare his personnel on. Major-General	16	COMMISSIONER HEMRAJ: - killed by the
17	Annandale then clarified Lieutenant-Colonel Merafe's	17	police.
18	group's role again as being a reserve and needing to wait	18	MR WESLEY: That's correct, three
19	for deployment instructions as all POP groups were doing	19	attackers killed by the police in realisation. What do you
20	while negotiations were taking place." From this, and you	20	mean to be saying by that?
21	must correct me if I'm wrong, you haven't taken part in the	21	COLONEL MERAFE: Retaliation was supposed
22	plan, any planning after the JOC meeting on the 14th – 24	22	to be, I was supposed to say in self-defence, actually in
23	hours later there is a discussion and input about what is	23	private defence because their colleagues were being chopped
24	referred to by Lieutenant-Colonel Scott as the operational	24	at, then they shot at the attackers, so it's the attacker,
25	concept. We're not going to debate that again and he	25	three attackers were killed by the police in, not
	Page 27131		Page 27133
1	explains roles, but things had changed such then that you	1	retaliation, but in private defence. So not in retaliation
2	raised a concern about the tasking that was being given to	2	because retaliation means you hit me, I hit you back, it's
3	your members and you didn't know what to tell the members.	3	retaliation. If I am under –
4	Do you see the effect? The plan is changing, Colonel, and	4	CHAIRPERSON: Tell me, tell me –
5	a day later you are concerned about your tasking and you	5	COLONEL MERAFE: - it's a wrong word that
6	didn't know what to tell your members.	6	was used, Chairperson.
7	CHAIRPERSON: Well, the first question	7	CHAIRPERSON: Yes. We know that you're
8	is, do you agree with what Colonel Scott says in that	8	Setswana-speaking, that's your home language.
9	passage in his statement or don't you agree?	9	COLONEL MERAFE: Yes, Chairperson.
10	COLONEL MERAFE: I agree with it, Chair.	10	CHAIRPERSON: Now is the same word used
11	Chairperson, if I may explain, police members were being	11	in Setswana for retaliation as for self- or private
12	posted as to what their duties were, what they were going	12	defence? If you think in Tswana, you might well use,
13	to do on that particular day. So from POP's side members	13	choose the wrong English word to convey what you're
14	were not told exactly what they were going to do during the	14	thinking in Tswana. Is that the case here?
		15	COLONEL MERAFE: Chairperson – I Tswana-
15	briefing because people were posted. Now I was just		
15 16	briefing because people were posted. Now I was just concerned about what to tell members if I don't know what	16	rised it.
16	concerned about what to tell members if I don't know what	16	rised it.
16 17	concerned about what to tell members if I don't know what they are going to do. Then I got an answer that they are	16 17	rised it. CHAIRPERSON: I won't understand it, I'm
16 17 18	concerned about what to tell members if I don't know what they are going to do. Then I got an answer that they are reserves and I think it was well taken and I went and	16 17 18	rised it. CHAIRPERSON: I won't understand it, I'm afraid.
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		I	
	Page 27134	1	Page 27136
1	COLONEL MERAFE: The three attackers were	1	fired the last year at Karee, so when the NUM people come
2	killed by the police, Mr Chairperson, who were acting in	2	we can ask them whether they mentioned that and what the
3	private defence of their colleagues.	3	context was and what they were conveying but you can't help
4	MR WESLEY: And just to round off the	4	us, no. The other thing is, going back to the people who
5	point, in exhibit QQQ3 paragraph 10 you in fact address it	5	had marched on the Friday who were to be arrested that
6	as well. Now, if we could go to –	6	night it says, you say they were to be identified. Now who
7	CHAIRPERSON: Sorry, before we move away	7	was going to identify them? I understood you to say that
8	from that page of his diary could we please have it again	8	they were to be identified from videos that had been taken
9	on the screen? Higher up – no, no, sorry, okay – it's	9	but who was going to help to identify the people and say,
10	round about between 11:30 and 12:00, what you wrote was	10	that person on that video is so and so and that person is
11	this, now this is written on the 13th, am I right?	11	somebody else?
12	"Gathering at the mountain, people who march on Friday" – I	12	COLONEL MERAFE: My members who were
13	take it that means "marched" because you're talking about	13	present at Marikana during the march, Chairperson, had seen
14	the previous Friday, the 10th – "people who march on Friday	14	the protesters. We also had a video clip for the Friday
15	to be identified and to be arrested tonight." Now –	15	where people could be seen, this is so and so. So there we
16	COLONEL MERAFE: During the meeting in	16	were also having the members of crime intelligence – patrol
17	the morning, in some of the facts that was said then I	17	the area to see who are armed and maybe tried to see where
18	diarised it here, I put it in my diary, ja, I wrote it.	18	they sleep and then we can –
19	People to be identified actually and then they should be –	19	MR MAHLANGU: - who were covering the
20	because they armed we cannot go and arrest them now, we	20	area, seeing the people who were armed and trying to verify
21	will make later arrests, so we must identify them with our	21	where they were staying.
22	videos, try to see or maybe follow them when they are away	22	CHAIRPERSON: Was Lonmin going to assist
23	from the hill. It was something that I wrote just to	23	in any way in identifying the people and saying where they
24 25	remind me of what was happening. It was said in the	24	could be found, where they lived, whether in shacks or in
25	meeting, Chairperson.	25	hostels and, if so, where?
	Page 27135		Page 27137
1	Page 27135 CHAIRPERSON: Now this – I said I take it	1	Page 27137 COLONEL MERAFE: Management did try to
1	CHAIRPERSON: Now this – I said I take it	1 2	
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	Page 27138		Page 27140
1	unusual that Brigadier Calitz was asking for 4 000 rounds	1	relevant places. If we could hand these out, I'll bring it
2	of R5 ammunition.	2	to the Chair.
3	COLONEL MERAFE: It is so, Chair.	3	CHAIRPERSON: It's not already an
4	MR WESLEY: In your experience, have you	4	exhibit?
5	ever before, before that day been asked to arrange	5	MR WESLEY: Chair, I've asked one of our
6	anything, the delivery of anything approaching 4 000 rounds	6	staff to check and Ms Pillay says no it hasn't been.
7	of R5 ammunition to a public order policing crowd control	7	MS PILLAY: Chair, it's not an exhibit
8	or crowd management situation?	8	yet.
9	COLONEL MERAFE: No, it never happened.	9	CHAIRPERSON: If she says it's not an
10	MR WESLEY: And since that day have you	10	exhibit I'll accept that.
11	ever been asked to do something like this again?	11	COMMISSIONER HEMRAJ: While Mr Wesley is
12	COLONEL MERAFE: No, it has not happened.	12	going to direct our attention to that can I just ask you,
13	MR WESLEY: It was odd then, you must	13	this conversation that you had with him, it was just one
14	agree with that at least. You said it wasn't unusual but	14	telephone call and it was only about the ammunition.
15	it really was unusual wasn't it?	15	COLONEL MERAFE: On that day it was the
16	[11:24] COLONEL MERAFE: Yes well that was as a	16	only thing, Chair. I remember this one. If there's any
17	result of question that was put to me, Chairperson, was it	17	other one it might have had reference to something else.
18	usual or unusual. I made the statement when I was being	18	COMMISSIONER HEMRAJ: Yes, thank you.
19	asked questions and responded.	19	CHAIRPERSON: Now we'll mark it exhibit
20	COMMISSIONER HEMRAJ: Any idea why he	20	QQQ13 and describe it as Brigadier Calitz's phone records
21	would have asked you to do this, Colonel?	21	for period from 15-8-2012 to 16-8-2012. Mr Wesley, you say
22	COLONEL MERAFE: I do not know,	22	you can identify telephone conversations between Brigadier
23	Chairperson, but we had other members like the TRT, NIU and	23	Calitz and the witness.
24	the others, I think they wanted to use those, ammunition	24	MR WESLEY: That's right. Colonel, your
25	was to be used by those.	25	cell phone number ends in 6067.
	Page 27139		Page 27141
1	Page 27139 COMMISSIONER HEMRAJ: And what time would	1	Page 27141 COLONEL MERAFE: Correct, Chair.
1 2		1 2	-
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1	Page 27142 COLONEL MERAFE: I repeat I agree with	1	Page 27144 argument that he ordered these extra bullets or rounds
2	that.	2	because he foresaw a conflict as described in the diary
3	MR WESLEY: So when you made the entry	2	which would have an important bearing on some of the
4	and you wrote in your operational diary being 15h30 as	4	findings of this Commission. I'm not saying it would be a
4 5	being the time that you would have received a telephone	5	good argument but it's an argument that I imagine would be
			raised. Equally if we find that he did give that request,
6 7	call from Brigadier Calitz that's not correct. COLONEL MERAFE: Possibly the time not	6 7	make that request to the witness and he now denies it then
8	COLONEL MERAFE: Possibly the time not being correct, I did receive such an instruction and I did	8	
	5	0 9	very often – and if we find that he's giving false evidence in that respect then sometimes false evidence points in the
9	note it. So to be precise in time because I was not		
10 11	knowing this is coming. I make an entry on my diary the time might differ, so long as the time says it's before. I	10	direction of the truth. And the truth to which that false
12	got that information, I complied to the instructions.	11	evidence, if it is false evidence, I'm not saying it is,
12		12	would also be significant for the findings of the
	15	13	Commission. So it's a very relevant matter and I think I
14	instructions but it's the time. It wasn't at half past	14	must allow these questions to be questions.
