

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 147 12 NOVEMBER 2013 PAGES 16207 TO 16401



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1 [PROCEEDINGS ON 12 NOVEMBER 2013]
 2 [09:16] CHAIRPERSON: The Commission resumes.
 3 Major-General, you're still under oath.
 4 WILLIAM MPEMBE: Correct, Commissioner.
 5 CHAIRPERSON: Mr Mpofo.
 6 CROSS-EXAMINATION BY MR MPOFU: Thank
 7 you, Chairperson. Good morning, General.
 8 MAJOR-GENERAL MPEMBE: Good morning,
 9 Advocate.
 10 MR MPOFU: General, I'm just going to
 11 spend a few minutes just to deal with a broad outline of
 12 where I'll be going with you, and hopefully those minutes
 13 will save us a couple of hours, just so that we are
 14 together. Okay?
 15 MAJOR-GENERAL MPEMBE: That's correct,
 16 Chairperson.
 17 CHAIRPERSON: I think that's a hope we
 18 all share, Mr Mpofo.
 19 MR MPOFU: Thank you, Chairperson.
 20 General, the events that we're going to discuss are, they
 21 involve quite serious issues, you would agree? Agree? You
 22 agree?
 23 MAJOR-GENERAL MPEMBE: Maybe if I may get
 24 clarity, are you talking about what happened on the 13th
 25 until the 16th?

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1 MR MPOFU: Yes, that's the period I'm
 2 talking about.
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson, I agree.
 5 MR MPOFU: Thank you, and that period
 6 which we've just defined is a period when you were in
 7 charge, correct?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MPOFU: And in that period 40 lives
 11 were lost, five on the 13th, one on the 14th, and 34 on the
 12 16th, correct?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson, as, one as an overall commander and other
 15 incident both as an overall and operational commander.
 16 MR MPOFU: Yes, and so you have said in,
 17 I think in an answer to one of the cross-examiners when you
 18 were asked whether you take any responsibility for what
 19 happened, that you wouldn't take responsibility except for
 20 the things that were ordered, in other words that were part
 21 of the instructions, correct?
 22 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 23 asking the, maybe if I may be appraised with the testimony
 24 where I said so, so that I should interpret it in the right
 25 context.

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1 MR MPOFU: Okay, we'll do so in due
 2 course. In any event, I just want to tell you that one of
 3 the approaches that my team, or the people that I represent
 4 are taking in this matter is that there were, the overall
 5 approach that we are taking is that there were three, what
 6 we call game changers, or turning points in this saga. The
 7 first one is one that doesn't concern you because you were
 8 no longer, we are not there yet, which is the alleged
 9 attack by NUM on the strikers, which caused them to go to
 10 the koppie in the first place and to start arming
 11 themselves. That's what we, we call that the first game
 12 changer, but I'm not going to ask you much about that. I'm
 13 sure you heard about it, but it's not, you were not there.
 14 You did hear about it, right?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson, I did hear about it.
 17 MR MPOFU: Yes, the second game changer
 18 is the killings that happened on the 13th, particularly the
 19 killings of the police, of the two policemen and the injury
 20 of one, and that is a matter in which you were essentially
 21 involved, correct?
 22 MAJOR-GENERAL MPEMBE: Both as an
 23 operational and overall commander, correct, Chairperson.
 24 MR MPOFU: CJOC, ja, and the third game
 25 changer is the political interference which happened on the

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1 15th, which we are going to show influenced the decision to
 2 go tactical, to use your language, particularly on the 16th.
 3 You understand?
 4 MAJOR-GENERAL MPEMBE: I understand, but
 5 I don't know about political interference.
 6 MR MPOFU: Yes, well that alone is an
 7 issue that I'm going to canvass with you at some stage.
 8 Now let's therefore start with just generally your
 9 responsibilities as CJOC. I think you've already answered
 10 the questions that – or let me just say this; apart from
 11 you being CJOC, you were also the deputy provincial
 12 commissioner, correct?
 13 CHAIRPERSON: He was a deputy
 14 provincial –
 15 MR MPOFU: A, a, correct, one of many.
 16 CHAIRPERSON: You were one of the deputy
 17 commissioners for the North West Province. Is that
 18 correct?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson.
 21 CHAIRPERSON: What was your portfolio, as
 22 it were? What was your assigned area of responsibility as
 23 deputy commissioner?
 24 MR MPOFU: ORS.
 25 MAJOR-GENERAL MPEMBE: Operational

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1 Services. Operational Services, and I am still,
 2 Chairperson, because I hear there is a speculation that I'm
 3 a cluster commander. I'm still a deputy provincial
 4 commissioner.
 5 MR MPOFU: Ja, no, your position can be
 6 confusing, General. For example one of the things I'm
 7 going to canvass is that although you were CJOC, at some
 8 stage you were not really in charge of the situation and
 9 you were merely a token leader, holding the title without
 10 the responsibilities. What would you say to that?
 11 MAJOR-GENERAL MPEMBE: I hear it for the
 12 first time –
 13 CHAIRPERSON: Do you mean without
 14 responsibilities, or do you mean without the authorities?
 15 MR MPOFU: Thank you, Chairperson, yes,
 16 without the authorities, would be more correct, yes.
 17 Without the authorities that goes with the position of
 18 CJOC.
 19 CHAIRPERSON: You're going to be
 20 questioned about that. I can see you're nodding your head.
 21 It looks as if you're not going to agree with those
 22 propositions, but anyway, Mr Mpofu at the moment is giving
 23 you an outline –
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: - and us as well, of the

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1 ground he's going to cover in the cross-examination. So
 2 when he asks the question we will know where he's coming
 3 from and where he's hoping to go to. So you don't have to
 4 comment at this stage. I'm sure you'll get an opportunity
 5 to do so before he's finished, and if you don't, then I'll
 6 give you an opportunity to do so yourself on your own
 7 initiative if the questions aren't asked, but I suspect
 8 they will be.
 9 MR MPOFU: Yes. Thank you, yes, the
 10 Chairperson is correct; I'll put to you a series of
 11 criticisms of either what you did or what you did not do so
 12 that I can give you an opportunity to deal with those
 13 before at the end I can argue that you were a token chief
 14 of the joint operation.
 15 Then I've agreed with the Chairperson and the
 16 Commissioners, I just want to give you an assurance, I'm
 17 going to do my utmost to avoid repetition. I've read very
 18 extensively the very thorough cross-examination that has
 19 been done by many people on some of the issues. However,
 20 when I do ask something that has been covered I will try to
 21 be doing it for a specific purpose that has not been
 22 covered. Okay? Alright, and lastly I just want to – I
 23 know that on the 16th you were not at the scene yourself,
 24 but I'll ask you a few questions about the scene simply in
 25 your capacity as the CJOC.

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1 Now on the 13th, let's start with the 13th, it's
 2 your evidence that General Mbombo gave you a kind of wide-
 3 ranging instruction, which included dispersal and arrest of
 4 people, correct?
 5 MAJOR-GENERAL MPEMBE: As stated in the
 6 OB, correct, Chairperson.
 7 MR MPOFU: Yes, and at that stage you had
 8 only 121 forces on the ground, correct?
 9 MAJOR-GENERAL MPEMBE: Plus or minus.
 10 MR MPOFU: Plus-minus, yes. You might
 11 not remember the exact number, but ja. Do you think it
 12 would have been possible to carry out that instruction with
 13 about 120 or so policeman, supposedly to arrest and disarm
 14 the thousands of people who were at the koppie?
 15 MAJOR-GENERAL MPEMBE: Chairperson,
 16 thousands of people were not at the koppie at that time,
 17 and I was not at the koppie on the 13th, on Monday.
 18 MR MPOFU: No, that I accept, but your
 19 evidence is that General Mbombo said you must arrest and
 20 disarm people, like those people who were coming from Karee
 21 and people at the koppie. Isn't that your evidence?
 22 MAJOR-GENERAL MPEMBE: Firstly relates to
 23 those that were at the railway line and going to the
 24 koppie, but she did not say on Monday.
 25 MR MPOFU: No, I'm sorry, she gave you an

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1 instruction to arrest people, including the people at the
 2 koppie. That was the Monday morning, correct?
 3 MAJOR-GENERAL MPEMBE: The instruction
 4 was given on Monday, yes –
 5 MR MPOFU: 12:45, sorry, not morning.
 6 Ja, that's at about 12:45.
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson, it was on Monday, but the dispersal, it was
 9 not mentioned when.
 10 MR MPOFU: No, General, please, I want us
 11 to work together here. Even the one at the koppie, of the
 12 people coming from Karee, it wasn't mentioned when. All
 13 I'm saying to you is that you were given an instruction
 14 according to you to arrest, to disperse and arrest people,
 15 including the people at the koppie, and that was given on
 16 Monday. It wasn't said when. It could have been on
 17 Monday, it could have been on Tuesday, correct?
 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 19 correct.
 20 MR MPOFU: Now then answer the question.
 21 Do you think it was realistic – let's assume now it was
 22 Monday, because we've agreed it could have been Monday or
 23 Tuesday – do you think it would have been realistic for
 24 that instruction, or possible even for that instruction to
 25 be carried out in regard to the koppie when you only had

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1 120 people?

2 COMMISSIONER HEMRAJ: But Mr Mpofu, if

3 you –

4 MAJOR-GENERAL MPEMBE: Chairperson, it's

5 an assumption, question -

6 COMMISSIONER HEMRAJ: Mr Mpofu, if you

7 are saying that it's not germane only to the Monday, then

8 surely that question must take into account that additional

9 police were brought in?

10 MR MPOFU: No, that's exactly why I

11 asked, I've ruled out the other days. I'm saying if you

12 say it's possible it's Monday, Tuesday, whatever, let's now

13 confine ourselves just to the Monday. That's why I

14 prefaced the question like that. Ja, so limiting ourselves

15 to the question of Monday, which you have said it's one of

16 the possibilities, what's your answer?

17 MAJOR-GENERAL MPEMBE: Chairperson, it's

18 difficult for me to speculate.

19 MR MPOFU: Well, I will speculate for

20 you. That would have been an impossible instruction to

21 carry out. What's your comment?

22 MAJOR-GENERAL MPEMBE: No, Chairperson,

23 in the sense the General Mbombo gives a strategic

24 instruction; I need to operationalise that instruction

25 according to the circumstances and according to the means

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1 that I have, taking into account all legal aspects of crowd

2 management. She did not in any way prescribe how, when,

3 and how to do it. That has to be decided by the overall

4 commander.

5 MR MPOFU: Okay, I promise you I'm not

6 going to ask you to speculate a lot, but if that

7 instruction had to be carried out on Monday, you as the

8 operational commander, what would you have done?

9 MAJOR-GENERAL MPEMBE: Chairperson, it's

10 exactly what I did, to negotiate, apply situational

11 appropriateness.

12 MR MPOFU: At the koppie?

13 MAJOR-GENERAL MPEMBE: The same, and I

14 said it also to the protesters at the railway line, and

15 while in the process assembling the required resources, as

16 we did.

17 MR MPOFU: The point I'm really driving

18 at is this, and I'd like your comment – can I continue,

19 Chairperson?

20 CHAIRPERSON: Yes.

21 MR MPOFU: Yes, thank you. The point I'm

22 driving at is this, General, so that we don't waste time on

23 this; as at that time it was considered feasible – let's

24 leave it at that – that the dispersal and the arrests that

25 were necessary could be carried out and the only forces you

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1 had at that stage were POP and TRT, correct?

2 MAJOR-GENERAL MPEMBE: No, Chairperson.

3 MR MPOFU: Okay, there was also –

4 MAJOR-GENERAL MPEMBE: I just want to

5 explain it –

6 MR MPOFU: Ja, no let me –

7 MAJOR-GENERAL MPEMBE: I just want to

8 explain my no. Nobody considered it feasible, hence I

9 change a cap of being an operational commander. It is my

10 testimony to this Commission that I took an operational

11 decision and I applied situational appropriateness.

12 MR MPOFU: Yes. No, that may well be

13 so –

14 CHAIRPERSON: I'm sorry, Mr Mpofu, are

15 you busy still with the question of the adequacy of the

16 forces, the members at his disposal, is that what –

17 MR MPOFU: Yes, in fact I –

18 CHAIRPERSON: Can I just –

19 MR MPOFU: Sorry, Chairperson –

20 CHAIRPERSON: Can I just – in the police

21 occurrence book FFF25 we have the instruction you received

22 from Lieutenant-General Mbombo as entry number 37 on the

23 13th of August at 12:45, and this is how it reads – I don't

24 know if it is going to be put up for us, but it's exhibit

25 FFF25, it's the page relating to the 13th of August and it's

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1 entry number 37. There it is; it's on the screen now. Now

2 it reads as follows, "JOC visit," this is a note in the

3 handwriting I take it of Lieutenant-General Mbombo, signed

4 by her, "and as shown, the different points of gathering,"

5 I take it, it means shown by different points of gathering,

6 "the planning has been adjusted to disperse the gatherings.

7 All police officials on duty to conduct searches and

8 confiscate all dangerous weapons. All those who can be

9 identified in the footage should be picked up and

10 deployment to key strategic areas should be enhanced. In

11 terms of our policy on crowd management, all members to

12 conduct themselves within the limits of this policy, unless

13 the situation dictates otherwise; ensure that peace

14 prevails." Signed Lieutenant-General Mbombo. Those were

15 the instructions you received?

16 MAJOR-GENERAL MPEMBE: Correct,

17 Chairperson.

18 CHAIRPERSON: Right, and the reference to

19 the different points of gathering in the first line I take

20 it includes a reference to the koppie, because we know that

21 from some time at least on Saturday the 11th, the strikers

22 were gathering, or some of them were gathering on the

23 koppie. So the reference to the different points of

24 gathering includes a reference to the koppie. That must be

25 right. You agree?

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1 MAJOR-GENERAL MPEMBE: Correct,
2 Chairperson.

3 CHAIRPERSON: Right, so the sentence goes
4 on, "The planning has been adjusted to disperse the
5 gathering," so therefore you were instructed inter alia to
6 disperse any gathering of strikers on the koppie. That's
7 correct, isn't it?

8 MAJOR-GENERAL MPEMBE: It will also
9 include the koppie, correct, Chairperson.

10 CHAIRPERSON: Right, then she goes on,
11 "All police officials on duty to conduct searches and
12 confiscate all dangerous weapons." This refers to the
13 people, the members of the service who were put under your
14 command when you were made the operational commander – the
15 overall commander. I take it that's right too, isn't it?
16 When you were made the operational commander all police
17 officials on duty were therefore put under your command for
18 the purposes of the operation, is that correct?

19 [09:35] MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.

21 CHAIRPERSON: Right. So all police officials on
22 duty to conduct searches and confiscate all dangerous
23 weapons - so your, the people working under you had to
24 conduct searches and confiscate all dangerous weapons, is
25 that right?

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1 MAJOR-GENERAL MPEMBE: Correct,
2 Chairperson.

3 CHAIRPERSON: Right. Then those who could be
4 identified on the footage had to be picked up and
5 deployment to key strategic areas had to be enhanced. Now
6 what were the key strategic areas? The koppie was clearly
7 one. I take it the key strategic areas included areas
8 which might be the subject of attack by some of the
9 strikers, would that be correct, where there had been
10 previous incidents of malicious injury to property and even
11 murder. Is that correct?

12 MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson, the informal settlement for example.

14 CHAIRPERSON: Yes – yes. I'm not sure anyone had
15 been murdered in the informal settlement at that stage but
16 that could also have been a key strategic area, is that
17 right?

18 MAJOR-GENERAL MPEMBE: Correct, Chair.

19 CHAIRPERSON: Right. Now what Mr Mpofo is
20 suggesting to you is that at that stage you didn't really
21 have adequate forces at your disposal to do all the things
22 that you were instructed to do in this entry in the
23 occurrence book. That's what he's putting to you. Now
24 let's just take that apart gently. How many people did you
25 have under your command? In other words this reference to

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1 all police officials on duty, can you give us an estimate
2 as to – can you give us an estimate as to the number of
3 people who were under your command at that stage in the
4 operation?

5 MAJOR-GENERAL MPEMBE: Chairperson, I'll
6 have to consult the SAPS15 that was on Monday.

7 CHAIRPERSON: Well, perhaps you can do that after
8 the tea adjournment or during the tea adjournment, you can
9 tell us afterwards.

10 MAJOR-GENERAL MPEMBE: Yes.

11 CHAIRPERSON: But can you at this stage, if you
12 can't please say so but can you at this stage give us a
13 kind of preliminary estimate, you know, a ballpark figure?

14 MAJOR-GENERAL MPEMBE: It could be over
15 100.

16 CHAIRPERSON: Over 100. And at that stage did you
17 have any idea as to how many people had been gathered, were
18 gathered at the koppie?

19 MAJOR-GENERAL MPEMBE: No, Chairperson.

20 CHAIRPERSON: But it was presumably quite a
21 substantial number of people?

22 MAJOR-GENERAL MPEMBE: When looking at
23 the video when I was briefed, yes, it could be a quite
24 substantial number of people.

25 CHAIRPERSON: Alright. Now at that stage had

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1 reinforcements arrived from other areas yet? We know that
2 reinforcements arrived at Marikana from various other
3 provinces, including I think Gauteng was one and I think
4 even KwaZulu Natal was another but there were other
5 provinces also. Had any of these people arrived yet at
6 12:45 on Monday, the 13th?

7 MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.

9 CHAIRPERSON: They had?

10 MAJOR-GENERAL MPEMBE: Yes.

11 CHAIRPERSON: And they're included in the
12 approximately 100 that you've mentioned?

13 MAJOR-GENERAL MPEMBE: Yes Chairperson,
14 that is Mpumalanga, POP from Mpumalanga, Gauteng, they were
15 there, also National Intervention Unit.

16 CHAIRPERSON: I see. And were – yes, yes. And
17 were more expected to arrive? Were more on the way as far
18 as you knew?

19 MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.

21 CHAIRPERSON: I hope I haven't interfered with
22 your cross-examination. I've tried to cut a path through
23 the bush -

24 MR MPOFU: Thank you very much.

25 CHAIRPERSON: - to help you and I hope I

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1 succeeded.

2 MR MPOFU: You have, you have succeeded,

3 Chairperson, and even more helpful would be to go to slide

4 L42. Yes, and before we deal with slide 42, you knew,

5 possibly not from personal knowledge but let me say the

6 police knew that on the previous day between 2 000 and

7 3 000 people had – or rather in the past two days, 11th and

8 the 12th, groups of about 2 000 to 3 000 people had gathered

9 at the koppie, correct?

10 MAJOR-GENERAL MPEMBE: It is correct,

11 Chairperson. Me, in particular, I was not there, I was on

12 leave.

13 MR MPOFU: Yes. No, no, I accept that.

14 I'm just saying it was known to the police that the trend

15 on the 11th and the 12th, there were gatherings of about

16 2 000 to 3 000 people. Okay, now slide 42 says initially

17 there were 121 members and then it says an additional 96

18 were deployed after the incident with the protesters and

19 that's why I was dealing with before the incident, which is

20 the 121 which is more or less what you were saying about

21 the 100 or so, correct?

22 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

23 MR MPOFU: And by the time you were given

24 that instruction the other 96 had not been deployed because

25 it was before the incident, correct?

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1 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

2 MR MPOFU: Right. Now, what I'm going to

3 argue is that the, what can really be described as the

4 deluge of the other hundreds and hundreds of additional

5 policemen who were called up, at that stage that was not

6 foreseen because the incident with the police had not

7 happened, correct? I mean the killing.

