

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 120 20 AUGUST 2013 PAGES 12290 TO 12415



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1 [PROCEEDINGS ON 20 AUGUST 2013]
 2 [09:32] CHAIRPERSON: We're starting later this
 3 morning than I had anticipated because we were requested by
 4 Mr Gumbi to allow him and the evidence leaders an
 5 opportunity to collate certain documents which were
 6 necessary for the cross-examination of the Major-General.
 7 So that's why we're starting late; I apologise for that,
 8 but it was not a delay of our making, but I understand also
 9 there were practical problems – I'm not criticising Mr
 10 Gumbi – there were practical problems he had to deal with.
 11 Major-General, you're still under oath.
 12 WILLIAM MPEMBE: s.u.o.
 13 CHAIRPERSON: Mr Gumbi, are you ready to
 14 commence your cross-examination?
 15 MR GUMBI: Thanks, Chairperson and the
 16 Commissioners. Yes, I'm ready to cross-examine General
 17 Mpembe on behalf of Lieutenant Baloyi and the family of the
 18 late Warrant-Officer Lepaaku. But before I could even
 19 start my cross-examination, Chairperson and the
 20 Commissioners, I wanted to put on record certain remarks on
 21 behalf of Lieutenant Baloyi and the family of the late
 22 Warrant-Officer Lepaaku. You'll note, Chairperson, it is
 23 on record that at the commencement of this Commission the
 24 current legal representative represented POPCRU, Lieutenant
 25 Baloyi, and the family of the late Warrant-Officer Lepaaku

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1 who was brutally killed on the 13th of August 2012.
 2 At the end of May 2013 POPCRU, who was funding,
 3 or who was footing the bill of the legal representative of
 4 the late Warrant-Officer Lepaaku and Lieutenant Baloyi
 5 withdrew its participation in this Commission, citing the
 6 lack of funding, and as a result of that, and we'd like
 7 also to place on record that the legal representative of
 8 Lepaaku family and Lieutenant Baloyi engaged the SAPS in
 9 terms of trying to secure funding for legal representation
 10 of Warrant-Officer Lepaaku and Lieutenant Baloyi. Those
 11 engagement, Chairperson, was unsuccessful. As a result of
 12 that Lieutenant Baloyi instructed the current legal team to
 13 file an urgent High Court application seeking an order to
 14 compel the SAPS to fund his legal representation in this
 15 Commission, and it's only his legal representation in this
 16 Commission, and it is also on record, Chairperson, that the
 17 National Commissioner opposed that urgent application and
 18 she advanced the reason why she could not fund the legal
 19 representation of Lieutenant Baloyi in this Commission, and
 20 it is on record furthermore, Chairperson, that on the 16th
 21 of August 2013 the North Gauteng High Court dismissed his
 22 application, Lieutenant Baloyi's application, and the court
 23 was of the view that Lieutenant Baloyi is not entitled to
 24 choose the current legal representative appointed by POPCRU
 25 to represent him in this Commission. He has two options;

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1 whether he submits himself to the evidence leaders to
 2 assist him in this Commission, or he uses the current SAPS
 3 legal team to assist him, he himself in his legal
 4 representation in this Commission, despite the fact that he
 5 contended that the current SAPS legal team is conflicted
 6 and they cannot represent his interests in this Commission.
 7 CHAIRPERSON: I'm sorry to interrupt you.
 8 MR GUMBI: Yes.
 9 CHAIRPERSON: Am I correct in saying that
 10 there is a conflict of fact between the version of the
 11 present witness –
 12 MR GUMBI: Yes.
 13 CHAIRPERSON: - whose evidence is led by
 14 the SAPS legal team, and the version of Lieutenant Baloyi?
 15 Is that correct?
 16 MR GUMBI: Yes, yes, Chairperson.
 17 CHAIRPERSON: So your contention is
 18 therefore that it would be inappropriate for the SAPS legal
 19 team to represent Lieutenant Baloyi because of that
 20 conflict? That's your argument?
 21 MR GUMBI: Yes, that was our argument,
 22 though we did not disclose the content of our consultation
 23 with Lieutenant Baloyi because we are of the view, based on
 24 legal principle, that whatever we discuss with Lieutenant
 25 Baloyi is confidential.

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1 CHAIRPERSON: Yes, well I'm not sure
 2 that's entirely correct, but we won't go there now.
 3 MR GUMBI: Yes.
 4 CHAIRPERSON: The point upon which the
 5 judgment of the High Court is based of course is that it
 6 was also possible for the evidence leaders to lead, to
 7 represent Lieutenant Baloyi, as it were, and I think that
 8 is the point which found favour with Judge Raulinga. Is
 9 that correct?
 10 MR GUMBI: Yes, Chairperson. So as the
 11 matters stand now, Chairperson, we want to please –
 12 CHAIRPERSON: No, but is that not right?
 13 I mean why – there was originally a contention put up in
 14 the High Court, very serious allegations were made against
 15 the evidence leaders which apparently were entirely without
 16 foundation. I don't know how they came to be made, but
 17 they were very properly withdrawn. Is that correct?
 18 MR GUMBI: Yes, Chairperson. Those
 19 matters were sorted out, yes.
 20 CHAIRPERSON: Yes, yes, they should never
 21 have been raised, but they were.
 22 MR GUMBI: Yes.
 23 CHAIRPERSON: And did Judge Raulinga not
 24 decide that because those allegations had now been
 25 withdrawn, that there was no basis for contending any

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1 longer that there was a conflict between the evidence
 2 leaders on the one hand, and Lieutenant Baloyi on the
 3 other? The evidence leaders after all don't represent a
 4 client. They're just here to put the facts before the
 5 Commission.
 6 MR GUMBI: Yes, Chairperson.
 7 CHAIRPERSON: And any party who is not
 8 represented, if for example the problem that relates,
 9 relating to the arrested and injured miners isn't solved
 10 from a funding point of view, then the evidence leaders
 11 will have to do their best to present the version of the
 12 miners as well. I don't know how they'll do it, but that's
 13 a matter that can be discussed later if the problem arises.
 14 But the function of the evidence leaders is not to
 15 represent any client.
 16 MR GUMBI: Yes, Chairperson.
 17 CHAIRPERSON: They are here simply to
 18 assist the Commission to get to the truth. The argument is
 19 Lieutenant Baloyi could also be represented in that way, or
 20 his case could be presented in that way. Is that not –
 21 MR GUMBI: Yes, Chairperson, it was his
 22 contention that the current legal representative appointed
 23 by his union POPCRU, or he wanted to continue to make use
 24 of it, like other parties who have legal representative in
 25 this Commission, when he tendered his evidence before this

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1 Commission. So but –
 2 CHAIRPERSON: Sorry, before you continue,
 3 can I ask you a question? For whom do you appear at the
 4 moment? You appear for Lieutenant Baloyi, but you also
 5 appear for the family of Warrant-Officer Lepaaku –
 6 MR GUMBI: Yes, Chairperson.
 7 CHAIRPERSON: - who was one of the two
 8 policemen killed on the 13th. Is that correct?
 9 MR GUMBI: Yes, Chairperson.
 10 CHAIRPERSON: Now who are your clients?
 11 Is it the widow, and who else?
 12 MR GUMBI: Those are my –
 13 CHAIRPERSON: The widow, and?
 14 MR GUMBI: Those are my clients,
 15 Chairperson.
 16 CHAIRPERSON: No, is it just the widow,
 17 or are there children as well?
 18 MR GUMBI: The widow, the family. We
 19 normally call the family –
 20 CHAIRPERSON: Are there children?
 21 MR GUMBI: Yes.
 22 CHAIRPERSON: Now the Constitutional
 23 Court judgment makes it clear that, in paragraph 12 of its
 24 judgment, that a child has a right to have a legal
 25 practitioner assigned to him or her by the State at State

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1 expense in civil proceedings affecting the child if
 2 substantial injustice would otherwise result, and they then
 3 go on to make the point that the miners, who were the
 4 applicants before the Constitutional Court, were neither
 5 children nor detained persons, so it's a question of
 6 detained persons as well. So I take it, it's on the basis
 7 of the fact that children have a constitutional entitlement
 8 to legal aid in appropriate circumstances, that the Legal
 9 Aid Board saw its way clear to grant legal aid to the
 10 families of the deceased. Is that correct?
 11 MR GUMBI: Yes, Chairperson.
 12 CHAIRPERSON: Now on that basis would you
 13 not, at least wearing your hat as counsel for Warrant-
 14 Officer Lepaaku's family, be entitled to approach the Legal
 15 Aid Board to ask for legal aid?
 16 MR GUMBI: Yes, Chairperson, my
 17 instruction is that my counsel, they are in the process of
 18 finalising all those issues. So as the matter stands now,
 19 Chairperson, as from the 31st of May up to date, we wanted
 20 to put it on record that the current legal representative
 21 representing Baloyi and Lepaaku family is not funded. So –
 22 CHAIRPERSON: Yes, so while you're
 23 putting things on record, can you also put on record
 24 whether an application was made to the Legal Aid Board in
 25 May for legal aid, at least as far as the Lepaaku family is

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1 concerned, based upon the constitutional entitlement
 2 referred to by the Constitutional Court in the passage to
 3 which I referred – I think it's para 13 of the judgment.
 4 MR GUMBI: We didn't lodge an application
 5 as early as May. Instead of doing that, we engaged the
 6 SAPS and then even up to date we've tried also again to
 7 engage the Legal Aid Board, and the outcome of that is
 8 still outstanding and we'll advise the Commission in due
 9 course, but we just wanted to put on record that the
 10 current legal team representing these parties, they are not
 11 funded.
 12 CHAIRPERSON: Does that mean that you are
 13 acting either pro bono or pro amico at this stage?
 14 MR GUMBI: Yes, Chairperson.
 15 CHAIRPERSON: In accordance, if I may so
 16 say, with the highest traditions of the legal profession in
 17 this country. Is that right?
 18 MR GUMBI: Yes, Chairperson. And as a
 19 legal representative of the late Warrant-Officer Lepaaku
 20 and his entire family, and Lieutenant Baloyi, we understand
 21 the conflict and the trauma suffered by our clients since
 22 the 13th of August 2012, and we want to place on record
 23 before this Commission that we took it upon ourselves,
 24 despite the fact that the SAPS refused, or opposed our
 25 application to compel them to fund the current legal

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1 representative, we took it upon ourselves, Chairperson,
 2 that we'll rise above all these technicalities because we
 3 understand the importance of this Commission and we
 4 understand the trauma and the pain suffered by our clients,
 5 and we'll do our best to ensure that the Commission leaves
 6 no stone unturned surrounding the death of Warrant-Officer
 7 Lepaaku and Lieutenant Baloyi. So we'll continue to
 8 participate in this Commission, and we also share the same
 9 sentiment with our colleagues who withdraw from this
 10 participation. We understand their plight of representing
 11 the client without any funds, but on behalf of Warrant-
 12 Officer Lepaaku and Lieutenant Baloyi we are giving an
 13 assurance to this Commission, and we have a trust in this
 14 Commission, and we will participate and we'll ensure that
 15 all the facts surrounding the death of Warrant-Officer
 16 Lepaaku and Lieutenant Baloyi are put before this
 17 Commission –

18 CHAIRPERSON: And the injuries of
 19 Lieutenant Baloyi –

20 MR GUMBI: Yes, Chairperson, I beg your
 21 pardon, and the injuries of Lieutenant Baloyi, up until the
 22 issues of our funding is resolved. Thank you very much,
 23 Chairperson, those are the remarks I wanted –

24 CHAIRPERSON: I thank you for putting
 25 those facts on record. I think it's important that they

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1 should be matters of public record. Would you now like to
 2 start your cross-examination?

3 MR GUMBI: Yes, Chairperson, I would like
 4 to cross-examine General Mpembe on the behalf of Lieutenant
 5 Baloyi and the family of the late Warrant-Officer Monene.
 6 Chairperson –

7 CHAIRPERSON: I take it, it's not
 8 necessary for your remarks that you've made so far to be
 9 translated?

10 MR GUMBI: Yes.

11 CHAIRPERSON: Is it?

12 MR GUMBI: I don't think so, Chairperson.

13 CHAIRPERSON: The people in the
 14 auditorium are shaking their head, it's fine. I
 15 understand, am I correct in thinking the simultaneous
 16 translation facilities are not yet in operation? Is that
 17 correct?

18 MR MAHLANGU: That's correct,
 19 Chairperson.

20 CHAIRPERSON: I'm sorry, Mr Gumbi,
 21 there's one question I have to ask you. I take it the
 22 members of the Lepaaku family are present, at least one of
 23 them is, and members of the Baloyi family as well?

24 MR GUMBI: Only Lieutenant Baloyi I've
 25 seen. I don't know –

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1 CHAIRPERSON: Do they understand English?
 2 MR GUMBI: Yes, Chairperson.
 3 CHAIRPERSON: Is he Tswana-speaking or
 4 Sepedi-speaking or what is his –
 5 MR GUMBI: He's Tswana-speaking, but he
 6 understands English.
 7 CHAIRPERSON: He's Tswana-speaking, but
 8 he understands English?
 9 MR GUMBI: Yes.
 10 CHAIRPERSON: So it's not necessary that
 11 we translate the proceedings for them into Tswana?
 12 MR GUMBI: Yes, Chairperson.
 13 CHAIRPERSON: Setswana.
 14 MR GUMBI: Yes, Chairperson.
 15 CHAIRPERSON: Alright, okay.
 16 MR GUMBI: Thank you very much,
 17 Chairperson. Chairperson, yesterday I've circulated the
 18 index of documents I will use during the cross-examination
 19 of General Mpembe, so I understand some of the documents I
 20 will rely on during the cross-examination, my cross-
 21 examination, some of them they are not marked as exhibit.
 22 I don't know whether it will be a good opportunity for us
 23 maybe to mark all those documents as exhibits before I
 24 could even start cross-examining General Mpembe. You'd
 25 give a direction, Chairperson, on –

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1 CHAIRPERSON: Well, unless there are
 2 going to be objections to any of those documents, I don't
 3 know, the SAPS sometimes objects at all sorts of things, so
 4 – and sometimes their objections, to be fair, are upheld.
 5 So I'm not speaking [inaudible] time. Let's ask, Mr
 6 Ngalwana, you're representing the SAPS as far as this
 7 witness is concerned today. Is that correct? You've seen
 8 the documents in the index – any of them that you object
 9 to?

10 MR NGALWANA: I've seen the documents,
 11 Chair. I tried my level best to read through them last
 12 night; given the shortness of time I couldn't get through
 13 all of them. I doubt my witness has, but I'll object to
 14 each document as it is presented, Chair. So I'm not going
 15 to object to all sorts of things –

16 CHAIRPERSON: Yes, I don't know how
 17 successful you'll be in respect of all the documents, but
 18 we obviously have to take each document then as it comes.
 19 So we can't mark them in advance. That's basically what it
 20 amounts to.

21 MR NGALWANA: Correct, Chair.

22 CHAIRPERSON: Yes, so we're going to have
 23 an interesting time this morning, Mr Gumbi, but let's carry
 24 on.

25 MR GUMBI: Thank you, Chairperson, I will

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1 do that.

2 MR NGALWANA: Sorry, Chairperson, before

3 my learned friend proceeds, I've just been alerted to the

4 fact that some time ago, because there was an indication

5 that SAPS were uncooperative as regards the representation

6 for – is it Warrant-Officer Lepaaku and Lieutenant Baloyi.

7 I'm instructed that the police did offer legal

8 representation to the family by the legal team that is

9 representing Monene, Lieutenant Monene. So it is not

10 correct to say –

11 CHAIRPERSON: Well, it's important that

12 you put that on record as well. Of course to be fair,

13 Judge Raulinga dismissed the application brought on behalf

14 of Lieutenant Baloyi, so that's also a fact which is

15 relevant to have on record.

16 MR NGALWANA: And I'm instructed that

17 that offer still stands, Chair.

18 MR GUMBI: Chairperson, our instruction

19 is that that information –

20 CHAIRPERSON: We don't have to go into

21 that now. It's not a matter that concerns this Commission.

22 You've put your facts on record that you wanted to have on

23 record, which we listened to. Mr Ngalwana has put what the

24 SAPS considered appropriate to have on record as well. If

25 there are going to be discussions about, along the lines of

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1 what Mr Ngalwana has said, they don't concern the

2 Commission; you can do them outside, but do it at teatime.

3 Let's carry on with your cross-examination in the meantime.

4 MR GUMBI: Ja, but Chairperson, I'm

5 entitled also again to put on record my instruction against

6 this averment made by my learned colleagues in this

7 Commission.

8 CHAIRPERSON: I think that in fairness I

9 must let you do that.

10 MR GUMBI: Yes, Chairperson. I must

11 place on record that that offer my learned colleague's

12 talking about only emerged when we lodged our application

13 to the High Court, and we were not even engaged on that up

14 until our application was dismissed.

15 CHAIRPERSON: You don't expect us to rule

16 on that –

17 MR GUMBI: Yes, Chairperson, but I must

18 put facts correct.

19 CHAIRPERSON: Alright, well let's carry

20 on.

21 CROSS-EXAMINATION BY MR GUMBI: Thanks,

22 Chairperson, I'm ready to cross-examine. Good morning,

23 General Mpebe.

24 MAJOR-GENERAL MPEMBE: Good morning,

25 Advocate.

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1 MR GUMBI: Hope you are fine this

2 morning.

3 MAJOR-GENERAL MPEMBE: Not fine,

4 Advocate. I never slept. I had to go through 33

5 documents.

6 MR GUMBI: No, I understand that. I will

7 try as much as I can to take you through these documents

8 step by step, and you must –

9 CHAIRPERSON: You'll remember that each

10 step in the way you're going to meet with an objection, so

11 –

12 MR GUMBI: Yes, Chairperson. I'm

13 anticipating that.

14 CHAIRPERSON: So I'd hoped just to sit

15 and listen to your cross-examination.

16 MR GUMBI: Yes.

17 CHAIRPERSON: I fear I'm going to have to

18 be giving decisions all the time, but anyway, that I

19 suppose is my duty, so I must –

20 MR GUMBI: Thanks, Chairperson.

21 CHAIRPERSON: - do it as cheerfully as I

22 can. Shall we start?