15	three in the afternoon, in fact you would have spoken to him at approximately ten to one a couple of hours earlier.	15 16	MS BALOYI: Chair, I wasn't saying it's
16 17	COLONEL MERAFE: I said the evidence that	16 17	irrelevant. MR BUDLENDER SC: I'm sorry to interrupt.
17	I spoke to Brigadier Calitz is there.	17	MR BUDLENDER SC: I'm sorry to interrupt. Could we know does the SAPS have a case on this, is there a
18	CHAIRPERSON: According to this exhibit	18	case that it was requested or it was not requested? If the
20	he sent you an SMS shortly after that telephone call at	20	SAPS accept that it was requested then that line of enquiry
20	12:56. Can you remember receiving an SMS and if so can you	20	may come to an end. But what is the SAPS case?
22	remember what the contents of the SMS were?	22	CHAIRPERSON: I think that's legitimate
23	COLONEL MERAFE: As I said Brigadier	23	question, sorry. You see - first answer the question then
24	spoke of his need for the rounds, I take it the SMS and the	24	I want to put a comment to you depending on the answer.
25	phone were delivering the same message. There were 4000	25	What is the SAPS's case as we sit here today? If you're
			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
	Page 27143		Page 27145
1	rounds of R5 ammunition necessary at Marikana.	1	not able to answer the question now without consulting with
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1	Page 27146 witnesses to get different stories and then ask us to pick	1	Page 27148 puts us in a very awkward position to handle that sort of
2	which of those is correct surely. I don't expect you to	2	situation and we, as you know, are concerned to get the
3	answer now, I mean you can if you want to. You may wish to	3	truth and we don't mind what the consequences are. But
4	consider and give me a considered reply after the lunch	4	we've got to get the truth and it may be hampered in that
4 5	adjournment. But it is a matter of concern that has been	4 5	where the police present two different conflicting versions
	exercising my mind for some time, it's just as well it's	6	of the truth and then how we'd handle it. Anyway do you
6 7	raised its head now out of the clinch so we can deal with	7	understand my problem?
8	it or mention it.	8	MS BALOYI: Yes, Chairperson, I do and,
9		9	Chairperson, I accept the invitation to reflect –
10	MS BALOYI: Yes, Chairperson, it may well be that I want to reflect on some of the things but it is	10	Chairperson, I accept the invitation to reflect –
11	important I think, with respect, Chair, that at the outset	11	and I will leave it to Mr Semenya to deal with it and I'm
12	I respond to the first issue which the Chairperson put.	12	sure we do have an answer to that. What was important to
13	It's never been the position of SAPS or of the legal team	13	deal with immediately, Chairperson, was to correct the
14	that we do not call Colonel Vermaak because we do not agree	14	statement that the SAPS decided not to call Colonel Vermaak
15	with any part of his evidence, that is not so. We have	15	because we didn't like his case. It was important that I
16	consulted throughout the process with him with the	16	immediately correct that. That's not the position of the
17		17	SAPS.
18	intention to call him as a witness. Chairperson, we got to a point whereas Colonel Vermaak testified, his evidence	18	MR BUDLENDER SC: Sorry to interrupt.
19	here in chief was that the legal team, as I understood it	19	CHAIRPERSON: Yes all right.
20	then was that he was being required to take blame for	20	MR BUDLENDER SC: Can I ask in relation
20	certain things. That is the only point at which a decision	20	to Colonel – I don't to make this a debate but in relation
22	was made that perhaps to give him peace of mind let him	22	to Lieutenant-Colonel Vermaak, he gave evidence that he was
23	rather obtain his own counsel if that's what he's happy	22	told by the SAPS team that they terminated their services
23	with. It was never the position of the SAPS or of this	24	to him and they did not wish to call him as a witness.
25	legal team on record that he's not represented because the	25	It's rather different from what my colleague has just said
20		20	no ratio alloron non what my consegue has just sala
	Page 27147		Page 27149
1	SAPS did not agree with his case, Chair. It's never been	1	that this was done for his comfort. He was told we don't
2	SAPS did not agree with his case, Chair. It's never been the case. Now, Chairperson, the Chairperson alludes to the	1 2	that this was done for his comfort. He was told we don't want you anymore and in fact we want to cross-examine you.
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1	MR BUDLENDER SC: Chair, I'm sorry to	1	question and there's a whole tea adjournment to think about
2	prolong this but I think we need it on record and we need	2	the answer to that. We'll take the tea adjournment now.
3	to know either now or after the adjournment whether the	3	[COMMISSION ADJOURNS COMMISSION RESUMES]
4 5	SAPS are going to cross-examine Colonel Vermaak on what he says they said to him during consultation with him.	4 5	[12:08] CHAIRPERSON: You're still under oath, Colonel.
6	Because if the version is going to – if he's going to be	6	OMPHILE JOSEPH MERAFE: (s.u.o.)
7	cross-examined to say we didn't fire you, you fired us or	7	CHAIRPERSON: Before I ask Mr Wesley to –
8	we invited you to leave then it's a cross-examination of a	8	well, I can't exactly ask him to resume his cross-
9	witness on what happens in consultation with counsel and it	9	examination, he's already asked the question – before I ask
10	becomes a rather difficult matter.	10	the witness to give the answer to the question we'll have
11	MS BALOYI: Chairperson, this is out of	11	to wait for the return of the SAPS who are absent from the
12	order what Mr Budlender is doing. We didn't enter into a	12	chamber.
13	discussion about Colonel Vermaak and the reasons that we	13	You may now give the answer to the question you
14	are going to cross-examine him and the material we are	14	were asked. Can you remember what the question was or
15	going to cross-examine him about, Chair. All I was dealing	15	would you like Mr Wesley to repeat it?
16	with when I spoke to Colonel Vermaak was in response to the	16	COLONEL MERAFE: I'm asking Adv Wesley to
17	Chairperson's statement that we made the decision not to	17	please repeat the question, sir.
18	lead him because we didn't like his evidence, that's all I	18	CHAIRPERSON: Let's hope he can remember.
19	dealt with, Chairperson. I mean all of these comments are	19	CROSS-EXAMINATION BY MR WESLEY (CONTD.):
20	out of order.	20	No problem. Colonel, in paragraph 6.4 of QQQ1 you write
21	CHAIRPERSON: Well I don't know if	21	that, amongst other things you raised at Roots, one of the
22	they're out of order but anyway let's not go there now.	22	things was – this is the quote, "The issue that the POP
23	You've accepted my offer for the matter to stand over till	23	training that we received never prepared us for
24	later and I suggest we leave it there for the moment. I'm	24	confrontation with armed strikers such as we were faced
25	reminded that I'm failing in my duty to those present. We	25	with in Marikana" and my question to you is, what must be
	Page 27151		Page 27153
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	Page 27154		Page 27156
1	wanted the training that the – POP training that your	1	MR NTSEBEZA SC: Mr Chairman, this video
2	members were to receive in the future, prepare you, to use	2	has been played several times and I don't know, even the
3	your words, for confrontation with armed strikers such as	3	witness probably has heard it played to him in the course
4	you were faced with at Marikana. Now has the training that	4	of his testimony but –
5	is received now since Marikana by members of the POP been	5	CHAIRPERSON: If you don't want the sound
6	upgraded or amplified or – to deal with the situation?	6	I won't ask the operator to give it to us.
7	COLONEL MERAFE: Chairperson – we put	7	MR NTSEBEZA SC: Yes, Mr Chairman, I
8	some people there and try to remove them from the hills, we	8	think the sound should be played.
9	tried to go there, we are moving to that direction –	9	CHAIRPERSON: Mr Ntsebeza has asked for
10	MR MAHLANGU: Chairperson, yes, since	10	the sound, could he be given the sound?
11	Marikana the police training, the POP training, they are	11	[VIDEO IS SHOWN]
12	undergoing refresher courses in an endeavour to upgrade	12	MR NTSEBEZA SC: It's 20:53 actually.
13	them and he used the word like "hills." We train them –	13	[VIDEO IS SHOWN]
14	koppies and hills.	14	MR NTSEBEZA SC: Yes, can you stop it
15	COLONEL MERAFE: Normally when we train,	15	there? Stop it. Now –
16	we train in an environment – flat area. We never, even in	16	CHAIRPERSON: What we can see, for those
17	my experience when we found a crowd sitting there and you	17	who one day read the transcript, is General Mpembe on his
18	know we struggled to deal with it on top of a hill. It was	18	cell phone speaking to somebody.
19	for the first time really.	19	MR NTSEBEZA SC: Yes.