8 MAJOR-GENERAL MPEMBE: Chairperson, if

9 you may repeat the question?

10 MR MPOFU: Yes. No, I'm saying the

11 additional deluge of let's say another 600 policemen who

12 then came had at that stage not been envisaged because the

13 incident, the killings of the 13th had not yet occurred,

14 correct?

15 MAJOR-GENERAL MPEMBE: No, Chairperson.

16 MR MPOFU: Well, if it's no then you must

17 know something we don't know. What do you know about that?

18 MAJOR-GENERAL MPEMBE: The mobilisations

19 did not start on Monday, they started from the incidences

20 that were taking place from the weekend.

21 MR MPOFU: Yes, was the decision for

22 example to call the STF not taken after the killing of the

23 police?

24 MAJOR-GENERAL MPEMBE: Of the STF?

25 MR MPOFU: Yes, of the STF –

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1 MAJOR-GENERAL MPEMBE: There were a lot

2 of members of the police that were there that were being

3 mobilised.

4 MR MPOFU: General –

5 MAJOR-GENERAL MPEMBE: The STF –

6 MR MPOFU: I'm sorry, sorry to cut you.

7 MR NGALWANA: Sorry, Mr Chairman. Mr

8 Chairman –

9 CHAIRPERSON: [Microphone off, inaudible] answer.

10 MR MPOFU: Yes. No, I thought –

11 CHAIRPERSON: [Microphone off, inaudible] let him

12 finish.

13 MR MPOFU: I'm sorry, yes. Ja, please

14 answer the question.

15 MAJOR-GENERAL MPEMBE: The mobilisation

16 started before the incident of the 13th.

17 MR MPOFU: Is that your answer?

18 MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson.

20 MR MPOFU: Do you still remember what the

21 question was?

22 MAJOR-GENERAL MPEMBE: Particularly with

23 the STF.

24 MR MPOFU: Yes, so does that answer

25 really deal with the STF? Please answer the question,

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1 General.

2 MAJOR-GENERAL MPEMBE: The STF were

3 called by General Annandale as a specialised head. He

4 might have an idea but at that time I might not have an

5 idea that he had but what I know is that they were called

6 by him.

7 MR MPOFU: Yes.

8 MAJOR-GENERAL MPEMBE: Correct,

9 Chairperson.

10 MR MPOFU: Thank you. It was Annandale's

11 idea to all the STF, correct?

12 MAJOR-GENERAL MPEMBE: It is correct,

13 Chairperson.

14 MR MPOFU: Yes. So then you agree with

15 me because General Annandale only featured in this after

16 the killing of the police, not before, agreed?

17 MAJOR-GENERAL MPEMBE: Correct,

18 Chairperson.

19 MR MPOFU: So then I'm correct that

20 before the police were killed there was no contemplation of

21 the STF, let alone – there was not even a contemplation of

22 Annandale, let alone the STF.

23 MAJOR-GENERAL MPEMBE: Chairperson, I

24 cannot say General Annandale and the STF were brought there

25 because of the killings because I did not call General

<p style="text-align: right;">Page 16227</p> <p>1 Annandale and I think the person who called General 2 Annandale could give this Commission a correct answer. 3 MR MPOFU: Who is that person? 4 MAJOR-GENERAL MPEMBE: I don't know but 5 the Provincial Commissioner might know who, because the 6 communication was done through the Provincial Commissioner. 7 CHAIRPERSON: General Mbombo will give evidence, 8 we'll ask her but it's also possible we can save time by 9 asking the police if they can get that information for us 10 and give it to us from the bar, as it were. That'll save 11 time but I think you're right, Lieutenant-General Mbombo 12 should be able to give us the information anyway but it 13 will save time perhaps if, even before she comes, the 14 police legal team provide us with that information. 15 MR NGALWANA: Thanks, Mr Chairman. 16 CHAIRPERSON: I'm sure they'll be willing to do 17 so. 18 MR NGALWANA: We will do that, Mr 19 Chairman. 20 MR MPOFU: Right. One of the key and 21 possibly admiral decisions that you took was, despite the 22 fact that you could have chosen to stay in the JOC and send 23 Calitz, Brigadier Calitz, you decided to go yourself, 24 correct? 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>	<p style="text-align: right;">Page 16229</p> <p>1 MR MPOFU: Thank you, thank you for that 2 – 3 MAJOR-GENERAL MPEMBE: - but for the fact 4 that the protesters refused to hand over the weapons, no. 5 MR MPOFU: Yes, no, we'll get there. All 6 I'm saying is that your motivation, your admirable 7 motivation of going there and given the fact that you know 8 the language paid dividends because in the end you had to 9 speak to them in isiZulu and they were speaking in Xhosa 10 and Fanagolo but you understood each other correct? 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 12 MR MPOFU: And if you had, I mean we can 13 – once again I don't want to get too much into the area of 14 speculation but had you not taken that decision and sent 15 Brigadier Calitz and the interpreter was not made 16 available, that there could have been a problem at least 17 from his point of view in doing what you did, which was to 18 make the appeals that you did and interact quite 19 extensively with the protesters, correct? 20 MR NGALWANA: Sorry, Mr Chairman – 21 MAJOR-GENERAL MPEMBE: No, Chair. 22 MR NGALWANA: Okay. 23 MR MPOFU: Ja, I prefer the answer from 24 the witness. 25 CHAIRPERSON: I have a problem with the question,</p>
<p style="text-align: right;">Page 16228</p> <p>1 MR MPOFU: And the key reason that you 2 decided not to send Brigadier Calitz but to go yourself was 3 because you thought that you understood the language and 4 the culture of the people involved, correct? 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson, and that's not what I was told by General 7 Mpeembe, for example. 8 MR MPOFU: No – no, that's why I said 9 it's admirable. Out of your own initiative you decided 10 that instead of sending Brigadier Calitz and because you 11 know the language and the culture of the people, you will 12 go yourself to the ground, correct? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 MR MPOFU: And indeed as we saw in the 15 videos, that assisted a lot because after Lonmin refused to 16 give you an interpreter you decided to do it yourself, 17 correct? 18 MAJOR-GENERAL MPEMBE: In that respect, 19 yes. 20 MR NGALWANA: No, Chair, that is 21 disputed. 22 MR MPOFU: Well, the witness has said 23 yes. 24 MAJOR-GENERAL MPEMBE: Chairperson, I'm 25 saying in that respect, yes –</p>	<p style="text-align: right;">Page 16230</p> <p>1 the question is of course speculative and it's probably not 2 very profitable to speculate but if Brigadier Calitz had 3 gone there with, say, Lieutenant-Colonel Merafi or one of 4 the other senior officers with him who was able to speak 5 the various relevant vernacular languages, I take it that 6 it would've been possible to communicate with the strikers 7 through one of the senior officers present who was able to 8 speak the language, is that correct? 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 10 but I could not speculate what could have happened. 11 CHAIRPERSON: No, no. 12 MR MPOFU: Yes, but you didn't just go 13 there as an interpreter. If someone else was there, for 14 example the other admirable decision to allow the strikers 15 to proceed to the koppie might not have been taken, 16 correct? 17 MAJOR-GENERAL MPEMBE: No, Chairperson, I 18 don't know because as I said before, situational 19 appropriateness is only taken by the operational commander 20 – 21 CHAIRPERSON: I'm sorry to interrupt you. He used 22 the word "might," Mr Mpofo. Mr Mpofo isn't putting it to 23 you that it would necessarily have happened but he said 24 it's a possibility, it might have happened that if you 25 hadn't been there to make the decisions and someone else</p>

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1 had been, the two important decisions you made might not
 2 have been made. That's what he says. I take it the answer
 3 to that has got to be yes, it might not have happened or it
 4 might have happened. I mean, is that right?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR MPOFU: Yes. Well, and the
 8 Chairperson was speculating, for example, that had you not
 9 been there Lieutenant-Colonel Merafi could have done the
 10 interpretational services, which is correct but we know
 11 what he would have done about the actual – whether to allow
 12 the –
 13 CHAIRPERSON: No – no, hang on. That's not a good
 14 point, Mr Mpofo. We know what Colonel Merafi would have
 15 done.
 16 MR MPOFU: Yes, that's what I'm saying.
 17 CHAIRPERSON: No – no, but this was on the basis
 18 that if he'd sent Brigadier Calitz along we don't know what
 19 Brigadier Calitz would have done. Brigadier Calitz might
 20 have agreed with Colonel Merafi or he might have taken the
 21 stance independently which the witness took. We're in the
 22 realms of speculation and inasmuch as Brigadier Calitz
 23 didn't go, I'm not sure if there's any profit to be derived
 24 from trying to answer the question what would he have done
 25 if he had gone, but anyway I won't stop you from following

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1 the line. I think I know where you're going but –
 2 MR MPOFU: Yes, no, that's fine
 3 Chairperson, I'll leave it at that for now. We know what
 4 he did on the 16th, Calitz, but we'll come there in due
 5 course. It's correct, isn't it, that the interaction
 6 between you and the protesters on the 13th was respectful on
 7 both sides. You spoke to them respectfully and they spoke
 8 to you respectfully, correct?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson, only with regard to the communication -
 11 MR MPOFU: Ja.
 12 MAJOR-GENERAL MPEMBE: But not any other
 13 matters.
 14 MR MPOFU: Well, I only asked you about
 15 the communication. Now, so much so that you, I think it's
 16 – I don't know what the transcript is – you were referring
 17 to each other in very respectful terms. You called them
 18 Baba, they called you Baba and Tata which in the transcript
 19 was translated as father but we know that it doesn't
 20 literally mean that, it's a sign of respect, correct, from
 21 both sides?
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 23 but despite calling me Tata they could not listen to me.
 24 That was highly disappointing.
 25 MR MPOFU: Well, they did listen to you

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1 and you did listen to them as well.
 2 CHAIRPERSON: I think listened to, he means comply
 3 with the request. He doesn't mean hear.
 4 MR MPOFU: Yes, that's exactly what I'm
 5 clarifying. So you said, they said to you, we'll give you
 6 these arms but we'll give you at the koppie when you can
 7 have access to all the arms, correct, and you listened?
 8 MAJOR-GENERAL MPEMBE: Yes, I did listen,
 9 Chairperson.
 10 MR MPOFU: And they also said to you,
 11 Baba, we're not fighting with you. They said something
 12 between seven and ten times, we're not fighting, we're not
 13 fighting, we're not fighting, and you listened. Correct?
 14 MAJOR-GENERAL MPEMBE: I listened and I
 15 also said I'm not fighting with them but the problem that I
 16 had is the carrying of dangerous weapons.
 17 MR MPOFU: Ja, don't go ahead of me,
 18 General, if you may. The third thing they said to you was
 19 that they were carrying those arms in order to protect
 20 themselves against the NUM and mine security, correct, who
 21 had attacked them previously, correct?
 22 MAJOR-GENERAL MPEMBE: They said so to
 23 me, even though I did not agree with them on that point.
 24 MR MPOFU: Well, did you know whether or
 25 not the NUM had attacked them or the security had attacked

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1 them? How could you to agree when you were not even there
 2 on the 11th and the 12th?
 3 MAJOR-GENERAL MPEMBE: I'm only referring
 4 on Monday. Because I was there I could protect them. I'm
 5 not referring on the 11th and the 12th –
 6 MR MPOFU: But that – sorry.
 7 MAJOR-GENERAL MPEMBE: But for having
 8 listen to them, that has happened. I did listen to them,
 9 to that one, on that one.
 10 MR MPOFU: No, but that answer cannot be
 11 correct. Your evidence, and I'll find the passage if you
 12 dispute it, your evidence was that one of the reasons you
 13 wanted to escort them was that you thought that this NUM
 14 might even be on the way and then the police would be there
 15 to protect them, correct?
 16 [09:55] MAJOR-GENERAL MPEMBE: Both reasons, one
 17 is one the Advocate is saying, Chairperson. The other one
 18 is that if they did not hand over voluntarily the weapons,
 19 I would have to escort them to protect those, they
 20 themselves and to those that might also be attacked by
 21 them.
 22 CHAIRPERSON: If you made that clear
 23 there were those two modes, the two factors which operated,
 24 the need to protect them if they were attacked and the
 25 need to prevent them from attacking anybody else. Are you

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1 sure that is your duty as the operational commander of the
 2 police there on the scene at that time?
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.
 5 MR MPOFU: Yes, so that must mean that
 6 you considered the possibility that they might be attacked
 7 from which they might need your protection which you
 8 provided, correct?
 9 MAJOR-GENERAL MPEMBE: Definitely
 10 correct, Chairperson.
 11 MR MPOFU: Yes.
 12 MAJOR-GENERAL MPEMBE: Chairperson, I
 13 just want to add definitely correct if they gave over the
 14 weapons to me.
 15 MR MPOFU: Okay, anyway we'll come back
 16 to that. Now the issue is when you spoke to your
 17 commanders and then you came back to the strikers you did
 18 not tell them that you had decided that you would escort
 19 them to the koppie, correct?
 20 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 21 MR MPOFU: You also did not tell them
 22 that they should not go anywhere near any settlement,
 23 residential settlement, correct?
 24 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 25 MR MPOFU: Now in operations of this kind

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1 do you know that communication is very paramount, correct?
 2 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 3 MR MPOFU: So paramount that regulation,
 4 rather standing order 262 postulates two warnings to be
 5 given, correct?
 6 MAJOR-GENERAL MPEMBE: Correct when
 7 dispersing a crowd.
 8 MR MPOFU: Yes.
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: I'm sorry to interrupt you,
 12 Mr Mpofo, there's a point that arises from a point you made
 13 a moment ago. I understand your evidence to be as I'm
 14 going to summarise it to you in a moment, it seems to be
 15 borne out by your written statements and that is that you
 16 started counting and they didn't listen. They got up and
 17 walked away. You then decided, you say in Para 18 of your
 18 original statement, well not your original statement, your
 19 second statement GGG12, "when they started to move away
 20 realising that a violent confrontation could result if the
 21 police attempted to disperse and disarm them, I took the
 22 decision to rather escort them." Is this what you said?
 23 MAJOR-GENERAL MPEMBE: Correct,
 24 Chairperson.
 25 CHAIRPERSON: And in your supplementary

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1 statement which is exhibit HHH3 amplifying what you said in
 2 Para 18 of the statement which I have just read you said
 3 that "I paused here to point out that Lieutenant-Colonel
 4 Merafe didn't agree with my approach, preferred that those
 5 protesters be dispersed and arrested right there and then.
 6 I maintained it would be unwise to arrest and disperse them
 7 at that time" Am I correct in thinking that that means
 8 that you communicated that to Merafe? You didn't just make
 9 the decision in your head to allow them to go and escort
 10 them, you communicated that decision to Lieutenant Merafe,
 11 is that correct?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson, to all the officers but not to the protestors,
 14 to the officers but not to the protestors.
 15 MR MPOFU: Thank you. Thanks,
 16 Chairperson. Yes, no I think we understand each other
 17 correctly. In other words you told the commanders that
 18 you're going to let them go, correct?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 20 MR MPOFU: And Merafe disagreed with you,
 21 correct?
 22 MAJOR-GENERAL MPEMBE: Lieutenant-Colonel
 23 Merafe disagreed with me.
 24 MR MPOFU: Well otherwise known as Merafe
 25 to me, ja. And did you –

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1 CHAIRPERSON: Sorry to interrupt you, can
 2 I just –
 3 MR MPOFU: Okay, Chairperson.
 4 CHAIRPERSON: The point I was putting so
 5 we don't get lost, according to Lieutenant Baloyi's
 6 statement a copy of which Mr Mpofo very kindly provided us
 7 with this morning, exhibit GGG16, Lieutenant Baloyi says in
 8 Para 7, I'll start reading at the end of Para 6. "They
 9 started singing and" he's talking about the strikers,
 10 "started singing, stood up, moved forward towards the
 11 police. We allowed them to proceed." He then says, now I
 12 don't know whether you agree with this but this is what he
 13 says, "When they were about approximately 300 metres away
 14 from us, the General told us to let them go and we would
 15 disarm them at the mountain. One senior colonel advised
 16 the General," I take it that's reference to Merafe "that if
 17 we intended to disarm them it was better to disarm them
 18 there because at the mountain they would outnumber us. The
 19 General told us to follow them. I advised the General that
 20 stun grenades should be used to disperse them." That's
 21 what Baloyi says. Do you agree with that as well or not?
 22 MAJOR-GENERAL MPEMBE: I only agree,
 23 Chairperson, with regard to escorting them, but I wouldn't
 24 agree that he had advised me to use the stun grenades.
 25 CHAIRPERSON: I see, so you say Baloyi is

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1 wrong when he says –

2 MAJOR-GENERAL MPEMBE: The stun grenade –

3 CHAIRPERSON: - that he had advised you

4 that stun grenades should be used?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson. I also said it in my supplementary statement.

7 CHAIRPERSON: Yes, yes, I understand.

8 But the point is where he says that the General told us to

9 let them go, that's correct. In other words - I take it

10 Baloyi wasn't one of the commanders, he was only a

11 lieutenant.

12 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

13 CHAIRPERSON: Yes and in Merafe's

14 statement which is exhibit GGG15 in Para 17 he says "when I

15 saw the miners were not going to listen to Major-General

16 Mpembe and lay down their weapons I spoke to the General

17 and informed him that we should disarm the miners and stop

18 them from continuing seeing they were heading to the

19 direction of the informal settlement." Well I'm not sure

20 about that, we won't debate that at the moment. "And they

21 were very aggressive. Major-General Mpembe did not agree

22 with me and other officers and said he doesn't want another

23 Tatane incident which means he didn't us to confront the

24 people. I informed Major-General Mpembe that I do not

25 agree with him." And then later on in Para 18 he says

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1 "Major-General Mpembe instructed us to follow the miners on

2 foot and he was also walking with them. He further

3 instructed POP members with two Nyalas to go to the front

4 of the march and stop them from entering the informal

5 settlement." Do you agree with that?

6 MAJOR-GENERAL MPEMBE: Correct,

7 Chairperson, only for the informal settlement and also the

8 other side of them.

9 CHAIRPERSON: Yes, you said earlier that

10 in order to ensure they didn't go to the informal

11 settlement you arranged for Nyalas to go and block the way

12 which they did.

13 MAJOR-GENERAL MPEMBE: Correct,

14 Chairperson.

15 CHAIRPERSON: But the point is that

16 there's no doubt that the commanders knew what your

17 decision was because you communicated it to them. In fact

18 there was a discussion which I take it they heard between

19 you and Merafe where Merafe didn't agree with you. But you

20 were both the overall commander and operational commander

21 and your decision and instruction stood to be complied with

22 by everybody. Is that right?

23 MAJOR-GENERAL MPEMBE: Correct,

24 Chairperson.

25 MR MPOFU: Thank you very much,

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1 Chairperson. But you decided not to communicate that

2 decision to the strikers, correct?

3 MAJOR-GENERAL MPEMBE: Correct,

4 Chairperson.

5 MR MPOFU: Despite the fact that you and

6 I have agreed communication in these situations and knowing

7 what each side is intending to do is paramount?

8 MAJOR-GENERAL MPEMBE: I didn't

9 understand each side intending to do.

10 MR MPOFU: No.

11 MAJOR-GENERAL MPEMBE: Maybe you an and

12 maybe clarify it for that way.

13 MR MPOFU: No, communication is a two way

14 thing isn't it? If you say communication is paramount it

15 means they say something and you give them information as

16 well, it's the nature of communication, correct?