23 MR GUMBI: Thanks, Chairperson. No,

24 General, if I ask you question and you don't understand the

25 question, please feel free to tell me through the

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1 Chairperson and the Commissioners that you don't understand

2 my question, and I'm here and I'm prepared to repeat the

3 question if you don't understand the content. I do

4 understand all these documents you were supposed to go

5 through yesterday. Thanks very much. Lieutenant, you

6 testified before this Commission – I do apologise, General,

7 you know, I called you Lieutenant –

8 CHAIRPERSON: He was a lieutenant a long

9 time ago.

10 MR GUMBI: Long time ago.

11 CHAIRPERSON: When were you a lieutenant,

12 Major-General?

13 MAJOR-GENERAL MPEMBE: 1991.

14 CHAIRPERSON: We won't revisit those

15 unhappy times. Carry on, Major-General.

16 MR GUMBI: I apologise, General.

17 Normally I talk to Lieutenant Baloyi, that's why I'm used

18 to this term, Lieutenant, Lieutenant. I apologise. You

19 testified before this Commission, General, that on the 13th

20 of August 2012 before you confronted protesters along the

21 railway line, you had three briefings, and I wanted to go

22 through those three briefings you had before you confronted

23 the protesters.

24 [09:51] Right, the first briefing you had, you had a

25 briefing with Brigadier Callitz that was an interim JOC

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1 Commander if I understand your evidence and Brigadier
2 Calitz informed you that about the incident of the 9th,
3 10th, 11th, 12th August 2012, do you still remember that?
4 MAJOR-GENERAL MPEMBE: Correct,
5 Chairperson. It was a discussion between me and Brigadier
6 Calitz because I was coming from leave.
7 MR GUMBI: Yes, we'll call it a
8 discussion and he further informed you how the security
9 personnel were attacked and killed by armed protestors on
10 the 12th of August 2012 and he also informed you about the
11 modus operandi of the protestors, is that correct?
12 MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson.
14 MR GUMBI: Can I refer you, General, to
15 exhibit TTT5? That is a Police Intelligence information
16 that was circulated before the Commission. Are you in
17 possession of that document, General?
18 MAJOR-GENERAL MPEMBE: I just want to
19 find - is it TTT or?
20 MR GUMBI: I mean TT5.
21 MAJOR-GENERAL MPEMBE: Oh okay, I have
22 that.
23 MR GUMBI: TT5, I do apologise. Are you
24 in possession of that document?
25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2 MR GUMBI: When you go to paragraph 6 of
3 that document, that's page 1, paragraph 6 of that document.
4 It reads as follows, "On the 12th of August 2012 during -
5 CHAIRPERSON: Sorry, Mr Gumbi, what is
6 the document you're referring to is it exhibit PP5?
7 MR GUMBI: Yes, Chairperson.
8 CHAIRPERSON: What is it?
9 MR GUMBI: It's Police Intelligence
10 information. It is written, the heading is Lonmin Platinum
11 Mine Marikana Labour Unrest.
12 CHAIRPERSON: Yes, thank you.
13 MR GUMBI: Yes, I consider that document
14 as a Police Intelligence information. When you read the
15 paragraph 6, General, that document says, "on the 12th of
16 August 2012 during the night two security officers were
17 killed at Wonderkop while attending to a squabble between
18 NUM and AMCU members," do you see that?
19 MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.
21 MR GUMBI: It went on and say "Crime
22 Intelligence reported that AMCU members went through a
23 ritual with the Sangoma with the belief that they could not
24 be shot by the police or mine security during that day and
25 they were further planning to set the offices of NUM and

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1 the SAPS satellite police station near Wonderkop alight."
2 I'm not sure about this word, near Wonderkop alight or
3 light, I'm not sure about that. "And this information was
4 also reported and Brigadier Engelbrecht relayed it to the
5 Deputy Provincial Commissioner Mpeembe." Do you see that?
6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.
8 MR GUMBI: Will I be correct, General,
9 that this information also again was relayed to you by
10 Brigadier Calitz on the 15th of August 2012? The content of
11 this information, paragraph 6.
12 MAJOR-GENERAL MPEMBE: Yes, correct,
13 Chairperson.
14 MR GUMBI: Can I also refer you to
15 another document, I don't think it's an exhibit before this
16 Commission, Chairperson, let me go through it.
17 CHAIRPERSON: Is it one of the documents
18 in your index?
19 MR GUMBI: Yes, it is in my index.
20 CHAIRPERSON: What is it?
21 MR GUMBI: Let me check, Chairperson.
22 MR NGALWANA: While my learned friend is
23 checking perhaps he should note that that document it is
24 dated the 28th of August.
25 MR GUMBI: When you go to entry number

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1 27, Chairperson, the document is titled -
2 CHAIRPERSON: I and my colleagues have to
3 follow your cross-examination. We were given a bundle of
4 documents, each of us when we came this morning, they
5 weren't available yesterday and which is the document to
6 which you are now referring?
7 MR GUMBI: The document, Chairperson, is
8 titled Report Mine Unrest at Lonmin Marikana August 2012.
9 CHAIRPERSON: Is it the document that I'm
10 now showing you?
11 MR GUMBI: Yes, Chairperson, that is the
12 one and this document was compiled by Colonel Visser after
13 Potchefstroom meeting held on the 27th of August -
14 CHAIRPERSON: Now before you go further
15 we've got to ascertain what - we first have to decide
16 whether Mr Ngalwana is going to object to this document
17 being put in as an exhibit and if he does object we'd have
18 to decide on his objection and only if his objection is
19 overruled will Ms Pillay be given an opportunity to tell us
20 what the exhibit number must be, all right? Mr Ngalwana,
21 are you objecting to this document being used in evidence?
22 MR NGALWANA: Well as soon as I can
23 identify which document he's referring to -
24 CHAIRPERSON: I showed it to him, it's
25 this document.

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1 MR NGALWANA: I don't know what it is,
 2 Chair.
 3 CHAIRPERSON: Well I'm showing it to you.
 4 It's a document with a police coat of arms on the front,
 5 it's headed Confidential but I take it that's not a reason
 6 not to refer to it, and then it's headed Report Mine Unrest
 7 at Lonmin Marikana August 2012. It says at the beginning
 8 "Page 1 of 101" 41 rather but we're only being asked to
 9 look at the first 40 pages which is something for which we
 10 must be grateful. Now do you to that being put in?
 11 MR NGALWANA: I don't have that document
 12 in front of me, Chair.
 13 CHAIRPERSON: Well I take it, it was on
 14 the police hard drive, was it referred to in your index, Mr
 15 Gumbi? We're going to be more than -
 16 MR GUMBI: Yes, yes I have the page in my
 17 index.
 18 CHAIRPERSON: Have you not seen the
 19 document yet Mr Ngalwana?
 20 MR GUMBI: If you go to page 27, item
 21 number 27 Report on Mine Unrest at Lonmin Marikana August
 22 2012. That's the title of the document.
 23 CHAIRPERSON: I see that we even - we
 24 weren't even given the first 40 pages, we were given
 25 extracts to refer to this page.

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1 MR GUMBI: Yes, Chairperson. It's almost
 2 141 pages, so -
 3 CHAIRPERSON: Yes, I know but I've
 4 already expressed gratitude with the fact that we're not
 5 expected to read all 141, don't revoke that.
 6 MR GUMBI: Yes, Chairperson.
 7 CHAIRPERSON: Now it's been put together
 8 out of order but let's not worry about that. I've got 21
 9 then 24 then 23 then 22. Then we've got 31, 32, 33, 34
 10 through to 40. So I haven't got page 27 anyway. So is 27
 11 the one you're going to refer to?
 12 MR GUMBI: No, Chairperson.
 13 CHAIRPERSON: What page are you referring
 14 to?
 15 MR GUMBI: Page 24.
 16 CHAIRPERSON: Oh I see, page 24.
 17 MR GUMBI: Page 24 of that document, at
 18 the top of that document.
 19 CHAIRPERSON: Yes, yes I've got it in
 20 front of me. Now, Mr Ngalwana, have you got page 24 in
 21 front of you?
 22 MR NGALWANA: We don't have the document
 23 at all because it's so opaquely described. My attorney
 24 tells me he has no idea what the document was -
 25 CHAIRPERSON: Well never mind that,

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1 you've been handed a copy now by Mr Budlender, you've got
 2 the document in front of you. Would you please look at
 3 page 24?
 4 MR NGALWANA: This document doesn't have
 5 page 24.
 6 MR GUMBI: It is on the SAPS hard drive,
 7 Chairperson, they must -
 8 CHAIRPERSON: The problem we've got is
 9 the document as we have it, is - obviously consists of
 10 excerpts, they are stapled together out of order. I can
 11 understand if the 141 pages are a summary of events and
 12 you're referring to a discreet section of the document, so
 13 you don't have to refer to everything. But perhaps - I
 14 think in order to save time I'm going to take a short
 15 adjournment now to enable you to discuss the matter with
 16 your learned friend, Mr Ngalwana. Identify the passages in
 17 this document you're going to refer to and let him look at
 18 them and he can then report back to us whether he objects
 19 to your referring to those passages because otherwise we'll
 20 be here for quite a long time, just debating housekeeping
 21 matters which can be dealt with more easily when we aren't
 22 in the chamber.
 23 MR GUMBI: I'm open, Chairperson, I can
 24 do that.
 25 CHAIRPERSON: The other possibility is,

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1 is there not some other matter you can deal with first and
 2 sort this matter out at tea time, or is your cross-
 3 examination such that you have to start with this?
 4 MR GUMBI: I think the best thing to do,
 5 is to check with my learned colleague whether he has all
 6 these documents I will rely on - I took it for granted -
 7 MR NGALWANA: On that issue I can tell
 8 him now that I have at least two objections now that I've
 9 had a cursory look at this document. The first is that
 10 it's not properly described in the index so when we tried
 11 to identify the document we came up with other documents
 12 which is not this, that's the first thing. And the second
 13 thing -
 14 CHAIRPERSON: What's the relevance of
 15 this? We now know what the document is, you've seen it.
 16 Either it's a good document we can look at or it isn't.
 17 The fact that you were misled by wrong descriptions
 18 yesterday and the day before is a matter of historical
 19 interest only. What's wrong with this document as it is?
 20 If there's something wrong with it, that's maybe your
 21 second objection which may be good, what is the objection?
 22 I'm not interested in historical mishaps.
 23 MR NGALWANA: It's 141 page document and
 24 there excerpts of it that are produced here -
 25 CHAIRPERSON: That's why I suggested we

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1 adjourn, you have a discussion with our learned friend
 2 which passages of the document he considers relevant. It's
 3 not necessary for us to burden the record with 141 pages of
 4 exhibits if only two or three or four of them are relevant.
 5 If they can be read in isolation without the other parts
 6 being referred to. So we'll adjourn now for five minutes.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [10:39] CHAIRPERSON: Sorry, are we now ready to
 9 proceed with your cross-examination, Mr Gumbi? Have you
 10 come to an arrangement or a compromise with your learned
 11 friend for the SAPS in relation to the documents you're
 12 going to use today?
 13 MR GUMBI: Yes, Chairperson, we've
 14 identified those document I'm not going through today, but
 15 the other document, I'm going to use it on my cross-
 16 examination. I don't know whether, Chairperson, must I put
 17 that on record, those document that I'm not going to refer
 18 to during my cross-examination?
 19 CHAIRPERSON: You may refer to them
 20 later.
 21 MR GUMBI: Yes.
 22 CHAIRPERSON: But you may not – you told
 23 me in chambers you may – I'm just putting on record what
 24 you said to me, what you told me in chambers. I understand
 25 there are documents which you may use on Thursday.

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1 MR GUMBI: Yes.
 2 CHAIRPERSON: But you're not going to use
 3 them today.
 4 MR GUMBI: Yes.
 5 CHAIRPERSON: So that the witness will
 6 have an opportunity, because we're not sitting tomorrow,
 7 because it's the third Wednesday when the council chamber
 8 is required for other purposes. The witness will have the
 9 opportunity tomorrow to read those other documents. Is
 10 that correct?
 11 MR GUMBI: Yes, Chairperson.
 12 CHAIRPERSON: Major-General, you're still
 13 under oath. Mr Gumbi?
 14 MR GUMBI: Yes, Chairperson. Thank you
 15 very much, Chairperson. General, before we adjourned you
 16 still remember I was going through the content of the
 17 information that was conveyed to you by Brigadier
 18 Engelbrecht. That is TT5. You still remember?
 19 CHAIRPERSON: When you were dealing with
 20 TT5, Mr Ngalwana pointed out that that document is dated
 21 the 28th of August. I don't think you've dealt with that at
 22 all in what you said.
 23 MR GUMBI: Yes.
 24 CHAIRPERSON: Perhaps you should deal
 25 with it now before you carry on.

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1 MR GUMBI: Yes, Chairperson. Have a look
 2 at that document TT5, General. Are you in possession of
 3 that document?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR GUMBI: Go to page 2 of that document.
 7 MAJOR-GENERAL MPEMBE: I am on page 2,
 8 Chairperson.
 9 MR GUMBI: You see the date at the bottom
 10 of that page is dated 28 August 2012.
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 12 MR GUMBI: And it was signed by Brigadier
 13 Engelbrecht. You see that?
 14 MAJOR-GENERAL MPEMBE: Correct.
 15 MR GUMBI: Ja. So – but I was going
 16 through the content of that document, paragraph 6. Then I
 17 asked you a question that on the 13th of August 2012 the
 18 content of paragraph 6 was conveyed to you by Brigadier
 19 Calitz and you confirmed that.
 20 CHAIRPERSON: Mr Ngalwana, sorry, Mr
 21 Gumbi, beg your pardon, I think it would be helpful if you
 22 read that passage out for two reasons. Firstly, we haven't
 23 got our documents and our exhibits here with us. We don't
 24 have the interpreter here, but I think that for the benefit
 25 of those in the auditorium who are in the same position

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1 we're in, who haven't got the documents in front of them,
 2 to enable them to follow it would help if you read out that
 3 paragraph.
 4 MR GUMBI: I will do so, Chairperson.
 5 When you read paragraph 6 of that document, General, it
 6 read as follow, "On 28 August 2012 during the night two
 7 security officers were killed at Wonderkop whilst attending
 8 the squabbles between NUM and AMCU members. Crime
 9 intelligence reported that AMCU members went through a
 10 ritual with a sangoma with the belief that they could not
 11 be shot by the police or mine security during the day.
 12 They were further planning to set the office of NUM and
 13 SAPS satellite police station near the Wonderkop alight.
 14 This information was also reported and Brigadier
 15 Engelbrecht relay it to DPC Mpembe," referring to you. Do
 16 you see that, General?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 CHAIRPERSON: Do you confirm that that
 20 information set out in the paragraph as read by Mr Gumbi
 21 was in fact conveyed to you by Brigadier Engelbrecht?
 22 MAJOR-GENERAL MPEMBE: Chairperson, the
 23 one that I convey and maybe I will also like to bring the
 24 SMS that was sent to me, not this document.
 25 CHAIRPERSON: You can do that, but the

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1 real question is was that information conveyed to you?
 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 3 CHAIRPERSON: And when was it conveyed to
 4 you?
 5 MAJOR-GENERAL MPEMBE: It was conveyed to
 6 me through the SMS and I still have the SMS.
 7 CHAIRPERSON: We'd like – if the SMS is
 8 relevant you must obviously show it to us, but the question
 9 I asked you, I think Mr Gumbi also asked, was when was that
 10 information conveyed to you? When did you receive that
 11 SMS?
 12 MAJOR-GENERAL MPEMBE: The SMS,
 13 Chairperson, I received it on the 11th and I – in terms of
 14 paragraph –
 15 CHAIRPERSON: No, no, no, that can't be
 16 right. The paragraph that's being read relates to the 12th.
 17 Now, remember the 12th is the Sunday.
 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 19 CHAIRPERSON: Now, what Mr Gumbi says is
 20 according to that document which has been put before us as
 21 an exhibit certain information as to what happened on
 22 certain dates was incorporated in this criminal
 23 intelligence document dated the 28th of August. But what
 24 allegedly happened on Sunday the 12th is set out in the
 25 paragraph he read and according to that paragraph that

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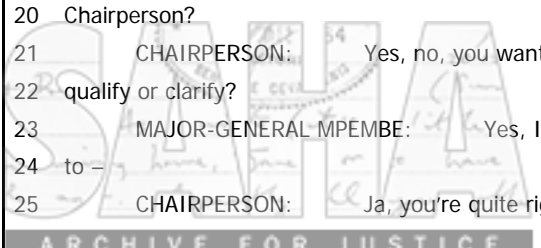
1 information was conveyed to you. Now, what we want to know
 2 is when that information referred, conveyed to you – it
 3 couldn't be conveyed on the 11th because it would require
 4 gifts of prophecy to be able to do that, which the criminal
 5 intelligence people however clever they are haven't got,
 6 but so when was that information conveyed to you?
 7 MAJOR-GENERAL MPEMBE: Chairperson, the
 8 one of the 12 – of according to paragraph 6, it was
 9 conveyed to me on the 13th.
 10 CHAIRPERSON: - before or after you went
 11 to the railway line place where the – where you addressed
 12 the strikers.
 13 MAJOR-GENERAL MPEMBE: It was before,
 14 Chairperson.
 15 CHAIRPERSON: Thank you.
 16 MR GUMBI: Thanks very much, Chairperson.
 17 Then according to your evidence in chief or if I can wrap
 18 up this – okay, no, it's fine. I'll cross it, Chairperson.
 19 MAJOR-GENERAL MPEMBE: I'm sorry,
 20 Chairperson?
 21 CHAIRPERSON: Yes, no, you want to
 22 qualify or clarify?
 23 MAJOR-GENERAL MPEMBE: Yes, I just wanted
 24 to –
 25 CHAIRPERSON: Ja, you're quite right to

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1 do that.
 2 MAJOR-GENERAL MPEMBE: I just want to
 3 clarify paragraph 6. According to TT5 paragraph 6 said
 4 that Brigadier Engelbrecht relayed it to me which is not
 5 correct, because this I was just informed by Brigadier
 6 Calitz because of the events that happened while I was on
 7 leave. The only one that was related to me, with the SMS,
 8 was paragraph 5.
 9 CHAIRPERSON: That you said was relayed
 10 to you on the 11th. That's the Saturday.
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MR GUMBI: Thanks, General, for
 14 clarifying that point. In fact, it was my question that
 15 this information was relayed to you by Brigadier Calitz
 16 before you confronted the strikers along the railway line.
 17 Okay, let's move on. Then again you had another brief with
 18 Lonmin and Lonmin briefed you how the protestors killed
 19 their employees and how they destroyed their property on
 20 the 12th of August 2012. Is that correct, General?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MR GUMBI: So can you agree with me,
 24 General, if I put the following proposition to you? Can we
 25 assume that before you approached the protestors along the

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1 railway line you had a police perspective on how the
 2 violence escalated around Marikana and you also have the
 3 employer's perspective as to how the violence escalated
 4 around Marikana before you confronted the mine – the armed
 5 protestors along the railway line?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MR GUMBI: And furthermore, General,
 9 before you confronted those protestors along the railway
 10 line is it your evidence that Brigadier Calitz show you the
 11 video footage of those protestors who were marching on
 12 their way to the koppie?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 MR GUMBI: So will you agree with me,
 16 General, if I put again the following proposition to you
 17 that as an experienced POP over a commander on that day,
 18 the information relayed to you on the previous day
 19 regarding the incident of the previous day, that is the
 20 incident of the 11, 12 by Brigadier Engelbrecht, Brigadier
 21 Calitz, by Lonmin and the video footage you saw before you
 22 confronted those armed miners placed you in the better
 23 position to do a threat analysis of that group you were
 24 about to confront along the railway line? Will you agree
 25 with me?