20	MR MAHLANGU: What he was explaining,	20	CHAIRPERSON: Surrounded, well,
21	that in the past they trained on flat places but since	21	accompanied by three other people, two of whom are facing
22	this, they are taking the people now to be trained in	22	away from the camera and the other one is looking sideways
23	places like it was in Marikana where there are hills and	23	towards the camera.
24	mountains.	24	MR NTSEBEZA SC: Now, Colonel, I know
25	MR WESLEY: Thank you, Chair.	25	that from your testimony you were present at the scene when
	Dago 27155		Dago 27157
1	Page 27155 CHAIRPERSON: The parties were going to	1	Page 27157 General Mpembe had the conversation with the group of
1 2	5	1 2	Page 27157 General Mpembe had the conversation with the group of mineworkers next to the railway line. Is that you, the
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	Page 27158		Page 27160
1	CHAIRPERSON: Is there a particular	1	indicated that we'd like to go with you there, we request
2	passage to which you wish to refer us?	2	that you do not ask us for these things," and I suppose
3	MR NTSEBEZA SC: Yes, on page 9, Mr	3	these things refers to their weaponry, "and that we all go
4	Chairman, just to confirm what the witness has already	4	and if you still want to take these weapons then you can
5	ostensibly acceded to, just so that – on page 9, "On	5	take all of - there. We ask you to come with us because we
6	Saturday when we came back, mine security shot at us	6	are not going to fight, we are not fighting." And confirm
7	together with the people from NUM and killed two of our	7	that this conversation reflects the spirit that was
	o i i		obtaining at the railway line when there was this exchange
8	people," that was what they thought at the time.	8	
9	CHAIRPERSON: We haven't got the relevant	9	of conversation between General Mpembe and the workers.
10	passage on the screen, it's line 18.	10	COLONEL MERAFE: I agree, sir.
11	MR NTSEBEZA SC: Yes.	11	MR NTSEBEZA SC: Further, and I would
12	CHAIRPERSON: It's passages underlined,	12	like to get your view on this, they also said that it
13	in fact.	13	didn't have to be the koppie, it could be a location of
14	MR NTSEBEZA SC: Yes, Mr Chairman, thank	14	your choice, for example a stadium, as long as you escorted
15	you very much, Mr Chairman. There you are, you see that,	15	them back to their group and called their employer to speak
16	Colonel?	16	to them, they would meet you in a location of your choice
17	COLONEL MERAFE: I see, Chair.	17	and hand over their weapons and for this, if we for
18	MR NTSEBEZA SC: It actually confirms	18	instance could go to page 10 of exhibit QQ2. You see where
19	what you have already agreed to with me. Now if you will	19	it says, "We are at the mountain but if you want us, we
20	recall, and this is what I want a confirmation from you,	20	will come to the location of your choice, we will come to
21	these mineworkers also repeatedly asked the police to	21	the stadium" -
22	escort them to the koppie, do you recall that?	22	CHAIRPERSON: This is line 20 and
23	COLONEL MERAFE: I agree, sir, it is so.	23	following. Yes, we now have that on the screen.
24	MR NTSEBEZA SC: They didn't want to go	24	MR NTSEBEZA SC: Oh, thank you very much,
25	alone, they wanted to be escorted by the police, is that	25	Mr Chairman. You see that, "We are at the mountain but if
	Page 27159		Page 27161
1	Page 27159	1	Page 27161 you want us, we'll come to the location of your choice, we
1 2		1 2	5
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	Page 27162		Page 27164
1	understand that because if that is true, there was a road	1	could go back again, Mr Chairman and put up on the screen
2	leading to the koppie and not getting into the informal	2	exhibit Z1 at the place where we have the Colonel, yes.
3	settlement so we have to look at both of these.	3	CHAIRPERSON: That's 2100, we see the
4	[12:28] MR NTSEBEZA SC: Perhaps let me give you	4	general on the telephone, the Colonel next to him and two
5	a little bit of background so that we can contextualise the	5	other people. Can you recognise the other two?
6	question. I understand your answer, you see we, the	6	COLONEL MERAFE: The one is Colonel
7	commission has heard evidence whether through statements or	7	Diole, the other gentleman for Lonmin Mr –
8	through oral evidence that at one stage whilst you, I mean	8	CHAIRPERSON: I think we've been told
9	collectively whilst the SAPS were there on the 13th of	9	his name is Blou.
10	August at that railway line were escorting these people to	10	COLONEL MERAFE: Mr Blou yes.
11	the mine workers to the koppie as had been agreed between	11	CHAIRPERSON: Colonel Diole is a
12	General Mpembe and all of you. At some stage and this	12	Colonel, he's the other person in uniform and then Mr Blou
13	seems to be the reason that is being given for why the	13	is the gentleman with his hands on his hips wearing a black
14	teargas canisters thrown at or shot at the mine workers.	14	jersey, is that right?
15	The evidence is that at some stage the mine workers	15	COLONEL MERAFE: Ja, the one with the, on
16	deviated from the route that they were taking in order to	16	the extreme right is Colonel Diole, the one facing our, to
17	get into the informal settlement and the apparent	17	me it's myself and then this gentleman who is looking that
18	justification for the use of tear gas is that they were now	18	side is Mr Blou from Lonmin.
19	going to go into the informal settlement and they would	19	CHAIRPERSON: He's the one in the black
20	harm the people in the informal settlement which is where	20	jersey with his hands on his hips. Diole is the one in
20	they live incidentally. Now I'm asking you the question is	20	uniform?
22	that probable that people who asked you as the armed police	22	COLONEL MERAFE: Ja, the one with the
23	to escort them to the koppie that they would suddenly think	22	uniform is Colonel Diole, Chairperson.
24	of going into the informal settlement to harm people,	23	CHAIRPERSON: Okay so we know who all
25	injure people who are living in the informal settlement.	24	the people were. Now Mr Ntsebeza wants to ask you about
20		20	the people were. Now wir Nisebeza wants to usk you about
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	Page 27163		Page 27165
1	Page 27163 Do you now understand where I am coming from?	1	Page 27165 that telephone conversation.
1 2	5	1 2	•
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2	Do you now understand where I am coming from? COLONEL MERAFE: I do understand you,	2	that telephone conversation. MR NTSEBEZA SC: Yes, Chair.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Do you now understand where I am coming from? COLONEL MERAFE: I do understand you, Sir. Again I explain looking at the important issue that you are now raising. There was a road that was leading straight to the hill and not to the squatter settlement. Chairperson, I agree that they could have gone into the squatter camp and not injure people but there was an agreement between us and them that that is the way to follow to the koppie. MR NTSEBEZA SC: Yes. As you have seen from the transcripts the mine workers were giving you a variety of options. You can escort us to the location of your choosing, it doesn't have to be the koppie, the critical question for them and this is what they conveyed to you was that you should call the employer because they want the employer to request, I mean to respond to their request and on that basis they were prepared to hand over their weapons. Would that be a fair summary of the kinds of exchanges that took place at the railway line which is why in the end you as the police under the command of General Mpembe decided to move and escort the mine workers? COLONEL MERAFE: That is true, yes. MR NTSEBEZA SC: Now I want us to talk	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that telephone conversation. MR NTSEBEZA SC: Yes, Chair. CHAIRPERSON: In which General Mpembe was speaking to somebody else. Do you know to whom he was speaking? Colonel, do you know to whom Major General Mpembe was speaking? COLONEL MERAFE: Whilst we were there, Chairperson, with these people, General Mpembe was phoning the Provincial Commissioner giving her a situation report. MR NTSEBEZA SC: Alright, now so what did he say to you? Did he say anything to you about who he was calling or who had called him, I don't know, do you know who had called who, was it General Mpembe who called the Provincial Commission General Mbombo or was it General Mbombo who had called or don't you know? COLONEL MERAFE: Who called who, Chairperson, I don't remember so well who called who. What I do remember is that at one stage he was talking to her giving a situation report. MR NTSEBEZA SC: The situation report do you know what it was that he was reporting to her? COLONEL MERAFE: Chair, the situation report could be something like we are seeing people that

	Page 27166		Page 27168
1	those options. Not to ask the superior to tell you what to	1	General Mpembe said.
2	do but the situation report to tell the person, the senior	2	MR NTSEBEZA SC: Yes.
3	what you are observing on the ground.	3	CHAIRPERSON: Whether you must do it
4	MR NTSEBEZA SC: You see what, if we had	4	immediately or whether you must do it at some stage is a
5	to play this clip you will see that up to that point, right	5	matter for your choice. But her point is that at some
6	up to the point where he receives a telephone or he makes a	6	stage the witness should be told what General Mpembe said
7	telephone call it had been at a point where, and this we'll	7	that he can bear that in mind.
8	argue, General Mpembe was beginning to understand what the	8	MR NTSEBEZA SC: Yes.
9	mine workers were putting to him. Namely please one, we	9	CHAIRPERSON: Anyway you're the cross-
10	are not fighting with you. We don't want to fight with	10	examiner.