17 MAJOR-GENERAL MPEMBE: In that sense

18 correct, Chairperson.

19 MR MPOFU: Yes, but you decided to

20 withhold the information that you had just shared with your

21 commanders from the strikers, correct?

22 MAJOR-GENERAL MPEMBE: Correct,

23 Chairperson.

24 COMMISSIONER HEMRAJ: But, Mr Mpofu, was

25 there sufficient opportunity to convey that to the strikers

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1 because when the General started counting the strikers then

2 started to move, isn't that so?

3 MR MPOFU: Well that's even worse. Okay

4 let's go there. So instead of saying to the strikers look

5 I've decided that we're going to escort you, you started

6 counting, correct?

7 MAJOR-GENERAL MPEMBE: It is correct

8 because –

9 CHAIRPERSON: I don't think that's right.

10 My understanding of his evidence is he was counting not so

11 they could go and be escorted, the counting was to give

12 them an opportunity to lay down their weapons.

13 MR MPOFU: Exactly.

14 CHAIRPERSON: They stood up and according

15 to the passage I read from Baloyi's statement they started

16 singing in fact and walked away. So the question is

17 whether he had the opportunity to communicate the decision

18 he took after – he made a decision, discussed it with his

19 officers, with his commanders. They couldn't persuade him

20 to change, according to his evidence, change his

21 instruction. By that time was it possible for him to

22 communicate with the strikers? It may be, I don't know,

23 let's see what he says.

24 MAJOR-GENERAL MPEMBE: No, Chairperson.

25 CHAIRPERSON: Let him answer this one.

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1 What do you say –

2 MAJOR-GENERAL MPEMBE: No, Chairperson.

3 The first thing, they did not give me a chance and the

4 other issue that most probably because I was persistent on

5 that is that they should voluntarily hand over the weapons.

6 And after they shall have handed over the weapons I could

7 also communicate with them to say why I wanted the weapons

8 because that to me it was a serious security risk. Because

9 if I let them go with weapons it could have been a serious

10 security risk, but if they handed over the weapons to me as

11 I counted I could have explained to them to say why I want

12 the weapons. Secondly, I'm going to escort them, but

13 nonetheless all what they communicated to me on that day it

14 was done.

15 CHAIRPERSON: Mr Mpofo has got another

16 point. What Mr Mpofo, as I understand, says to you is

17 this. That's the position up to the time you started

18 counting, but subsequently we know from what you've told us

19 and what you told Lieutenant-Colonel Merafe you decided to

20 let them go, not to seek to disarm them there and to escort

21 them. Now what Mr Mpofo wants to know is did you tell the

22 strikers as they were walking away, in disobedience of

23 course of your instructions, to lay down their arms, did

24 you tell them we will now escort you to the koppie or did

25 you not? And the question flowing from that is did you in

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1 fact, practically speaking, have the opportunity to

2 communicate that to them. Those are the two questions

3 which if Counsel had asked them I wouldn't allow it, but

4 seeing I've done it I will. Can you answer?

5 MAJOR-GENERAL MPEMBE: No, Chairperson,

6 the video it's clearly an objective evidence. They were

7 singing, seriously in disobedience, they couldn't listen, I

8 couldn't allow them to go, they stood up and they go. So

9 there could not have been any time to communicate with

10 them.

11 MR MPOFU: Chair, sorry. General, this

12 is quite an important issue. Am I correct that your

13 discussion with Lieutenant-Colonel Merafe and the

14 disagreement about what should be done happened just before

15 you started counting, correct?

16 MAJOR-GENERAL MPEMBE: I would say yes,

17 Chairperson.

18 MR MPOFU: Ja, now in that case then your

19 answer completely does not make sense. You're just

20 grabbing a leaf while you are sinking. If you took the

21 decision, if you took the decision to let them go before

22 the counting then you had the opportunity because instead

23 of counting that was the time at which you could have been

24 saying to them gentlemen, at that point when you started

25 counting, your lips could have been saying gentlemen I've

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1 now decided to escort you to the koppie. That was the

2 opportunity. Do you accept that?

3 MAJOR-GENERAL MPEMBE: Chairperson, I've

4 been persistently requesting them to hand over the weapons.

5 MR MPOFU: No.

6 MAJOR-GENERAL MPEMBE: Chairperson, may I

7 be allowed to answer the question?

8 CHAIRPERSON: Well I've got to let you

9 answer the question. Of course I have to.

10 MAJOR-GENERAL MPEMBE: Thanks,

11 Chairperson.

12 MR MPOFU: General Mpembe –

13 CHAIRPERSON: He wants to answer the

14 question –

15 MR MPOFU: I thought he was already

16 finished.

17 CHAIRPERSON: But he has asked if he

18 could answer the question, I told him I have to let him

19 answer the question –

20 MR MPOFU: No, no, I misunderstood.

21 Sorry, General.

22 MAJOR-GENERAL MPEMBE: Thanks,

23 Chairperson for the intervention. Chairperson, I have

24 persistently been saying that I wanted the strikers to hand

25 over their weapons voluntarily. I never moved on that

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1 point. There was no point where I have ever agreed with

2 them that I will escort them to the mountain without them

3 handing over the weapons. My communication with Colonel

4 Merafe and all other officers who were in command posts of

5 different units on that day, Chairperson, it's not that I'm

6 grabbing the leaf because I'm sinking because I am not

7 sinking and the evidence is there, it's objective what I

8 did on that day and I don't see myself sinking, but I will

9 answer is I stood and I put my foot down on the issue of

10 them dropping their weapons. The other issue is I could

11 not communicate with them because they were singing, they

12 left where we were without giving me an opportunity. The

13 other issue is they were also carrying those weapons, I

14 could foresee it as a security risk.

15 MR MPOFU: Well, General, I am afraid you

16 are making this up as you go along now. So they were

17 singing, they were singing, you were fearing that they

18 might not hear you when you tell them about that you can

19 allow them to go.

20 MAJOR-GENERAL MPEMBE: I don't understand

21 that question, Chairperson.

22 MR MPOFU: Okay, when you say to the

23 Commission –

24 MR MATHIBEDI SC: Mr Chairman, there is

25 no evidence that the witness had decided to escort the

<p style="text-align: right;">Page 16247</p> <p>1 protesters prior to them defying him.</p> <p>2 CHAIRPERSON: That's correct, Mr Mpfu</p> <p>3 isn't it?</p> <p>4 MR MPOFU: Well, Chairperson, I'd prefer</p> <p>5 the answers to be given by the witness with respect. The</p> <p>6 issue I'm exploring is if I can just be allowed to explore</p> <p>7 this point. Thank you, Chairperson. General, please work</p> <p>8 with me here. When –</p> <p>9 CHAIRPERSON: Repeat your question and</p> <p>10 then we will see whether you avoided the objection that's</p> <p>11 been raised. Repeat your question, Mr Mpfu.</p> <p>12 MR MPOFU: General Mpenbe, one of the</p> <p>13 disagreements and Colonel Merafe was because you said you</p> <p>14 wanted to disarm these people at the koppie, correct?</p> <p>15 MAJOR-GENERAL MPEMBE: It was that we</p> <p>16 should allow them to go, not to disarm them at the koppie.</p> <p>17 MR MPOFU: No, no, no, was it or was it</p> <p>18 not one of the disagreements between you and Lieutenant-</p> <p>19 Colonel Merafe that you were saying that the people should</p> <p>20 be disarmed at the koppie and he was saying they should be</p> <p>21 disarmed there. Yes or no.</p> <p>22 MAJOR-GENERAL MPEMBE: Maybe it is just</p> <p>23 the difference, Chairperson, but what Colonel Merafe was</p> <p>24 saying they should be disarmed there and myself we were</p> <p>25 saying if we disarm them here there will be a confrontation</p>	<p style="text-align: right;">Page 16249</p> <p>1 arms. Now I'm asking you a question. We've now</p> <p>2 established that you took the decision to let them go</p> <p>3 before the counting, correct?</p> <p>4 MAJOR-GENERAL MPEMBE: May you please</p> <p>5 repeat that question?</p> <p>6 MR MPOFU: You and I have agreed that you</p> <p>7 took the decision to let them go and have the discussion</p> <p>8 with the Merafes of this world before you started the</p> <p>9 counting.</p> <p>10 CHAIRPERSON: No, that can't be right.</p> <p>11 What was the point of the counting? I understood that the</p> <p>12 point of the counting –</p> <p>13 MR MPOFU: That's what the witness said,</p> <p>14 Chairperson.</p> <p>15 CHAIRPERSON: Well let's ask him. What</p> <p>16 was the point of the counting?</p> <p>17 [10:15] MAJOR-GENERAL MPEMBE: It was that they</p> <p>18 should lay down their weapons.</p> <p>19 CHAIRPERSON: Ja, that's the way I</p> <p>20 understood it.</p> <p>21 MR MPOFU: General, did you five minutes</p> <p>22 ago agree that the disagreement with Merafe happened before</p> <p>23 the counting, or not, or it's just my ear?</p> <p>24 MR MATHIBEDI SC: Sorry, Mr Chairman,</p> <p>25 before the witness answers, could I read the statement of</p>
<p style="text-align: right;">Page 16248</p> <p>1 because they are already showing the sign of refusal.</p> <p>2 MR MPOFU: Correct, therefore they should</p> <p>3 be disarmed at the koppie, correct?</p> <p>4 MAJOR-GENERAL MPEMBE: Not necessarily</p> <p>5 the koppie or let's say at the koppie –</p> <p>6 MR MPOFU: Yes.</p> <p>7 MAJOR-GENERAL MPEMBE: - because at that</p> <p>8 time I could not decide that we are going to disarm them at</p> <p>9 the koppie, Chairperson.</p> <p>10 MR MPOFU: Please, General Mpenbe, just</p> <p>11 please, your disagreement as you say was that Lieutenant-</p> <p>12 Colonel Merafe was saying they must be disarmed here, you were</p> <p>13 saying they must be disarmed elsewhere, let's just - forget</p> <p>14 the koppie, correct?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct,</p> <p>16 Chairperson.</p> <p>17 MR MPOFU: Yes, now then your answer</p> <p>18 cannot make sense because if you are saying they must be</p> <p>19 disarmed elsewhere what Mr Mathibedi – goes out of the</p> <p>20 window. Because if they're going to be disarmed elsewhere</p> <p>21 that means they're going to leave with their arms, correct?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct,</p> <p>23 Chairperson.</p> <p>24 MR MPOFU: Yes, right. So let's cut out</p> <p>25 this story about they were not going to leave with their</p>	<p style="text-align: right;">Page 16250</p> <p>1 Merafe on this aspect?</p> <p>2 MR MPOFU: No, Chairperson, with the</p> <p>3 greatest respect –</p> <p>4 MR MATHIBEDI SC: No, no, no –</p> <p>5 CHAIRPERSON: No, no, come on. This</p> <p>6 witness is being cross-examined.</p> <p>7 MR MPOFU: Yes.</p> <p>8 CHAIRPERSON: There may be differences</p> <p>9 between his evidence and Merafe's. I don't think it's an</p> <p>10 appropriate intervention to remind him what Merafe said</p> <p>11 before he answers the question. I think that would hamper</p> <p>12 cross-examination unduly, but I think you can carry on, but</p> <p>13 I think there may be something which may have to be</p> <p>14 interposed later, but carry on first.</p> <p>15 MR MPOFU: Thanks, Chairperson.</p> <p>16 CHAIRPERSON: I'll keep a close eye on</p> <p>17 what's happening.</p> <p>18 MR MPOFU: Thank you, Chairperson.</p> <p>19 MR MATHIBEDI SC: Sorry, Mr Chairman, the</p> <p>20 reason why I'm saying so, it's because the contents of this</p> <p>21 statement does not –</p> <p>22 CHAIRPERSON: I know exactly what Colonel</p> <p>23 Merafe –</p> <p>24 MR MATHIBEDI SC: - does not support</p> <p>25 what's being put to the witness –</p>

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1 CHAIRPERSON: No, no, I know, but while –
 2 MR MPOFU: Re-examination is for –
 3 CHAIRPERSON: - witness A is giving
 4 evidence and it looks as if he may be disagreeing with
 5 witness B, it's not appropriate for his counsel to jump up
 6 and say well before you answer the question, I'm going to
 7 remind you what witness B said. That stultifies cross-
 8 examination and I've never known it to happen before and I
 9 don't propose to allow it to happen here. But on the other
 10 hand, I don't want the witness to be misled or tricked into
 11 something, so that's why I'm keeping a – I'm not suggesting
 12 "trick" in a nasty sense. I don't want something to happen
 13 in cross-examination which is unfair to the witness. I'm
 14 not suggesting Mr Mpofo is doing that, but it may happen
 15 inadvertently, so I'm keeping a close eye on it. But Mr
 16 Mpofo, you may continue.
 17 MR MPOFU: Well, Chairperson –
 18 CHAIRPERSON: The suggestion by your
 19 learned friend is not acceded to. Carry on.
 20 MR MPOFU: Thanks, Chairperson. You
 21 know, General, before I'm accused of things which I'm
 22 innocent of, let me –
 23 CHAIRPERSON: Accuse you? I haven't
 24 accused you of anything. I've accepted –
 25 MR MPOFU: Yes, because, that's why I –

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1 CHAIRPERSON: I've accepted your
 2 innocence pro tem anyway, so let's stay on an innocent mode
 3 and carry on.
 4 MR MPOFU: Yes. No, that's why I'm
 5 saying before I'm accused. I'm not accused yet.
 6 CHAIRPERSON: Your innocence has not been
 7 rebutted.
 8 MR MPOFU: Yes. Now before that happens,
 9 General, I want to ask you again, I'm giving you an
 10 opportunity and you can explain to this Commission, and if
 11 you made a mistake before you can say so. We all make
 12 mistakes. So I'll give you an opportunity again. Did the
 13 discussion between you and Merafe and the generals about,
 14 and what we've now referred to as the disagreement, occur
 15 before the counting, yes or no?
 16 MAJOR-GENERAL MPEMBE: It occurred before
 17 the counting.
 18 MR MPOFU: Thank you.
 19 MAJOR-GENERAL MPEMBE: The counting was
 20 not to disperse. The counting was they should lay down
 21 their weapons. That's all about counting. It was not
 22 about dispersing. It was about them laying down their
 23 weapons.
 24 MR MPOFU: Yes -
 25 CHAIRPERSON: Now before Mr Mpofo

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1 continues I want to get clarity on something that happened
 2 immediately prior to your counting. There was a
 3 disagreement between you and Colonel Merafe. Now what
 4 precisely was the disagreement about? What did he want you
 5 to do and what did you want to do? I think we must have
 6 that clear before Mr Mpofo proceeds.
 7 MAJOR-GENERAL MPEMBE: General Merafe –
 8 CHAIRPERSON: Colonel. He's not a
 9 general, he's a colonel, I think.
 10 MAJOR-GENERAL MPEMBE: Yes, Lieutenant-
 11 Colonel Merafe. Lieutenant-Colonel Merafe wanted that the
 12 protesters be dispersed and disarmed there, then and there,
 13 and I said if they refused, because the risk of refusal
 14 since I've been communicating with them, it was there.
 15 Then it was that we have to force them there to, we need to
 16 disarm – need to disperse them and disarm them there, and
 17 that's where it was the point of disagreement.
 18 CHAIRPERSON: Thank you.
 19 MR MPOFU: No, please man, that's a point
 20 of agreement. So you're saying he was saying you must
 21 disarm them there –
 22 CHAIRPERSON: No, no, no, that's a point
 23 of disagreement.
 24 MR MPOFU: No way.
 25 CHAIRPERSON: Yes, he said so –

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1 MR MPOFU: Disarm, they both are saying
 2 they must be disarmed there.
 3 CHAIRPERSON: No, but you've missed
 4 something, Mr Mpofo. You've missed something. Mr Mpofo,
 5 don't make all these gestures and so on, it doesn't help
 6 us. What he said was he wanted them to lay down their
 7 arms. He said Merafe wanted him to disarm and disperse
 8 them – disarm and disperse them – and as far as I
 9 understood the difference between them was he didn't agree
 10 with any attempt to disperse them at that point, nor did he
 11 want to disarm them, which I take it means going to them
 12 and taking their arms away. He wanted them almost in a
 13 coercive way, he wanted them to lay down their arms
 14 voluntarily. So there's quite a lot of blue water between
 15 the stances as expressed by him on the one hand and Merafe
 16 on the other. So I'm not stopping you from proceeding with
 17 your cross-examination, but the cross-examination must
 18 proceed on what he says and on a clear and accurate
 19 understanding of what he says, particularly as to the
 20 nature of the disagreement between himself and Lieutenant-
 21 Colonel Merafe. But having said that, you may now proceed.
 22 MR MPOFU: Okay, thank you, I'll help
 23 you –
 24 COMMISSIONER HEMRAJ: Can I just clarify
 25 something before that, please?