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1 MAJOR-GENERAL MPEMBE: No, Chairperson,
 2 because the threat analysis includes more than that which I
 3 did not have at that stage.
 4 MR GUMBI: But my question is that
 5 information, it was relayed to you by Brigadier Calitz that
 6 this group, on the 12th they killed two police officers,
 7 they damaged property, they performed rituals, and you saw
 8 them on the video footage and they were armed and they were
 9 moving towards the railway line towards their way in the
 10 koppie. You had enough information to know that you are
 11 not confronting just an ordinary group, but you are
 12 confronting the group that has performed ritual on the
 13 previous day, the group that has killed two security
 14 officers and the group that is armed. You saw that group
 15 on the video footage shown to you by Brigadier Calitz.
 16 MAJOR-GENERAL MPEMBE: Chairperson, when
 17 I get a briefing from Brigadier Calitz he did not know who
 18 performed rituals. He did not know who was marching. He
 19 was only relating to me the chronological events of what
 20 happened, but who, where he stays, where is he coming from
 21 and under which circumstances Brigadier Calitz did not
 22 know. I could not confirm basically to say it is precisely
 23 this group that killed the securities on the previous day.
 24 MR GUMBI: I understand your question,
 25 General, but I'm saying all this information was at your

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1 disposal before you confronted the group of armed
 2 protestors on that day. You don't deny that. Do you?
 3 MAJOR-GENERAL MPEMBE: I don't deny,
 4 Chairperson.
 5 MR GUMBI: Furthermore, General, would
 6 you agree with me that this information placed you in the
 7 better position to understand the dynamics of the group you
 8 are about to confront on the 13th of August 2012.
 9 MR NGALWANA: Chair, the witness, with
 10 respect, has already answered that question and he's made
 11 it clear that Calitz didn't know which group he was dealing
 12 with, so when my learned friend is talking about the
 13 dynamics of the group he needs to be specific.
 14 MR GUMBI: Yes, Chairperson, I think I
 15 will clarify this point. Despite the fact that, General,
 16 you didn't know that group that was marching towards
 17 koppie, whether it was the group that had killed two police
 18 officers on the previous day, whether they had performed
 19 ritual, but I'm saying that that information placed you in
 20 the better position for you to understand any dynamics of
 21 any group within the vicinity of Marikana before you
 22 confronted the group along the railway line. Will you
 23 agree with me?
 24 MAJOR-GENERAL MPEMBE: No, Chairperson,
 25 because I did not know who were actually the destabilisers.

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1 I did not actually know where they were coming from and
 2 there was no briefing in terms of saying whether these
 3 destabilisers, are they also having any other weapons than
 4 one when one can sit down and do a threat analysis.
 5 MR GUMBI: But you saw the video footage
 6 -
 7 COMMISSIONER HEMRAJ: Sorry, just a
 8 second. General, did it cross your mind that this might be
 9 the same group that's responsible for the actions the
 10 previous day or part of the same group?
 11 MAJOR-GENERAL MPEMBE: Chairperson, at
 12 that time it did not come to my attention and none of the
 13 people who briefed me could ever show me any photo of
 14 anything to say it is probably the same group that caused
 15 the problem.
 16 CHAIRPERSON: But when you went to the
 17 scene and you spoke to them they indicated that they wanted
 18 to go back to the koppie, didn't they?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: And the strikers who were
 22 armed, presumably responsible for the previous actions,
 23 were part of the group on the koppie. Is that right?
 24 MAJOR-GENERAL MPEMBE: I was informed
 25 that, correct, Chairperson.

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1 CHAIRPERSON: Ja, so when they told you
 2 they wanted to go back to the koppie it must've been
 3 apparent to you that they might well be part of the group
 4 that's been responsible for what happened on the previous
 5 day. Is that right? Is that right?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson.
 7 CHAIRPERSON: Sorry?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 CHAIRPERSON: No. I see. Why do you say
 10 this?
 11 MAJOR-GENERAL MPEMBE: I say because part
 12 of the briefing that was done to me couldn't indicate
 13 specifically which group was responsible of the previous
 14 day's activities.
 15 CHAIRPERSON: No, I understand that. I
 16 mean, there were quite a lot of people on the koppie,
 17 weren't there? There were - at times there were over 3 000
 18 people on the copy, so, but the question that I'm asking
 19 you is did it not cross you mind that this group you were
 20 dealing with here might be part of that group of people who
 21 were involved in the events of the previous day, not that
 22 they necessarily were, but they might have been.
 23 MAJOR-GENERAL MPEMBE: No, correct,
 24 Chairperson. I agree with that proposition.
 25 MR GUMBI: Thanks very much, Chairperson,

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1 for clarifying this aspect. Let's move on, General.
 2 According to Lieutenant Merafi, I mean, Colonel Merafi,
 3 Lieutenant-Colonel Merafi before you confronted those
 4 groups of the armed miners along the railway line, he said
 5 you issued instruction that they must include the
 6 Rustenburg POP, Rustenburg TRT and Pretoria POP and
 7 Gwamasenga POP. You still remember that?
 8 MAJOR-GENERAL MPEMBE: Maybe if I might
 9 be referred to the statement of Colonel Merafi.
 10 MR GUMBI: Chairperson, I'm trying, with
 11 the leave of you, Chairperson, can I check the statement of
 12 Merafi?
 13 MS PILLAY: Chairperson, it's GGG15 at
 14 paragraph 14.
 15 MR GUMBI: Yes, at paragraph 14. Are you
 16 in possession of that statement? Thank you, Ms Pillay, for
 17 assisting me.
 18 CHAIRPERSON: You had a question,
 19 General. The question – are you in possession of Colonel
 20 Merafi's statement? Have you got a copy of it there?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson,
 22 it was not included in the list.
 23 CHAIRPERSON: All right, Mr Gumbi, I see
 24 it's five to eleven.
 25 MR GUMBI: Yes.

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1 CHAIRPERSON: May I suggest that we do
 2 two things. Firstly, we take the adjournment now –
 3 MR GUMBI: Yes.
 4 CHAIRPERSON: So that – and he be given a
 5 copy of Colonel Merafi's statement and any other exhibits
 6 you want to refer to.
 7 MR GUMBI: Yes.
 8 CHAIRPERSON: And in the mean – and also
 9 ask those responsible for bringing our papers here to
 10 please ensure that when we resume they will be with us
 11 here. Yes. It is pointed out to me we have taken an
 12 adjournment a short while ago. If there's something else
 13 you can deal with in the meanwhile perhaps you can do it
 14 and we can go on till half past eleven, but Colonel
 15 Merafi's statement is now being produced. Perhaps you can
 16 carry on with that now. Is there anything else that you
 17 can deal with after that?
 18 MR GUMBI: No, Chairperson. I think
 19 that's only that portion of paragraph that I'm referring
 20 to.
 21 CHAIRPERSON: And then? And then you
 22 want to move onto something else?
 23 MR GUMBI: Yes, to another –
 24 CHAIRPERSON: And has the witness got the
 25 documents you're going to refer to?

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1 MR GUMBI: Yes.
 2 CHAIRPERSON: Well, okay then we can
 3 carry on until half past eleven then.
 4 MR GUMBI: Yes.
 5 CHAIRPERSON: So I think it's para 16
 6 they want you to look at.
 7 MR GUMBI: Yes.
 8 CHAIRPERSON: But you might want to read
 9 some of the paragraphs around it just to make sure that
 10 what's being put to you isn't being put out of context.
 11 MR GUMBI: Yes. Are you in possession of
 12 that paragraph, General?
 13 MAJOR-GENERAL MPEMBE: I'm in possession
 14 of the statement. I don't know whether, Chairperson,
 15 Advocate, you referred to paragraph 15.
 16 MR GUMBI: Yes.
 17 CHAIRPERSON: I think you must give him
 18 an opportunity to look at paragraph 15 and also some of the
 19 surrounding paragraphs so that he's fully aware of the
 20 context of the paragraph that you're referring to.
 21 MR GUMBI: Yes, that's paragraph 14,
 22 General.
 23 CHAIRPERSON: When you're ready to
 24 proceed let us know but in the meanwhile you read the
 25 document quietly to yourself and satisfy yourself that you

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1 understand the passage you've been asked to read and the
 2 context of it and then we – then questions will continue.
 3 [10:59] MR NGALWANA: Chair, for that purpose,
 4 and I don't want to be sounding some caution in the
 5 presence of the witness, but at the risk of doing that for
 6 purposes of determining, of reading things in context.
 7 This is not a long statement. It might very well be that
 8 the witness may want to read the entire statement because
 9 he wasn't forewarned that he was going to be cross-examined
 10 on –
 11 CHAIRPERSON: Alright, if you want to
 12 read the whole statement, Major-General, you can do so.
 13 MR GUMBI: But I'm going to give you an
 14 assurance, Chairperson, that I'm going to make use of
 15 paragraph 14 only. I'm not going to refer to any paragraph
 16 in that statement.
 17 CHAIRPERSON: Let him read the whole
 18 statement, just to satisfy himself.
 19 MR GUMBI: Okay.
 20 CHAIRPERSON: I know it takes time, but
 21 we may find we save time eventually by doing it this way.
 22 COMMISSIONER TOKOTA: Mr Gumbi, would you
 23 be kind enough to put your question again in relation to
 24 this paragraph 14? I didn't understand it now, now that
 25 I've read the –

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1 MR GUMBI: Yes, according to paragraph
 2 14, Commissioner Tokota, according to Lieutenant-Colonel
 3 Merafi, before confronting the AMCU protesters along the
 4 railway line, General issued instruction that they must
 5 include Rustenburg POP, Rustenburg TRT, Pretoria POP, and
 6 KwaMhlanga POP.
 7 COMMISSIONER TOKOTA: Where is that?
 8 CHAIRPERSON: Here –
 9 COMMISSIONER TOKOTA: No, no, no, where
 10 does it say he issued an instruction that you must include
 11 these? Where is that?
 12 MR GUMBI: When you go to paragraph 14 –
 13 COMMISSIONER TOKOTA: Yes, just read it.
 14 MR GUMBI: It's sentence number 5,
 15 "Major-General issued an instruction that we include
 16 members of Rustenburg POP" –
 17 COMMISSIONER TOKOTA: Where is "we
 18 include"? Where is "we include"? Because as I see there
 19 is something which is in brackets which says, "We should
 20 go." The instruction here, as I read the sentence, is that
 21 "we should go and stop and disarm the miners."
 22 MR GUMBI: Yes.
 23 COMMISSIONER TOKOTA: But he says when
 24 I'm saying "we," I include these people. That's how I read
 25 the sentence.

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1 MR GUMBI: Yes, members of Rustenburg
 2 POP.
 3 COMMISSIONER TOKOTA: No, but the way you
 4 put it is that he issued an instruction that they must
 5 include those members from Rustenburg, from Pretoria, and
 6 so on. That's not how I read the statement. The statement
 7 says, "He issued an instruction that we should go and he
 8 says we," by we I include – that's how I read the
 9 statement.
 10 MR GUMBI: Yes, Chairperson –
 11 COMMISSIONER TOKOTA: Where do you read
 12 the thing which says you must include? How do you read it
 13 here?
 14 MR GUMBI: Yes, Commissioner, if may I
 15 clarify that with the witness so that I'll get a
 16 confirmation. I do understand your concern on this one.
 17 COMMISSIONER TOKOTA: Yes.
 18 MR GUMBI: Yes, General –
 19 CHAIRPERSON: It's not as if you've got
 20 to reformulate your question –
 21 MR GUMBI: Yes.
 22 CHAIRPERSON: - so it's correct in the
 23 light of the passage you've referred to.
 24 MR GUMBI: Yes, Chairperson, I will do
 25 that. General, are you in possession of – have a look at

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1 paragraph 14.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 MR GUMBI: According to Lieutenant-
 5 Colonel Merafi, in his statement he said, "Major-General
 6 Mpeembe issued instruction that we, that's including members
 7 of Rustenburg POP, Rustenburg TRT, Pretoria POP, and
 8 KwaMhlanga POP should go and stop and disarm the miners
 9 marching." Do you see that –
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 MR GUMBI: - sentence? Do you confirm
 13 that that was your instruction?
 14 MAJOR-GENERAL MPEMBE: I did not specify
 15 which units must go there.
 16 MR GUMBI: But you knew very well that
 17 there were members from Pretoria POP and KwaMhlanga POP?
 18 MAJOR-GENERAL MPEMBE: Specifically that
 19 they were coming from which provinces I did not also know.
 20 I only know that we did get help from other provinces, but
 21 the people preferably who knew who is coming from where, I
 22 indicated also in my evidence-in-chief that it was Colonel
 23 Merafi because he briefed them and he said he orientated
 24 them. He knew precisely to whom I was talking to, but me
 25 without knowing that who is coming from where.

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1 MR GUMBI: I understand you, and then
 2 Lieutenant-Colonel Merafi was an operational commander at
 3 that stage before you took over as an overall commander?
 4 MAJOR-GENERAL MPEMBE: At that time I did
 5 not – I'm not sure, because Brigadier Calitz was also
 6 present.
 7 MR GUMBI: You didn't know whether
 8 Colonel Merafi was an operational commander?
 9 MAJOR-GENERAL MPEMBE: According to the
 10 contingency plan of – I just have to check that contingency
 11 plan. According to that contingency plan, yes.
 12 MR GUMBI: But before you took over, did
 13 you know whether Lieutenant-Colonel Merafi was an
 14 operational commander? That's what I wanted to check with
 15 you.
 16 COMMISSIONER TOKOTA: Are you referring
 17 to paragraph 3, Mr Gumbi, of the statement?
 18 MR GUMBI: It should be paragraph 17.
 19 COMMISSIONER TOKOTA: Paragraph 17?
 20 MR GUMBI: I mean paragraph 16. I do
 21 apologise, paragraph 16.
 22 COMMISSIONER TOKOTA: No, no, when you
 23 say he's an operational commander –
 24 MR GUMBI: Yes, at that stage –
 25 COMMISSIONER TOKOTA: Which paragraph is

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1 that?

2 MR GUMBI: 16. 1-6, paragraph 16.

3 COMMISSIONER TOKOTA: I think you'd

4 better refer him to that.

5 MR GUMBI: Yes. Paragraph 16, sentence

6 number 3, Lieutenant-Colonel Merafi is saying that, "Major-

7 General Mpmembe was the more senior officer at the scene and

8 in command as an overall commander. I was the operational

9 commander at that stage." Do you see that, General?

10 MAJOR-GENERAL MPEMBE: Yes, I see it.

11 MR GUMBI: Do you confirm the content of

12 that paragraph?

13 MAJOR-GENERAL MPEMBE: Maybe Colonel

14 Merafi will explain how he was an operational command,

15 because Brigadier Calitz was there at that stage. Maybe he

16 can also point out which plan also pointed up as an

17 operational command, because what I know is that once a

18 provincial head ORS is already present, and Brigadier

19 Calitz was present since Saturday, he took over as a senior

20 person.

21 CHAIRPERSON: Major-General, that's a

22 long answer, but in fact the basic point is very short.

23 You were the overall commander, right?

24 MAJOR-GENERAL MPEMBE: Correct,

25 Chairperson.

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1 CHAIRPERSON: Brigadier Calitz was the

2 operational commander, right? He was.

3 MAJOR-GENERAL MPEMBE: Chairperson, yes –

4 CHAIRPERSON: You didn't bring him, you

5 didn't take him with you –

6 MAJOR-GENERAL MPEMBE: According to me,

7 yes, Chairperson.

8 CHAIRPERSON: That's right. You didn't

9 take him with you when you went to deal with these people

10 who were near the railway line, so he stayed behind.

11 MAJOR-GENERAL MPEMBE: Correct,

12 Chairperson.

13 CHAIRPERSON: You explained to us when

14 you were cross-examined by Mr Madlanga that you were

15 therefore both overall commander and operational commander

16 at that stage. That was your evidence. Is that right?

17 MAJOR-GENERAL MPEMBE: Correct,

18 Chairperson.

19 CHAIRPERSON: So it follows from that

20 that you don't agree with what Lieutenant-Colonel Merafi

21 says, that he was the operational commander. You were

22 functioning as operational commander and you were also the

23 overall commander. That was your evidence previously. Is

24 that correct?

25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.

2 MR GUMBI: Thanks, Chairperson. Can I

3 move to another aspect, General, with you. I wanted to

4 deal with this aspect of deployment, orientation, and

5 debriefing of members before you deployed them along the

6 railway line, and in doing so I would like to focus on the

7 deployment of POP members mobilised outside of Rustenburg,

8 especially Lieutenant Baloyi who was mobilised from

9 Pretoria, and Warrant-Officer Lepaaku, I represent in these

10 proceedings, who was mobilised from KwaMhlanga, Mpumalanga,

11 and in that regard, General, I would like to refer you to a

12 report by the commander, that is SAP15, SAP15, report by

13 commander of Lieutenant Baloyi. Are you in possession of

14 that report?