11	you. We want the employer, we are carrying these weapons	11	MR NTSEBEZA SC: Yes, yes Mr Chairman.
12	because we were shot at by Lonmin workers, security and	12	CHAIRPERSON: I'm sure you'll strive not
13	NUM. We are prepared to hand over the weapons to you but	13	to be unfair.
14	please escort us firstly to the koppie, it doesn't have to	14	MR NTSEBEZA SC: Yes.
15	be the koppie, you can escort us to a place of your own	15	CHAIRPERSON: Carry on.
16	choosing and we'll hand you over, and we'll hand the	16	MR NTSEBEZA SC: Yes, now, thank you, Mr
17	weapons over to you. Now if we played that clip trust me	17	Chairman, I propose to put what the evidence was later on.
18	up to that point where you see General Mpembe that is what	18	But as a person who was there, Colonel, I just want to test
19	had happened and I want to suggest to you that the	19	what you remember to have been the situation. There you
20	situation report that he was giving to the provincial	20	are, you are standing there with General Mpembe on the
21	commissioner was to tell her that I think at this stage we	21	phone and you are unequivocal about who he is phoning and
22	need to change tact because these people whom we were to	22	of course we'll also led evidence about who those, you say
23	disarm have put a suggestion and the suggestion is that we	23	he was phoning have said in testimony here. But let's go
24	must escort them to the mountain or wherever we can, a	24	to, your evidence thusfar is that you know that when he was
25	venue of our choice and that, and this is what we will	25	on the phone as you see him on the phone in that clip, he
	Page 27167		Page 27169
1	Page 27167 argue and that that is what General Mpembe was reporting to	1	Page 27169 was talking to General Mbombo.
1 2		1 2	
	argue and that that is what General Mpembe was reporting to		was talking to General Mbombo.
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2 3	argue and that that is what General Mpembe was reporting to General Mbombo because to him it appeared to make sense. Would you disagree with that kind of assessment of what General Mpembe was saying given that you were saying he was giving a situation report to General Mbombo.	2 3	was talking to General Mbombo. COLONEL MERAFE: That is so, Chair. MR NTSEBEZA SC: And he was giving
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	D 07470		5 07170
1	Page 27170 disarmed at that place. Now I'm putting it to you that	1	Page 27172 CHAIRPERSON: That is Mr Ngalwana's
2	that situation report would have contained that situation	2	question.
		2	
3	as at that point. Namely we have a situation here where		MR NTSEBEZA SC: That's Mr Ngalwana's
4	now the mine workers whom I am here to disarm are putting a	4	question.
5	proposal to me that we must escort them to the koppie or to	5	COLONEL MERAFE: I see, Chairperson.
6	any venue of our choice, would you disagree with that?	6	MR NTSEBEZA SC: And the General says,
7	COLONEL MERAFE: I am not disagreeing	7	"Correct, Chairperson." Mr Ngalwana, "With whom are you
8	with you, it is in fact so.	8	communicating there?" Do you see that?
9	MR NTSEBEZA SC: Now if we could get to	9	COLONEL MERAFE: I see, Chair.
10	21:11 in the clip. You see there he finishes the call.	10	MR NTSEBEZA SC: And General Mpembe
11	You see that?	11	responds, "I was communicating with the JOC and also
12	COLONEL MERAFE: I see, Chair.	12	informing the Provincial Commissioner about the situation
13	MR NTSEBEZA SC: And he seems to be	13	that I'd encountered." Do you see that?
14	turning to you. Where suddenly he is now finishing the	14	COLONEL MERAFE: I see, Chairperson.
15	call and, can I ask you what he said to you?	15	MR NTSEBEZA SC: Then Mr Ngalwana wants
16	COLONEL MERAFE: The pronoun you, does it	16	to know, "in precise terms what the nature of the
17	refer to me or us in plural. Because there were three of	17	conversation was, the content of what you were telling
18	us and –	18	them?" And then he responds and I think this is the part
19	CHAIRPERSON: He used singular, are you	19	that my learned friend would have loved for me to have put
20	asking you singular or you plural? When you say what did	20	to you. Now that response must obviously be weighed
21	he say you, do you mean to, what did he say to the witness	21	against your recent response as to what he had told you
22	or do you mean what did he say to the three of you at the	22	after he had completed that telephone call, namely, that
23	witness, Colonel Diole and Mr Blou?	23	we'll escort these people and we must just make sure that
24	MR NTSEBEZA SC: Mr Chairman, it could	24	they don't get into the township. Do you recall that was
25	have been to you or to you collectively because you were	25	your –
	Page 27171		Page 27173
1	Page 27171 assembled at that place and I'm simply taking advantage of	1	Page 27173 COLONEL MERAFE: I remember that, sir.
1 2	5	1 2	<u> </u>
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	Page 27174		Page 27176
1	COLONEL MERAFE: It is so, Chair.	1	of August 2012. Paragraph 35 reads 'Having given the
2	MR NTSEBEZA SC: "And I later spoke to	2	instruction to Mpembe and made OB entry as above, I've left
3	the commanders that were around me." And then the Chairman	3	for Potchefstroom with Naidoo.' So this is now you giving
4	says, "I think the question relates to the telephone	4	the instruction to General Mpembe to go and deal with the
5	conversation that you had. So you had one telephone	5	strikers at the railway line. Then 36 reads as follows,
6	conversation with General Mbombo, and then another one with Brigadier Calitz. Is that right?" Major-General Mpembe,	6	While on the way to Potchefstroom I received a telephone
7		7	call from Mpembe who informed me that members of SAPS were
8 9	"Correct." Do you see that? COLONEL MERAFE: I see, Chair.	8	attacked and that one was severely injured and two killed.
9 10		9	That two protestors were shot dead apparently by the police
10	MR NTSEBEZA SC: And then it goes on up to line 24 where General Mpembe seems to clarify the	10 11	and one person had died apparently from a stab wound.' So there you are giving evidence about the telephone call that
12	questions that the Chairman sought some clarification in	12	you received from General Mpembe after the incident on the
12	relation to, you see that?	13	13th. Now, General, what you don't mention in your
13	COLONEL MERAFE: I see that, Chair.	14	statement or indeed in your evidence in chief is the
		14	-
15 16	MR NTSEBEZA SC: Now, I think we now know from your evidence that General Mpembe had told you that he	15	telephone call that you received from General Mpembe before the confrontation on the 13th while he was still at the
10	had been making a situation report to General Mbombo. Now,	17	railway line." General Mbombo, "I don't remember that
18	I don't know if you have, while sitting there, testified	18	call, the call you are referring to. Not that I'm denying
19	that he had also spoken to General, I mean to Brigadier	19	that he could possibly have phoned me." Do you see that?
20	Calitz. Did he tell you whilst you were there that he had	20	COLONEL MERAFE: I see, Chair.
21	also spoken to Brigadier Calitz and that he told them that	20	MR NTSEBEZA SC: "Okay, let's look at
22	he had decided to escort the workers to the koppie and that	22	General Mpembe's evidence about that telephone call." So,
23	they were happy with his decision to do so?	23	but as far as you are concerned and this was confirmed by
24	COLONEL MERAFE: I do not remember that	24	General Mpembe, you know from what General Mpembe told you
25	about Brigadier Calitz but what I do know is the one about	25	that there had been the conversation between him, on the
	Ŭ		
	Page 27175		Page 27177
1	Page 27175 General, the Provincial Commissioner.	1	Page 27177 telephone, and General Mbombo. General Mbombo doesn't
1 2		1 2	
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1	Page 27178	1	Page 27180
1	person on the ground. So that's quite important, isn't it,	1	intimidating everyone. That's your entry, do you see that?
2	because it means that it wasn't just his decision, it was	2	COLONEL MERAFE: It is so, Chair.
3	now backed by the decision of the Provincial Commissioner	3	MR NTSEBEZA SC: Just one thing in
4	herself.	4	relation to that. You must have gathered that from
5	COLONEL MERAFE: That is correct, Chair.	5	somebody, where did you get that sense that AMCU are now
6	CHAIRPERSON: When it's appropriate for	6	intimidating –
7	us to take the lunch adjournment, you'll let me know, Mr	7	CHAIRPERSON: He's told us already. He
8	Ntsebeza.	8	said that these notes relates to what was said by Lonmin
9	MR NTSEBEZA SC: Mr Chairman, this would	9	management –
10	be an appropriate time.	10	MR NTSEBEZA SC: Oh.
11	CHAIRPERSON: We have a meeting with the	11	CHAIRPERSON: To the meeting of the PC,
12	representatives of the SAPS and the evidence leaders, or	12	and the other gentlemen in the offices including himself on
13	some of them, at half past one so we will adjourn now until	13	the Monday morning at the Lonmin offices.