<p style="text-align: right;">Page 16255</p> <p>1 MR MPOFU: So sorry.</p> <p>2 COMMISSIONER HEMRAJ: Something that</p> <p>3 appears on the record previously. When you had this</p> <p>4 conversation with Colonel Merafe and he said disarm and</p> <p>5 disperse, did that include arresting anyone at that scene?</p> <p>6 MAJOR-GENERAL MPEMBE: Correct,</p> <p>7 Chairperson.</p> <p>8 COMMISSIONER HEMRAJ: Yes, thank you.</p> <p>9 CHAIRPERSON: In other words was the</p> <p>10 dispersal, in other words to take the form of breaking up</p> <p>11 the gathering by taking the gatherers into custody?</p> <p>12 MAJOR-GENERAL MPEMBE: Correct,</p> <p>13 Chairperson.</p> <p>14 CHAIRPERSON: You did say that previously</p> <p>15 in a passage which has been shown to me, which is at page</p> <p>16 11121 on – good gracious – day 103 of our sitting.</p> <p>17 MAJOR-GENERAL MPEMBE: I didn't hear</p> <p>18 that.</p> <p>19 CHAIRPERSON: You there spoke about</p> <p>20 arrests, that Merafe effectively wanted you to disarm the</p> <p>21 people and arrest them. Now is that correct, or is that a</p> <p>22 misunderstanding of what Merafe was saying?</p> <p>23 MAJOR-GENERAL MPEMBE: It is correct,</p> <p>24 Chairperson, because he wanted all the processes being</p> <p>25 done, despite that we could see the resistance from the</p>	<p style="text-align: right;">Page 16257</p> <p>1 at that stage, but to allow them to go to the koppie and to</p> <p>2 escort them on the way with the dual purpose of protecting</p> <p>3 them from being attacked by their enemies, and preventing</p> <p>4 them from attacking other people. I think that's his</p> <p>5 evidence, isn't it?</p> <p>6 MR MPOFU: Except, Chairperson, you know,</p> <p>7 I'm going to move from this, but this is actually so</p> <p>8 simple. Then there would not have been a disagreement with</p> <p>9 Merafe if that was the sequence of events. The true</p> <p>10 sequence of events –</p> <p>11 CHAIRPERSON: I think that's a matter for</p> <p>12 argument. I see clear blue water between the stances of</p> <p>13 the two, but if I'm wrong you can persuade me in due</p> <p>14 course –</p> <p>15 MR MPOFU: I will.</p> <p>16 CHAIRPERSON: - or endeavour to do so,</p> <p>17 that the blue water that I see is imaginary.</p> <p>18 MR MPOFU: Okay, thank you, Chairperson.</p> <p>19 Did you say, General, "Realising that a violent</p> <p>20 confrontation" –</p> <p>21 MAJOR-GENERAL MPEMBE: Sorry,</p> <p>22 Chairperson.</p> <p>23 MR MPOFU: I'm sorry? He wants to -</p> <p>24 CHAIRPERSON: No, we must give the</p> <p>25 witness a chance –</p>
<p style="text-align: right;">Page 16256</p> <p>1 protesters themselves.</p> <p>2 MR MPOFU: You know – alright, and your</p> <p>3 difference with him was that you wanted those processes to</p> <p>4 be done at the koppie, correct?</p> <p>5 MAJOR-GENERAL MPEMBE: No, Chairperson, I</p> <p>6 said we have to apply situational appropriateness.</p> <p>7 MR MPOFU: And after applying situational</p> <p>8 appropriateness you wanted those processes to be done at</p> <p>9 the koppie or elsewhere, correct?</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, by</p> <p>11 that time when the decision will take place, the situation</p> <p>12 could dictate itself, not necessarily as somewhere else,</p> <p>13 but as I said at that time, at that situation we couldn't</p> <p>14 disperse and disarm them by force.</p> <p>15 MR MPOFU: Yes, Sir, and that's why you</p> <p>16 took a decision to escort them and not to –</p> <p>17 CHAIRPERSON: No, no, no, that's not</p> <p>18 entirely correct. He took a decision first to count to 10</p> <p>19 and he's explained what that was; that was to afford them</p> <p>20 an opportunity to lay down their arms, but he made a</p> <p>21 further decision of course, as you will point out to me in</p> <p>22 a moment if I don't say it myself, and that was that if</p> <p>23 they didn't comply with his requests and the opportunity he</p> <p>24 was giving them by counting to 10 to lay down their arms,</p> <p>25 the further decision was not to try to force the situation</p>	<p style="text-align: right;">Page 16258</p> <p>1 MR MPOFU: Yes, of course.</p> <p>2 CHAIRPERSON: It's no good that you and I</p> <p>3 have the battle; you must have it with him, and it must be</p> <p>4 peaceful with gloves on it. Yes, General, what do you want</p> <p>5 to say?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, at</p> <p>7 this stage I consider it important, the fact that that's</p> <p>8 what made actually members to be unhappy with me. I wanted</p> <p>9 to indicate it at this stage that that is what actually</p> <p>10 what the Chairperson has explained, that what makes</p> <p>11 actually the members to be unhappy with me, and they refer</p> <p>12 it, to it as incorrect instruction.</p> <p>13 MR MPOFU: Yes, correct. In fact that's</p> <p>14 why Baloyi says "No, we can't disarm them at the koppie</p> <p>15 because there they will outnumber us." I mean really,</p> <p>16 isn't it?</p> <p>17 CHAIRPERSON: Did Baloyi say that?</p> <p>18 Whether he said it in his statement is another matter. Did</p> <p>19 he say that to you? Did Baloyi speak to you at all after</p> <p>20 you'd had your discussion with Colonel Merafe, Lieutenant-</p> <p>21 Colonel Merafe? Did you have any discussion at all with</p> <p>22 Lieutenant Baloyi?</p> <p>23 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>24 CHAIRPERSON: Yes, you see, Mr Mpofu is</p> <p>25 correct when he says that that's what Baloyi says. What he</p>

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1 says is, and let me read it to you, because this is what is
 2 the basis of his question. He says, "When they were
 3 about," I think I read it before, but let's read it again.
 4 "When they were about approximately 300 metres away from
 5 us, the General told us to let them go and we would disarm
 6 them at the mountain. One senior colonel," presumably
 7 that's Merafe – if he's a lieutenant-colonel I'm not sure
 8 how senior he was as a colonel, but we won't worry about
 9 that – "One senior colonel advised the General that if we
 10 intended to disarm them it was better to disarm them there
 11 because at the mountain they would outnumber us. The
 12 General told us to follow them." So you didn't talk to
 13 Baloyi, but what Baloyi in fact says is that a senior
 14 colonel – I assume it's Merafe – advised you that if you
 15 intended to disarm them it was better to disarm them at the
 16 mountain because you would be outnumbered – sorry, it would
 17 be better to disarm them there because at the mountain you
 18 would be outnumbered by them. Now is that correct? Is
 19 that what Colonel Merafe or some other, some senior colonel
 20 said to you at the time?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson, only Colonel Merafe.
 23 MR MPOFU: Thank you. Thank you very
 24 much. Now, and it is at that point that you said you did
 25 not want – the reason that you were taking your stance that

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1 they should be disarmed elsewhere was because you did not
 2 want another Tatane incident, correct?
 3 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 4 that's meaning the, I didn't want there should be more
 5 violence.
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: That was the application of
 8 the principle of situational appropriateness.
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: Did you actually use – I
 12 know you spoke about the Tatane incident and your concern
 13 that there shouldn't be a repetition of that. Did you also
 14 actually use the phrase "situational appropriateness" when
 15 you spoke to Lieutenant-Colonel Merafe?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 17 I said to them the way in which I see the situation, for me
 18 taking into account that they are POP members and they know
 19 the interventions actions that, or the modes that the POP
 20 members do, is that the way in which I'd spoken to these
 21 people, the way in which I see the situation, I am going to
 22 make sure that they do hand their weapons by counting. If
 23 they don't, we'll have to accord with the situation.
 24 MR MPOFU: And you said if they don't,
 25 then they will have to be disarmed elsewhere because you

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1 didn't want a Tatane situation, correct?
 2 MAJOR-GENERAL MPEMBE: No, Chairperson,
 3 because we did employ also other methods of persuading them
 4 to disarm. We did bring in the negotiators, so I couldn't
 5 say on the 13th –
 6 CHAIRPERSON: That was later. That was
 7 on the Tuesday. Is that right? The other methods were
 8 used later.
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: The negotiators came,
 12 Lieutenant-Colonel McIntosh I think, came and dealt, and
 13 spoke to the strikers at the koppie and endeavoured to
 14 negotiate with them. But that was on the Tuesday.
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson. Chairperson, what I wanted to indicate is
 17 that it's not correct to say I was going to disarm them at
 18 the mountain, because there were well going to be other
 19 alternative methods, which we did do before resorting to
 20 the disarmament process, which is known as dispersal
 21 process. So it is not correct to say I wanted to go and
 22 disarm them at the mountain.
 23 MR MPOFU: Yes.
 24 MAJOR-GENERAL MPEMBE: While if other
 25 methods could have been, could have worked, we could not

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1 have, because as I've indicated, dispersing the protesters,
 2 it was a last resort.
 3 MR MPOFU: Yes. General, I'm prepared to
 4 grant you that. In the six-kilometre distance between
 5 where they were and the mountain, another opportunity might
 6 have arisen to disarm them. I'll grant you that. The only
 7 issue, I'm saying to you, is that your decision –
 8 CHAIRPERSON: No, no, no, I think what
 9 you're granting him is something he doesn't want granted.
 10 I don't think that's his evidence. His evidence is not
 11 that he was hoping to find another, or there was a
 12 possibility of another opportunity en route to the koppie.
 13 What he was saying was that even once they'd gone to the
 14 koppie that doesn't mean we won't be able to disarm and
 15 disperse them in some way later, and in fact goes on to say
 16 what was in fact done thereafter in an attempt to do that.
 17 Firstly they tried the negotiation route. He will tell us
 18 in a minute, if we give him an opportunity, they then tried
 19 to get the trade union presidents involved and he then says
 20 that ultimately what they did was what he regards as a last
 21 resort –
 22 MR MPOFU: Thank you.
 23 CHAIRPERSON: All those raised are issues
 24 that can be debated, but we've got to understand what he's
 25 saying. He's not suggesting that we'll have an opportunity

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1 to disarm them en route to the koppie that day. He's not
2 saying that, as I understand him.

3 MR MPOFU: Oh, good.

4 CHAIRPERSON: Am I understanding you
5 correctly, or is Mr Mpofo understanding you correctly?
6 MAJOR-GENERAL MPEMBE: It's the
7 Chairperson who understands me perfectly correctly.

8 MR MPOFU: Oh, thank you. Then that's
9 even better. That's even better, because then there were
10 two options then. You could either disarm them where they
11 were sitting, or after the koppie, as the Chairperson says.
12 So those were the two options, correct?

13 CHAIRPERSON: I think by "after the
14 koppie" he means after they'd arrived at the koppie.

15 MR MPOFU: Yes.

16 CHAIRPERSON: Whether on that day –
17 MR MPOFU: Or at the koppie.

18 CHAIRPERSON: - or the following day or
19 the day after, or even possibly on the Friday morning, but
20 that's something he may get to later.

21 MAJOR-GENERAL MPEMBE: Thanks,
22 Chairperson, to understand the "after the koppie," to
23 explain the "after the koppie" to me.

24 MR MPOFU: Yes, in other words, if you
25 agree with the Chairperson, my interim solution is kicked

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1 out of the window. The only options were to disarm them
2 then and there, or at the koppie or thereafter. Agreed?
3 General, I'm asking you a question.

4 CHAIRPERSON: I put it on a different
5 basis which I think, with my customary humility, I think
6 it's more accurate, and that is that what the options were,
7 either to do what Merafe wanted you to do, to try to disarm
8 them and disperse them near the railway line, which would
9 have involved the use of force, I take it. Right? That
10 was what Merafe wanted you to do if they wouldn't agree to
11 lay down their arms voluntarily. The alternative was what
12 you had in mind, and that's to take steps to disarm them
13 and disperse them after they got to the koppie, right? In
14 other words you're going to let them go to the koppie,
15 you're going to escort them to the koppie, make sure they
16 didn't get up to mischief while they were on the way to the
17 koppie, and protect them insofar as they needed protection
18 on the way, and once they were there, you were then going
19 to deal with the situation as it arose with them there at
20 the koppie. Am I understanding you correctly?
21 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

22 CHAIRPERSON: That would have involved,
23 or potentially would have involved a number of actions
24 which might ultimately have culminated in action on the
25 Friday, but we're not there yet at the moment. Is that

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1 correct?

2 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

3 MR MPOFU: Good. So ja, now I'm –

4 CHAIRPERSON: Adv Hemraj says for the
5 sake of completeness I must just add one thing which you've
6 told us already, but just to get the whole position on the
7 table at one time. As far as you were concerned first
8 prize was they would listen to your request to lay down
9 their arms voluntarily and for that you gave them the
10 opportunity by counting. That to you was first prize. To
11 you second prize was letting them go to the koppie,
12 protecting them on the way, preventing them from getting up
13 to mischief on the way, and after they've arrived at the
14 koppie, deal with the situation in various ways. That was
15 your approach. Is that right?

16 MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.

18 CHAIRPERSON: Merafe had another
19 alternative, and that is that if they don't voluntarily lay
20 down their arms near the railway line, you'll take them
21 from them by force and you'll disarm them, which you will
22 disperse them, which would include, as you've explained,
23 arresting them. Right?

24 MAJOR-GENERAL MPEMBE: Yes, I mean
25 arrested –

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1 [10:35] CHAIRPERSON: You didn't consider that to
2 be an appropriate response to the situation because you
3 thought that that would lead to a Tatane situation and
4 bloodshed, and that's something you didn't want to happen.
5 Is that correct?

6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.

8 CHAIRPERSON: Is that your evidence?

9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

10 MR MPOFU: Thank you. And you also did
11 not tell the strikers at any stage that they were not to go
12 towards or past – I don't know what the real thing was –
13 the informal settlement, correct?

14 MAJOR-GENERAL MPEMBE: I've already
15 testified, yes, Chairperson.

16 MR MPOFU: Well, can you testify again?
17 Okay.

18 CHAIRPERSON: He said yes again. Will
19 that be alright?

20 MR MPOFU: Ja, thanks. Alright, now at
21 this point when these people started to leave, they were
22 proceeding peacefully, correct?

23 MAJOR-GENERAL MPEMBE: Chairperson, maybe
24 the video will be a very objective evidence because I might
25 say it's peaceful, but the way in which I saw it and the

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1 way in which they acted, it was not peaceful.
 2 MR MPOFU: Okay.
 3 MAJOR-GENERAL MPEMBE: But the video is
 4 at the disposal of the Commission maybe to – once, why I'm
 5 saying so, it was not peaceful, they knew that I wanted
 6 they should drop their weapons. Secondly, we did not even
 7 have a chance of talking to each other.
 8 MR MPOFU: Yes, but according to Vermaak
 9 they were "vreedsaam" at the stage that they left that
 10 place, correct?
 11 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 12 need to put it on record, Colonel Vermaak was in the
 13 chopper. He might see it from the chopper. He was not on
 14 the scene. For him there on top maybe it could have been
 15 "vreedsaam," but to those that were next to the protesters
 16 it could have been something else, as I explain now.
 17 MR MPOFU: Ja. No, it's not maybe. I'm
 18 telling you from where he was they were "vreedsaam." It's
 19 fair for you to say he was in the chopper and what have
 20 you, but I'm telling you that from where he was they were
 21 peaceful, correct?
 22 MAJOR-GENERAL MPEMBE: Chairperson, in my
 23 case, no.
 24 CHAIRPERSON: Mr Mpofo, I don't think you
 25 can take it much further. Colonel Vermaak has given his

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1 impressions in his statement.
 2 MR MPOFU: That's all I –
 3 CHAIRPERSON: I understand he'll give
 4 evidence here, so you'll have an opportunity to ask him
 5 about it. The witness has given his impression and I would
 6 suggest you might consider moving on to the next point. I
 7 think you've got enough material on record from this
 8 witness to argue what you want to argue in due course, in
 9 the light of what Colonel Vermaak tells us. So you might
 10 like to move on to the next point.
 11 MR MPOFU: Yes. Well no, I'm moving to
 12 the next point, but it's still around this issue. When
 13 they proceeded, we're now talking before the teargas and
 14 all that, when they proceeded they did not attack anybody,
 15 correct?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR MPOFU: They actually walked in close
 18 proximity to some of the policemen who were armed, correct?
 19 MAJOR-GENERAL MPEMBE: Reasonable
 20 distance, yes, Chairperson.
 21 MR MPOFU: Yes, and they simply marched
 22 on in the direction of the koppie, correct?
 23 MAJOR-GENERAL MPEMBE: Others marched –
 24 no, Chairperson, others marched to, in the direction of the
 25 informal settlement.

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1 MR MPOFU: No –
 2 CHAIRPERSON: I'm sure that that's
 3 visible on the video, you know. But at any rate, you were
 4 there and you got the Nyalas in place to stop them going to
 5 the informal settlement, as you've told us. That's right,
 6 isn't it?
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 CHAIRPERSON: To block them from going to
 10 the informal settlement if they wanted them.
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 12 MR MPOFU: General Mpeembe, I'm not
 13 talking about the – we're going to have a lot of discussion
 14 about that. I'm not talking about the disputed thing about
 15 the teargas and whether they were veering off to the
 16 informal settlement. I'm far from there. I'm saying the
 17 first 300 to 400 metres before we go to that point, that's
 18 where we are. Do you agree?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 20 MR MPOFU: The point I'm talking about
 21 is, if you remember when you and I were at the inspection
 22 in loco, you agreed with Mr Zuzi and Mr Booie - there was a
 23 slight difference as to whether this tree or that tree, and
 24 so on, but at that point you agreed about the route until
 25 after the dam. Do you agree? You remember that?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR MPOFU: Yes, so I'm talking about that
 4 point where we are all on the same side. I'm saying that
 5 at that point, in that 300, 400 metres - we'll get the
 6 exact distance, I'm not sure – you've agreed that they
 7 walked past, they did not attack anybody and they walked in
 8 close proximity to armed policemen until the trouble
 9 started, agreed?
 10 MAJOR-GENERAL MPEMBE: Reasonable
 11 distance.
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: It wasn't quite close
 14 proximity, it was a reasonable distance. I'm not quite
 15 sure what the difference is. How far would you say they
 16 were from the nearest policeman?
 17 MAJOR-GENERAL MPEMBE: Chairperson, I did
 18 draw – I don't know whether –
 19 CHAIRPERSON: Give me a ballpark
 20 estimate.
 21 MAJOR-GENERAL MPEMBE: As I said before,
 22 I'm very poor in measurements. Maybe if we –
 23 CHAIRPERSON: Anyway, would you describe
 24 it as close proximity or is it something more than that?
 25 MAJOR-GENERAL MPEMBE: As a reasonable

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1 distance from the police.

2 CHAIRPERSON: And tell me, were the

3 police all behind them as they walked towards, and were

4 they walking in the general direction of the koppie when

5 they walked away, in the general direction of the koppie?

6 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

7 we can also be saying that they were walking in the

8 direction of the koppie, because we knew that they are

9 going to the koppie.

10 CHAIRPERSON: And were the police at that

11 stage behind them?

12 MAJOR-GENERAL MPEMBE: They were behind

13 them, but I did indicate that they were some sort of a

14 curving circle.

15 CHAIRPERSON: Yes, yes, you did

16 indicate –

17 MAJOR-GENERAL MPEMBE: But behind and

18 also, yes, Chairperson.

19 CHAIRPERSON: And did any of them at any

20 point look in the direction of the police as they were

21 walking, or did they just walk away, all facing the

22 direction of the koppie? What I'm reminded is at some

23 point in the evidence, page 11168, it was said that the

24 distance was about 30 paces and – sorry, 15 to 20 paces,

25 and he's not with us today, but he was there at the time,

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1 Mr Pretorius, the attorney, actually paced it out. So

2 these are 15 to 20 Pretorius paces, if you know what I

3 mean. That appears to be the distance. Is that right?

4 Now the question I asked you was as they walked, were they

5 all facing towards the koppie?

6 MAJOR-GENERAL MPEMBE: Correct,

7 Chairperson.

8 CHAIRPERSON: They weren't sort of

9 looking around, glaring at the police and waving their

10 pangas at the police, were they?

11 MAJOR-GENERAL MPEMBE: No, Chairperson.

12 CHAIRPERSON: So there were no aggressive

13 – am I correct? If I'm wrong, correct me. There were no

14 aggressive gestures from them at that stage as they walked

15 towards the koppie. Is that correct?

16 MAJOR-GENERAL MPEMBE: No, Chairperson.

17 MR MPOFU: Thank you, and I put it to

18 you, and in fact we'll see on the video that at least two -

19 or one, it might be the same policeman, maybe from

20 different angles - one of the policemen that they walked

21 past was about a metre or two from the crowd, and they

22 walked past him, as the Chairperson describes, they walked

23 past him facing the direction of the koppie. You remember

24 that?

25 MAJOR-GENERAL MPEMBE: I already said

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1 that they were moving to the direction of the koppie.

2 MR MPOFU: No –

3 MAJOR-GENERAL MPEMBE: But maybe I might

4 see that one.

5 CHAIRPERSON: No, the suggestion, the

6 added fact that Mr Mpofu has added to his question, and

7 that is that in respect of a couple of policemen there was

8 a distance as they walked past in the way you've described,

9 or agreed with the description, they were about a metre

10 away from them. That's the extra point he wants you to

11 comment on. Is that correct?

12 MAJOR-GENERAL MPEMBE: Correct,

13 Chairperson.

14 CHAIRPERSON: It's now quarter to 11. I

15 was proposing to take tea round about this time. If you

16 have still got some questions you want to ask on this point

17 before we take tea, you may proceed, and if so, would you

18 please let me know when it will be a convenient time to

19 take the – in other words, applying a principle of

20 appropriateness to the decision as to when we'll take the

21 tea adjournment.