15 MAJOR-GENERAL MPEMBE: Chairperson, I'm

16 in possession of three reports by commanders here, maybe if

17 I might be directed to which one specifically out of the

18 three.

19 MR GUMBI: We do have two reports. Both

20 of them they are dated 13 August 2012, and the member in

21 charge, that's commander, Lieutenant-Colonel Tsiloane, it's

22 for Lieutenant Baloyi.

23 MAJOR-GENERAL MPEMBE: Correct,

24 Chairperson, I do have that one.

25 MR GUMBI: And the time there is dated 6

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1 o'clock in the morning. Do you have it?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 COMMISSIONER TOKOTA: Sorry, Mr Gumbi,

5 which exhibit are you referring to now?

6 MR GUMBI: It's SAP15, SAPS15, report by

7 commander.

8 COMMISSIONER TOKOTA: Is that an exhibit

9 document or –

10 MR GUMBI: It's not an exhibit, not yet

11 an exhibit, Chairperson.

12 COMMISSIONER TOKOTA: Do we have it here?

13 MR GUMBI: I think we must enter it as an

14 exhibit before this Commission.

15 CHAIRPERSON: We were given a bundle of

16 documents. We asked for them yesterday.

17 MR GUMBI: Yes.

18 CHAIRPERSON: They weren't available

19 yesterday, so we could finally take them this morning. We

20 were given a bundle of documents this morning. Among that

21 bundle is a document which I'm holding up –

22 MR GUMBI: Yes.

23 CHAIRPERSON: - which is headed "Report

24 by commander," that's in print, and then in handwriting at

25 the top, "Rustenburg POP." Is that the document you're

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1 referring to?

2 MR GUMBI: It's not that one,

3 Chairperson, the one I'm referring to.

4 CHAIRPERSON: Then there's another one,

5 also a report by commander. This is POPS Pretoria. Is

6 that the one?

7 MR GUMBI: Yes, that's the one I'm

8 referring to. There are two documents in fact.

9 CHAIRPERSON: There's two, yes. Right,

10 now one of them –

11 MR GUMBI: POP Pretoria –

12 CHAIRPERSON: No, sorry. One of them has

13 got – which is the one we look at? One has got "Report by

14 commander – duty on 127/08/12."

15 MR GUMBI: 2012.

16 CHAIRPERSON: And the other one says

17 "Duty on," it looks like OB127/08/2012. Now which is the

18 one we must look at?

19 MR GUMBI: Can I make use of the other

20 one? There are two documents –

21 CHAIRPERSON: I know. I'm trying to

22 identify the one you're looking at.

23 MR GUMBI: The one I'm looking for, I'm

24 looking on right now, Chairperson, is that one written

25 "Duty on OB127/08/2012" and it's duty of OB128/08/2012, POP

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1 Pretoria, member in charge, Lieutenant-Colonel Tsiloane.

2 It is dated 13 August 2012, time 6 o'clock, date –

3 CHAIRPERSON: But the trouble is they

4 both say that.

5 MR GUMBI: Yes.

6 CHAIRPERSON: One of them has got a

7 bigger handwriting on it as far as the names are concerned.

8 MR GUMBI: Yes.

9 CHAIRPERSON: And the other has got

10 smaller handwriting.

11 MR GUMBI: Yes.

12 CHAIRPERSON: Which of the two is it?

13 MR GUMBI: I'm referring to the bigger

14 one, the one –

15 CHAIRPERSON: The bigger one.

16 MR GUMBI: - bigger handwriting, yes,

17 Chairperson.

18 MS PILLAY: Chairperson, it lists as the

19 second member, Lieutenant Baloyi, that document.

20 MR GUMBI: Yes.

21 MS PILLAY: That's got number 2,

22 Lieutenant Baloyi.

23 MR GUMBI: Yes.

24 CHAIRPERSON: No, no, they both have got

25 the second member Baloyi, Lieutenant Baloyi –

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1 MR GUMBI: Both of them they are written

2 for Baloyi.

3 CHAIRPERSON: They both have got nine

4 names.

5 MR GUMBI: Yes, Chairperson.

6 CHAIRPERSON: Starting with Tsiloane, and

7 then Baloyi, and so on.

8 MR GUMBI: Lehawu, Motsima –

9 CHAIRPERSON: One of them has got bigger

10 handwriting than the other. Now did I understand you to

11 say the bigger one –

12 MR GUMBI: Yes.

13 CHAIRPERSON: Ah, yes. Ah, Adv Hemraj

14 has come to the rescue. One of them is headed on the top

15 right-hand corner, it's got "Function, crowd management."

16 The other has got no space for function, and there's no

17 mention of crowd management. Now is it the crowd

18 management document we must look at, or the other one?

19 MR GUMBI: The one I'm looking at,

20 Chairperson, it has how many column? Six columns.

21 COMMISSIONER HEMRAJ: Is it the one that

22 has "crowd management" on the right-hand side –

23 MR GUMBI: Yes –

24 COMMISSIONER HEMRAJ: - or the one that

25 does not have "crowd management" on the right-hand side?

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1 MR GUMBI: It has the "crowd management"

2 on the right-hand side. In fact both documents they do

3 have "crowd management" on both ends, and at the bottom

4 there is a number written 0001020, and the other one is

5 written 0001019.

6 CHAIRPERSON: Now are we busy with triple

7 – no, I'm sorry –

8 MR GUMBI: 0001020 –

9 CHAIRPERSON: Are we busy with 001019, or

10 001020?

11 MR GUMBI: 001020, Chairperson.

12 CHAIRPERSON: 1020?

13 MR GUMBI: Yes, Chairperson.

14 CHAIRPERSON: So it hasn't got "crowd

15 management" on it.

16 MR GUMBI: Yes, Chairperson.

17 CHAIRPERSON: Alright, okay. So now

18 we've finally succeeded in ascertaining, tracking down the

19 relevant document.

20 MR GUMBI: Yes, Chairperson.

21 CHAIRPERSON: Now this obviously has got

22 to be given an exhibit number.

23 MR GUMBI: Yes, Chairperson.

24 CHAIRPERSON: Ms Pillay? It looks like

25 HHH22.

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1 MS PILLAY: That is correct, Chair.
 2 MR NGALWANA: Chair, may I check, is it a
 3 document in relation to which the member in charge is
 4 Lieutenant-Colonel Tsiloane? Because we've got three of
 5 these documents. The one says the member in charge is
 6 Lieutenant-Colonel Tsiloane. The second is member in
 7 charge is Lt, or Lieutenant Khutu, and the third one is
 8 member in charge, Warrant-Officer Mpepho.
 9 CHAIRPERSON: The short answer apparently
 10 is the document we've got to look at, if you look at the
 11 bottom right-hand corner, is 001020.
 12 MR GUMBI: And 001019.
 13 CHAIRPERSON: And 001019. Okay -
 14 MS PILLAY: Chair, may I just indicate at
 15 this stage -
 16 CHAIRPERSON: Now which is going to be
 17 HHH22?
 18 MS PILLAY: Chair, may I -
 19 CHAIRPERSON: Is that going to be - mm?
 20 MS PILLAY: May I just indicate that I
 21 think the SAPS team don't have the version that you and Mr
 22 Gumbi have. They've got a different version of the
 23 document and I'm not too sure why, because it's the SAPS15
 24 document.
 25 CHAIRPERSON: Alright.

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1 COMMISSIONER TOKOTA: I also don't have
 2 001019.
 3 CHAIRPERSON: There's a fair degree of
 4 confusion at the moment. Are we busy at the moment with
 5 001020?
 6 MR GUMBI: Yes, Chairperson.
 7 CHAIRPERSON: Have we all got that?
 8 MR GUMBI: No, we don't, Chair.
 9 CHAIRPERSON: Alright, well what we will
 10 do is we will give you - a document is being brought
 11 across. The most important person here is the Major-
 12 General. Major-General, have you got a document SAPS15,
 13 which has got at the bottom right-hand corner the numbers
 14 001020? Have you got that?
 15 MAJOR-GENERAL MPEMBE: Chairperson, maybe
 16 I might trace it with the OBN, because I don't see double
 17 zero, or it's the wrong one?
 18 CHAIRPERSON: Alright, have you now got
 19 the right one? Imagine how many rands have been spent on
 20 trying to get the right document.
 21 MR NGALWANA: We need to follow the
 22 cross-examination; we don't have that document, Chair.
 23 They've just given it to our witness.
 24 CHAIRPERSON: Mr Gumbi, what are we going
 25 to do? We're wasting, I don't know how many rands a minute

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1 on trying to find the right document. What's going on
 2 here?
 3 MR GUMBI: But Chairperson, I was with my
 4 colleagues. He never indicated that he's not in possession
 5 of all these documents.
 6 CHAIRPERSON: Alright, I was going to
 7 take the tea adjournment at half past 11. I'm going to now
 8 take it quarter past 11 and when you people are ready, let
 9 us know, and let's hope that all the right documents are
 10 before everybody, and that a bit of forward planning has
 11 been done so we've got all the documents from now until
 12 lunchtime under control, and then we will proceed hopefully
 13 without wasting any more money. We now adjourn for tea.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [11:49] CHAIRPERSON: The commission resumes. Mr
 16 Gumbi, are you in a position to report satisfactory
 17 progress?
 18 MR GUMBI: Yes, Chairperson, but there
 19 are certain information that I wanted to bring to your
 20 attention, Chairperson. I was busy dealing with a report
 21 by Commander POP for Lieutenant Baloyi and during our
 22 consultation with my learned colleagues for SAPS, they've
 23 indicated to me that those report that was circulated by
 24 evidence leaders, they are containing the IPID file. In
 25 fact, they are not a complete report. They do have another

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1 version of those reports that they are complete and they
 2 will like to circulate those report, you know, so we agree
 3 with them that I'm not going to cross-examine on this
 4 report up until I have the content of the full report.
 5 Because they are saying that at the back of those report
 6 they do have report that is handwritten, so they will like
 7 the witness to go through those, the content of those
 8 report. Then after that I can carry on with my cross-
 9 examination on those reports. So we agree with them that
 10 it's fine.
 11 CHAIRPERSON: Have you got other matters
 12 that you can deal with now?
 13 MR GUMBI: Yes, we do have other matters.
 14 CHAIRPERSON: In respect of which there
 15 won't be these problems?
 16 MR GUMBI: Yes, Chairperson.
 17 CHAIRPERSON: Such as those we've
 18 encountered this morning.
 19 MR GUMBI: Yes, Chairperson, I promise.
 20 So, General -
 21 CHAIRPERSON: I have to remind you,
 22 Major-General, that you're still under oath.
 23 MR GUMBI: Thank you very much,
 24 Chairperson. Yes, General, I'm not going to take you
 25 through the report by Commander on behalf of Lieutenant

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1 Baloyi and Lieutenant Lepaaku because the SAPS indicted to
 2 me that there are some portion of that report that they are
 3 not contained in this report I'm using, so we're going to
 4 deal with that aspect later on. Let us proceed to another
 5 aspect, General. Brigadier Mkhwanazi who is a POP trainer
 6 in the SAPS testified before this commission that units
 7 that they are mobilised from other provinces or outside
 8 Rustenburg in this case, it's very important that those
 9 units must be properly orientated before they are being
 10 deployed to anything. You still remember that?
 11 MAJOR-GENERAL MPEMBE: I was not present
 12 when he was testifying, so I'm not in a position to confirm
 13 or deny.
 14 MR GUMBI: So you don't deny his
 15 testimony if he's saying that before any member is being
 16 deployed to anything it's very important that the
 17 operational commander must orientate that member? You
 18 don't deny that?
 19 MAJOR-GENERAL MPEMBE: I don't deny it,
 20 Chairperson.
 21 MR GUMBI: So can I assume, General, that
 22 as an operational commander on the 13th of August 2012 it
 23 was your responsibility to orientate members before they
 24 are being deployed to anything?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I did

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1 testify that Colonel Merafi as the POP commander did
 2 confirm with me that the members were briefed and the
 3 members will be orientated while he was also working with
 4 them, but I don't deny that I could have done it. The only
 5 issue is the time that I arrived and the time that my – I
 6 have to disperse. It, as I've indicated, it was very
 7 short.
 8 MR GUMBI: So Brigadier Calitz - I
 9 understand that there was a Brigadier Calitz who was an
 10 overall commander before –
 11 CHAIRPERSON: Brigadier Calitz was the
 12 operational commander. This witness was the overall
 13 commander.
 14 MR GUMBI: Yes.
 15 CHAIRPERSON: But as the witness
 16 explained Brigadier Calitz didn't accompany them to the
 17 railway line.
 18 MR GUMBI: Yes.
 19 CHAIRPERSON: He'll be there for
 20 functions both as overall commander and operational
 21 commander.
 22 MR GUMBI: Yes, Chairperson, that's the
 23 aspect I'm dealing with. Before you deploy members along
 24 the railway line I wanted to check with you, did you ask
 25 Brigadier Calitz whether the members have been oriented

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1 before they were being deployed, orientated, yes?
 2 MAJOR-GENERAL MPEMBE: I did,
 3 Chairperson, and he referred me to Colonel Merafi to say
 4 Colonel Merafi did it and that's why I went to Colonel
 5 Merafi and Colonel Merafi confirmed.
 6 MR GUMBI: But when you look at the
 7 statement of Brigadier Calitz that was distributed before
 8 this commission, that is GGG13 – are you in possession of
 9 that statement?
 10 MAJOR-GENERAL MPEMBE: I do have it,
 11 Chairperson.
 12 MR GUMBI: And when you check paragraph
 13 4, 5 and 6 that deal with the incident of the 13th of August
 14 2012, Brigadier Calitz does not mention any briefing of any
 15 members of any operational members mobilised outside of
 16 Rustenburg. Do you see that?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR GUMBI: Furthermore on that one,
 20 Brigadier, I mean, General, can I also refer to FFF25?
 21 That is the occurrence book of the 13th of – from the 12th
 22 until the 18th of August 2012. Are you in possession of
 23 that exhibit, General, FFF25? Can you go to page 2 of that
 24 exhibit? From page 2 until page 4 before entry number 40 –
 25 MAJOR-GENERAL MPEMBE: If it's FFF25 or

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1 FFF –
 2 MR GUMBI: FFF25 is written "Occurrence
 3 Register Marikana Job Operation Platinum" from the 12th of
 4 August 2012 to the 18th of August 2012. Chairperson, I've
 5 noted that the general is struggling to get this document.
 6 I don't know whether he's in possession of it.
 7 MAJOR-GENERAL MPEMBE: Yes, you may
 8 continue.
 9 MR GUMBI: From page 2, page 3 until page
 10 4 before entry number 40.
 11 MAJOR-GENERAL MPEMBE: Yes.
 12 MR GUMBI: Will you agree with me that
 13 there is no any entry indicting debriefing or orientation
 14 of members or commanders mobilised outside of Rustenburg?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR GUMBI: And will you agree with me,
 18 General, if I put to you the following proposition that
 19 this information about briefing and orientation of members
 20 mobilised outside of Rustenburg ought to be captured in
 21 this occurrence book?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson. If – it's correct, Chairperson.
 24 MR GUMBI: Will you agree with me
 25 further, General, if I put the following proposition to you

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1 that by virtue of the fact that this information dealing
 2 about the orientation and the briefing of members mobilised
 3 outside Rustenburg, by virtue of the fact that it's not in
 4 this occurrence book, that's an indication that it's
 5 possible that members who were mobilised outside of
 6 Rustenburg, they were never orientated and they were never
 7 briefed before they were being deployed?
 8 MAJOR-GENERAL MPEMBE: I do not agree,
 9 Chairperson. My reasons will be as follows. I did
 10 indicate to the commission to say that I was on leave as
 11 the deputy responsible for operations. Secondly, when
 12 senior officers whom work under me confirm with me that
 13 it's been done I did not have any doubt – senior officers,
 14 meaning that is a provincial head, that's Brigadier Calitz,
 15 and also POP commander who knows the area in Rustenburg,
 16 that is Colonel Merafi. I did not have any doubt in terms
 17 of what they were telling me.
 18 CHAIRPERSON: No, I think, General, there
 19 are two issues. The one issue is whether you thought on
 20 adequate grounds that these people had been properly
 21 briefed. That's the first issue. The second issue is
 22 whether they were actually briefed. Now, I think it's
 23 clear from what you told us that you assumed for the
 24 reasons you've given us that they were briefed. Is that
 25 right? Whether they actually were briefed is a matter of

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1 which you yourself have no knowledge. The suggestion made
 2 by Mr Gumbi is that Lieutenant-Colonel Merafi is the one
 3 that should've briefed them. Is that right?
 4 MAJOR-GENERAL MPEMBE: Yes, sir.
 5 CHAIRPERSON: And whether he briefed them
 6 or not is a matter that he will have to tell us about.
 7 He's established that an entry in the relevant record to
 8 the effect that debriefing took place is not there. That
 9 might be an indication that the briefing wasn't done. It
 10 may also simply be an indication that the relevant entry
 11 wasn't made. Is that right?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 CHAIRPERSON: But you can't help us by
 15 telling us whether the briefing was given because you don't
 16 know. You weren't there. All that you can – all you can
 17 say is you believed it had been for the reasons you gave.
 18 Is that correct?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: Ja.
 22 MR GUMBI: In summing up that point,
 23 General, will you agree with me that this information that
 24 ought to be captured here if it happened on that day,
 25 information dealing about the briefing and orientation of