14	two o'clock.	14	MR NTSEBEZA SC: No, thank you, Mr
15	[COMMISSION ADJOURNS COMMISSION RESUMES]	15	Chairman, thank you very much. That is where I just wanted
16	[14:13] CHAIRPERSON: You're still under oath,	16	to make sure that it was actually from Lonmin that he got
17	Colonel. Mr Ntsebeza, do you have any more questions for	17	that, Mr Chairman, thank you very much. Is that so?
18	the witness?	18	COLONEL MERAFE: It is correct,
19	MR NTSEBEZA SC: Thank you, Mr Chairman.	19	Chairperson.
20	Colonel, I still want to find a place in the video before	20	MR NTSEBEZA SC: Now, maybe let's go back
20	General Mpembe got or made the telephone call which was the		,
		21	to the clip. Mr Chairman, maybe it would be quicker if we
22	subject matter of our debate just now. I just want us to	22	just, as I say I just want to get to the place firstly
23	be locating the part where, if I recall he seems to be	23	where General seems to confirm with the mine workers what
24	suggesting, seems to be having a conversation with the mine	24	is it that they are proposing to him.
25	workers where he seeks to understand exactly what it is	25	CHAIRPERSON: Well, I don't want to tell
1	Page 27179	1	Page 27181
1	that they are proposing. We have not located that but that	1	you what to do, but I don't know that you have to
2	that they are proposing. We have not located that but that is where I wanted to play that clip and then the phone call	2	you what to do, but I don't know that you have to necessarily –
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1	Page 27182 agreed translation of the relevant transcripts.	1	Page 27184 the mineworkers should be escorted to the koppie provided
2	MR NTSEBEZA SC: Yes. Now maybe let me	2	they will not seek to go into the informal settlement. It
3	just put without even playing, thank you very much, Mr	3	seems and I put this as a suggestion to you that when once
4	Chairman, Colonel, I just want to put a proposition or a	4	he had said that to you what we see in the clip where he,
5	suggestion to you and you may or may not agree with that.	5	against that backdrop, against what you say he suddenly now
6	It seems to me that up to the point, I think we clarified	6	says listen I want those weapons, give me those weapons,
7	that and you agreed with that, that up to the point when	7	I'm not, I'm going to count. That seems to have been a
8	the General received his telephone call and this is	8	sudden change of attitude on his part, would you agree?
9	confirmed by what he said, he said to General Mbombo that	9	COLONEL MERAFE: That is a bit difficult
10	he had understood that the mine workers proposition was	10	for me, for me to agree to that. Except that you would
11	that they should be escorted by the police to the koppie or	11	understand, Chair, that it was the General who was
12	to wherever the police would be keen to, to escort them and	12	discussing with these people and that was his way of doing
13	that he told you that in fact that is what he proposes to	13	it.
14	do. Subject to your understanding him to be saying that	14	MR NTSEBEZA SC: Now I'm just asking you
15	they shouldn't be allowed to get into the informal	15	from the point of you saying that you were there and you
16	settlement. Are we together as far as that goes?	16	had been given a report. But I understand your response.
17	COLONEL MERAFE: Yes, we are together.	17	It's something that will probably be left to argument.
18	MR NTSEBEZA SC: Now after the call and	18	That his attitude is surprisingly aggressive given where he
19	this is what I want to canvas with you because this is what	19	seems to have gone to with the mineworkers by way of
20	we will argue. After the call he seems to have come back	20	agreement that they will be escorted to the koppie. Now
21	to the mine workers in what I would argue was in a	21	the last point that I want to raise with you again comes
22	surprisingly aggressive manner where he simply said "listen	22	out of the diaries, the second point, Mr Chairman, arising
23	here I'm going to count now, I want those weapons". I see	23	out of the diary and that is where you referred to
24	you nod. Do you recall that to have been the position?	24	retaliation and you seem to want to gloss over what was
25	COLONEL MERAFE: Yes, it is so, Chair.	25	meant by that inscription by you. You want to, and this is
1	Page 27183	1	Page 27185
1	MR NTSEBEZA SC: Which would be	1	what we'll argue. That, what you put there is pregnant
2	MR NTSEBEZA SC: Which would be surprising given that what he had told that he's not going	2	what we'll argue. That, what you put there is pregnant with meaning. It is not as innocuous as you wanted the
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Page 271861COLONEL MERAFE:I do not agree with the2counsel here, Chairperson. If what he is saying,3Chairperson, is if what counsel is putting to me the4killing would not have taken place at the scene where this5happened and that the killing would not have taken place at6the time that our members were being attacked. This is why7I am saying, that is why I am saying, Sir, the words8retaliation is not read as it is intended to avenge or9anything. I tried to explain it. I also tried to explain10what the difference is between private defence and11retaliation. Retaliation is an ct of avenging and avenge you can12take days, it's things that take time after the other,13Retaliation is an act of avenging, Chairperson that can be14done a few days or many days after the first incident had15take place. I tried to explain as much as I could that is16my explanation, Mr Chairperson.17MR NTSEBEZA SC: You see, Colonel, in18that response is very clear to anyone listening to you that19coLONEL MERAFE: I am going to a20understand exactly that there is something called self21defence or private defence and there's something called self22retaliation and that if you wanted anyone reading that23counsel to repeat the question, if he could – he s24sate of mind, if it was so that you wanted anyone to23CHAIRPERSON: What Mr Mpofu – w24 <th>nge per se. ean by per as to when there, d. You ce, they er with id re now re on means the</th>	nge per se. ean by per as to when there, d. You ce, they er with id re now re on means the
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24 state of mind, if it was so that you wanted anyone to 24 Ntsebeza put to you was to say that you used the	
	hat Mr
25 understand that the police acted in self defence you would 25 "retaliation" when you meant "self-defence" or "r	word
25 interstand that the police detect in son defence you would 25 retailation when you meant son-defence of p	rivate
Page 27187	Page 27189
1 have written self defence there. You chose to wrote in 1 defence" can't be accepted because he says it's r	
2 English and now that you are confronted by an English word 2 in English and it's not correct, he put it, he said in	
3 whose meaning is exact opposite of what you want us now to 3 of the African languages. That's the question he	asked
4 accept you seek to hide behind the vernacular and which is 4 you. Am I right, Mr Ntsebeza?	
5 why it is and we will argue it is ridiculous for you to 5 MR NTSEBEZA SC: Yes, Mr Chairma	
6 seek to suggest that in isiTswana retaliation is self 6 CHAIRPERSON: I'm putting it a bit r	
7 defence. 7 than you did, but I think I captured the essence of	f what
8 COLONEL MERAFE: Unless I do not 8 you were putting.	
9 understand what I'm saying, Chairperson. I saw these 9 MR NTSEBEZA SC: You did, Mr Chai	
10 things happening, Chairperson, it's not something that I 10 CHAIRPERSON: Now how do you ar	swer that?
11had - might be something different but now I saw members,11MR NTSEBEZA SC:Experience.	
12 an incident happening and writing can be different. I saw 12 COLONEL MERAFE: I still disagree,	
13members being chopped at and I saw members of the police13Chairperson.	
14 using their firearms to their attackers, during the attack 14 MR NTSEBEZA SC: What is the Tsw.	
15when the attack is taking place.15and please spell it for the record, what is the Tsw	
16 [14:33]I saw that with my own eyes so writing16 for self-defence? In IsiXhosa self-defence means	
17 "retaliation" there and I tried to explain and it cannot be 17 I-K-A-U-S-E-L-A, ukuzikausela. That's the IsiXhos	
18 accepted, I don't know what to do, what to say furthermore 18 IsiZulu and isiSwati. The Nguni languages, that i	
19 but that is what happened.19 they have for self-defence. What is it is IsiTswar	a?
20 MR NTSEBEZA SC: Exactly. That's exactly 20 Spell the Tswana to me?	
21 the point. You saw members of the SAPS being chopped and 21 COLONEL MERAFE: Self-defence [st	I-1
	eaking
22 stabbed by assegais and pangas and then you saw SAPS 22 Tswana] –	eaking
23 persons killing those who had done this. 23 MR NTSEBEZA SC: My junior agrees	-
h h h h h h h h h h h h h h h h h h h	-
23 persons killing those who had done this. 23 MR NTSEBEZA SC: My junior agrees	-

		r	
1	Page 27190 MR MAHLANGU: As said in English, that	1	Page 27192 COLONEL MERAFE: It is so, Chairperson.
2	was our argument.	2	CHAIRPERSON: Now, according to the
3	COLONEL MERAFE: Self is your own but	3	evidence, one of them was killed on the field, as it were,
4	when you talk private is when you save another person's	4	where the fighting took place, another was killed some
5	life by means of acting. So maybe if – because you have	5	distance away on the other side of a stream as one is
6	been taking me through a long speech and thereafter the	6	moving towards the koppie, across the stream, another one
7	question came.	7	was killed there and the third one was killed by being
8	CHAIRPERSON: No, well, I did try to	8	stabbed in the upper part of his leg in the informal
9	capture the essence of it in my repetition of it. What are	9	settlement nearer a shack. Now when the first person was
10	the Tswana words that you rely on? I think you said, you	10	killed, this was, I take it, during what one can call the
11	did say it but I think you should spell it for the benefit	11	fight on the field, where were you at that stage?