22 MR MPOFU: Situational appropriateness,

23 Chairperson, yes. Yes, Chairperson, what I'll endeavour to

24 do is just to finish this segment before what I call the

25 trouble started, and I'm close to that.

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1 CHAIRPERSON: Do you want the trouble to

2 start after tea?

3 MR MPOFU: I want the trouble to start

4 after tea, Chairperson. Now until what you call the spark,

5 which was the throwing of the teargas, the situation that

6 you and the Chairperson have agreed on prevailed. They

7 were moving towards the direction of the koppie and if and

8 when there were policemen, they were passing them and

9 proceeding, and at the beginning of that walk they were –

10 okay, I know the Chairperson doesn't like this word which

11 we've invented, crouch walking, but at the beginning of

12 that walk they were sort of walking but kind of crouching

13 at the same time, correct?

14 MAJOR-GENERAL MPEMBE: Clarity,

15 Chairperson, because remember since you left me while 300

16 metres, now are you back for when they start, or –

17 MR MPOFU: Ja, when I say the beginning,

18 it means the beginning, General, the beginning of the walk.

19 MAJOR-GENERAL MPEMBE: Oh, we are now

20 back to where I was addressing them?

21 MR MPOFU: Yes.

22 MAJOR-GENERAL MPEMBE: When they –

23 MR MPOFU: A walk can only begin at the

24 beginning.

25 MAJOR-GENERAL MPEMBE: When they move

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1 singing the song, they were on the crouching position.
 2 MR MPOFU: Yes.
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.
 5 CHAIRPERSON: Walking in a crouching
 6 position, presumably leaning forward, so not standing
 7 upright, but leaning forward and walking in that fashion,
 8 that's the – I would like to think that in the rich
 9 resources of the English language there's a single verb
 10 that covers that, but I haven't been able to find it yet
 11 and Mr Mpofo hasn't either, but we will persevere, hey Mr
 12 Mpofo. Carry on.
 13 MR CHASKALSON SC: Mr Chairperson,
 14 shuffling. Shuffling, Mr Chairperson.
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: Shuffling relates to what
 17 you do with your feet, it doesn't relate to what you do
 18 with the upper part of your body. We'll have to try
 19 harder. Carry on, Mr Mpofo.
 20 MR MPOFU: Okay, for now we'll stick with
 21 crouch walking, until we find a better –
 22 MAJOR-GENERAL MPEMBE: Sorry,
 23 Chairperson, I just want to add, crouching position and
 24 while they were pass those stones, they were ululating.
 25 MR MPOFU: Yes, thank you, and this is

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1 the period that we've all agreed, there was no sign of
 2 aggression, correct?
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 the answer to that already. Do you want to undo it?
 5 You've got the answer already. Do you want to undo it?
 6 MR MPOFU: Oh, you got it, Chairperson.
 7 That's fine. It's just as good.
 8 CHAIRPERSON: No, a good cross-examiner
 9 doesn't undo things that have been achieved –
 10 MR MPOFU: Well, then I'm a bad cross-
 11 examiner, Chairperson.
 12 CHAIRPERSON: No, no, no, you're
 13 learning, Mr Mpofo. Carry on.
 14 MR MPOFU: Thanks. Now as Mr Madlanga,
 15 and I think the Chairperson as well, asked you questions
 16 about mainly what was happening on the right flank.
 17 Remember that's where the first informal settlement was,
 18 correct? The right flank of the crouch walking protesters.
 19 Do you remember that?
 20 MAJOR-GENERAL MPEMBE: Chairperson, maybe
 21 the explanation, at that time they were no more crouching,
 22 because now I hear the question is that crouch walking,
 23 because –
 24 MR MPOFU: Okay, fine, walking.
 25 MAJOR-GENERAL MPEMBE: – maybe I need

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1 just to understand because –
 2 MR MPOFU: They were now walking.
 3 MAJOR-GENERAL MPEMBE: At that time they
 4 were not crouching, they only crouch when they move to,
 5 from the side, and then as the Chairperson asked they were
 6 only now moving.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: Anyway, these are matters
 9 that we can get the answers to from the video actually.
 10 You don't need to rely on what the witness –
 11 MR MPOFU: Ja, and that's not even the
 12 gist of the question, ja. That's got nothing to do with
 13 the question, quite frankly. The point I was asking is
 14 that as they were doing whatever, moving forward, the
 15 Nyalas and some of the policemen kept guard on the right,
 16 on their right between them and the informal settlement,
 17 correct?
 18 MAJOR-GENERAL MPEMBE: It was not
 19 between, but it was in front of the informal settlement.
 20 MR MPOFU: Yes.
 21 MAJOR-GENERAL MPEMBE: Yes.
 22 MR MPOFU: And do you accept the
 23 following, which is where I'm going to start after tea,
 24 that – and this is based on what we saw at the inspection
 25 and if you dispute it, we'll find other ways of showing it.

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1 Do you accept that given the direction that they were
 2 taking, and postulating that they were going to go straight
 3 to the koppie, that at some stage they had to pass a
 4 residential area? There was no way of getting to the
 5 koppie without passing a residential area. In other words,
 6 if you drew a straight line in the direction that they were
 7 moving, there was always going to be some housing that they
 8 were going to pass. Or don't you know?
 9 MAJOR-GENERAL MPEMBE: Chairperson, I
 10 cannot dispute that, unless maybe if I'm shown, but the
 11 informal settlement I could understand that we had to pass
 12 it as far as limitation is concerned, but not to go inside
 13 the informal settlement, as they did.
 14 MR MPOFU: Well, General, that can't be
 15 correct. Surely these people were at least a hundred to
 16 200 metres from the informal settlement when the trouble
 17 started. When the teargas was thrown, they were still in
 18 the veld. They hadn't even reached the road, let alone the
 19 informal settlement, correct?
 20 MAJOR-GENERAL MPEMBE: No, Chairperson,
 21 others were seen in the direction of the informal
 22 settlement.
 23 MR MPOFU: Yes, I dispute that, but
 24 that's not the point I'm making now. I'm saying in the
 25 direction, let's accept it was in the direction, but all

<p style="text-align: right;">Page 16279</p> <p>1 I'm saying to you is that they had not reached any informal 2 settlement, in fact they had not even reached the road, let 3 alone the informal settlement, correct? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 MR MPOFU: Thank you. 7 CHAIRPERSON: Before we take the tea 8 adjournment, Adv Hemraj wants to correct something, but 9 before she does that, I want to point out that in exhibit 10 HHH59, the third page, we have a photograph which – now 11 this is Ms Barnes's exhibit which apparently is going to be 12 the subject of maybe agreement between AMCU and the police, 13 but I'm not concerned about the yellow arrows on the 14 picture, but that indicates, does it not, firstly, do you 15 have it in front of you? Or I'll pass my one to you if you 16 haven't got it. 17 MAJOR-GENERAL MPEMBE: No, Chairperson, I 18 don't have it. 19 CHAIRPERSON: Alright, well I'll give it 20 to you in a moment then you can just look at it. What it 21 shows is a blue circle, which I think is the koppie. It 22 shows a red circle – oh, there it is, it's on the screen, I 23 see – blue circle, which is the koppie, a red circle where 24 the, what one can call the hostilities took place, where 25 there was fighting. The yellow – this is a photograph of</p>	<p style="text-align: right;">Page 16281</p> <p>1 Is that correct? 2 MAJOR-GENERAL MPEMBE: That's correct, 3 Chairperson. 4 CHAIRPERSON: Ja, that shows us, if you 5 ignore the yellow line, that shows us the scene which 6 presumably Mr Mpofo will deal with after tea. Is that 7 right, Mr Mpofo? 8 MR MPOFU: Yes, Chairperson, if I can 9 just ask one question arising from this? 10 CHAIRPERSON: Yes, yes, alright. 11 MR MPOFU: Yes, now the point I was 12 simply making to you, if you use that picture, is that 13 where one, two, the second yellow arrow. Can you see that? 14 [10:54] MAJOR-GENERAL MPEMBE: No, Chairperson, I 15 don't understand the second because there are so many 16 yellow lines these. 17 MR MPOFU: There are three. There are 18 three lines – 19 CHAIRPERSON: Well – 20 MR MPOFU: There are three arrows. An 21 arrow is the one that has – 22 CHAIRPERSON: Sorry, there's a yellow line which 23 runs from the place near the railway line. 24 MR MPOFU: Ja. 25 CHAIRPERSON: To the beginning of the red circle</p>
<p style="text-align: right;">Page 16280</p> <p>1 the scene. Now we are told that the blue circle is the 2 koppie. Would you agree with that? 3 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 4 I would agree in terms of the direction. 5 CHAIRPERSON: Yes, yes, we're also told 6 that the red circle is where the fighting took place. Is 7 that correct? Or can't you say? 8 MAJOR-GENERAL MPEMBE: Chairperson, I 9 will agree also if I look in terms of the scenes. 10 CHAIRPERSON: Yes, yes. 11 MAJOR-GENERAL MPEMBE: But I don't 12 dispute it at the moment. 13 CHAIRPERSON: Okay, and there's a, it 14 looks like a lozenge-shape, yellow shape, that we are told 15 – again the question is can you confirm this or not – that 16 that is where the confrontation took place near the railway 17 line. 18 MAJOR-GENERAL MPEMBE: Yes, probably, 19 Chairperson, it's where the, I spoke with them. 20 CHAIRPERSON: Ja, ja, ja. 21 MAJOR-GENERAL MPEMBE: Okay. 22 CHAIRPERSON: And then the last thing, as 23 I say I'm not talking about the yellow arrows, that's not 24 part of what I'm concerned with. Then there's an orange 25 semi-circle and we are told that's the informal settlement.</p>	<p style="text-align: right;">Page 16282</p> <p>1 and then the line continues but presumably that's more an 2 imaginary line but the line continues to a point just 3 beyond what looks like a track or a road to the left, as we 4 look at the picture, what the witness concedes is the 5 informal settlement. 6 MR MPOFU: Yes. 7 CHAIRPERSON: And then that's where the second 8 arrowhead is and then it moves to the right at I suppose 9 something like 45 degrees towards the blue circle which is 10 the koppie. 11 MR MPOFU: That's correct. That's 12 correct, Chairperson. 13 CHAIRPERSON: So there are not three yellow lines 14 but there are there, as it were, arrows if one has regard 15 to the arrowheads. 16 MR MPOFU: That's exactly what I – 17 CHAIRPERSON: Alright, okay. Ask your question – 18 MR MPOFU: - three yellow lines. 19 CHAIRPERSON: Okay. Ask your question now in a 20 way that I can, that's simple enough for me to understand 21 it and then carry on. 22 MR MPOFU: General, you agree, when I was 23 saying three arrows I was talking about one, two, three. 24 Are we together now? 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>

<p style="text-align: right;">Page 16283</p> <p>1 MR MPOFU: Yes. Now, where the second 2 arrow, as the Chairperson puts it, crosses the road, do you 3 see that point? 4 MAJOR-GENERAL MPEMBE: I see, 5 Chairperson, from the point - 6 CHAIRPERSON: It crosses two roads, you see. 7 MR MPOFU: Yes. 8 CHAIRPERSON: Are you talking about the road which 9 is in line with the top of the yellow semi-circle, the 10 orange semi-circle, in other words the informal settlement 11 or are you talking about the road which is immediately 12 above the red circle? You see there are two roads. 13 MR MPOFU: No – ja. Okay, where I'm 14 point which is where the arrow crosses the, not the main 15 gravel road but the smaller walking road, can you see that 16 point? 17 MAJOR-GENERAL MPEMBE: I could see that 18 arrow, yes. 19 MR MPOFU: Yes. Now from, either from 20 your knowledge or from when we did the inspection or you 21 can take it from me because I have been there many times, 22 that point is part of the informal settlement where that 23 arrow crosses that second road, or rather let me just say 24 it's between houses. Do you remember? If you don't 25 remember, you don't, but - if you can dispute it you can,</p>	<p style="text-align: right;">Page 16285</p> <p>1 that you're looking for, Mr Mpofu? 2 MR MPOFU: Chair, yes. Did you know, 3 before you allowed the people to proceed had you ever been 4 between those houses? 5 MAJOR-GENERAL MPEMBE: No, Chairperson. 6 MR MPOFU: So – okay. 7 CHAIRPERSON: These sound like post-tea questions 8 but – 9 MR MPOFU: Yes – 10 CHAIRPERSON: Applying the doctrine of appropriate 11 – 12 MR MPOFU: Yes, going that way, 13 Chairperson. It would be appropriate, Chair. 14 CHAIRPERSON: Before we take the tea adjournment 15 Adv Hemraj wants to correct something. 16 COMMISSIONER HEMRAJ: Yes, I incorrectly 17 placed on record that the 15 to 20 metres paced by attorney 18 Mr Pretorius was the distance of the police line behind the 19 strikers. That's incorrect, it's actually the distance 20 between the General and Warrant Officer Koen in the police 21 line. I just wanted to correct that. 22 CHAIRPERSON: So that's been sorted out. On that 23 note we will take the tea adjournment. There was something 24 we wanted the witness to look at and that was how many, 25 what, how many members of the service were there on the 13th</p>
<p style="text-align: right;">Page 16284</p> <p>1 if you can't, you can't. 2 CHAIRPERSON: The simple question is, where that 3 yellow line, yellow arrow crosses the smaller, the narrower 4 road in line with the top of the orange semi-circle, what 5 counsel wants to know, does it pass between houses which 6 form part of the informal settlement? Is that the 7 question? 8 MR MPOFU: That's the question. 9 CHAIRPERSON: Are you able to answer that or is it 10 something that you prefer to pass on? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson, it is between the houses but it's not the 13 houses that are intensified and you could still control 14 them through those houses. 15 CHAIRPERSON: So you say it passes between houses 16 but doesn't pass between houses which you regard as part of 17 the informal settlement, is that what you're saying? 18 MR MPOFU: No. 19 CHAIRPERSON: Or are close to the rest of the 20 informal settlement, shall we say that? 21 MAJOR-GENERAL MPEMBE: It could be 22 informal settlement or it could also be a village but there 23 were houses but they were not so intensified, we could 24 control them between those houses. 25 CHAIRPERSON: I see, I see. Is that the answer</p>	<p style="text-align: right;">Page 16286</p> <p>1 at the time he went with his men to the railway line. 2 That's correct, is it? 3 MR MPOFU: Sorry, Chairperson, I thought 4 that was sorted out when we went to slide 42 because the 5 NUM's were put. 6 CHAIRPERSON: Oh yes, 126 I think it was. 7 MR MPOFU: 121. 8 CHAIRPERSON: 121 and then a subsequent 96 9 arrived. 10 MR MPOFU: That's correct. 11 CHAIRPERSON: So you're let off that task, you can 12 just enjoy your tea and we'll take the tea adjournment. 13 MR MPOFU: Thank you, Chair. 14 MAJOR-GENERAL MPEMBE: Thank you, 15 Chairperson. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [11:37] MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson. 19 CHAIRPERSON: Mr Mpofu, you said the trouble was 20 going to start after tea. Please keep it – 21 MR MPOFU: I will, within bounds, 22 Chairperson. General, I just want to round off that point 23 that we were discussing and I'll short-circuit it like 24 this. My instructions or rather the evidence that's going 25 to be led by the people who were involved in the incident</p>

<p style="text-align: right;">Page 16287</p> <p>1 of the 13th is going to be, one, that what I – I put to you 2 that there was nowhere, no way of going back to the koppie 3 without passing a residential area and I know you don't 4 live there, you might not know the terrain so if you can't 5 dispute it I'll understand, but can you comment on that? 6 COMMISSIONER HEMRAJ: Passing through? 7 MR MPOFU: Passing through, yes, a 8 residential area. Well ja, let's start with through. 9 CHAIRPERSON: He's said that already. He said the 10 way they were going, I suppose they could have deviated but 11 he said the route that was indicated here which is the sort 12 of straight line, the shortest distance between two points, 13 went between houses which he said were not part of the sort 14 of denser informal settlement but it was between houses. 15 So you've already got that on record. I told you before, 16 good cross-examiners don't undo they work they've done 17 already but bear that in mind please, but it is correct 18 what he puts to you, is it not – 19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. 21 CHAIRPERSON: - that assuming that they were going 22 what was effectively the shortest route, more or less, 23 between the two points, they would have to pass through an 24 area where there were homes. That's right, isn't it? 25 MAJOR-GENERAL MPEMBE: Correct,</p>	<p style="text-align: right;">Page 16289</p> <p>1 CHAIRPERSON: We can get evidence on that but – so 2 it would seem, would it not, that the line that's been 3 drawn here, the orange, the yellow line you know, the 4 arrows, does look as if it's a sensible route to follow if 5 you want to go from the place near the railway line to the 6 koppie, is that correct? 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 CHAIRPERSON: Right, so now that I've tried to cut 10 some of the bush away and clear a path for you, are you 11 going to put your version or what are you going to do? 12 MAJOR-GENERAL MPEMBE: Yes, that's all I 13 was doing, Chairperson, at the risk of being called a bad 14 cross-examiner. I'm just simply saying, I'm saying to you, 15 Chair – I have to do this, by the way – that also the 16 version of the people who were there will be that when you 17 intercepted them, this was on the return trip. Were you 18 aware of that? 19 MAJOR-GENERAL MPEMBE: I was aware when I 20 was communicating with them, Chairperson. 21 MR MPOFU: No. Okay and in any event one 22 of the implications of that is that when they had gone on 23 the first leg of the return trip, so to speak, they had 24 gone past through those residential areas without even a 25 police escort, do you accept that?</p>
<p style="text-align: right;">Page 16288</p> <p>1 Chairperson, with an exception that the police could still 2 have controlled them. An objective of the police of making 3 sure that others are not injured could still have been 4 achieved. 5 CHAIRPERSON: Yes, no, I understand. He's not 6 asking you that, you see. So if we look at this picture 7 and we draw a straight line between the place near the 8 railway line and the koppie, of course it would go straight 9 through what, it looks like – is that a built-up area 10 there? Ignore the red circle for the moment and even the 11 orange semi-circle. If you just draw a straight line 12 between the spot near the railway line and the koppie, it 13 goes right through the residential area, not an informal 14 one but a residential area proper, is that right? Do you 15 see what I'm trying to say? Immediately above the left- 16 hand end of the orange semi-circle, there's an area there. 17 Do you know what that area is? 18 MAJOR-GENERAL MPEMBE: Yes, the one that 19 is orange, it's – as Chairperson put it, yes, it's an 20 informal settlement, I agree. 21 CHAIRPERSON: Above the orange one there's what 22 appears to be a rectangular area. What is that? I'm not 23 sure but there was, there's also fire, what is it, it's 24 line for the electricity. Maybe that rectangular one is 25 that one but I'm not sure what is that one.</p>	<p style="text-align: right;">Page 16290</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, I 2 cannot dispute it because I did not see them. 3 CHAIRPERSON: You can't accept it but you don't 4 dispute it because you have no knowledge yourself of it. 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 6 as I'm saying I cannot dis – what is it? 7 CHAIRPERSON: Dispute? 8 MAJOR-GENERAL MPEMBE: Dispute it, yes. 9 CHAIRPERSON: Yes, yes, I think the evidence is, 10 either is or will be that they went from the Karee Mine, 11 they sort of sent out a sort of flying squad almost – 12 sorry, from the koppie, went from the koppie, sent out a 13 flying squad of about 200 people to the Karee Mine because 14 they heard there was a possibility that the unprotected 15 strike wasn't being complied with and the evidence I think 16 is or will be, I'm not sure whether I'm relying on 17 statements I've read or evidence I heard, that they went to 18 Karee Mine, they spoke to the security people there. They, 19 I think, were satisfied that the strike was being observed 20 and they turned around and were on their way back when you 21 met them at the railway line. I think that's the evidence. 22 Obviously it's not something you know about. That seems to 23 be what is common cause, is that right, Mr Mpofo? 24 MR MPOFU: That's correct, Chairperson. 25 The point really I'm making is that when they went through</p>

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1 those houses on the first leg of the trip they did not harm
 2 anybody, would you accept that, or at least that you know
 3 of?
 4 CHAIRPERSON: You received no report to the effect
 5 that there had been any trouble when they were on the way
 6 from the koppie to the Karee Mine. That's correct, isn't
 7 it?
 8 MAJOR-GENERAL MPEMBE: That's correct,
 9 Chairperson, except the earlier reports on Monday when the
 10 people were reporting on duty but for them going from the
 11 koppie to the Karee, no reports except that on Monday when
 12 people went to work there were people that were - another
 13 one was killed, another one was seriously maimed.
 14 MR MPOFU: Ja, I'm talking about this
 15 particular group of about 100 people or so.
 16 CHAIRPERSON: According to the police logbook,
 17 occurrence book, there were incidents on the Sunday night I
 18 think, that vehicles were damaged, two people were killed.
 19 That appears from the police occurrence book but that was
 20 in the middle of the night as far as I can recall. What Mr
 21 Mpofu is concerned about is this group who appear to have
 22 gone in the daytime, then as far as I can see there don't
 23 appear to be any reports, unless I've missed them, in the
 24 occurrence book to the effect that this lot got up to any
 25 mischief while they were going from the koppie to Karee.