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1 members even though you don't have a knowledge of that.
 2 CHAIRPERSON: Sorry, he really has
 3 admitted that. In normal course the entry should've been
 4 made. The fact that it wasn't made indicates one of two
 5 things. Either the briefing wasn't given or simply despite
 6 the fact that the briefing was given the relevant entry
 7 wasn't made. He can't tell us which of those two is
 8 correct. Colonel Merafi will tell us when he comes, but
 9 isn't that the point? Do we have to take it any further?
 10 MR GUMBI: Thanks very much, Chairperson.
 11 I won't take it any further. Let's move on, General. Is
 12 it my understanding that when you assumed the role of being
 13 an operational commander or an overall commander in the
 14 crowd management situation you don't communicate with your
 15 operational commanders or subordinate commanders only. You
 16 communicate with your members you are going to deploy to
 17 the scene.
 18 MAJOR-GENERAL MPEMBE: Chairperson, in
 19 terms of the structure you do have commanders that they do
 20 command members and I did expect that the officers that I
 21 have briefed they will have to brief their members.
 22 MR GUMBI: So do I understand correctly
 23 that a line of communication if you are an operational
 24 commander, you do have other subordinate commanders, you
 25 are not compelled to speak directly to the members. You

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1 can speak directly to the members via their operational
 2 commanders. That's how you operate in the crowd management
 3 situation.
 4 MAJOR-GENERAL MPEMBE: Operationally
 5 speaking and in reality in crowd management commanders are
 6 there to ensure the supervision and command and control, so
 7 if, even if the operational commander was not me he could
 8 have still spoken to the officers that they will take the
 9 individual charge of the sections that are responsible for
 10 the operation, and that's exactly what I did. I did call
 11 the officers and brief those officers and I did testify
 12 that I expected them – they should have briefed the
 13 members.
 14 MR GUMBI: Okay, so do I understand
 15 correctly your evidence, General, that it is not a
 16 requirement if you are an operational commander to speak
 17 directly to the members? You can speak directly to the
 18 members via their operational or commanders? It's
 19 possible?
 20 CHAIRPERSON: I think he's not limited to
 21 operational commanders. Remember he was both overall
 22 commander and the operational commander on that day, but
 23 there were other officers present –
 24 MR GUMBI: Yes, insubordinate commanders.
 25 CHAIRPERSON: Who weren't operational

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1 commanders, they were subordinate to him.
 2 MR GUMBI: Yes.
 3 CHAIRPERSON: And I understand his
 4 evidence to be that it was their duty to brief the other
 5 members. Is that right, General?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MR GUMBI: Yes. So in terms of preparing
 9 the members before you deployed them along the railway line
 10 you as an operational commander I assume that you did
 11 convey the content of Exhibit TT5 to those subordinate
 12 operational commanders. Is it not so?
 13 MAJOR-GENERAL MPEMBE: I just wanted to
 14 confirm –
 15 MR NGALWANA: My learned friend -
 16 MAJOR-GENERAL MPEMBE: The commanders –
 17 MR NGALWANA: Can my learned friend,
 18 excuse me, Chair, can my learned friend be precise because
 19 previously there was reference to paragraph 6 only and we
 20 know that the exhibit to which he refers is dated the 28th.
 21 Now, if he says did you convey the contents of TT5 on the
 22 13th or the 12th there seems to be a disjunct there.
 23 CHAIRPERSON: Question, I think Mr
 24 Ngalwana is right, I think the question could be more
 25 precisely formulated.

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1 MR GUMBI: Yes, I'm referring to the
 2 paragraph 6 of TT5. Thank you very much for assisting me,
 3 my learned colleague. The content of paragraph 6 of
 4 Exhibit TT5, that content of that paragraph, was it
 5 conveyed to your subordinate operational commanders on that
 6 day before you confronted these armed miners?
 7 MR NGALWANA: And the witness, sorry,
 8 Chair, has already testified that the last sentence in that
 9 paragraph was not correct, so that also needs to be
 10 qualified.
 11 CHAIRPERSON: The point was he said he
 12 didn't receive a briefing from Brigadier Engelbrecht. He
 13 received a briefing from Brigadier Calitz who presumably
 14 received a briefing from Brigadier Engelbrecht.
 15 MR GUMBI: Yes.
 16 CHAIRPERSON: So the point taken is that
 17 your question doesn't take that fact into account. Do you
 18 understand the point they were in a – short of all the side
 19 issues, you were told by Brigadier Calitz what was in that
 20 intelligence report that we've seen. The question is did
 21 you convey that to the officers immediately subordinate to
 22 you? That's the question. Is that right, Mr Gumbi?
 23 MR GUMBI: Yes, Chairperson.
 24 MAJOR-GENERAL MPEMBE: Chairperson, I did
 25 convey but not in the precise terms in which that were

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1 there, hence I applied a situational appropriateness.
 2 MR GUMBI: So, General, so all the units,
 3 that is POP, TRT commanders mobilised outside provinces
 4 like KwaMhlanga and Mpumalanga knew very well the group
 5 they are about to confront on that day.
 6 MR NGALWANA: Again, Chair, the witness
 7 has testified that he didn't know at that time nor did
 8 Calitz what group was being talked about.
 9 MR GUMBI: Yes, I'm referring to the
 10 possible character of that group you are about to confront.
 11 CHAIRPERSON: The question as phrased
 12 originally didn't include the expression "possible
 13 character".
 14 MR GUMBI: Yes.
 15 CHAIRPERSON: I take it the point is that
 16 among the members who went with you to the railway line
 17 were members who were from – not from the local area but
 18 from other areas. Is that correct?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: How exactly they were made
 22 up and who came from where I take it wasn't a matter of
 23 importance for you at the time, but you knew some of them
 24 were from outside.
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 MR GUMBI: Will I be correct, will you
 3 agree with me, General, that the main purpose of briefing
 4 members before deploying them to any operation is to afford
 5 them the sufficient opportunity to prepare themselves about
 6 what they are going to confront on that day? That's how
 7 POP operates.
 8 [12:09] MAJOR-GENERAL MPEMBE: Chairperson, I did
 9 testify that all the officers that were there, they were
 10 called by me and I did brief them to prepare them, and also
 11 the approach that is going to be taken, I did also brief
 12 them, and I did also testify that I expected them in turn
 13 to brief their own members.
 14 CHAIRPERSON: I think counsel is putting
 15 a slightly different question. He's saying apart from the
 16 fact that you expected them to brief their members, he's
 17 putting it to you it was important that they should brief
 18 their members. I take it that follows almost from what you
 19 said. You agree with that point?
 20 MAJOR-GENERAL MPEMBE: I agree with that
 21 one, Chairperson.
 22 CHAIRPERSON: Yes.
 23 MR GUMBI: Let us go to the content of
 24 what you said to the operational commanders. Can you tell
 25 this Commission exactly the content of what you conveyed to

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1 those cluster commanders or subordinate operational
 2 commanders before you confronted those strikers along the
 3 railway line?
 4 MR NGALWANA: Chair, may I just say this;
 5 it's not an objection, it's just maybe to assist my learned
 6 friend, if I may. This happened to the day almost about a
 7 year ago. To ask the witness to relate exactly the words
 8 he used when briefing members or commanders is a bit
 9 unfair. Perhaps he could be requested to say in broad
 10 terms –
 11 CHAIRPERSON: No, no, Mr Ngalwana, I
 12 think you're going a bit far now. The point of course is
 13 that exact words are possibly a bit much to expect, but can
 14 you give us the general gist of what you said, General? As
 15 far as you can remember.
 16 MAJOR-GENERAL MPEMBE: Chairperson,
 17 immediately after I spoke to the members in the present of
 18 all the officers, that every officer could hear what I said
 19 and they could confirm in terms of their statements,
 20 precisely as I have indicated the reasons why we could not
 21 disperse according to my statement, that is HHH3, the
 22 reason why we could not disperse, that is precisely what I
 23 briefed the officers, and secondly for the fact that I
 24 could see the mood of the crowd, I could see how the crowd
 25 was behaving. Then I even informed the officers what is

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1 going to be the next action, what action I expect by me
 2 going to count, and that when the protesters do not act in
 3 the manner that I expect them to act, meaning to hand over
 4 their weapons, dangerous weapons voluntarily, the officers
 5 should not stop them, should not disperse them, taking in
 6 terms of what are the reasons I have said according to
 7 paragraph 18, GGG12, and also the reasons that I've given
 8 in terms of why we could not disperse in terms of my
 9 statement, supplementary statement, HHH3.
 10 MR GUMBI: General, can I take you, go
 11 back to exhibit TT5, and I want to deal with this aspect
 12 step by step. Are you in possession of TT5?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 MR GUMBI: Paragraph 6.
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 MR GUMBI: So did you tell your members
 19 before you deployed them along the railway line that on the
 20 previous day two security officers were killed around
 21 Marikana? Did you convey that information to the police?
 22 MAJOR-GENERAL MPEMBE: Chairperson, as I
 23 have said, precise these words were not the same words that
 24 Brigadier Calitz told me. It was the matter of fact and
 25 common knowledge to any commander that was there that

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1 people were killed on the previous day, but what I said to
 2 them, I said taking into account not only the killing of
 3 these people, taking also further in terms of how the crowd
 4 was behaving and how the violence was going up, this is the
 5 way in which, and the way that I was speaking about is that
 6 we should be very proactive in approaching this matter; we
 7 should be having tolerance in approaching this matter, but
 8 to say precisely these words, Chairperson, I did not do.
 9 MR GUMBI: Thanks very much, General.
 10 I'll go back to my question because I don't think you were
 11 answering my question. My question was did you inform your
 12 members, whether it's subordinate operational commanders,
 13 that on the previous day two security officers were killed
 14 by the group of protesters, yes or no?
 15 CHAIRPERSON: I think he's answered that.
 16 He said he didn't, but it was common knowledge. Do I
 17 understand you correctly?
 18 MAJOR-GENERAL MPEMBE: Correct,
 19 Chairperson.
 20 CHAIRPERSON: Sorry, what I said wasn't
 21 recorded. I said I think you had said that. Your answer
 22 was you didn't tell them, but it was common knowledge. Am
 23 I understanding you correctly?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson. Yes.

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1 MR GUMBI: Thanks very much, Chairperson.
 2 Then again did you inform your members, including your
 3 operational commanders, that on the previous day certain
 4 group of miners performed rituals with a sangoma and they
 5 had this belief that they could not be shot by the police
 6 or mine security on that day? Did you convey that
 7 information to your members?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MR GUMBI: Did you inform your members
 10 again that certain group of people within the vicinity of
 11 Marikana, they were planning to set alight the offices of
 12 NUM and the SAPS police station, before you deployed those
 13 members along the railway line? Did you do that?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson.
 15 MR GUMBI: It was further your testimony,
 16 General, before this Commission that before going to the
 17 railway line you had a briefing with Lieutenant-Colonel
 18 Merafi, Brigadier Calitz, and Lieutenant-Colonel Tsiloane.
 19 Still remember that?
 20 MAJOR-GENERAL MPEMBE: Chairperson, with
 21 an exception that Lieutenant-Colonel Tsiloane came, it is
 22 also shown on the video, when I called officers already on
 23 the scene, but precisely the one with Brigadier Calitz, if
 24 Advocate also states the one, it is when I arrived and it
 25 is when I go out of the meeting of the Lonmin that he

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1 showed me something on the TV. With Colonel Merafi it's
 2 when I wanted precisely whether members were orientated.
 3 With an exception of Colonel, Lieutenant-Colonel Tsiloane,
 4 I do agree.
 5 MR GUMBI: In the presence of Lieutenant
 6 Baloyi, have you ever had any briefing before deploying
 7 members along the railway line, with Baloyi?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson,
 9 because with an understanding that Lieutenant Baloyi was
 10 falling under Colonel Tsiloane, Lieutenant-Colonel
 11 Tsiloane. Whether he called him when I called a briefing,
 12 I do not know.
 13 MR GUMBI: Lieutenant Baloyi, his version
 14 of the incident of the 13th of August before he was deployed
 15 to the scene along the railway line, is that on that day in
 16 question he saw you landing from the chopper on the 13th of
 17 August 2012 and he was waiting inside a Nyala with
 18 Lieutenant-Colonel Tsiloane. Then after that they were
 19 instructed to move on the convoy towards the railway line.
 20 Will you dispute that version of Lieutenant Baloyi?
 21 MAJOR-GENERAL MPEMBE: Chairperson, I do
 22 not remember flying with a chopper on the 13th, but maybe if
 23 I might be given precisely – because what I remember
 24 precisely in terms of what I testified, on my arrival,
 25 briefed by Brigadier Calitz, we went to the management

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1 meeting, and then I also come back from management meeting,
 2 shown a group of people, and thereafter the Provincial
 3 Commissioner speak to me and I do not remember alighting
 4 from the chopper. Maybe Colonel, Lieutenant Baloyi might
 5 have heard that or seen me, but I do not remember, and I
 6 also respect his view.
 7 MR GUMBI: It is your testimony –
 8 MR NGALWANA: Chair – sorry. Chair,
 9 presumably the version that my learned friend is putting to
 10 the witness in cross-examination is contained in Lieutenant
 11 Baloyi's statement. Perhaps he can take us there.
 12 CHAIRPERSON: Lieutenant-Colonel Baloyi's
 13 statement – sorry, he's described as Lieutenant-Colonel
 14 Baloyi in the index, he's actually Lieutenant at the time.
 15 Lieutenant Baloyi's statement is exhibit GGG16, and the
 16 passage being referred to at the moment is I take para 5,
 17 take it para 5, which simply says that General Mpeembe
 18 arrived at about 13h00, police speak. It doesn't say how
 19 he arrived, whether he arrived in a helicopter or in some
 20 other form of conveyance, but is there some other passage
 21 in the statement by your client, which is the exhibit to
 22 which I referred, which you want to refer the witness to?
 23 MR GUMBI: Not at all, Chairperson. It
 24 was only specifically to this one. If I can move on,
 25 Chairperson?

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1 CHAIRPERSON: I take it your instructions
 2 are he arrived by helicopter.
 3 MR GUMBI: Yes, Chairperson, while they
 4 were there.
 5 CHAIRPERSON: That presumably is going to
 6 be the evidence he's going to give. Is that –
 7 MR GUMBI: Yes, Chairperson.
 8 CHAIRPERSON: Yes, I notice that para 2
 9 of the statement says that when he arrived there Captain
 10 Meso briefed him and his colleagues about the situation in
 11 the area and about the death of the two security personnel
 12 on the previous day. So it wasn't necessary for this
 13 witness or anybody else to tell Lieutenant Baloyi about the
 14 two security personnel having been killed on the previous
 15 day because he was told that already by Captain Meso. Is
 16 that right?
 17 MR GUMBI: Yes, that one is noted,
 18 Chairperson. Can we move on again, General? Brigadier
 19 Mkhwanazi here who testified before this Commission about
 20 the training of POP in the SAPS, he spoke about resources
 21 that should be allocated to POP members before they have
 22 been deployed, that members should be suitable, must be
 23 equipped before they are being deployed to any scene, and
 24 he further testified that it is the responsibility of the
 25 operational commander to ensure that all the members they

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1 are equipped before they are being deployed to any scene.
 2 Do you agree with him on that?
 3 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 4 I do agree with him, taking into account that was said
 5 under the following circumstances; when a call-up is being
 6 made of POP members, firstly the call-up indicates
 7 equipment that they should bring along already from where
 8 they are, and when they arrive where they work they are
 9 being orientated by the commanders of the arriving
 10 province, that is North West, and orientated. Chairperson,
 11 with the time that I have indicated and what I was expected
 12 to do, that I also expected that it should have already
 13 been done.
 14 MR GUMBI: So do I understand your
 15 answer, General, that on that day you as the operational
 16 commander, you did not enquire from the members, including
 17 their operational commanders, whether the members mobilised
 18 outside of Rustenburg are fully equipped to confront any
 19 situation?
 20 MR NGALWANA: Chair, is it going to be
 21 Captain, or Lieutenant Baloyi's version that they were not
 22 properly equipped?
 23 MR GUMBI: That's where I'm heading,
 24 Chairperson. That's why I'm putting this proposition to
 25 this witness.