12	of the transcribers –	12	COLONEL MERAFE: Chair, I was a distance
13	MR NTSEBEZA SC: Yes.	13	of about 10 metres from where the attack took place, Chair.
14	CHAIRPERSON: - what the Tswana word is	14	CHAIRPERSON: And you were in a Nyala,
15	for self-defence, what the Tswana word is for private	15	were you, at that stage?
16	defence and what the word is for retaliation, if it's a	16	COLONEL MERAFE: No, I was in a Ford
17	different word?	17	Escort, white in colour, just nearby.
18	COLONEL MERAFE: Okay. Self-defence,	18	MR MAHLANGU: Said in English.
19	goitsiretsa, but if you do the same -	19	CHAIRPERSON: Alright. Well, we
20	MR MAHLANGU: Goitsiretsa would be	20	understood what you said.
21	G-O-I-T-S-I-R-E-T-S-A.	21	COLONEL MERAFE: Thank you, Chairperson.
22	CHAIRPERSON: That's self-defence.	22	CHAIRPERSON: When the second person was
23	What's private defence?	23	killed on the other – well, I'm assuming the person who was
24	COLONEL MERAFE: Private defence,	24	killed on the other side of the stream was killed before
25	goitsiretsa motho omong.	25	the person at the informal settlement but that may not be
	5 5		, ,
	Page 27191		
1	-	1	Page 27193
1	MR MAHLANGU: That is the same word,	1	right, but let's concentrate on the person killed on the
2	MR MAHLANGU: That is the same word, goitsiretsa, motho means another person, M-O-T-H-O, omong,	2	right, but let's concentrate on the person killed on the other side of the stream, where were you or do you know
2 3	MR MAHLANGU: That is the same word, goitsiretsa, motho means another person, M-O-T-H-O, omong, O-M-O-N-G.	2 3	right, but let's concentrate on the person killed on the other side of the stream, where were you or do you know where you were when the person was killed on the other side
2 3 4	MR MAHLANGU: That is the same word, goitsiretsa, motho means another person, M-O-T-H-O, omong, O-M-O-N-G. MR NTSEBEZA SC: In other words, to	2 3 4	right, but let's concentrate on the person killed on the other side of the stream, where were you or do you know where you were when the person was killed on the other side of the stream?
2 3 4 5	MR MAHLANGU: That is the same word, goitsiretsa, motho means another person, M-O-T-H-O, omong, O-M-O-N-G. MR NTSEBEZA SC: In other words, to defend somebody else.	2 3 4 5	right, but let's concentrate on the person killed on the other side of the stream, where were you or do you know where you were when the person was killed on the other side of the stream? COLONEL MERAFE: Two of the killings,
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	Page 27194		Page 27196
1	metres away from where the fight took place. So that would	1	CHAIRPERSON: And you then, and you came
2	have been where the first person was killed, is that - that	2	back later?
3	would be right?	3	COLONEL MERAFE: I came back later, then
4	COLONEL MERAFE: Correct, Chairperson,	4	I did this report.
5	yes.	5	CHAIRPERSON: Yes, and when you came back
6	CHAIRPERSON: And do you have any	6	were these two bodies, these extra two bodies you're
7	knowledge of your own about how the person who was shot on	7	talking about, were they there? That's when you saw them?
8	the other side of the stream was shot and died? Do you	8	COLONEL MERAFE: They were there,
9	know anything about that?	9	Chairperson. There were cones which showed that the scene
			•
10	COLONEL MERAFE: No, Chairperson, I do	10	had been cordoned.
11	not have that evidence.	11	CHAIRPERSON: I see, thank you. Now that
12	CHAIRPERSON: And do you know anything	12	Mr Ntsebeza has finished, I understand the parties have
13	about how the person who was stabbed in the upper part of	13	agreed among themselves as to who is to cross-examine. Are
14	his leg and bled to death in front of a shack in the	14	you the next one, Mr Gumbi?
15	informal settlement, do you know anything about that?	15	MR GUMBI: Yes, Chairperson.
16	COLONEL MERAFE: Not there either, Chair.	16	CHAIRPERSON: Please proceed with your
17	CHAIRPERSON: So your statement in your	17	cross-examination.
18	diary that three attackers were killed by the police,	18	CROSS-EXAMINATION BY MR GUMBI: Yes,
19	obviously in the case of the first one, the one who was	19	thank you very much, Chairperson and the Commissioners.
20	killed at the field of battle, if one can call it that,	20	Good afternoon, Colonel.
21	that's based upon what you saw from this Ford Escort, white	21	COLONEL MERAFE: Afternoon, Advocate.
22	in colour, is that right?	22	MR GUMBI: As you know, Colonel, I
23	COLONEL MERAFE: Correct, Chair.	23	represent Lieutenant Baloyi who was injured on the 13th of
24	CHAIRPERSON: As far as the others are	24	August, and the family of the late Warrant Officer Lepaaku.
25	concerned, what was the statement based on?	25	There are two topics I wanted to briefly canvass with you,
		+	
	Page 27195		Page 27197
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1 2	-	1 2	-
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2	COLONEL MERAFE: This report, Chairperson, I did later as an overall report in order to	2	in brief. The first topic I wanted to canvass with you, Colonel, I'm going to deal with the version of Lieutenant
2 3	COLONEL MERAFE: This report, Chairperson, I did later as an overall report in order to open up a case. When I went back to the scene I saw, I	2 3	in brief. The first topic I wanted to canvass with you, Colonel, I'm going to deal with the version of Lieutenant Baloyi.
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1	Page 27198	1	Page 27200
1	[15:08] CHAIRPERSON: Colonel, you're still under	1	convened what we normally call, what he called an emergency
2	oath, Mr Gumbi. MR GUMBI: Thank vou verv much.	2	parade then he ought to have conveyed this information. Do
3		3	you agree with him on that?
4	Chairperson. Colonel, before we adjourned I was busy	4	COLONEL MERAFE: I agree.
5	explaining to some points I'm going to converse with you.	5	MR GUMBI: Again when you check exhibit
6	The first point I wanted to briefly converse with you,	6	SS3 the operational plan of the 13th and Mr Wesley took you
7	Colonel, revolve around sharing of intelligence information	7	through that operational plan in his cross-examination,
8	before intercepting the strikers near the railway line.	8	this intelligence information that on the previous day the
9	And the second one revolve around this aspect of line of	9	strikers or a certain group performed the rituals and they
10	command between General Mpembe and the police officers near	10	believed that they could not be shot at by the police is
11	the railway line. In doing so, Colonel, I'm going to put	11	not factored on that operational plan. Do you see that?
12	the version of Lieutenant Baloyi who's an experience POP	12	COLONEL MERAFE: I agree with you yes.
13	officer who was there near the railway line and then in	13	MR GUMBI: As an experienced POP
14	that I will solicit your comments on or your views on that	14	commander is it possible to draw up an operational plan if
15	line. Do you understand, Colonel?	15	you had this information without factoring it on that
16	COLONEL MERAFE: I understand you, Sir.	16	operational plan?
17	MR GUMBI: Let's deal with this first	17	COLONEL MERAFE: Chairperson, in our
18	aspect of lack of Intelligence information before	18	operational plan we had to put these things down, the
19	intercepting strikers near the railway line. When we	19	behaviour and how these people appear, the people that we
20	cross-examined General Mpembe on the 20th of August 2013 on	20	are going to face.
21	behalf of Lieutenant Baloyi and the family of the late	21	MR GUMBI: So there is no way that you
22	Warrant Officer Lepaaku General Mpembe testified that	22 23	can ignore it. COLONEL MERAFE: It was important yes, if
23 24	before he confronted strikers near the railway line he was informed by Intelligence that is Brigadier Engelbrecht that	23 24	COLONEL MERAFE: It was important yes, if there was such a thing.
24	strikers went through rituals with sangoma on the previous	24 25	MR GUMBI: Can I also refer to another
23	surkers went through muals with sangoina on the previous	25	
	Page 27199		Page 27201
1	Page 27199 days and they believed that they could not be shot at by	1	Page 27201 critical –
1 2	•	1 2	-
	days and they believed that they could not be shot at by		critical –
2	days and they believed that they could not be shot at by police or mine security. On Tuesday, yesterday when you	2	critical – CHAIRPERSON: Before you move onto
2 3	days and they believed that they could not be shot at by police or mine security. On Tuesday, yesterday when you were cross-examined by Mr Wesley I think he refer you to	2 3	critical – CHAIRPERSON: Before you move onto another point can I ask the witness?
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2 3 4 5	days and they believed that they could not be shot at by police or mine security. On Tuesday, yesterday when you were cross-examined by Mr Wesley I think he refer you to exhibit GGG5, that's the Intelligence information related to the police before the 13th. Will I be correct, Colonel,	2 3 4 5	critical – CHAIRPERSON: Before you move onto another point can I ask the witness? MR GUMBI: Yes.