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1 That seems to be correct, isn't it?
 2 MAJOR-GENERAL MPEMBE: Chairperson, what
 3 Chairperson is saying, from the koppie to the Karee
 4 nothing, but in the morning of that Monday morning, early
 5 in the morning of Monday there were reports of a person
 6 that was seriously killed and maimed by some group of
 7 people that were moving, but it's for those people that
 8 were going at work and that is also my testimony.
 9 CHAIRPERSON: The allegation I see relates to
 10 Wonderkop of course and there's entry 25 in the occurrence
 11 book, an incident at 08:30 but this doesn't appear to
 12 relate to this group, does it? That was something that
 13 happened at item, entry 25, something happened at
 14 Wonderkop. Anyway, I think Mr Mpofu has made his point.
 15 Would you like to move on to the next one, Mr Mpofu?
 16 MR MPOFU: Yes. And I'm going to argue
 17 at the end, if you would care to comment, that your alleged
 18 fear that if this group went through a residential area
 19 something was going to happen, were unfounded since they
 20 had done so and they were destined to do so anyway, even if
 21 you were to take them through and they had done so without
 22 police escort and nothing had, no danger had befallen
 23 anybody.
 24 CHAIRPERSON: Something he says of course he
 25 doesn't know about but he doesn't dispute it, so it's an

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1 argument that you're putting to him. I suppose -
 2 MR MPOFU: Ja, I thought by now he will
 3 say he disagrees with me or - I just have to put it to him.
 4 CHAIRPERSON: You've heard what Mr Mpofu says, do
 5 you want to argue with him on that?
 6 MAJOR-GENERAL MPEMBE: Chairperson, I
 7 just want to qualify it, is that yes, I agree that for them
 8 going to the Karee and nothing happened but the reports
 9 when I arrived there and what has happened, there were
 10 people that were killed. There was a person that was
 11 killed and the others that were maimed and the docketts were
 12 opened and I did also testify on that - by the people who
 13 were having dangerous weapons.
 14 MR MPOFU: Yes.
 15 MAJOR-GENERAL MPEMBE: And I did also
 16 testify that I did not know whether were they the same
 17 group, but also I want to add is the fact that that group,
 18 as senior police official I spoke to them not to carry
 19 dangerous weapons, my fear was not unfounded.
 20 MR MPOFU: Yes, but we now know that your
 21 intention was to disarm them at the koppie or, as they had
 22 suggested.
 23 CHAIRPERSON: His original intention -
 24 MR MPOFU: Well, his latest intention.
 25 CHAIRPERSON: - was to get possession of their

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1 weapons near the railway line but he has already told us
 2 very fairly that if they, he wasn't going to try to do that
 3 by force and if he couldn't do it on a voluntary basis he
 4 was happy to deal with - perhaps happy is the wrong word -
 5 he was content to deal with the situation after they got
 6 back to the koppie.
 7 MR MPOFU: Correct, that's all I'm
 8 saying.
 9 CHAIRPERSON: We've established that.
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: You've established that.
 12 MR MPOFU: That's all I'm saying. And
 13 did you also know that on their way to Karee they had been
 14 stopped by mine security and effectively instructed to go
 15 back to the koppie?
 16 MAJOR-GENERAL MPEMBE: I heard that when
 17 I was communicating with them, Chairperson.
 18 MR MPOFU: Yes, and that in that incident
 19 once again they had obeyed those instructions and they had
 20 simply abandoned their trip to Karee and you intercepted
 21 them in the process of them going back to the koppie
 22 anyway, as they had been instructed of mine security. Did
 23 you become aware of that?
 24 MAJOR-GENERAL MPEMBE: When I was
 25 speaking with them, Chairperson.

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1 MR MPOFU: Yes, and in fact I would like
 2 to show you a video. Chairperson, this video was not on my
 3 list but I've cleared that with Mr Mathibedi. It's just a
 4 reference, a reference point really.
 5 CHAIRPERSON: Is it a video we've seen already or
 6 do I have to give it –
 7 MR MPOFU: No, it's a new one,
 8 Chairperson.
 9 CHAIRPERSON: Alright, well, that will be exhibit,
 10 it looks like triple – hang on. That will be exhibit
 11 HHH61. How do I describe it?
 12 MR MPOFU: Well, let me first say what it
 13 is, Chairperson. It's from the Lonmin hard drive, video
 14 recording of the 13th August 2012 and its video 364.
 15 CHAIRPERSON: Sorry, video 364?
 16 MR MPOFU: 364 in the Lonmin hard drive.
 17 CHAIRPERSON: Yes, I understand. In Lonmin hard
 18 drive and are you saying the whole video is 364 or only
 19 certain portions?
 20 MR MPOFU: Yes. Chairperson, yes, for
 21 now let's say we'll play the whole video but I think –
 22 CHAIRPERSON: Alright, what I've recorded then is
 23 exhibit HHH61 is a Lonmin video of the 13th of August 2012.
 24 It's video 364 in the Lonmin hard drive.
 25 MR MPOFU: Yes. And I won't spend much

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1 time on it, it's just as a reference point. Thank you.
 2 [VIDEO IS SHOWN]
 3 CHAIRPERSON: General Mzembe, are you any wiser
 4 than I am? Do you recognise the spots at which this
 5 incident which is on the video took place or do we need Mr
 6 Mpofo to tell us? Mr Mpofo, can you put it on record to us
 7 what that's supposed to be?
 8 MR MPOFU: Thank you, Chairperson. Thank
 9 you very much, Chairperson. General, as I said, I'm using
 10 this as a reference point of what you and I are discussing,
 11 that this was a return trip. The evidence is going to be
 12 that what we've just seen is the spot at which the mine
 13 security told that same group that they must turn back to
 14 the koppie, which they did, and then on their way to the
 15 koppie they met with your group. It's just to reference
 16 that, how the return trip occurred? Do you understand
 17 that? I'm not saying you were there or you saw it
 18 yourself, correct?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 20 I understand.
 21 MR MPOFU: Yes, and the only point I want
 22 to put to you is that these people, when they turned back
 23 they behaved in the same way as they behaved when they were
 24 leaving after speaking to you, clicking weapons and singing
 25 rhythmically with the clicking, correct?

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1 MAJOR-GENERAL MPEMBE: Chairperson, as I
 2 said earlier on, the behaviour of the clicking and I said
 3 they moved in a crouching position but the difference with
 4 me, it was one that they did not want to give me the
 5 weapons.
 6 MR MPOFU: Yes.
 7 MAJOR-GENERAL MPEMBE: Which is the
 8 difference, and the way in which they moved out there, they
 9 definitely showed some disobedience.
 10 MR MPOFU: Yes, no –
 11 MAJOR-GENERAL MPEMBE: So I do not have
 12 any problem with any other conduct except that one.
 13 MR MPOFU: Yes. No, no –
 14 MAJOR-GENERAL MPEMBE: And the difference
 15 between there and here is that the securities did not say
 16 they should be disarmed.
 17 MR MPOFU: How do you know that?
 18 MAJOR-GENERAL MPEMBE: No, what I'm
 19 saying is that maybe that's where, because the point of
 20 difference that I did not agree with them is when they did
 21 not want to hand me the weapons.
 22 MR MPOFU: General, I accept that in that
 23 you didn't like the fact that they didn't give you the
 24 weapons. All I'm saying to you is, when they turned around
 25 after that interaction with the security, that they turned

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1 back and they were singing and they were clicking their
 2 weapons rhythmically with the song in the same way that
 3 when they were disobeying you they moved, correct?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR MPOFU: Thank you. I'm sorry to do
 7 this but just to round off the previous point so that we
 8 don't come back to it and I don't expect you to comment
 9 because you don't know the geography, can you please put
 10 back that – is it HHH60? 59.
 11 CHAIRPERSON: The one that we were looking at when
 12 I was questioning the General was HHH59.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: I think it's point 3.
 15 [11:56] MR MPOFU: Yes, I'm sorry, General, to
 16 take you back. I just wanted to finish a point and the
 17 evidence will be that even on the third arrow, now you know
 18 what that means, where that third arrow crosses the road
 19 the evidence will be that that's also going through some
 20 checks.
 21 CHAIRPERSON: I'm sorry, Mr Mpofo are you
 22 going to be leading evidence to the effect that that's
 23 where they were intending to cross?
 24 MR MPOFU: Yes, well not only were they
 25 intending to cross but the route more or less that they

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1 followed –

2 CHAIRPERSON: There will be evidence

3 dealing with that –

4 MR MPOFU: Yes, Chairperson.

5 CHAIRPERSON: Yes, you see I stopped Ms

6 Barnes because she wasn't going to lead any evidence

7 explaining this –

8 MR MPOFU: Yes.

9 CHAIRPERSON: - that's why I said we can

10 look at the fixed points as it were, but I wouldn't allow

11 her to ask questions about the yellow arrows –

12 MR MPOFU: Fair enough.

13 CHAIRPERSON: - because there would be no

14 supporting evidence. But you'll give me the assurance that

15 there will be from your side.

16 MR MPOFU: Yes, Chairperson that's why I

17 started the question by saying the will be evidence that

18 even at the point where the third arrow crosses there were

19 shacks.

20 CHAIRPERSON: The second arrow, Mr Mpofo.

21 MR MPOFU: The third, the third one now.

22 That's the point I'm pointing, we've done with the second

23 one.

24 CHAIRPERSON: No, no, the first arrow is

25 from the yellow lozenge shaped near the railway line to the

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1 red circle. The second arrow runs from the red circle to a

2 point on the other side of the road and the third arrow as

3 I see it runs from there to the koppie.

4 MR MPOFU: That's the one I'm dealing

5 with.

6 CHAIRPERSON: Okay, so you are now

7 dealing with what's clearly the third arrow.

8 MR MPOFU: Correct.

9 CHAIRPERSON: Okay.

10 MR MPOFU: Now the second one we dealt

11 with before I moved here.

12 MR MATHIBEDI SC: Sorry, Mr Chairman, can

13 we be referred to the relevant statement dealing with what

14 has been put to the witness, that statement that has

15 already been provided to the Commission?

16 MR MPOFU: Well, Chairperson, that's a

17 strange request.

18 CHAIRPERSON: You put in statements by Mr

19 Nzuzza and I think there's a Mr Boo.

20 MR MPOFU: Yes.

21 CHAIRPERSON: They are going to say they

22 were part of the group.

23 MR MPOFU: Yes.

24 CHAIRPERSON: They will say that they

25 left the koppie, went towards Karee, turned around and came

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1 back.

2 MR MPOFU: Correct.

3 CHAIRPERSON: And even if they don't say

4 so in terms of the statement you say their evidence will

5 be, as you've no summarised it, regarding the route.

6 MR MPOFU: That's correct.

7 CHAIRPERSON: I think that's all right in

8 the circumstances. You can carry on, Mr Mpofo.

9 MR MPOFU: Thank you. The other evidence

10 in respect of – while you have that picture there will be

11 that, let's call it the first residential area, the one

12 that presumably you were stopping the people to go to, also

13 constitutes or it's constituted of very sparse shacks. In

14 fact there are no more than nine or ten shacks –

15 CHAIRPERSON: I'm sorry, Mr Mpofo, you've

16 lost me. It may well be my fault, so I'm not criticising

17 you, what's this first residential area you're talking

18 about? Is it the one depicted by or marked by the orange

19 semi-circle or is it not visible on this photograph?

20 MR MPOFU: It's the one with the orange

21 semi-circle, Chairperson.

22 CHAIRPERSON: Yes, now I follow.

23 MR MPOFU: Yes. I'm saying that the

24 houses there is even fewer than the houses that they were

25 going to walk through. There are about nine or ten

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1 sparsely situated shacks. Would you agree with that of

2 perhaps you can't remember. As I said I know you don't

3 come from there, but that's the evidence.

4 MAJOR-GENERAL MPEMBE: Chairperson, I

5 already said that I do not dispute that they could have

6 been moving through the houses or shacks, but through those

7 spaces the police could still have controlled them not to

8 have done what we thought that they could do.

9 MR MPOFU: Yes and no I accept that, but

10 I am saying similarly in the path that the Chairperson and

11 I have identified, if they went through those places you

12 could similarly have controlled them, correct?

13 MAJOR-GENERAL MPEMBE: No, Chairperson, I

14 wanted to put it that on that yellow place, that's where

15 one of the protestors was actually fatally injured.

16 CHAIRPERSON: Orange, orange.

17 MAJOR-GENERAL MPEMBE: Orange one was

18 fatally injured.

19 CHAIRPERSON: We're not quite sure who

20 injured him because he was stabbed as I understand it and

21 according to the post mortem report he died of stab wounds.

22 So exactly how he died it was established yesterday that he

23 was definitely, that he was actually one of the strikers.

24 It was visible on the videos of the strikers who were by

25 the railway line. The dead body was found in that informal

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1 settlement in front of a house. The post mortem report
2 indicates that he was stabbed and I think there was serious
3 haemorrhage in respect of one the stab wounds which appears
4 to have been the cause of death. So exactly how he died we
5 don't know, that's a mystery yet. Who killed him, whether
6 he died as a result of police action or some other action
7 is still a mystery to us. But he certainly appears to have
8 died in that informal settlement. How he died and the
9 circumstances we don't know. So I think you must bear that
10 in mind. Mr Mpofo.

11 MR MPOFU: Yes, actually don't even bear
12 it in mind because it doesn't deal with what I'm asking
13 you. I accept that that's where the person died. We are
14 talking now about long before anybody dies. I'm saying to
15 you just as you have testified that you could control the
16 strikers among those shacks that are next to the second
17 arrow, you could similarly control the strikers had they
18 gone to the place with the orange line, correct?

19 MAJOR-GENERAL MPEMBE: Chairperson, I've
20 already said no. Hence I made reference to the death of
21 the person.

22 MR MPOFU: General, when you were
23 supposedly preventing these people from going to that area
24 you did not know someone was going to die there an hour
25 later or whenever. Is that correct?

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1 MAJOR-GENERAL MPEMBE: Chairperson, our
2 objective was to protect as I said earlier on.

3 MR MPOFU: General Mpeembe, please don't
4 make this too difficult. I'm saying to you before anybody
5 dies, before any policeman dies or whatever, your answer
6 was that if – remember I was postulating to you that they
7 would have gone past houses and then you said yes but then
8 we could have controlled that they don't cause trouble.
9 Let's call it like that. Now all I'm putting to you is
10 that similarly as that would have happened in that place,
11 if they had gone to the place with the orange arrow you
12 would similarly be able to make sure that they don't cause
13 trouble there with the amount of police that you had,
14 that's all.

15 MAJOR-GENERAL MPEMBE: Chairperson, I'm
16 requesting the pointer so that maybe my answer should be
17 correctly understood.

18 CHAIRPERSON: - matter over which I have
19 no control, but is it being arranged that he will have a
20 pointer -

21 MR MPOFU: That's correct, Chairperson.

22 CHAIRPERSON: Mr Wesley is bringing some
23 instrument of some kind.

24 MAJOR-GENERAL MPEMBE: Chairperson, what
25 I'm explaining is that we didn't want that they should move

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1 through these house, these informal or shacks or whatever
2 and I don't also disagree that there could have been
3 houses, but there were spaces where we could control them.
4 The fact that they moved out here there is a person that
5 the Chairperson is explaining has died. So what I'm saying
6 is that if clearly their intention was not – was surely
7 from the beginning to move there we couldn't have got any
8 problem. That's what I'm explaining. It could have been
9 easy and it could have been confirmed even if from where
10 they start they have given us their dangerous weapons.
11 That could have been even more easier for us to handle.

12 COMMISSIONER HEMRAJ: Why would you not
13 have been able to control them in that area of the
14 settlement that's demarcated by the orange semi-circle?

15 MAJOR-GENERAL MPEMBE: Chairperson, as I
16 indicated earlier on is that the people staying here and we
17 don't know whether they are working at the Lonmin mine and
18 maybe – Chairperson, as I indicated earlier on we did not
19 know who is staying here were working at the mine. We
20 wanted that they should be in our view so that we can see
21 if they want to do any other thing.

22 MR MPOFU: Yes, but you also did not know
23 who is staying where they were going to pass through and
24 whether those people also worked at the mine, correct?

25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson, as long as they are in our view and they are
2 not between houses or shacks. But as long as they are in
3 our view.

4 COMMISSIONER HEMRAJ: So are you saying
5 that if they went into that area, that settlement that's
6 demarcated by that orange line that you would have lost
7 sight of them if they went between the houses? Is that
8 what I understand you to say?

9 MAJOR-GENERAL MPEMBE: Correctly,
10 Chairperson, particularly if those houses are intensely
11 populated.

12 COMMISSIONER HEMRAJ: Yes, thank you.

13 CHAIRPERSON: Now you told us that in
14 order to prevent that from happening you arranged for the
15 Nyalas to move there so they wouldn't have access to that
16 part. Is that what you told us?

17 MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson.

19 CHAIRPERSON: So therefore the danger
20 which you had foreseen, possibly happening you had
21 successfully prevented by the disposition you made in
22 respect of the Nyalas. That's what you said before, is
23 that right?