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| <p style="text-align: right;">Page 12366</p> <p>1 MR NGALWANA: But he has to precede it by 2 saying this is going to be the version of Captain Baloyi, 3 so that we can cross-examine him on it. 4 CHAIRPERSON: He can cross-examine in the 5 way he likes. You may cross-examine that way, but he can 6 cross-examine another way if he wants to, as long as that 7 point is made ultimately. I don't think we should dictate 8 to him how he can cross-examine, in what order he must ask 9 his questions. 10 MR GUMBI: Yes, Chairperson, I'm going 11 there. Can you answer my question, General? 12 MAJOR-GENERAL MPEMBE: Chairperson, with 13 the exhibit that I have been given here, that is, 14 Chairperson marked it as HHH22, I believe is the SAPS15, 15 when we check at the back of it the member normally – I'm 16 now talking about a normal procedure – a member will 17 indicate whether he has got all the resources posted. 18 Maybe if we can go there and indicate and check what was 19 not, Lieutenant Baloyi not been given, maybe then, because 20 this exhibit lying before us will confirm whether he was 21 not, or he was not given. 22 CHAIRPERSON: We have a copy, Adv Tokota 23 has a copy of the document which I think I marked HHH22, 24 which is the police hard drive 001020. That copy that Adv 25 Tokota has been given contains the reverse side and perhaps</p> | <p style="text-align: right;">Page 12368</p> <p>1 to the Major-General so he can satisfy himself also and 2 then we can move on. 3 MR GUMBI: Yes. Yes, I'll go back to my 4 question, Chairperson, the one I asked to the General – 5 CHAIRPERSON: Give the document to the 6 witness first before – 7 MR GUMBI: Yes, yes, I do have this 8 document. I've seen the content of it, Chairperson. So my 9 question, General – 10 CHAIRPERSON: - and let him be able to 11 read it. In the light of that document, can you tell us, 12 Major-General, what the situation was as far as the 13 equipment which the people listed on the document had on 14 the relevant day? 15 MR NGALWANA: Chair, may I just clarify 16 something? I'm now being told that the second page of that 17 document, HHH22, is indeed the backside of that document – 18 CHAIRPERSON: The more elegant way of 19 putting it, the reverse side – expected a person of your 20 education to use a word like that. 21 MR NGALWANA: It's my instructing 22 attorney's influence, Chair. 23 CHAIRPERSON: These inferences should be 24 resisted. Anyway, no the point is – and that's what I put 25 to him – the reverse side of that document is now before</p> |
| <p style="text-align: right;">Page 12367</p> <p>1 you might like to look at it. It contains a section headed 2 "Equipment of members," and there were nine people present 3 and there's a tick in all the relevant columns, they've got 4 their appointment certificates, their torches, their 5 tonfas, their handcuffs, their bulletproof vests, and they 6 apparently had caps and uniforms and nameplates and they 7 were all tidy and their dress was in order, but perhaps 8 you'd like to look at the document – 9 MR GUMBI: No, I understand the document 10 – 11 CHAIRPERSON: And it's relevant – no, 12 well perhaps the witness can have a chance to look at it. 13 MR GUMBI: Yes, I understand that, 14 Chairperson, and we indicated to my learned colleagues that 15 we are not going to make use of this document because the 16 SAPS indicated to me that the contents of the – 17 CHAIRPERSON: No, I'm sorry, Mr Gumbi, 18 you were asking a question about that and the witness 19 correctly said he needs to see the reverse side of the 20 document. As it happened, Adv Tokota had one and I'm 21 saying to you that as far as all those nine people are 22 concerned – I think your client is number 2 on that list – 23 all the ticks are there. So the indications are that they 24 were all properly equipped according to the form. So 25 perhaps when you've looked at the document we can show it</p> | <p style="text-align: right;">Page 12369</p> <p>1 us, or certainly thanks to Adv Tokota. The witness has now 2 seen it and he can now comment, using elegant language, of 3 course. 4 [12:28] MAJOR-GENERAL MPEMBE: Chairperson, 5 according to this exhibit which was presented to us by Adv 6 Gumbi, Lieutenant Baloyi is number 2 from the posting list, 7 and normally the Commander when he inspect the parade will 8 go through with the member to check each and every 9 equipment. The only equipment that is indicated here is 10 the tonfa that he did not have on that day but all other 11 equipment he was issued with and he also acknowledged it by 12 signing. 13 CHAIRPERSON: Just tell us, for the 14 benefit of those of us who are ignorant what exactly is a 15 tonfa? 16 MAJOR-GENERAL MPEMBE: Chairperson, a 17 tonfa it's an instrument, I don't know whether should I use 18 another word, it looks like a baton. 19 CHAIRPERSON: It's a kind of a baton. 20 MAJOR-GENERAL MPEMBE: Yes. 21 CHAIRPERSON: Longer than the ordinary 22 policeman's baton and longer than a conductor's baton, so 23 it's basically a longish baton. 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p> |

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1 MR GUMBI: Thank you very much,
 2 Chairperson. General, I will go back to my question.
 3 Thank you very much for explaining exhibit HHH22. I asked
 4 you the question as an operational commander -
 5 MAJOR-GENERAL MPEMBE: I'm sorry,
 6 Chairperson. Chairperson I didn't want and I need this to
 7 be recorded because as a senior officer where I'm sitting,
 8 I'm not saying this to expose my member but it is because
 9 of the question.
 10 MR GUMBI: Okay let me repeat the
 11 question for you. As an operational commander on that day
 12 did you enquire from your members whether they're all fully
 13 equipped before they were being deployed along the railway
 14 line? That was my question.
 15 MAJOR-GENERAL MPEMBE: Chairperson, as I
 16 said I spoke with Colonel Merafi and the officers, all of
 17 them they do confirm. but I also point out now to the SAP
 18 15 if that couldn't be the case the SAP 15, SAPS 15 could
 19 have indicated that he did not have. As I have indicated
 20 that he did not have the tonfa because that's what the
 21 member says himself, Chairperson.
 22 CHAIRPERSON: But normally is it
 23 necessary for an operational commander to say to his
 24 subordinate officers have you done what you're supposed to
 25 do, have you filled in the SAPS 15 correctly? Have you

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1 checked they've all got their equipment? Do you normally
 2 have to do that?
 3 MAJOR-GENERAL MPEMBE: No, Chairperson
 4 because that is included in their training in terms of the
 5 operational commander's course.
 6 MR GUMBI: Let's move on with Brigadier
 7 Calitz there, before you assumed your role of being an
 8 operational commander on that day did you ask him whether
 9 all members who were deployed or mobilised outside of
 10 Rustenburg whether they are fully equipped before they are
 11 been deployed to any scene or to any operation, did you do
 12 that?
 13 MR NGALWANA: Chair, with respect where
 14 is this all going? I thought the witness -
 15 CHAIRPERSON: I think he can ask his
 16 questions, I don't think we should ask - a cross-examining
 17 counsel doesn't like to be asked where it's going. There
 18 are sometimes reasons why they do what they do, so I don't
 19 think we can ask him that. He must carry on with his
 20 cross-examination. If I suspect that it is irrelevant I
 21 will deal with him but not yet. Carry on, Mr Gumbi.
 22 MR GUMBI: Thanks very much, Chairperson.
 23 You heard my question, General.
 24 CHAIRPERSON: Because of the
 25 interruptions, could we have it again please? He may have

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1 heard it but I didn't, it's important I hear it too.
 2 MR GUMBI: I will repeat it. I'm
 3 referring to Brigadier Calitz. My question was did you ask
 4 Brigadier Calitz whether all the members that were
 5 mobilised outside of Rustenburg whether they were all fully
 6 equipped before they were being deployed any -
 7 CHAIRPERSON: But we covered that. The
 8 answer was you don't normally do that because you assume
 9 that they done what they are supposed to do. You don't ask
 10 elementary questions to which the answer would be pretty
 11 obvious when you're the overall commander of the operation.
 12 That's the answer he gave.
 13 MR GUMBI: It was in respect to members
 14 so I'm asking about Brigadier Calitz who was an overall
 15 commander on that day before he took over the role of being
 16 an operational commander.
 17 CHAIRPERSON: No, no you've got it wrong.
 18 Brigadier Calitz was the operational commander, this
 19 witness was the overall commander.
 20 MR GUMBI: Yes, Chairperson.
 21 CHAIRPERSON: Brigadier Calitz didn't go
 22 with them to the railway and that's why this witness
 23 functioned in both capacities.
 24 MR GUMBI: Yes.
 25 CHAIRPERSON: Alright, so what do you

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1 want to know, what was he supposed to have asked Brigadier
 2 Calitz who wasn't coming with them? What are you
 3 suggesting he should have asked Brigadier Calitz and didn't
 4 ask him?
 5 MR GUMBI: If I can repeat my question,
 6 Chairperson. I wanted to check from this witness is
 7 whether before deploying members along the railway line
 8 whether he asked Brigadier Calitz whether all the members
 9 who were mobilised outside of Rustenburg whether all of
 10 them they were fully equipped before they are being
 11 deployed to any operational -
 12 COMMISSIONER HEMRAJ: General, the issue
 13 of equipment, is that not dealt with the officer that's
 14 inspecting the parade when the members come on duty?
 15 MAJOR-GENERAL MPEMBE: It's correct,
 16 Chairperson. Maybe he had to indicate, I did indicate that
 17 Brigadier Calitz mobilised the members. So in the
 18 mobilisation, what we call a call-up which it does indicate
 19 that when members are coming in here for this operation
 20 these are the equipment that they should bring along. That
 21 Brigadier Calitz confirmed with me. The second part is
 22 this one of inspecting and briefing at the parade when they
 23 report on duty, not necessarily when I was taking them to
 24 the - when they report on duty their commander, in this
 25 case is Lieutenant-Colonel Silwane, did inspect the parade,

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1 did check that members have equipment. It's an exhibit
 2 that is in front of the Commission.
 3 COMMISSIONER HEMRAJ: Now once the
 4 officer commanding has done the inspection on parade does
 5 any other officer of higher rank or otherwise need to
 6 confirm what the inspection on parade -
 7 MAJOR-GENERAL MPEMBE: No, Chairperson,
 8 it's not normally done.
 9 MR GUMBI: Okay. Let's move again before
 10 I can wrap up this point. The question of orientation of
 11 members who are mobilised from other provinces outside of
 12 Rustenburg, Brigadier Mkhwanazi who testified before this
 13 Commission, he testified that it's very important to be
 14 orientated of the area so that when they are being deployed
 15 they understand the geographic area of Marikana. So did
 16 you enquire, either from the operational commanders,
 17 members, or Brigadier Calitz whether the members who were
 18 mobilised outside of Rustenburg they were properly
 19 orientated?
 20 MAJOR-GENERAL MPEMBE: Chairperson, I did
 21 answer the question. It's also repeated for the second
 22 time now
 23 CHAIRPERSON: What do you say they should
 24 have been briefed about? The situation in the area?
 25 MR GUMBI: Yes, of the geographical area.

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1 CHAIRPERSON: And the fact that 20 people
 2 had been killed the day before?
 3 MR GUMBI: I'm referring on the 13th, yes.
 4 CHAIRPERSON: Well on the 13th according
 5 to paragraph 2 of your client's statement which is exhibit
 6 GGG16. He says that when he arrived there at 11:40am with
 7 the other people from Pretoria and elsewhere he met other
 8 unit members who'd worked night shift, etcetera and Captain
 9 Mzo then briefed them about the situation in the area and
 10 about the deaths of two security personnel on the previous
 11 day. So what other briefing do you say was required?
 12 MR GUMBI: The orientation, the
 13 geographical area of Marikana, whether that information,
 14 whether the members they were oriented before they were
 15 being deployed.
 16 CHAIRPERSON: I understood him to say he
 17 doesn't know that, he didn't do it, someone else - insofar
 18 as it was necessary someone else would have done it. Isn't
 19 that as far as you can take it with him? As I've indicated
 20 to you there are other witnesses you can ask about this but
 21 aren't you wasting a bit of time asking him questions that
 22 you should actually be asking the other people when they
 23 come?
 24 MR GUMBI: Fair enough, Chairperson, I
 25 will -

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1 COMMISSIONER HEMRAJ: Actually, Mr Gumbi,
 2 if you look on the record that question was posed
 3 previously and the witness said that Colonel Merafi said
 4 that as and when the various POP groups arrived they were
 5 orientated as to the geography of the -
 6 MR GUMBI: Thanks very much, Chairperson.
 7 Let's go back to the version of Lieutenant Baloyi, General,
 8 will you agree with the Lieutenant Baloyi if he testified
 9 before this Commission that before he was deployed along
 10 the railway line to confront those armed protesters, he
 11 didn't have all the full equipment and if you go to his
 12 statement GGG16 -
 13 CHAIRPERSON: Which paragraph of GGG16
 14 are you referring to?
 15 MR GUMBI: Sorry, Chairperson, I can have
 16 the statement of Baloyi somewhere, somehow here. If,
 17 Chairperson, can bear with me I will go straight to the
 18 paragraph. I don't know -
 19 CHAIRPERSON: What are you looking for?
 20 Maybe we can find it more quickly than you can. What are
 21 you looking for?
 22 MR GUMBI: I will indicate now,
 23 Chairperson. I will indicate.
 24 CHAIRPERSON: You see if you're talking
 25 about the equipment he had with him if you look in

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1 paragraph 3 you will see -
 2 MR GUMBI: If you go to paragraph -
 3 CHAIRPERSON: Sorry, let me finish.
 4 After they'd heard from Captain Meso what had happened he
 5 and Captain Makukule -
 6 MR GUMBI: Yes, Chairperson.
 7 CHAIRPERSON: He and Captain Makukule
 8 agreed with the crowd management situation that they need
 9 shotguns and rubber rounds.
 10 MR GUMBI: Yes, that's the paragraph -
 11 CHAIRPERSON: They went to a storeroom.
 12 They were issued with 12 shotguns, without rounds as the
 13 store man for rubber rounds was not around. They then
 14 distributed shotguns among the members, he was in
 15 possession of a shotgun, he gets the number. He then
 16 received four rounds from Warrant Officer Matjiu who
 17 brought along some rubber rounds, so that's as far as the
 18 equipment is concerned.
 19 MR GUMBI: Yes, that's the question -
 20 CHAIRPERSON: Then later on he explains
 21 in para 7, that there was this debate with Colonel Merafi
 22 and the general as to whether people should be disarmed at
 23 the railway line and we know what happened there, and he
 24 then says he advised the general that stun grenades should
 25 be used to disperse them and then apparently took it upon

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1 himself, according to paragraph 8 to take a stun grenade
 2 from one of the members. So we know he had a stun grenade,
 3 we know he know he had a shotgun and we know he had some
 4 rubber rounds, so what other bits of equipment are you
 5 interested in? Sorry we know he didn't have a tonfa but
 6 I'm not sure what he would have done with a tonfa on that
 7 occasion.
 8 MR GUMBI: Yes, I wanted to put the
 9 content of paragraph 3 only, Chairperson, three.
 10 CHAIRPERSON: Three, well I've taken you
 11 through that.
 12 MR GUMBI: Yes.
 13 CHAIRPERSON: Alright so where can you
 14 take us now.
 15 MR GUMBI: I'm checking the version of
 16 this witness in relation to this allegation by Lieutenant
 17 Baloyi.
 18 CHAIRPERSON: If he knew or he didn't
 19 know is irrelevant. If in fact Lieutenant Baloyi had a
 20 shotgun and he had rubber rounds and he got hold of a stun
 21 grenade whether the general knew that or not, is that
 22 relevant?
 23 MR GUMBI: Yes I understand, Chairperson,
 24 that one. If I can ask the next question with regards to
 25 that one. Can I proceed, Chairperson?

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1 CHAIRPERSON: Yes, you can proceed.
 2 MR GUMBI: Yes, do you see that
 3 paragraph, General? That version of Lieutenant Baloyi.
 4 CHAIRPERSON: I think he's referring to
 5 para 3 which I read out.
 6 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 7 I do see it.
 8 CHAIRPERSON: Now you didn't expect him
 9 to follow each one of the members around into the storeroom
 10 to find out what they got did you? Or did you, is that you
 11 say a Major-General should do?
 12 MR GUMBI: That's not what I'm
 13 suggesting, Chairperson.
 14 CHAIRPERSON: Oh alright, let's carry on.
 15 MR GUMBI: Yes, Chairperson. So you are
 16 aware now, General that on the 13th of August Lieutenant
 17 Baloyi will come and testify before this honourable
 18 Commission that he was not fully equipped to confront those
 19 protesters. Let's move on, before you deploy members to
 20 confront those -
 21 COMMISSIONER TOKOTA: What is it that he
 22 didn't have which he should have had? The statement was
 23 read by Chairperson to cover all the equipment that he had.
 24 Which one do you say, except the tonfa which he didn't have
 25 he should have had?

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1 MR GUMBI: Yes, if you read the content
 2 of paragraph 3, the last sentence, he said "I received four
 3 rounds from Warrant Officer Matjiu who brought along some
 4 rubber rounds." Do you see that?
 5 COMMISSIONER TOKOTA: All I want is that
 6 put it to the General what is this equipment that you say
 7 he didn't have which he should have had on the 13th except
 8 the tonfa which he said, according to the police there it's
 9 only the tonfa.
 10 MR GUMBI: Yes, according to the version
 11 of Lieutenant Baloyi, if I can put it to the witness as
 12 Commissioner Tokota -
 13 CHAIRPERSON: We want to give you an
 14 opportunity to put your case to the witness, we're just
 15 concerned to understand what you're putting and make sure
 16 that it's correct but please you have the fullest right to
 17 put your case to the witness and if at any time I give you
 18 the impression I'm not allowing you to put your case
 19 properly please tell me.
 20 MR GUMBI: Thanks very much, Chairperson.
 21 If Lieutenant Baloyi, according to his version that on the
 22 13th of August 2012, he was only issued with - he was not
 23 issued with a rubber round, the rubber round he was in
 24 possession of he got it from one of his colleagues before
 25 they were being deployed to confront the protesters and

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1 those rubber rounds they were not sufficient to confront
 2 the protesters.
 3 MR NGALWANA: He doesn't say the rubber
 4 rounds were not sufficient, Chair.
 5 CHAIRPERSON: I take it those are your
 6 instructions, Mr Gumbi?
 7 MR GUMBI: Those are my instructions, he
 8 will come and testify before the Commission.
 9 CHAIRPERSON: Major-General would you say
 10 that if Lieutenant Baloyi only had four rubber rounds and
 11 he was going off with you and others to deal with a large,
 12 a relatively large group of armed strikers, misnamed
 13 protesters would you have thought that four rubber rounds
 14 was enough or would you say he should have actually,
 15 ideally have been given more rubber rounds than that?
 16 MAJOR-GENERAL MPEMBE: Chairperson,
 17 taking into account how many members were there one could
 18 not at least say there were enough or there were not enough
 19 but actually what I would like also maybe to put is that in
 20 the call-up, maybe I need to get the call-up because the
 21 call-up which made Lieutenant Baloyi to come to Marikana
 22 will explain what was expected from the ascending province
 23 to the members. I don't deny the fact that he had those
 24 rounds but as I have explained to the Commission, to the
 25 Chairperson is that when you do a call-up you state

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1 precisely what type of equipment because that province
 2 normally which is sending the members, normally members do
 3 come with those equipment.
 4 CHAIRPERSON: I understand that but you
 5 are now from the receiving province.
 6 MAJOR-GENERAL MPEMBE: Yes.
 7 CHAIRPERSON: Now maybe the people in the
 8 ascending province didn't do what they should have done
 9 what we're concerned with is whether you as the Deputy
 10 Provincial Commissioner, who was the overall commander in
 11 Marikana of the receiving province, whether you can tell
 12 us, whether you think that what the Lieutenant had was
 13 enough. Now when he tells us he had a shotgun because he
 14 got that apparently at Marikana and he had four rounds of -
 15 four rubber rounds. If you'd been asked at the time do you
 16 think that's enough for him what would you have answered?
 17 MAJOR-GENERAL MPEMBE: Chairperson,
 18 taking into account that Lieutenant Baloyi was actually
 19 supposed to manage other members I could say that was
 20 enough. Secondly is that as an officer I would have
 21 expected him to inform me while he's on the scene, to say,
 22 General, because I'm approachable, I do not have enough
 23 rounds.
 24 CHAIRPERSON: The first answer is you
 25 think he had enough but you say if he thought if he didn't