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1	Page 27202 these rituals and –	1	Page 27204 force, Chairperson, was done on the 14th and the 15th and
2	MR GUMBI: But how does it help them?	2	not on the 13th. What we're talking about now is what
3	COLONEL MERAFE: It helps them to know	3	Lieutenant Baloyi is saying that he wasn't told of the
4	how to approach them because if for instance you – it would	4	rituals on the 13th. This show of force came after when we
5	prepare them, Chairperson, in the sense that if a police	5	were now going for the strikers who were at the koppie
6	person believes in these rituals himself, some of them	6	later on. The show of force continued on the koppie on the
7	believe that, I do not have to handle, to catch, to put my	7	14th.
8	hands on that kind of a person.	8	CHAIRPERSON: The point is that you
9	COMMISSIONER HEMRAJ: Yes, but in dealing	9	remember what Lieutenant Baloyi did because he threw a stun
10	with them in either dispersing them or whatever action	10	grenade at the people and presumably we're going to hear
11	you're taking how would that fact influence the approach of	11	from him in due course. How he got the stun grenade and
12	the policemen?	12	what he thought he was doing with it but we won't worry you
13	COLONEL MERAFE: I don't think it would	13	with that, we'll worry him with it when he comes. But he
14	have had any difference in their – or influence them in any	14	threw a stun grenade, I take it thinking the stun grenade
15	way.	15	would help, give the people a fright, they can turn around
16	CHAIRPERSON: I'm going to put something	16	and run away. Why do you use a stun grenade, what do you
17	to you. Part of the police tactics appears to have been	17	use a stun grenade for? Surely to frighten people, to make
18	the belief that a show of force, force continuum could	18	them stop getting up to the mischief that they're getting
19	somehow influence the strikers to desist from what they	19	up to, isn't that right?
20	were doing. That you come with a big gun which can blow up	20	COLONEL MERAFE: That's correct, Chair.
21	a house even though it's got no bullets in it and you bring	21	CHAIRPERSON: So Lieutenant Baloyi if he
22	this around on the back of a truck do you think that will	22	had known that a stun grenade wouldn't have any effect
23	make them scared or run away? You fire rubber balls at	23	might presumably not have thrown the stun grenade in the
24	them, you have stun grenade, now if they think they're	24	first place. Is that right?
25	invincible, they're invulnerable and a stun grenade doesn't	25	COLONEL MERAFE: Correct, Chairperson.
	Page 27203		Page 27205
	8		•
1	actually do any damage to them. And the rubber balls if	1	COMMISSIONER HEMRAJ: I'm so sorry but
2	they've got thick jackets will just bounce off and the big	2	COMMISSIONER HEMRAJ: I'm so sorry but you haven't answered the question of how the knowledge of
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2	they've got thick jackets will just bounce off and the big gun that hasn't really got any bullets and can't do anything, we'll they'll just laugh. It's not going to make	2	COMMISSIONER HEMRAJ: I'm so sorry but you haven't answered the question of how the knowledge of the crowd having undergone the ritual would effect the approach of the police towards that crowd? If you had been
2 3	they've got thick jackets will just bounce off and the big gun that hasn't really got any bullets and can't do anything, we'll they'll just laugh. It's not going to make any difference to us, we can carry on. So surely it would	2 3	COMMISSIONER HEMRAJ: I'm so sorry but you haven't answered the question of how the knowledge of the crowd having undergone the ritual would effect the approach of the police towards that crowd? If you had been briefing your members to either disperse or take some
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17 at Marikana and he amongst other things was selling pangas, 17 information?	
18 axes and hatchets. And from the 11th onwards, 11th of 18 COLONEL MERAFE: No they did not know,	
19 August onwards that's the Saturday there was a sudden great 19 they would have shared it with us.	
20 demand for pangas, axes and hatchets. African males came 20 MR GUMBI: Let's move on and deal with	
21 and bought them, they did so for a whole week and he was 21 another aspect. You testified that on that day the 13th of	
22 running out of stock and he had to order some more and this 22 August you paraded your members before deploying them.	The
23 is the first time he's ever sold so many pangas, axes and 23 other units that were mobilised from Pretoria, Kwamhlanga	
24 hatchets in a week. That's his evidence, affidavit he made 24 do you have knowledge whether their operational commanded	lers
25 which had been accepted by the Commission. 25 or whosever is in charge of them paraded them before any	
Page 27207 Page 27	7209
1 MR GUMBI: Yes. 1 deployment?	
2 CHAIRPERSON: Now why do you want the 2 COLONEL MERAFE: The police from Gauteng,	
3 witness to deal with this? 3 Chairperson, amongst whom Lieutenant Baloyi found us	
4 MR GUMBI: On the 13th were you aware of 4 already at the scene, we did not meet him before. The	
5 this information? 5 people, the members that were briefed personally by me, the	
6 COLONEL MERAFE: I did not have it, 6 group from Kwamhlanga and Rustenburg. Kwamhlanga did	
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Marikana Commission of Inquiry

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1	Page 27210 different units involved, an operational commander can talk	1	Page 27212 MR MAHLANGU: As I am seated here he
2	through or via operational commanders without talking	2	indicates on the left-hand side, the far distance.
3	directly to members?	3	MR GUMBI: So you can't say whether he
4	COMMISSIONER HEMRAJ: Do you mean	4	had that argument or not?
5	briefing or negotiations?	5	COLONEL MERAFE: Maybe he heard Colonel
6	MR GUMBI: Yes, briefing.	6	Diole speaking but Colonel Diole was supporting my
7	COMMISSIONER HEMRAJ: Briefing.	7	statement.
8	MR GUMBI: Briefing with members, yes,	8	MR GUMBI: Okay. When he made a decision
9	when briefing members about what's to happen.	9	to escort, when General Mpembe made a decision to escort,
10	COLONEL MERAFE: Ja, normally the overall	10	according to the version of Lieutenant Baloyi that we put
11	commander will talk to officers. Officers, but then they	11	to General Mpembe is that when the tactical option to
12	have to brief their own members.	12	escort is implemented by an operational commander, first of
13	MR GUMBI: In all situations you're	13	all the operational commander must brief members clearly
14	supposed to do that?	14	that the tactical option to escort is implemented and which
15	COLONEL MERAFE: In all situations, that	15	route to be taken, which route to be used by the strikers
16	is the chain of command.	16	from point A to point B. Then on the 13th of August General
17	MR GUMBI: The version of Lieutenant	17	Mpembe did not inform the members that now he was escorting
18	Baloyi is that if you assume a role of being an operational	18	the strikers from the railway line on their way to the
19	commander and you have different units involved, you don't	19	koppie. What is your comment on that?
20	talk via commanders because you are an operational	20	COLONEL MERAFE: There I would agree with
21	commander, you are in charge. You must talk directly to	21	it.
22	members and on the 13th of August near the railway line,	22	MR GUMBI: And furthermore General
23	General Mpembe was supposed to talk directly to members,	23	Mpembe, when he was testifying before this Commission, he
24	not talk via commanders. What is your comment on that?	24	testified that there is a shaft within the vicinity of the
25	COLONEL MERAFE: That would have been	25	railway line and they wanted to protect that shaft also
	Page 27211		Page 27213
1	something unusual, Chairperson. The commanders there	1	again, it's one of the key areas he took into
2	something unusual, Chairperson. The commanders there represent the members on the ground and usually,	2	again, it's one of the key areas he took into consideration. Do you confirm that, whether there was a
	something unusual, Chairperson. The commanders there represent the members on the ground and usually, Chairperson, the members take their instructions direct	2 3	again, it's one of the key areas he took into consideration. Do you confirm that, whether there was a shaft that needed to be protected near the railway line.
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	Page 27214		Page 27216
1	the strikers and the police. In this situation, when you	1	COLONEL MERAFE: The members that were
2	take into consideration the incident of the 13th, we are	2	there and the commanders knew, yes. They were given those
3	having – you saw we had armed strikers. In that situation	3	instructions – go and form a line just next to the road
4	if you are an operational commander will you allow your	4	passing in front of the informal settlement.
5	members to follow armed strikers in such a distance when	5	MR MAHLANGU: That is why they took their
6	you take into consideration exhibit HHH16.1 and 16.2?	6	Nyalas and formed a line just in front of the settlement.
7	COLONEL MERAFE: Chairperson, the police	7	COLONEL MERAFE: They wouldn't have done
8	were not supposed to be too close to people who were	8	that without any instruction. They were instructed to do
9	carrying weapons. They had to give them quite a distance,	9	SO.
10	there should have been a space between them and the	10	MR GUMBI: So that decision, was it
11	protesters.	11	communicated over the radio by General Mpembe?
12	MR GUMBI: According to your analysis,	12	COLONEL MERAFE: He said so, yes. I also
13	Colonel, those members who were following these strikers on	13	personally did it, I told them. I communicated with the
14	their way to the koppie, were they properly equipped or	14	members.
15	were they sufficient or were they properly protected to	15	MR GUMBI: So for the safety of the
16	follow them in that fashion or in that way?	16	members is it possible to issue instructions to block while
17	COLONEL MERAFE: Firstly, Chairperson,	17	other police officers are still on foot, they are in close
18	the police did not form a correct basic line as it is	18	contact with the strikers who are armed?