24 MAJOR-GENERAL MPEMBE: Correct,
25 Chairperson.

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1 MR MPOFU: Thank you and in fact as we
 2 can see from the video and we'll play it if you insist, but
 3 I think Mr Madlanga played it for you. The only way in
 4 which the strikers could have gained any access to the
 5 residential area with the arrow would have been past the
 6 road and by that time that road was populated by police
 7 vehicles, correct?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MPOFU: Right, so even if by some
 11 miracle they would kind of pass through the line of police
 12 vehicles by the time they got to the residential areas at
 13 least there would be policemen present. At least those
 14 policemen were in, in the vehicles. Let's assume they
 15 outran the ones –
 16 CHAIRPERSON: I don't know where your
 17 miracle arises. If you've got the Nyalas in place,
 18 blocking them from going to the informal settlement they
 19 couldn't have gone to the informal settlement.
 20 MR MPOFU: Absolutely.
 21 CHAIRPERSON: And that's why the witness
 22 explained to us earlier when you weren't here that it
 23 wasn't necessary for any teargas to be fired which is why
 24 he didn't give an order. If there had been he might well
 25 have done so, but it wasn't necessary for any teargas to be

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1 fired he said because of the dispositions he'd made in
 2 respect of the Nyalas.
 3 MR MPOFU: That's not the point I'm
 4 dealing with. The point I'm dealing is a different one,
 5 namely that the supposed reason or the supposed fear
 6 expressed by this witness, not by anyone else, about these
 7 people entering that part of the informal settlement was
 8 unfounded because it was an impossibility.
 9 CHAIRPERSON: - what Mr Mpofo puts to you
 10 in that regard, what is your comment? He says your fear
 11 was a non-genuine fear or not a reasonable or well-founded
 12 fear for the reasons that he suggests. Do you agree with
 13 that or not?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 15 do not agree. As a police officer if I've been briefed
 16 that these people are killing those that are going at work
 17 and the are maiming them and we do have evidence of that
 18 and must be mindful of protecting everyone, including them.
 19 MR MPOFU: So do you have any evidence
 20 that these people, meaning that group, had killed anyone?
 21 MAJOR-GENERAL MPEMBE: Chairperson, as I
 22 have indicated the modus operandi of those that were killed
 23 and those that were maimed it was a group that was carrying
 24 dangerous weapons and I did say that I did not specifically
 25 say these ones. But anyone who was carrying dangerous

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1 weapons and he's the one that – and that was still under
 2 investigation and is still under investigation.
 3 MR MPOFU: Yes, okay anyway I think let's
 4 just forget this by saying this. I'll take the
 5 Chairperson's word that you have previously stated that
 6 there was no need to fire teargas for the reason –
 7 CHAIRPERSON: You don't have to take my
 8 word for it, it's on the transcript.
 9 MR MPOFU: Ja, well you yourself,
 10 Chairperson, said I was not here.
 11 CHAIRPERSON: I take it you read the
 12 transcript.
 13 MR MPOFU: Well you wouldn't have added
 14 those words that I knew it, you said I wasn't here to help
 15 me. Thank you. Now did you accept that statement?
 16 MAJOR-GENERAL MPEMBE: Chairperson, I
 17 said no and I still say no based on the fact that I did not
 18 know where the workers are working, where I was staying and
 19 I need to take that informal settlement, it was one of our
 20 key areas.
 21 MR MPOFU: Yes, okay, no I'm sorry,
 22 General, I think the exchange between me and the
 23 Chairperson confused both of us. What I was saying is that
 24 I'm accepting what the Chairperson has put, namely that you
 25 have said that there was no need to fire teargas. Now

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1 following from that is the question which is this, do you
 2 also accept that had the teargas not been fired the, what
 3 you call that trouble, which resulted in the deaths of five
 4 people would not have occurred.
 5 MAJOR-GENERAL MPEMBE: Chairperson, based
 6 on the history and that's what I said also, that firing of
 7 the teargas to the protestors it doesn't make protestors to
 8 attack the police normally, basically.
 9 CHAIRPERSON: Of course it was followed
 10 by stun grenades and if you're not familiar with stun
 11 grenades you might think that live ammunition was being
 12 fired at you. Isn't that right?
 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 14 that one is right.
 15 MR MPOFU: Yes and I take your point,
 16 General, that all sorts of things could have happened.
 17 They could have decided to just sit down and cry or
 18 whatever. But all I'm putting to you is simply this, that
 19 had that incorrect action of firing teargas and stun
 20 grenades at them not been done those five people would have
 21 been alive today.
 22 MAJOR-GENERAL MPEMBE: Chairperson, I've
 23 already answered it to say that I don't say it was correct
 24 to fire the teargas, I'm on record on that. But I'm saying
 25 on the other hand of the strikers firing of the teargas

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1 does not give then authority to attack the police. So I
 2 can't say the wrong thing corrected the other one.
 3 CHAIRPERSON: There are two issues here
 4 aren't there? The first is, the one Mr Mpofo is busy with,
 5 is if the teargas hadn't been fired or whatever you do to
 6 teargas, discharge I suppose. And if the stun grenades
 7 hadn't been fired then I take it what Mr Mpofo is
 8 suggesting to you is that the probabilities are, I don't
 9 know if you can put it any higher than that, the
 10 probabilities are that the strikers wouldn't have reacted
 11 the way they did. That to some extent is a speculative
 12 matter on which we have to at the end of the day may well
 13 have to make a finding. I take it he's asking you to
 14 comment because you were the overall commander and the
 15 operational commander there and you might well be in a
 16 position to help us in regard to that issue which we may
 17 have to decide. That's the basis of the question. Is that
 18 right, Mr Mpofo?
 19 MR MPOFU: That's the basis, Chairperson.
 20 Plus the fact that -
 21 CHAIRPERSON: But you, of course, make a
 22 further point that that may not necessarily justify the
 23 behaviour of the strikers in reacting, if it was a
 24 reaction, in reacting the way they did. And that may well
 25 be the subject of some subsequent proceedings in a court,

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1 but Mr Mpofo is not busy with the second half of the issue
 2 which I have now outlined to you, he's busy with the first
 3 half. Is that right Mr Mpofo?
 4 MR MPOFU: That's very right,
 5 Chairperson, just to add and that must be what you meant,
 6 General, when you said elsewhere that the teargas issue was
 7 the spark.
 8 [12:16] MR MATHIBEDI SC: Mr Chairman, my
 9 submission is that the witness is being asked to speculate
 10 on something that is not going to help us. I mean this is
 11 an aspect which at the end of the day, the Commission must
 12 decide whether he says yes or no. It's not going to be of
 13 assistance.
 14 CHAIRPERSON: I am not sure if you will
 15 recall, but in your absence there were a number of
 16 occasions when, even when you were here before, there were
 17 were a number of occasions where I disallowed questions of
 18 this nature, on the basis it's for us to decide not for the
 19 witness to decide, and we weren't going to delegate our
 20 duties to the witness to answer a question which we really
 21 are in as good a position than anyone else to answer.
 22 That's the objection that's raised. Do you wish to deal
 23 with it?
 24 MR MPOFU: No, Chairperson, maybe can I
 25 rephrase the question?

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1 CHAIRPERSON: Yes, certainly.
 2 MR MPOFU: Yes. When you said to the
 3 Commission that the firing of the tear gas which goes
 4 together with the stun grenades, was the spark, what did
 5 you seek to convey, was the spark of that incident?
 6 MAJOR-GENERAL MPEMBE: I need to convey,
 7 what I needed to convey is that that's what make the
 8 protesters to attack the police.
 9 MR MPOFU: Thank you.
 10 CHAIRPERSON: I think that's the answer
 11 you want, Mr Mpofo. Perhaps you can move on, before you
 12 undo anything that you've done.
 13 MR MPOFU: I will move very quickly
 14 Chairperson from there, thank you Chairperson.
 15 CHAIRPERSON: It's been suggested to me
 16 that it might be appropriate for us to take a five minute
 17 comfort break.
 18 MR MPOFU: That will be helpful to me.
 19 CHAIRPERSON: But I am in your hands, Mr
 20 Mpofo, if you are in need of comfort I suggest that you
 21 accept the offer.
 22 MR MPOFU: I am in need of comfort,
 23 Chairperson.
 24 CHAIRPERSON: Alright, I think we better
 25 make it ten minutes, because in the past these five minute

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1 ones have been too short. We will take a ten minute
 2 comfort break.
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [12:41] CHAIRPERSON: - under oath. Mr Mpofo?
 5 MR MPOFU: Yes, Chairperson. General, we
 6 are now going to move to the, what I said to you when we
 7 were doing the outline, I am just going to deal with the
 8 incident of the 13th globally as a turning point, without
 9 dealing with the specific -
 10 CHAIRPERSON: I take it you are going to
 11 put your version though, the version of your witnesses to
 12 him, insofar as he can deal with it.
 13 MR MPOFU: Yes, oh, yes, of course,
 14 Chairperson. In respect of the first part, yes. General,
 15 the version of the witnesses, when I say the version from
 16 now on, I will be talking specifically about witnesses Mr
 17 Nzuzza and Mr Boozi interchangeably, okay? Their version
 18 will be that as has been shown, when they were asked by the
 19 security, mine security, to turn back, they indeed their
 20 intention was to go back to the koppie, in other words, had
 21 you not intercepted them, that's exactly what they would
 22 have done.
 23 MAJOR-GENERAL MPEMBE: Chairperson, I
 24 cannot dispute it because I was not informed, I did not
 25 know about it.

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1 MR MPOFU: Thank you, yes. And their
2 version will be that when the police did intercept them,
3 led by you, they sat down and crouched as a sign of
4 respect, and to show you that they were submitting to your
5 authority.
6 MAJOR-GENERAL MPEMBE: It might well be
7 their version, but the song and the clicking of the
8 dangerous weapon could not have suggested what they are
9 saying.
10 MR MPOFU: Yes. Their version on that
11 particular – on the clicking, will be supported by the
12 video I showed you this morning, when they were turning at
13 the instruction of the security police, and there was no -
14 CHAIRPERSON: Not security police.
15 MR MPOFU: I am sorry.
16 CHAIRPERSON: Security guards I think.
17 MR MPOFU: At the instruction of the
18 security, the mine security and without anyone else in
19 sight, but they were continuing to click their weapons. So
20 you accept that that's what we saw this morning?
21 MAJOR-GENERAL MPEMBE: Chairperson, yes,
22 I saw – I heard the song, and I heard the clicking but the
23 clicking and the song on that, where I met them, there is a
24 huge difference in terms of the meaning of that.
25 CHAIRPERSON: Expand on that, tell us

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1 what you mean by that?
2 MAJOR-GENERAL MPEMBE: Chairperson, maybe
3 the video could also help me in terms of describing what I
4 am saying.
5 CHAIRPERSON: You want to see the video
6 again, now this is the video.
7 MAJOR-GENERAL MPEMBE: Yes, it could help
8 me in terms of describing having seen the one that they
9 left there, and seeing the other one, it could be evident
10 to everybody, to the Commission what could be the
11 difference.
12 CHAIRPERSON: Right, so what part of the
13 video do you want to be shown again?
14 MAJOR-GENERAL MPEMBE: Chairperson,
15 immediately when I arrive, when they start singing the
16 song, and clicking.
17 CHAIRPERSON: Can we be shown that part –
18 or what's the exhibit number?
19 MR MPOFU: Z1, Chairperson.
20 CHAIRPERSON: Sorry, Z1?
21 MR MPOFU: Yes, Z1.
22 CHAIRPERSON: Right, so could we see the
23 beginning, say the first, how minutes of Z1 do you want to
24 see from the beginning?
25 MR MPOFU: Just the beginning, in other

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1 words, we just keep the exchanges, it's about 11 eleven
2 minutes. Thank you.
3 CHAIRPERSON: I take it you don't want to
4 see the whole 11 minutes or I mean, what do you want to
5 see?
6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson, is just the starting of the song.
8 CHAIRPERSON: Alright.
9 MAJOR-GENERAL MPEMBE: And the clicking
10 of that part.
11 CHAIRPERSON: Alright, okay, perhaps we
12 can, it can be shown and when you've seen enough you can
13 raise your hand, or say "that's enough," and someone can
14 tell us how far the, we are down, we were into the video at
15 that point, and then we can carry on, is that –
16 MR MPOFU: Chairperson, may I make a
17 request?
18 CHAIRPERSON: Yes, of course, what is
19 your request?
20 MR MPOFU: This is meant to save time,
21 while we are showing that portion, General, I am asking
22 you, can you please to raise your hand until the part where
23 they pass the policemen just so that we kill two birds with
24 one stone, so to speak.
25 CHAIRPERSON: That seems a reasonable

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1 request, doesn't it?
2 MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson.
4 CHAIRPERSON: Sorry about the birds but
5 we must do our best.
6 [VIDEO SHOWN]
7 MAJOR-GENERAL MPEMBE: Chairperson, not
8 there, while they were still crouching. Chairperson, not
9 there, when they were singing the song.
10 CHAIRPERSON: I think those who are
11 showing us the video, can just find the place where the
12 song is being sung, so I am afraid we have to put up with
13 some of the stuff before that. But it will be at least,
14 have the advantage of being seen in context, so –
15 MR MPOFU: Yes, Chairperson, if I may on
16 that same vein, fortuitously I just want to put on the
17 record, General through you, that that is one of the people
18 I was talking about, Mr Nzuzza, the one who had just spoken
19 and you heard him saying "we are not fighting with
20 anybody." Okay?
21 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
22 I didn't dispute it and I also say yes, Mr Nzuzza.
23 [VIDEO SHOWN]
24 MR MPOFU: Thank you.
25 CHAIRPERSON: Stop, stop.

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1 MAJOR-GENERAL MPEMBE: Chair –

2 CHAIRPERSON: I am a bit lost, so anyway

3 something must be done to get that right.

4 MR MPOFU: We will fast forward, I just

5 want to confirm through the witness that Mr Nzuzi is saying

6 that again, “we are not fighting with anybody, we ask you

7 to please come with us and guard us.

8 CHAIRPERSON: We have seen that already.

9 MR MPOFU: Well, we haven’t Chairperson,

10 not this part, I never have translated Mr Nzuzi’s

11 statement, at least it was not done by me. He is my

12 witness.

13 CHAIRPERSON: I think it’s in the

14 transcript. It’s in the transcript, we’ve seen the video

15 before, but anyway, let’s come to the part that the witness

16 wants to see.

17 MAJOR-GENERAL MPEMBE: Chairperson, the

18 part that I am requesting the Commission to show is the

19 part of them singing, is before Mr Nzuzi is speaking. Is

20 when I was approaching –

21 CHAIRPERSON: They are singing the song,

22 [African Language.

23 MAJOR-GENERAL MPEMBE: [African

24 language].

25 CHAIRPERSON: It’s the song in the

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1 transcript –

2 MAJOR-GENERAL MPEMBE: That’s at 09:30.

3 CHAIRPERSON: The top of page 4, nine

4 minutes 29 seconds.

5 MR MPOFU: That’s correct.

6 CHAIRPERSON: So the policeman says, let

7 the ones with the guns get nearer. So perhaps we have

8 start 9 minutes 29 seconds. I think that’s what you want,

9 is it? And then they sing the song, which my colleague,

10 Adv Tokota, will pronounce for me. He has very delicately

11 said it, but not into the microphone.

12 [VIDEO SHOWN]

13 MR MPOFU: Can we stop right there.

14 CHAIRPERSON: Mr Mpofo, the witness has

15 asked to see the video, so for the moment, it’s just the -

16 MR MPOFU: Well, Chairperson –

17 CHAIRPERSON: Well -

18 MR MPOFU: Okay, fine, we will play it

19 again, I am trying to save time here.

20 CHAIRPERSON: I know you are, I know it’s

21 your cross-examination, but the witness did say he would

22 like to see part of the video to illustrate his answer, so

23 as far as that’s concerned, he’s in charge, not you or me.

24 So –

25 MR MPOFU: All I am saying, Chairperson,

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1 all I am saying is that I am trying to save time, if it’s

2 suggested that let’s play this for the witness and then

3 play it for me later, rather than short-circuiting it,

4 that’s fine I am happy with that.

5 CHAIRPERSON: Alright. So let’s carry on

6 for the moment, what we are doing.

7 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

8 what I wanted to explain –

9 CHAIRPERSON: Are you happy that the

10 picture has been stopped, the video has been stopped at a

11 particular point now? Are you happy to talk now?

12 MAJOR-GENERAL MPEMBE: Ja, correct,

13 Chairperson.

14 CHAIRPERSON: Okay, what is endorsed, Mr

15 Mpofo’s desire to save time, so I don’t want to create the

16 impression that I am against him on that, because I am very

17 much with him on that, but carry on.

18 MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson, what I wanted to explain is that the video

20 that we have seen before, they were walking slowly singing

21 the song ululating. What I am trying to explain to this

22 one, when they realised me, I am approaching them, they are

23 clicking, then the clicking started and the song is

24 started, so the crouching position and the clicking and the

25 song, to me didn’t show any sign of respect. It shows

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1 something else.

2 CHAIRPERSON: So you want to see any more

3 of the video, or is that enough?

4 MAJOR-GENERAL MPEMBE: Chairperson –

5 CHAIRPERSON: The purpose of the point,

6 you wanted to make, it’s your evidence.

7 MR MPOFU: Yes, Chairperson.

8 CHAIRPERSON: You asked to see some of

9 the videos to assist you to make your point, have you seen

10 enough of the video to make your point?

11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

12 The other one that Mr Mpofo ask is that we should leave it

13 until when they pass.

14 CHAIRPERSON: Well, Mr Mpofo is entitled

15 to ask for that. Can we move forward to that now?

16 MR MPOFU: No, Chairperson, I’d like to

17 talk about this.

18 CHAIRPERSON: I see. Well, it’s your

19 cross-examination, carry on.

20 MR MPOFU: Thank you, Chairperson. I am

21 sorry, I was trying to save time but it ends up we spend

22 more time.

23 CHAIRPERSON: - to do that though.

24 MR MPOFU: Yes, thank you, Chairperson.

25 General, would it surprise you if I told you that this song

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1 that these people are singing now and clicking their
2 weapons, is exactly the same song that they were singing
3 when they were turn back from the security guards, and
4 clicking, which song says [African language].
5 MAJOR-GENERAL MPEMBE: Chairperson, I
6 disagree with the song –
7 MR MPOFU: Then let's play it again.
8 MAJOR-GENERAL MPEMBE: Because the song
9 that that I am referring to specifically is the one that I
10 say it, I didn't want to say it because it's an insulting
11 song. [African language].
12 MR MPOFU: Okay, no, that's very well,
13 but I am saying, do you accept that this song that has been
14 sung here, which you've shown to the Commission is exactly
15 the same song that they were singing, when they were
16 turning away from the security and they were clicking
17 exactly in the same way. The song is (African language].
18 If you don't believe it, we can just rewind a few seconds,
19 and you will listen to it properly.
20 MAJOR-GENERAL MPEMBE: Chairperson, I say
21 I don't deny, but the song that I am referring to and the
22 clicking is the one that I am repeatedly saying it maybe it
23 could be played until that song is being sung.
24 MR MPOFU: So at this point, you did not
25 sense any aggression towards you?