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1 have enough it was his job to put his hand up and come to
 2 you and say General, I haven't got enough, what can you do
 3 about it. And he didn't do that.
 4 MAJOR-GENERAL MPEMBE: That's right,
 5 Chairperson.
 6 CHAIRPERSON: On that note I suggest we
 7 take the lunch adjournment until half past one.
 8 [COMMISSION ADJOURNS COMMISSION RESUMES]
 9 [13:40] CHAIRPERSON: The Commission resumes.
 10 Major-General, you're still under oath.
 11 WILLIAM MPEMBE: s.u.o.
 12 CHAIRPERSON: Mr Gumbi?
 13 COMMISSIONER HEMRAJ: Mr Gumbi, your
 14 client's complaint about not having enough equipment
 15 relates rubber rounds.
 16 MR GUMBI: Yes, Commissioner.
 17 COMMISSIONER HEMRAJ: Only. Because bear
 18 in mind, he had 9mm with 15 rounds with him.
 19 MR GUMBI: Yes, Commissioner.
 20 COMMISSIONER HEMRAJ: So the complaint is
 21 only in regard to rubber rounds.
 22 MR GUMBI: Yes, Commissioner.
 23 COMMISSIONER HEMRAJ: Thanks.
 24 CROSS-EXAMINATION BY MR GUMBI (CONTD.):
 25 Yes, I'm ready to proceed, Chairperson. General, I wanted

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1 to move to another aspect. Now I wanted to focus on the
 2 dialogue you had with the protesters on the 13th of August
 3 2012 at the railway line, along the railway line, as you
 4 testified. But in dealing with that topic I want to
 5 highlight the evidence that was tendered before this
 6 Commission by Brigadier Mkhwanazi. He testified that in
 7 the crowd management situation it is important for
 8 operational commanders to have a dialogue with the
 9 protesters, and this is important in order to avoid a
 10 conflict between the police and the protesters. Do you
 11 agree with him on that one?
 12 MAJOR-GENERAL MPEMBE: Negotiation,
 13 Chairperson.
 14 MR GUMBI: Yes, negotiation or a
 15 dialogue. Okay, do you agree with him?
 16 MAJOR-GENERAL MPEMBE: Negotiation,
 17 Chairperson.
 18 MR GUMBI: Yes, negotiation, I'm putting
 19 to you. You agree with him on that one, and he further
 20 testified before this Commission that it's very important
 21 that the protesters must know the expectation of the police
 22 and the police must also know the expectation of the
 23 protesters in any crowd management situation. You also
 24 agree with him on that one?
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
 2 MR GUMBI: So he further testified that
 3 in fact the conflict resolution module is offered as a
 4 course for POP trainees and I hope you are an experienced
 5 police officer and you have undergone that training on
 6 conflict resolution.
 7 CHAIRPERSON: Is that now a question?
 8 MR GUMBI: Yes.
 9 CHAIRPERSON: Yes, well you want to ask
 10 it with a question mark.
 11 MR GUMBI: Yes.
 12 CHAIRPERSON: Have you undergone the
 13 training to which counsel refers, conflict resolution?
 14 MAJOR-GENERAL MPEMBE: It is conflict
 15 resolution, but not with regard to POP matters, but it was
 16 just a course of conflict resolution.
 17 MR GUMBI: Thank you very much. Will I
 18 be correct, General, that when you confronted those armed
 19 miners along the railway line, it is your evidence that you
 20 applied this principle of situational appropriateness, and
 21 can I also assume that in applying that principle you also
 22 take into consideration exhibit TT5, specifically paragraph
 23 6, the content of paragraph 6 I referred to you earlier on?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

| | |
|--|---|
| <p style="text-align: right;">Page 12386</p> <p>1 MR GUMBI: So let us focus on how POP 2 commanders are supposed to conduct dialogue with protesters 3 on a crowd management situation. So in this regard, 4 General, I will focus on the SAP negotiation with the 5 protesters on the 14th of August, and I will compare it with 6 the one you conducted on the 13th of August 2012. Are you 7 with me on that one? 8 MAJOR-GENERAL MPEMBE: I am with you, 9 Chairperson. 10 MR GUMBI: On the 14th of August 2012 11 around half past 4 the afternoon McIntosh, when he 12 negotiated with those protesters, he requested them to 13 identify their leaders, and we saw video footage played 14 before this Commission some leaders of the group moving 15 towards the Nyala, negotiating with the police. Did you – 16 MR NGALWANA: Chair, that's not accurate. 17 Lieutenant McIntosh didn't ask them to identify their 18 leaders. 19 MR GUMBI: If I can put it correctly; I 20 agree with my learned colleague. On that video footage of 21 the 14th of August we saw the leaders of the group moving 22 towards the Nyalas and they negotiated with the police. 23 That's what we observed in this Commission. 24 MR NGALWANA: How does my learned friend 25 know those were leaders of the group?</p> | <p style="text-align: right;">Page 12388</p> <p>1 MR GUMBI: Yes. 2 CHAIRPERSON: - he says five of them came 3 forward, and so forth, and then later on in his statement 4 he does use the expression "leaders" as well. You see in 5 paragraph 14 he says when he came back on the Wednesday 6 "the five males with whom we talked the previous day were 7 sitting on a large rock. All the men in the group, as well 8 as the five leaders, were still heavily armed. So we 9 followed the same procedure as the previous day and 10 negotiated with the five leaders." So the objection taken 11 wasn't entirely accurate, but anyway, it's quite clear the 12 five people who came forward and negotiated with McIntosh 13 are the ones that you were talking about. Is that right? 14 MR GUMBI: Yes. Yes, Chairperson. 15 Thanks very much, Chairperson – 16 MR NGALWANA: Chair, may I just place on 17 record, I think the question was about Brigadier McIntosh – 18 is it Brigadier? Colonel McIntosh calling leaders – 19 CHAIRPERSON: - place on record - 20 MR NGALWANA: Well, the Chairperson – 21 CHAIRPERSON: - if you want to raise – 22 the proceedings are recorded. What is said is already on 23 record. If you wish to raise an objection you may do so, 24 but you don't have to place things on record that are 25 already on record. Do you want to raise an objection?</p> |
| <p style="text-align: right;">Page 12387</p> <p>1 COMMISSIONER HEMRAJ: Mr Gumbi, isn't the 2 evidence that what Colonel McIntosh said was asked that 3 five people be identified by the protesters who would come 4 forward to negotiate? 5 MR GUMBI: That's the evidence, it's 6 fine, Commissioner. 7 COMMISSIONER HEMRAJ: He didn't say five 8 leaders. He said identify five people to come and – 9 MR GUMBI: Yes, we can call it maybe the 10 delegates. 11 MS PILLAY: Chair, just to indicate that 12 the statement of Lieutenant-Colonel McIntosh states that he 13 asked for five of the bravest men to come forward. 14 CHAIRPERSON: Exhibit HHH14 is his 15 statement. 16 MS PILLAY: That's correct, in paragraph 17 3 of his statement. 18 MR GUMBI: Chairperson, if may I clarify 19 this point so that I won't – 20 CHAIRPERSON: You see the way it reads in 21 paragraph 3 is a bit ambiguous actually. He says, "I asked 22 for five of their bravest men to come forward towards the 23 Nyala vehicle so that I could speak and negotiate with 24 them. We requested the leaders over and over again," and 25 then in 4, para 4 –</p> | <p style="text-align: right;">Page 12389</p> <p>1 MR NGALWANA: Perhaps it can wait for re- 2 examination, Chair, but what I wanted to say was – 3 CHAIRPERSON: That sounds a good idea. 4 MR NGALWANA: - the Chairperson – 5 CHAIRPERSON: Let's carry on, Mr Gumbi. 6 MR GUMBI: Yes, General, on the 14th of 7 August 2012 five men – whether you're calling them leaders 8 or delegates, whatever – five men talked, or negotiated 9 with the police on behalf of the protesters. You saw that 10 in this Commission. Do you agree with me? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. I saw it. 13 MR GUMBI: On the 13th of August 2012 when 14 you confronted these armed, the miners along the railway 15 line, you did not ask them to identify any person or any 16 leader to talk on their behalf. We saw you just addressing 17 the protesters as a group. Will you agree with me? 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 19 I agree that I did not ask them to identify the leaders, 20 but the situation of first on the 13th and on the 16th is 21 not the same, and also to confirm that even Colonel 22 McIntosh, and nobody at that stage ever knew who were the 23 leaders. 24 MR GUMBI: Yes, I understand that. 25 CHAIRPERSON: I think there is a further</p> |

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1 difference. Lieutenant-Colonel McIntosh went to the koppie
 2 to negotiate with the strikers. The present witness, as I
 3 understand it, didn't go to the railway line to negotiate
 4 with the people; he went to the railway line to tell them,
 5 all of them, that they were engaged in an illegal gathering
 6 and to instruct them, all of them, to lay down their arms.

7 MR GUMBI: Yes.

8 CHAIRPERSON: So why did he have to
 9 follow the same procedure, according to you, which
 10 Lieutenant-Colonel McIntosh had followed when he was
 11 engaged in a different kind of situation?

12 MR GUMBI: He testified that he
 13 negotiated with them. I haven't seen anything on record to
 14 say he went, he approached the protesters with an intention
 15 to instruct them clearly that they must disarm and
 16 disperse. I haven't seen anything from the record to that
 17 effect. If any of my colleagues have identified that, I'm
 18 open to withdraw my line of cross-examination around this
 19 aspect of negotiations.

20 CHAIRPERSON: It looks as if he wants to
 21 say something because he's got his finger on the microphone
 22 button. Yes, Major-General?

23 MAJOR-GENERAL MPEMBE: Chairperson, on
 24 GGG12, page 7, paragraph 7, I then gave them an ultimatum
 25 to drop their weapons by indicating to them that I was

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1 going to count to number 3, but even before that, I
 2 informed them that they were required to leave all the
 3 dangerous weapons on the ground and we shall collect them
 4 after they have left and dispersed. I undertook that we
 5 will not arrest them if they left the weapons and dispersed
 6 as requested. So I was not going to talk to an individual;
 7 I was going to talk to all the people and to tell them that
 8 you are involved in the illegal gathering, and particularly
 9 the possession of dangerous weapons.

10 MR GUMBI: Yes, I understand your answer,
 11 General. Can I be clear on it? So is it your testimony
 12 that on the 13th of August when you approached this group of
 13 armed miners there, your intention was not to negotiate
 14 with them, but was to instruct them and tell them that they
 15 must disarm; if they failed to disarm, they were going to
 16 be dispersed and disarmed? Is it your testimony?

17 MAJOR-GENERAL MPEMBE: Chairperson, in
 18 terms of the policy we are expected as the police to
 19 restrain ourselves to act in a community orientated manner.
 20 When you go to members of the public, as I refer them as
 21 protesters, I had to make them to understand the position
 22 of the police and also listen to them, and in the manner
 23 that I should convince them. If it could have been
 24 possible that I could convince them, then it was not the
 25 question of saying I'm going to instruct them, but that's

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1 why I used the term "negotiation."

2 MR GUMBI: So you were going to negotiate
 3 with them. I understand you now. When you observed the
 4 video footage of the 13th of August 2012, while you were
 5 negotiating with the protesters and there were other police
 6 officers that they were standing within the vicinity of
 7 those miners and within your vicinity. Did you see that?

8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson. I saw it.

10 MR GUMBI: Will I be correct, General,
 11 that while you were negotiating with the miners there along
 12 the railway line, did you instruct any of your members to
 13 remain inside the Nyalas while negotiating with them?

14 MAJOR-GENERAL MPEMBE: At that time,
 15 Chairperson, I did not instruct anyone to remain in the
 16 Nyala, but I was also personally as a General even closer
 17 to the protesters. Firstly is to make, to show them that I
 18 don't treat them as criminals unless they're behaving other
 19 way, but taking precautionary measures, because I know that
 20 the members were properly equipped and I could not expose
 21 them to any danger, and properly so. I spoke to the
 22 protesters and they could not act against us at that time.

23 MR GUMBI: After negotiating with those
 24 miners that were along the railway line, the group informed
 25 you that they were not prepared to disarm, despite the fact

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1 that you advised them that it was illegal to be in
 2 possession of dangerous weapons. At that particular
 3 moment, General, did you inform your members now after this
 4 negotiation that they must remain inside the Nyala?

5 MAJOR-GENERAL MPEMBE: No, Chairperson.

6 MR GUMBI: On the video footage presented
 7 before this Commission we saw you counted, I think almost
 8 10 times to allow the group to hand over their dangerous
 9 weapons. Before you made that counting –

10 MR NGALWANA: That's not factually
 11 correct, Chair.

12 CHAIRPERSON: What is the objection?

13 MR NGALWANA: Not factually correct that
 14 the General counted up to 10.

15 CHAIRPERSON: No, Mr Ngalwana is correct.
 16 I think he only got as far as 3. He was going to count to
 17 10, but he wasn't able to finish. Is that right?

18 Subsequent -

19 MR GUMBI: Yes, okay, Chairperson, let's
 20 say he counted three times, it's fine –

21 CHAIRPERSON: Reformulate the question to
 22 obviate the objection.

23 MR GUMBI: Okay, thanks very much,
 24 Chairperson. General, you counted three times to allow the
 25 members to hand over their weapons to you, or to the

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1 police. Do you agree with me on that? Up to 3.
 2 MAJOR-GENERAL MPEMBE: Chairperson, I did
 3 count.
 4 MR GUMBI: Fair enough. Whether you
 5 counted three times or not, it's fair. So before making
 6 that counting, whatever it's 3 or is it 10 counting, did
 7 you instruct your members to remain inside the Nyalas while
 8 you were counting along the railway line?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I've
 10 already said that no.
 11 MR GUMBI: So after counting, or before
 12 counting, to say, did you instruct your members what will
 13 happen after your counting if the protesters, they were not
 14 prepared to hand over their dangerous weapons to you?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR GUMBI: Come again, General. I didn't
 18 hear.
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 MR GUMBI: You did not inform your
 22 members what –
 23 MAJOR-GENERAL MPEMBE: I did inform them.
 24 MR GUMBI: Can you tell this honourable
 25 Commission what you informed your members what will happen

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1 if the protesters they are not handing over their dangerous
 2 weapons to the police after your counting?
 3 [14:00] MAJOR-GENERAL MPEMBE: Chairperson, I did
 4 indicate to the members that we should not stop them, or to
 5 disperse them in the manner that we are supposed to
 6 disperse them, but to make sure that we escort them to the
 7 koppie and I refer to my supplementary statement, the
 8 reasons why we could not disperse and also the difference
 9 between myself and the approach of Lieutenant-Colonel
 10 Merafi. That explains exactly what it is that I expected
 11 from the police.
 12 MR GUMBI: So according to your answer,
 13 General, all the members were there. They knew very well
 14 what will happen after your counting if the protestors did
 15 not hand over their dangerous weapon to the police?
 16 MAJOR-GENERAL MPEMBE: Chairperson, I
 17 said that I did brief the officers and I instructed the
 18 officers to brief their members.
 19 MR GUMBI: So let us focus on the
 20 protestors themselves now, the miners who were fully armed
 21 on that day along the railway line. Did you inform them
 22 what action will follow if they fail to hand over their
 23 dangerous weapon to the police after you count, after your
 24 counting?
 25 MAJOR-GENERAL MPEMBE: Chairperson, the

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1 protestors themselves requested the police to escort them.
 2 That is contained in the statement of Mr Nzuzza himself.
 3 Secondly, I did ask them where are you going to give us
 4 these weapons, these dangerous weapons. They said at the
 5 mountain. So the protestors themselves, they were aware
 6 according to me from that communication that we were not
 7 going to go back unless we get the weapons.
 8 MR GUMBI: But you're not answering my
 9 question, General, with due respect. My question was did
 10 you inform the protestors themselves what action will
 11 follow if they fail to hand over those dangerous weapon to
 12 the police after you have counted, whether three times or
 13 ten times?
 14 MR NGALWANA: Chair, I know it's not my
 15 place to advise my learned friend on how to cross-examine
 16 on this issue, but it might be easier for everyone if the
 17 clip were played, because now we're working on memory and
 18 it's much easier when you can actually see what's being
 19 said and what's not being said.
 20 CHAIRPERSON: Your learned friend has
 21 very kindly made a suggestion which you might consider
 22 appropriate to follow. Is the clip readily available?
 23 MR GUMBI: I don't know whether the clip
 24 is ready of the 13th.
 25 MS PILLAY: Chairperson, it's exhibit Z1,

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1 2 or 3.
 2 MR GUMBI: Yes, Chairperson, if it can be
 3 played for sake of the witness I won't have any objection.
 4 CHAIRPERSON: So understand it's your
 5 cross-examination. It's rather unusual for other counsel
 6 to make suggestions during the course of the cross-
 7 examination, but if you accept the suggestion then we can –
 8 but it's still your cross-examination.
 9 MR GUMBI: We don't have any objection,
 10 Chairperson. We accept it as long as it will assist the
 11 witness and the commission. I don't know whether the clip
 12 is ready. It can be played before the commission.
 13 MS PILLAY: I think that they're about
 14 just to show the clip.
 15 MR GUMBI: Okay, thanks very much.
 16 CHAIRPERSON: Can we have some sound as
 17 well, please?
 18 [VIDEO SHOWN]
 19 MR GUMBI: I think the general wants to
 20 say something.
 21 CHAIRPERSON: General, you want to tell
 22 us something?
 23 MAJOR-GENERAL MPEMBE: I just want to say
 24 I did inform them that after speaking to them I'll go to
 25 the mountain to tell those to the mountain that for them to

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1 gather there it's illegal.
 2 MR GUMBI: No, I did not hear that,
 3 Chairperson. I was waiting for the video footage to
 4 continue, yes.
 5 CHAIRPERSON: Do you want more of the
 6 video clip to be shown?
 7 MR GUMBI: Yes, up until the time when
 8 the general is doing some counting then I'll go back to my
 9 question.
 10 CHAIRPERSON: So could we have the
 11 continuation of the clip up to the point where the general
 12 starts to count.
 13 [VIDEO SHOWN]
 14 MR GUMBI: Chairperson, I think the video
 15 footage is finished. We can carry on with our cross-
 16 examination if the technician can stop it.
 17 CHAIRPERSON: Thank you for showing us
 18 that part of the video clip. You want to continue now with
 19 your cross-examination?
 20 [14:20] MR GUMBI: Yes, Chairperson. So let us
 21 go back to my question, General. You saw the video footage
 22 there. In that video footage, and I also – I wanted you to
 23 take into consideration the transcript of that address, of
 24 your address, that was entered as Exhibit QQ13. Are you in
 25 possession of it? QQ13.