19	supposed to. They were just walking behind the people.	19	COLONEL MERAFE: The members that were
20	Pertaining to arms, some had their mufflers and some were	20	instructed to go there were inside an armoured vehicle.
21	just walking there empty-handed.	21	They were not walking and where they were exposed to
22	MR GUMBI: Okay. So while they were	22	danger. The police who were walking on foot were those
23	following those strikers, do you have knowledge whether	23	that were coming behind the strikers and those that were on
24	General Mpembe was in touch with the JOC by then?	24	the side of the strikers.
25	COLONEL MERAFE: He was talking to them	25	MR GUMBI: Yes, that's what I'm asking
	Page 27215		Page 27217
1	Page 27215 over the radio.	1	Page 27217 you, to say if you take a decision to block I understand
1 2	•	1 2	you, to say if you take a decision to block I understand that those members who go there and block they were inside
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		I	
1	Page 27218	1	Page 27220 COLONEL MERAFE: I am just as confused as
1	disperse it's very important to check the location of your		
2	members, where are they.	2	my interpreter.
3	COLONEL MERAFE: It is so.	3	MR GUMBI: I understand, Colonel. Maybe
4	MR GUMBI: Lieutenant-Colonel Vermaak,	4	if I can take it slowly. Can I refer you to exhibit
5	when he testified before this Commission, his observation	5	JJJ156? Are you in possession of that document? Are you
6	was that the police didn't have helmets, gas masks and the	6	in possession of that document, Colonel?
7	majority of them did not have protective clothing. Do you	7	[15:48] COLONEL MERAFE: Oh, this one? I see it
8	confirm his version?	8	on the screen, I see it on the screen.
9	COLONEL MERAFE: Yes, sir.	9	MR GUMBI: If I can take you to page 18,
10	MR GUMBI: Would I be correct again,	10	paragraph 2, if I can read it for you on record. It reads
11	Colonel, that before firing of that teargas and stun	11	as follows, that is the police version of the incident of
12	grenade General Mpembe did not issue any instruction to any	12	the 13th as of 5 September 2012. It reads as follows, "To
13	member to wear a gas mask or keep a safe distance.	13	prevent them from entering the settlement the police
14	COLONEL MERAFE: I agree with you, yes.	14	utilised teargas, stun grenades, to turn the protesters
15	MR GUMBI: And no instruction was ever	15	away from there into the path. Captain Thupe (TRT
16	issued by General Mpembe instructing member's maybe to	16	commander) heard Major-General Mpembe issue a command for
17	remain inside Nyalas for their safety.	17	stun and teargas, after which Warrant Officer Kuhn fired a
18	COLONEL MERAFE: The question wasn't	18	shotgun CS rifle grenade." Did you see this document on
19	clear, sir, would you repeat it?	19	the 5th of September 2012?
20	MR GUMBI: I'm saying General Mpembe	20	COLONEL MERAFE: I take it this document
21	again did not issue any instruction to members, instructing	21	came about as a result of the discussions that took place
22	them to remain inside the Nyalas before firing of any	22	at Roots because Captain Thupe heard Major-General Mpembe
23	teargas and stun grenade.	23	issue a command to Warrant Officer Kuhn. It was said in my
24	COLONEL MERAFE: No, there was no such	24	presence during group discussion – General Mpembe and the
25	instruction.	25	team.
	Page 27219		Page 27221
1	MR GUMBI: General Mpembe, when he	1	Page 27221 MR MAHLANGU: In our group discussion
1 2		1 2	•
	MR GUMBI: General Mpembe, when he testified before this Commission we presented some statement, extract from pocket book and diaries which		MR MAHLANGU: In our group discussion
2	MR GUMBI: General Mpembe, when he testified before this Commission we presented some	2	MR MAHLANGU: In our group discussion with General Mpembe I heard it.
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2 3 4	MR GUMBI: General Mpembe, when he testified before this Commission we presented some statement, extract from pocket book and diaries which pointed him, some of them pointed him as the person who	2 3 4	MR MAHLANGU: In our group discussion with General Mpembe I heard it. MR GUMBI: I'm saying you saw this document after Roots meeting.
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Marikana Commission of Inquiry

1 1	Page 27222	1	Page 27224
1	MR GUMBI: Do you have a knowledge why	1	people marching, passing Wonderkop Stadium and there were
2	this information is omitted?	2	shots that were fired at that group. By whom, he never
3	COLONEL MERAFE: I have no idea why it	3	explained to me, Chairperson.
4	was omitted, Chair.	4 5	CHAIRPERSON: He didn't give you any more
5	CHAIRPERSON: Were you present at Roots	5	details of the incident?
6	when Major-General Mpembe, according to his evidence,	6	COLONEL MERAFE: No, I did not get any
7	denied that he'd given any such order?	7	details about that incident. It was only on Monday that I
8	COLONEL MERAFE: I was present.	8	heard about it, Chair.
9	MR GUMBI: In conclusion, Colonel, the	9	CHAIRPERSON: What did you hear about –
10	version of Lieutenant Baloyi - know for a fact that he	10	COLONEL MERAFE: He did not give me
11	threw a stun grenade before he was attacked on the 13th –	11 12	details about that. CHAIRPERSON: What details? Did you hear
12	his version is that he threw a stun grenade because he		5
13	wanted to protect himself as he was under attack by	13	details on Monday about it? COLONEL MERAFE: Yes, on Monday when I
14	strikers. If it is his version as he is putting it, what	14 15	
15 16	is your comment? Will you dispute it? COLONEL MERAFE: I wouldn't deny that he	15 16	got – remember on Saturday there was that march, on Sunday there was the burning of two vehicles and killing of the
	, second s		
17 18	is saying that. I don't disagree with him. MR GUMBI: Thank you very much,	17 18	security and then Monday we went to the meeting. All the things starting from Friday the 10th, the 11th, the 12th,
		10 19	
19 20	Chairperson. CHAIRPERSON: Are you in a position to	19 20	were brought to my attention. CHAIRPERSON: And did you then get an
20	either confirm or deny what Lieutenant Baloyi says in that	20 21	account from witnesses as to what had happened on the 11th?
21	regard? Do you know the circumstances in which he,	22	COLONEL MERAFE: No, no witness did come
22	firstly, threw a stun grenade and, secondly, was injured?	22	forward - no witness came forward to say what happened.
23	Did you see anything yourself when he was –	23	CHAIRPERSON: Did you not get any further
24	COLONEL MERAFE: I did not see any attack	25	details as to what had happened on the 11th?
20		20	
	Page 27223		Page 27225
1	on Lieutenant Baloyi, Chair.	1	COLONEL MERAFE: No, Chairperson.
2	CHAIRPERSON: Yes, thank you. Before we	2	CHAIRPERSON: Thank you. I gather that
3	adjourn I'd like to ask you one question. In relation to	3	the next cross-examiner is going to be Ms Le Roux who is
4	the events of the 11th – do you remember the 11th of August	4	not here at the moment. It is six minutes to four, so we
5	was the Saturday when there was a group of people who	5	will adjourn now until tomorrow morning at 9 o'clock.
6	marched on the NUM office and there was, various things	6	[COMMISSION ADJOURNED]
7	happened including some shots were fired. You weren't	7	
8	there, as we know. Did anyone, any witness who was there	8	
9	describe to you later what he saw on the Saturday morning,	9	
10	the 11th of August in the vicinity of the NUM office?	10	
11	COLONEL MERAFE: I was phoned,	11	
12	Chairperson, by the station commander of Marikana, Masiza,	12	
13	who said there were people who were going past the	13	
14	Wonderkop Stadium towards the NUM offices and that there	14	
15	was shooting taking place and that's when he asked for my	15	•
	members to come and assist.	16	
16		17	
16 17	CHAIRPERSON: Did he say anything else?	17	
16 17 18	CHAIRPERSON:Did he say anything else?COLONEL MERAFE:I did not hear anything	18	
16 17 18 19	CHAIRPERSON:Did he say anything else?COLONEL MERAFE:I did not hear anythingfurther.What I did was to send police to go and assist	18 19	· · ·
16 17 18 19 20	CHAIRPERSON: Did he say anything else? COLONEL MERAFE: I did not hear anything further. What I did was to send police to go and assist there. I did not find out how many people were injured and	18 19 20	· · ·
16 17 18 19 20 21	CHAIRPERSON: Did he say anything else? COLONEL MERAFE: I did not hear anything further. What I did was to send police to go and assist there. I did not find out how many people were injured and when.	18 19 20 21	· · ·
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16 17 18 19 20 21 22	CHAIRPERSON: Did he say anything else? COLONEL MERAFE: I did not hear anything further. What I did was to send police to go and assist there. I did not find out how many people were injured and when. CHAIRPERSON: But what you've told us	18 19 20 21 22	· · · · · · · · · · · · · · · · · · ·

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