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson, I do have it.
 3 MR GUMBI: Okay, let's go back to my
 4 question. When you analyse that video footage together
 5 with Exhibit QQ13 I referred to you, would you agree with
 6 me, General, that we don't see you informing the protestors
 7 that what action will follow if they fail to hand over
 8 their dangerous weapon to the police?
 9 COMMISSIONER TOKOTA: But I thought, Mr
 10 Gumbi, he says here if you don't give us those weapons we
 11 won't allow you to go.
 12 MR GUMBI: Yes.
 13 COMMISSIONER TOKOTA: That's what he
 14 said.
 15 MR GUMBI: Yes, if I can elaborate on
 16 that one and clarify that point. In that video footage,
 17 General, you indicated to the protestors that you're not
 18 going to allow them to proceed, né, if they don't hand over
 19 their dangerous weapon to the police. Are you with me on
 20 that one?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MR GUMBI: And you did not inform the
 24 protestors that the police, they are going to dispel them
 25 if they don't hand over their dangerous weapons.

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1 MAJOR-GENERAL MPEMBE: I did indicate to
 2 them that I am going to the mountain and they themselves,
 3 every speaker that stood up there indicated and requested
 4 actually the police to accompany them to the mountain, so
 5 they were clear that we are not going to leave them, but
 6 the only thing that I did not tell them is that we will not
 7 force them – we will not act in the manner that I told the
 8 police that we should not – we should force them, because
 9 I've it clear that according to the situational
 10 appropriateness we could not force them or do any other
 11 matter to get those firearms, but they were aware that was
 12 is going to happen even if after I've counted, the
 13 protestors themselves as well as the police.
 14 MR GUMBI: I understand your answer,
 15 General, but that was not my question. I'm saying to you,
 16 General, you did not inform the protestors that if they
 17 refuse to hand over their dangerous weapon the police will
 18 disperse them. You did not convey that information.
 19 MAJOR-GENERAL MPEMBE: Chairperson, I
 20 said that [African language]. It's very clear. It's very
 21 clear even on the video there.
 22 MR GUMBI: I understand the content of
 23 the video, General. We have a transcript of what you
 24 conveyed to the miners along the railway line. So my
 25 question I'm saying to you, you did not inform the miners

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1 that if they refuse to hand over their dangerous weapon the
 2 police will disperse them.
 3 COMMISSIONER TOKOTA: But why would he do
 4 that? Because he already told the police we can't. The
 5 situational situation, the situational appropriateness, I
 6 don't know what you call it, was such that they couldn't do
 7 that. Why do you want him to say that now to them when he
 8 has already said to the members we can't? It is clear from
 9 these statements that they didn't agree, because he said,
 10 no, the situation is that we can't disperse these people
 11 now.
 12 MR GUMBI: Yes, I understand the
 13 information, Commissioner, here related to the police. I
 14 was focussing on the information he relayed to the
 15 protestors after he counted whether three times or ten
 16 times. That's my focal point. I do understand the
 17 information he relayed to the police.
 18 COMMISSIONER TOKOTA: But my question is
 19 why should he say to them if you don't hand over those
 20 weapons we are going to disperse you when in fact he was
 21 not going to do it? Why should he tell them that?
 22 MR GUMBI: Fair enough, Commissioner. I
 23 can move on, on that particular aspect. Maybe I can
 24 revisit it later on during the course of my cross-
 25 examination.

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1 CHAIRPERSON: The problem is I don't
 2 quite understand the point you're trying to make. We don't
 3 want to stop you from making your point if you consider it
 4 important for your client's case, but what exactly is the
 5 point? Can you explain it to me or would you prefer not to
 6 explain it at this stage but deal with it later? I'm in
 7 your hands.
 8 MR GUMBI: Fair enough, Chairperson.
 9 I've noted the concern of the commissioner. I will park
 10 that point. I will revisit it again whether I wanted to
 11 pursue it or not. Yes.
 12 CHAIRPERSON: As long as you don't get
 13 the impression that we're trying to prevent you from
 14 putting your case because that's not our intention, but we
 15 want to understand your case and we want it to be put
 16 fairly obviously, but I'm not sure – sorry, I am sure that
 17 you're not intending to put it unfairly, so –
 18 MR GUMBI: Yes, Chairperson. I've noted
 19 that. General, the protestors, they refused to hand over
 20 their dangerous weapon. We saw the video footage. They
 21 decided to proceed with their march. And we saw one of the
 22 police officers near the big rock who was in possession of a
 23 shotgun trying to block or to prevent the protestors from
 24 carrying on with their march. Did you see that?
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson, I saw it.
 2 MR GUMBI: So that police officers,
 3 police officer we saw in possession of a shotgun, did you
 4 instruct that police officer to block these miners who were
 5 proceeding with their march?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson,
 7 as I indicated that the most junior members, they were
 8 working under, also under their officers.
 9 MR GUMBI: So you assume that police
 10 officer was instructed by one of the operational commanders
 11 to block those armed protesters. Is that correct?
 12 MAJOR-GENERAL MPEMBE: According to my
 13 understanding, Chairperson, is that he did not block
 14 because the protestors did walk there and he didn't shoot
 15 at them, so maybe he is in a better position to say what
 16 actually he was trying to do, but actually what I expected
 17 from the officers at that time, at that moment, it did
 18 happen.
 19 MR GUMBI: Yes, but we saw him stepping
 20 back when the protestors approached him and he allowed them
 21 to proceed.
 22 MAJOR-GENERAL MPEMBE: Chairperson, I
 23 didn't see any protestor pushing the police officer.
 24 MR GUMBI: I didn't use the word "push".
 25 We saw that police officer stepping back and we saw the

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1 protestors moving and proceeding with their march.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 MR GUMBI: And you did not instruct that
 5 police officers to stand there, whether to block or to
 6 prevent those marchers who were proceeding with their
 7 march.
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR GUMBI: So after the protestors had
 11 breached that police line, we can call it a police line or
 12 after that a police officer attempted to block the
 13 protestors, will I be correct again, General, that at that
 14 particular moment you did not even instruct your members
 15 again to remain inside their Nyalas while these marchers
 16 they are proceeding with their march?
 17 MAJOR-GENERAL MPEMBE: Chairperson, I
 18 only said that they should escort them.
 19 MR GUMBI: So after they have proceeded
 20 with their march, would I be correct, General, then that at
 21 that particular moment you made a decision that you are
 22 going to escort them, the marchers, towards the koppie?
 23 MAJOR-GENERAL MPEMBE: Chairperson, the
 24 decision was not made at that time. It was before that
 25 time, before I count.

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1 MR GUMBI: When you made the decision to
 2 escort the protestors from the railway line towards the
 3 koppie would I be correct, General, that as an experienced
 4 operational commander it's very important to inform the
 5 operational members or whoever's involved there that now
 6 you've made a decision that by applying the principle of
 7 situational appropriateness you've made a decision that now
 8 you are escorting the miners towards the koppie? You have
 9 to convey that information clearly to all the parties who
 10 are there.
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson, and it was done.
 13 MR GUMBI: And would I be correct also
 14 again, General, that an experienced operational commander
 15 like you will also inform his members the road to be used
 16 by the protestors from the railway line on their way to the
 17 koppie?
 18 MAJOR-GENERAL MPEMBE: Chairperson, as I
 19 indicated and as I said on the video I said the protestors
 20 were not going to let them go and when they have left we
 21 have to escort them, take into account of the situational
 22 appropriateness. The route to be determined, it is the one
 23 that I said before, why the sensitivity of the informal
 24 settlement.
 25 MR GUMBI: Yes, but you informed your

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1 police officers that this is the route that is going to be
 2 used by the protestors from the railway line on their way
 3 to the koppie. You did inform them, clear.
 4 MAJOR-GENERAL MPEMBE: Chairperson, I did
 5 not speak about the route. I only said the key areas,
 6 including informal settlement and also on the other side
 7 the mine shaft, take into account the briefing with regard
 8 to the sensitivity with regard to that, but not to say this
 9 specific route.
 10 MR GUMBI: Don't you think, General, it
 11 was important to – because we do have other members who
 12 were mobilised from other provinces, to inform them clearly
 13 of the roads to be used from the railway line towards the
 14 koppie?
 15 MAJOR-GENERAL MPEMBE: Chairperson, I was
 16 present there and members of the POP of Rustenburg, they
 17 were also there and I indicated that Colonel Merafi said
 18 that since I'm working with them we will also orientate
 19 them. Correct, Chairperson.
 20 MR GUMBI: So all the members also –
 21 okay, no, they were fully aware that they must protect the
 22 informal settlement on their way towards the koppie while
 23 escorting these marchers?
 24 MAJOR-GENERAL MPEMBE: Chairperson, I
 25 briefed the officers and I expected the officers to brief

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1 their members.
 2 MR GUMBI: And again, General, did you
 3 inform all the police officers who were there that while
 4 they were escorting these miners from the railway line on
 5 their way to the koppie whether they're going to use Nyalas
 6 to escort them and channel them on their way to the koppie
 7 from the railway line?
 8 MAJOR-GENERAL MPEMBE: Chairperson,
 9 officers and members were issued with Nyalas. They were
 10 issued with older equipment. The only issue that I spoke
 11 about is the informal settlement, so each officer and each
 12 member, they have a discretion to utilise in terms of when
 13 to use this equipment. So for the fact that I was working
 14 with POP members that know exactly what they are supposed
 15 to do, that I could see that it is – it has to be complied
 16 with. But with regard to the safety of the members, yes,
 17 Chairperson, I did take that into account, hence I applied
 18 situational appropriateness as an intervention principle.
 19 MR GUMBI: So, do I understand your
 20 answer, General, that you did not inform your members to
 21 use Nyalas to escort the miners from the railway line
 22 towards the koppie? You did not issue that instruction?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson.
 25 MR GUMBI: And furthermore, General, you

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1 also – you did not even instruct your members to remain
 2 inside the Nyalas while escorting these miners on their way
 3 to the koppie, did not issue that instruction on that day.
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson, and also to go out from the Nyalas.
 6 MR GUMBI: We know before this
 7 commission, General, that there were other units that they
 8 were involved in this operation. We have TRT unit, POP
 9 unit and NIU unit and especially TRT unit and NIU, they are
 10 not specialised when it comes to crowd management
 11 situation. You agree with me?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 MR GUMBI: So as an experienced
 15 operational commander will you agree with me that in such a
 16 situation where we have other units that are not
 17 specialised on crowd management an operational commander
 18 will inform his subordinate commanders where to position
 19 themselves while escorting miners from the railway line
 20 towards the koppie?
 21 MAJOR-GENERAL MPEMBE: Chairperson, I did
 22 inform the commanders.
 23 MR GUMBI: So all the commanders were
 24 there, the TRT commanders, NIU commanders, they knew very
 25 well where to position themselves while escorting these

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1 miners?
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 MR GUMBI: So while you are escorting
 5 these protestors from the railway line, General, will you
 6 agree with me if I put the following proposition that in
 7 such a situation an operational commander will instruct one
 8 of the Nyalas maybe to lead the protestors on their way
 9 towards the koppie in order to channel them? It's another
 10 way of leading them towards the correct road to be used.
 11 MAJOR-GENERAL MPEMBE: I don't agree,
 12 Chairperson.
 13 MR GUMBI: So the protestors on the 13th
 14 of August 2012, you decided to escort them without leading
 15 them. Did you know the road that were going to be used on
 16 their way towards the koppie?
 17 MAJOR-GENERAL MPEMBE: Chairperson, the
 18 video is very clear and what I told the protestors is very
 19 clear. It is not a planned operation whereby you sit
 20 around with the protestors and you determine the routes,
 21 you agree and you lead them. Chairperson, I said [African
 22 language]. Maybe I should speak the language of the
 23 advocate, meaning that I am not going to release you if you
 24 don't give me - they forced their way, and when they forced
 25 their way I took a decision and which members were informed

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1 that situational appropriateness is going to be applied,
 2 hence the members could not act at that time. Secondly,
 3 Chairperson, I told the protestors that I am going to the
 4 mountain. The protestors, they themselves speaker after
 5 speaker requested us, the police, to go with them at the
 6 mountain. So Chairperson, nobody there, including
 7 protestors, could ever say we did not know what was going
 8 to – what was expected.

9 MR GUMBI: I understand your explanation,
 10 General, but my question is did you know the road to be
 11 used by the protestors from the railway line towards
 12 koppie. That was my question.

13 MAJOR-GENERAL MPEMBE: Chairperson, my
 14 answer was very clear, no, because the protestors forced
 15 their way out and there was no way that I could communicate
 16 with them which road to take.

17 MR GUMBI: Thank you very much, General
 18 According to Exhibit HHH16.1 and HHH16.2 you followed the
 19 protestors and you formed the curved line of – the curved
 20 police line behind the protestors. You still remember
 21 that? Are you in possession of Exhibit HHH16.1 and 16.2?

22 MAJOR-GENERAL MPEMBE: I do remember it,
 23 Chairperson, I just wanted to look at it now from the
 24 document that I'm having.

25 MR GUMBI: Those documents, they were

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1 introduced by the evidence leaders during cross-
 2 examination. There are two documents.

3 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 4 I do have it.

5 MR GUMBI: That's the police line you
 6 formed behind the protestors when you made a decision to
 7 escort them. Do you see that?

8 MR NGALWANA: Which one, Chair? There's
 9 16.1 and there's 16.2.

10 MR GUMBI: Can I – yes, Chairperson, it's
 11 Exhibit HHH16.2.

12 [14:40] MAJOR-GENERAL MPEMBE: Chairperson, I see
 13 it.

14 MR GUMBI: So while we are still on that
 15 exhibit, General, can I also assume that the police who
 16 were following these protestors from the railway line on
 17 their way to the koppie, we have different units that they
 18 were involved here. Would I be correct that that police
 19 line behind the protestors was formed by POP, TRT, and NIU
 20 members?

21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson. They were the units that were present on that
 23 day with their commanders.

24 MR GUMBI: Can I also again, General,
 25 refer you to the list of shooters of the 13th of August

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1 2012? It's not yet entered as an exhibit, Chairperson.

2 CHAIRPERSON: Do we have a copy of that
 3 document?

4 MR GUMBI: You must have it, Chairperson,
 5 in your bundle.

6 CHAIRPERSON: No, I didn't ask you
 7 whether I must have it; I asked you do we have it.

8 MR GUMBI: Yes.

9 CHAIRPERSON: What does it look like?

10 MR GUMBI: It was circulated by evidence
 11 leaders. It's number 32 –

12 CHAIRPERSON: Is it this document?

13 MR GUMBI: Yes, one-page document.

14 CHAIRPERSON: Alright, so that will be
 15 exhibit HHH23, right?

16 MR GUMBI: 23, yes.

17 MS PILLAY: That's correct.

18 MAJOR-GENERAL MPEMBE: Chairperson,
 19 according to the exhibit list it's FFF35. I don't know
 20 whether it's an exhibit number.

21 MR GUMBI: Not that one. It's one page.
 22 It's for the 13th of August 2012.

23 MS PILLAY: Chair, the document the
 24 General is referring to is the list of shooters at scene 1.

25 MR GUMBI: Yes.

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1 MS PILLAY: This is a list of shooters on
 2 the 13th.

3 CHAIRPERSON: Is this the document being
 4 referred to?

5 MS PILLAY: That's correct.

6 CHAIRPERSON: So that will be – I'll mark
 7 that, shall I? HHH23. How do I describe it? Shotists –

8 MS PILLAY: Schedule reflecting the list
 9 of shooters on the 13th –

10 CHAIRPERSON: Shotists on the 13 –

11 MS PILLAY: On the 13th of August.

12 CHAIRPERSON: - 8/12. Now that we've got
 13 the list of shotists, I suggest we take a 10 minute
 14 adjournment for tea.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]

16 [14:59] CHAIRPERSON: The Commission resumes.
 17 Major-General, you're still under oath.

18 WILLIAM MPEMBE: s.u.o.

19 CHAIRPERSON: But I understand you told
 20 my colleague Adv Tokota during the adjournment that you've
 21 actually got a very bad headache. Is that correct?

22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.

24 CHAIRPERSON: Well, I think it's
 25 inappropriate for us to continue. It's bad enough to have

1 to concentrate on every question and to concentrate on
2 giving a correct answer, but if you've got a distraction
3 like a headache, it's not fair, I don't think. So would
4 you agree with that statement of the situation?

5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.

7 CHAIRPERSON: So we'll start again on –
8 we can't sit tomorrow because this is the third Wednesday,
9 it will be the third Wednesday of the month and the council
10 chamber will be required for committee meeting, so we will
11 adjourn at this stage until Thursday at 9:30. We will, I
12 hope will know by then, I was told we would know by then
13 what the situation is in regard to possible funding. If
14 the answer is in the negative it will be necessary for us
15 to have a meeting I think, the parties' representatives, to
16 decide what we're to do and how we're to respond to the
17 situation that there's no funding. We will know, I hope,
18 in the course of the afternoon. I will ask Ms Pillay to
19 send an email to the parties' representatives, informing
20 them whether we're going to meet. I take it the most
21 sensible thing would be to meet in the Commission's offices
22 in Momentum Building in Pretoria. The question of course
23 is whether I should be at the meeting, or whether not. If
24 it's possibly best that the parties meet in my absence so
25 they can say what they want to say about me behind my back,

1 and then the result of the meeting can be reported in due
2 course. Is that correct? In other words you don't have to
3 meet in the Commission's offices, and possibly Ms Pillay
4 can indicate, if there's going to be a meeting, in her
5 email where the meeting will be.

6 MR BUDLENDER SC: Chair, what has been
7 done, is an email has gone to the parties advising that
8 provisionally we will meet at 9:30 tomorrow in Sandton
9 and –

10 CHAIRPERSON: Where do you meet?

11 MR BUDLENDER SC: In Sandton.

12 CHAIRPERSON: In Sandton.

13 MR BUDLENDER SC: In Sandhurst, and if
14 that, in the event that we have the bad news that we have
15 no good news, but if we do get good news in the interim
16 that funding has been provided, everyone will be notified
17 and the meeting will then not proceed.

18 CHAIRPERSON: We will adjourn until 9:30
19 on Thursday morning.

20 [COMMISSION ADJOURNED]



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