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1 MAJOR-GENERAL MPEMBE: I have already
2 testified, Chairperson, that the clicking to me it shows
3 aggressiveness. When you say somebody coming to you,
4 coming to talk to you, why do you click the dangerous
5 weapons?
6 MR MPOFU: Well, could it be perhaps
7 because they had been clicking for hundreds of metres until
8 that point?
9 MAJOR-GENERAL MPEMBE: Chairperson, as a
10 sign of respect, senior, senior police official, you could
11 want to hear what the police official is saying to you.
12 And now the clicking, we could understand each other while
13 they were clicking.
14 MR MPOFU: Yes. Once you started
15 talking, did they continue clicking, or did they stop the
16 clicking and listen to you?
17 MAJOR-GENERAL MPEMBE: Chairperson, I am
18 not talking about when we were talking, I am talking about
19 when I approached them and the singing of the song that
20 I've referred to, together with the clicking, to me it was
21 already showing that you need to be, it was already giving
22 a different view of what we saw them in the past taking
23 from the question.
24 MR MPOFU: Ja, no, no, General, I can't
25 expect you to know that they had been clicking away, on the

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1 way back, so I am not taking you to task about that, all I
2 am saying is that we now know that the clicking started
3 when they turned from the police, and the only question I
4 am asking you is once you then indicated that you wanted to
5 talk or once you started talking, did they continue
6 clicking or did they stop the clicking and listen to you?
7 MAJOR-GENERAL MPEMBE: They did stop the
8 clicking.
9 MR MPOFU: Thank you. Okay, let's, we
10 will continue the video. We've established that they were
11 singing the same thing song and clicking away, let's move.
12 [VIDEO SHOWN]
13 MR MPOFU: Sorry, Chairperson, I just
14 want to skip the verbal exchanges to the part where they
15 pass the policeman, I think it's 11:50 or something.
16 MAJOR-GENERAL MPEMBE: No, Chairperson,
17 the song that I referred to is not yet sung, so the singing
18 of that song and the clicking is totally different and
19 then, that's what I wanted the commission should see again.
20 MR MPOFU: No, thank you, Chairperson.
21 No, I am actually trying to help you, General, because if
22 your song, the one you were talking about was sung, it
23 would have been at the point at which they were supposedly
24 defying you, so which is after the speeches, which is round
25 about now. Ja, okay, can we now play on?

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1 CHAIRPERSON: I think that those who are
2 going to follow the record, will want to know what "round
3 about now is," where is this on the video clip?
4 MR MPOFU: 11:23 minutes 13 seconds,
5 Chairperson, thank you.
6 [VIDEO SHOWN]
7 MR MPOFU: Stop. Would you agree that
8 these people are still singing the same song that they sang
9 when they were being stopped by the police, by the security
10 guards, and when they were stopped by you and now they are
11 singing it for the third time. The same song [African
12 language].
13 MAJOR-GENERAL MPEMBE: Chairperson, I
14 don't deny but I see there is a persistent action of not
15 showing the song that they sung and the clicking was
16 totally different from these ones. So I don't know whether
17 maybe because what I am talking about is very specific, but
18 I am still being shown something that I am not saying.
19 CHAIRPERSON: Adv Hemraj has made a
20 suggestion which I think is very sensible, if I say so, and
21 that is, the section that you want shown again for purposes
22 of emphasis, during the lunch adjournment, we will take a
23 slightly longer lunch adjournment than usual, you can
24 identify that section, the section you want and discuss it
25 with the technician, and then immediately we resume after

<p style="text-align: right;">Page 16327</p> <p>1 lunch, that can be shown. That will save time, so the 2 point you want will be shown and will be seen, and this is 3 the moment that cross-examination belongs to Mr Mpofu, and 4 he's going to show us what he wants us to see. But your 5 bit show us immediately after lunch, okay? Yes, carry on, 6 Mr Mpofu.</p> <p>7 MR MPOFU: Thank you, Chairperson. 8 General, yes that's correct, we will get to your part but 9 on the part, do you agree that when they pass that stone, 10 it's quite close to the road, correct? That big stone.</p> <p>11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>12 MR MPOFU: And so when they were singing 13 this very same song, that they have been singing now, we 14 don't know for how long, it is at the point at which they 15 are leaving the road and getting into the veld, passed that 16 big stone which we also, when we went for the inspection, 17 correct?</p> <p>18 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>19 MR MPOFU: And the – despite the fact 20 that it may have been interrupted by another song or 21 whatever you saw at lunch time, but o what we've seen now 22 they are singing for the third time, the same song that 23 they sang when they were being turned back, when you first 24 confronted them, and now, correct?</p> <p>25 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p>	<p style="text-align: right;">Page 16329</p> <p>1 General shows us his part, yes.</p> <p>2 CHAIRPERSON: Okay.</p> <p>3 [13:01] MR MPOFU: Thank you, Chairperson. Right 4 now the version, I was still putting the version to you, 5 will be that at this point they continued, as they had 6 continued before the police even showed up with the, as I 7 say, singing the same song, clicking their weapons 8 rhythmically as a form of clapping, as Mr Magidiwana 9 explained.</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, I've 11 answered this, and I'm still repeating, I don't dispute 12 anything that they are saying, except that they did not 13 adhere to my request of voluntarily handing over the 14 dangerous weapons, which I told them that they are 15 illegally possessing it. There is no law in any country 16 that allows people to be so heavily armed.</p> <p>17 MR MPOFU: Yes, and so they were defiant, 18 but the point I'm making to you is that they were not 19 showing aggression, or any extra aggression, in quotes, 20 than they did when they were turning back from the security 21 guards.</p> <p>22 CHAIRPERSON: [Microphone off, inaudible] 23 respond to that proposition.</p> <p>24 MAJOR-GENERAL MPEMBE: I don't understand 25 actually the proposition, except what I said, Chairperson,</p>
<p style="text-align: right;">Page 16328</p> <p>1 I hear they are singing the song, but I am not quite sure 2 about the song, what the words of the song.</p> <p>3 MR MPOFU: Okay, I'll help you and we 4 will listen to this –</p> <p>5 MAJOR-GENERAL MPEMBE: But I don't 6 dispute, Chairperson, that they are singing that song.</p> <p>7 MR MPOFU: The one that says [African 8 language]?</p> <p>9 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 10 because even in the translations maybe I've never seen it, 11 but I am not disputing that they are singing that song.</p> <p>12 CHAIRPERSON: Mr Mpofu, can you tell us 13 what page it is on the transcript?</p> <p>14 MR MPOFU: That would be Q2.</p> <p>15 CHAIRPERSON: This is, the transcript is 16 QQ2.</p> <p>17 MR MPOFU: Thank you, Chairperson.</p> <p>18 CHAIRPERSON: Mr Tokota has been looking 19 for it, and he can't find it, so perhaps you can help us. 20 Well, perhaps we can do that after lunch as well, you are 21 justifiably concerned we should use every available minute.</p> <p>22 MR MPOFU: Yes.</p> <p>23 CHAIRPERSON: So these things can be 24 looked for during the lunch hour.</p> <p>25 MR MPOFU: We will tidy up when the</p>	<p style="text-align: right;">Page 16330</p> <p>1 is that for me for not having voluntarily handed over their 2 weapons to me, that was legally incorrect and it was 3 actually an unlawful action, and the fact that as a senior 4 police official requesting such adults to understand that 5 for them to possess these dangerous weapons is dangerous, 6 it was really incomprehensible.</p> <p>7 MR MPOFU: Yes.</p> <p>8 MAJOR-GENERAL MPEMBE: But any other 9 action of whether they were now slow or fast, to me 10 couldn't much – and I don't dispute it, but the fact that 11 they refused totally, that to me was a serious problem.</p> <p>12 MR MPOFU: Yes. No, we were together on 13 that. In fact you're quite right that it would be unlawful 14 to defy a policeman's clear instruction, but all I'm saying 15 is that that's a different thing. Not everything that's 16 unlawful is a sign of aggression. If I steal bread from 17 Pick 'n Pay I'm not fighting with anybody, but it's still 18 unlawful. You accept that?</p> <p>19 MAJOR-GENERAL MPEMBE: Chairperson, no, I 20 don't accept it, in the sense that there were already 21 people that were murdered and killed through dangerous 22 weapons, so the circumstances that I find myself in, it was 23 of necessity that they could, they themselves, seeing a 24 senior police official talking their own language and 25 telling them precisely that we are not there to arrest</p>

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1 them, but we are concerned about them possessing dangerous
 2 weapons, it could have been easily comprehensible by even a
 3 child that here is a policeman approaching us in a very
 4 humble way, but the manner in which they did not comply
 5 with that humble request actually in my seeing that that
 6 actually caused the most problems since from the 13th,
 7 because if they handed over their weapons on that day, and
 8 as I've said to Adv Madlanga, there could not have been the
 9 killing on that day.

10 MR MPOFU: Yes, okay, we'll leave it –

11 CHAIRPERSON: I think this is a point at
 12 which we can take the lunch adjournment. I think the
 13 General has made his standpoint on this issue clear –

14 MR MPOFU: Let's leave it for argument,
 15 Chairperson.

16 CHAIRPERSON: - and you've put your case
 17 to him as well.

18 MR MPOFU: Thank you, Chairperson.

19 CHAIRPERSON: So let's take the lunch
 20 adjournment. I think we'll start at 2 o'clock, or try to
 21 start at 2 o'clock. In the meanwhile I hope that the
 22 relevant section in the video clip will be identified and I
 23 think the section also where this particular song is sung
 24 is identified in the transcript, and then we'll be able to
 25 proceed further.

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1 MR MPOFU: Thanks, Chairperson.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [14:10] CHAIRPERSON: Major-General, you're still
 4 under oath.

5 WILLIAM MPEMBE: Correct, Chairperson.

6 CHAIRPERSON: There were some things that
 7 were going to be found, or attempts were going to be made
 8 to find them during the adjournment. Were these attempts
 9 successful and does somebody want to show us quickly before
 10 Mr Mpofo continues?

11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson, we, I will request the Commission that we
 13 should be allowed to show exhibit Z1. It starts at 10
 14 minutes 30 seconds, and thereafter to show the difference
 15 of the two videos, as I was requested, as I was asked, it
 16 will also go back to HHH61 at 30 seconds.

17 CHAIRPERSON: We'll see those two video
 18 clips now.

19 MAJOR-GENERAL MPEMBE: Thank you,
 20 Chairperson.

21 [VIDEO SHOWN]

22 CHAIRPERSON: That's the first one.

23 MAJOR-GENERAL MPEMBE: And I just want
 24 to –

25 CHAIRPERSON: That's the scene by the

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1 railway line.

2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson. What I would like to elucidate to this one is
 4 that immediately when they sing the song and the clacking
 5 was not as slow as when they sing other songs. It shows
 6 aggressiveness in that.

7 CHAIRPERSON: That's the point you want
 8 to show us.

9 MAJOR-GENERAL MPEMBE: That's the point –

10 CHAIRPERSON: Now you want to show us the
 11 other video. You indicate the point from which you want it
 12 shown, so can we now see that, please? Unless you want to
 13 say something first before we do?

14 MAJOR-GENERAL MPEMBE: No, thanks,
 15 Chairperson, we can go to that one.

16 [VIDEO SHOWN]

17 Thanks, Chairperson. That's what I want to
 18 illustrate the aggressiveness of the singing of the
 19 different songs and that could give me an interpretation
 20 that when I wanted, when I was approaching them, they show
 21 that they are aggressive and also the singing of that song.

22 CHAIRPERSON: Right, well we've seen
 23 that, and presumably that may be the subject of comment
 24 later in argument, but I imagine, unless you want to ask
 25 something about it now, maybe you want to save your powder

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1 for, shot for argument later, but I'm in your hands, Mr
 2 Mpofo.

3 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 4 No, Chairperson, I don't want to save my powder. Would you
 5 agree, General, that the tempo of the clicking will depend
 6 on whether it's a fast song or a slow song that is being
 7 sung?

8 MAJOR-GENERAL MPEMBE: No, Chairperson,
 9 it will depend in the manner in which the song is
 10 interpreted.

11 MR MPOFU: So if they are singing a slow
 12 song, will they click slowly, and when they're singing a
 13 fast song, by its nature, if we agree that the clicking is
 14 rhythmic with the song, surely it must depend on the tempo
 15 of the song, shouldn't it? I mean that's obvious.

16 MAJOR-GENERAL MPEMBE: No, Chairperson,
 17 it's not about – it's about the choosing of the song with
 18 the situation. I could –

19 CHAIRPERSON: [Microphone off, inaudible]

20 MAJOR-GENERAL MPEMBE: I'm sorry,
 21 Chairperson, I'm still answering.

22 CHAIRPERSON: [Microphone off, inaudible]

23 MAJOR-GENERAL MPEMBE: Oh, thanks. What
 24 I'm saying, Chairperson, is that if they chose this song
 25 and they were so slow like this, it couldn't give me an

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1 impression, but the situation why when I approach them they
 2 choose the song that I, or all of us we should tighten up
 3 something? And the clicking was very aggressive. That to
 4 me it was intimidatory, and seeing such a lot of people
 5 singing such a song and me, I'm not here, as I told them I
 6 was not there to arrest them, I was just there to tell them
 7 that what you are doing, it's unlawful.
 8 MR MPOFU: You accept that the songs that
 9 they were singing were not designed for a certain General
 10 Mpembe, but they were singing songs that they were singing?
 11 That will be the evidence, by the way, that there was no
 12 song that was directed at you personally, or even at the
 13 police.
 14 MAJOR-GENERAL MPEMBE: Chairperson, I do
 15 agree with what has been said, but to me choosing of the
 16 song went with the situation and they did want to achieve
 17 certain intentions.
 18 MR MPOFU: Okay, well accept –
 19 MAJOR-GENERAL MPEMBE: Because –
 20 MR MPOFU: Sorry, sorry, General.
 21 MAJOR-GENERAL MPEMBE: Because what I'm
 22 saying is why couldn't they sing the song when they started
 23 when they see us? Why they choose of "ncini samasende"
 24 (phonetic) when they see us? And that's the point that I
 25 wanted to bring along.

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1 CHAIRPERSON: That's the point that the
 2 song was changed when – it will also be your argument, I
 3 take it, when they saw that the police had arrived on the
 4 scene.
 5 MAJOR-GENERAL MPEMBE: Chairperson,
 6 according to the video, yes, correct.
 7 CHAIRPERSON: Well anyway, that's your
 8 interpretation of it.
 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 10 CHAIRPERSON: And you based your
 11 contention on that.
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 13 MR MPOFU: Now that's ridiculous, if I
 14 may say so. Did they change a song in your presence?
 15 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 16 talking about the song when they sing when they move from
 17 the poles, why they could not sing the same song when they
 18 move from the pole when they saw the police. When they saw
 19 the police, then they sing [African language] "ncini
 20 samasende Mfana" (phonetic), then that showed
 21 aggressiveness in the song and who is this Mfana who must
 22 tighten up his testicles? It's the police. Chairperson,
 23 it's a clear, it doesn't need any scientific somebody to
 24 interpret the song. It's very clear –
 25 MR MPOFU: Well –

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1 MAJOR-GENERAL MPEMBE: - and the
 2 situation from the beginning it was not the same when the
 3 police approached them, and yet we are community policing
 4 officers, we spoke with them and it's known to the
 5 Commission why I took a decision to lead the team.
 6 MR MPOFU: Okay, so if they had –
 7 CHAIRPERSON: Can I ask a question first
 8 before you ask one?
 9 MR MPOFU: Yes, Chairperson, of course.
 10 CHAIRPERSON: According to the
 11 transcript, exhibit QQ2 on page 1, line 10, there is rather
 12 words of a song, "siya yisi benzela," (phonetic) and the
 13 rest of the words are given, and the translation is "We
 14 work for my money, we work for it underground," and then
 15 later on, on page 3 there's a second song, "Amalungelo"
 16 (phonetic) other words are given, "Our rights, we are
 17 fighting for our rights." Now this other song that we're
 18 busy with, the song about the boy, what the boy must do, is
 19 that a third song?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 CHAIRPERSON: So is your point that
 23 there's no reason why they couldn't have sung the first
 24 song or the second song when they saw the police? The fact
 25 that they chose to sing the third song conveyed to you

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1 something which you've endeavoured to explain to us. Is
 2 that a summary of what you say?
 3 MAJOR-GENERAL MPEMBE: Exactly correct,
 4 Chairperson.
 5 MR MPOFU: And your evidence is therefore
 6 if they sang the other song that we heard many times, for
 7 example, "Ingoyami sekaya," (phonetic) which is slower than
 8 that one, you would have been happier?
 9 MAJOR-GENERAL MPEMBE: Chairperson, it's
 10 not "Ingwenya" (phonetic) or whatever, because the song
 11 itself, if they sing that one and they were as slow as that
 12 one, could also have conveyed another message, that's
 13 correct.
 14 MR MPOFU: A different message?
 15 MAJOR-GENERAL MPEMBE: Definitely,
 16 Chairperson.
 17 MR MPOFU: Yes.
 18 MAJOR-GENERAL MPEMBE: And that is a
 19 message of saying they were slow people, it's just the
 20 singing of any other song that the people they sing.
 21 MR MPOFU: Thank you.
 22 MAJOR-GENERAL MPEMBE: But the one that
 23 was sung when they saw the police, it's completely
 24 different -
 25 MR MPOFU: Yes.

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1 MAJOR-GENERAL MPEMBE: - from the
2 beginning, and it had intentions and the people who can
3 only interpret their intention and to be aggressive is the
4 strikers, Chairperson.
5 MR MPOFU: Thank you. So now we accept
6 then that the song that you prefer, "Ingoyami sekaya"
7 (phonetic) is the song that they actually were singing when
8 they left and passing the stone, correct?
9 MAJOR-GENERAL MPEMBE: Chairperson, I
10 said I did not know, but I didn't, because I didn't hear
11 the words well, but I don't dispute that.
12 MR MPOFU: Ja.
13 MAJOR-GENERAL MPEMBE: And that is not
14 what I'm speaking, Chairperson, but what I'm saying is the
15 choosing of the song went with the situations.
16 MR MPOFU: Yes, thank you very much. In
17 other words your evidence is now that at the important time
18 when Vermaak was saying that they were "vreedsaam" they
19 were actually singing the nice song?
20 MAJOR-GENERAL MPEMBE: No, Chairperson, I
21 don't know at what stage Colonel Vermaak indicate it was
22 "vreedsaam." I will be speculating. He's the only one to
23 say when were they "vreedsaam."
24 MR MPOFU: Okay, forget about Colonel
25 Vermaak. At the point at which they were passing the

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1 stone, and we'll play the video if you like, they were
2 singing the nice song, not the bad song, correct?
3 MAJOR-GENERAL MPEMBE: Yes, they were
4 singing another song.
5 MR MPOFU: Thank you very much.
6 MAJOR-GENERAL MPEMBE: But what I
7 indicated there, Chairperson, I need to add, is that they
8 did not hand their weapons to me as I requested them, and
9 that, it's a most fatal mistake of that day.
10 MR MPOFU: Yes, let's accept that as
11 fatal mistake, or another dramatic term, but the song that
12 they were singing was the good song which you prefer.
13 MAJOR-GENERAL MPEMBE: Chairperson, yes,
14 the song was different.
15 MR MPOFU: Thank you very much. Right,
16 now you were removed from the scene, correct?
17 MAJOR-GENERAL MPEMBE: Chairperson, I was
18 told to enter into the Nyala and to go to the JOC. In that
19 sense, correct, Chairperson.
20 MR MPOFU: And you knew that there were
21 people who were threatening to kill you?
22 MAJOR-GENERAL MPEMBE: No, Chairperson, I
23 did not know, but I was told.
24 MR MPOFU: Yes, once you were told you
25 knew that there were people who wanted to kill you.

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1 MAJOR-GENERAL MPEMBE: Yes, as I was told
2 I did not know who is that person.
3 MR MPOFU: Yes. Ja, neither do I. I'm
4 just saying people, because under ordinary circumstances
5 you would not be ordered or removed by somebody who's your
6 junior, correct?
7 MAJOR-GENERAL MPEMBE: It could have
8 happened if that somebody or junior knows that your life is
9 in danger.
10 MR MPOFU: Yes, that's exactly the point
11 I'm making. Under normal circumstances, which means when
12 your life was not in danger, under normal circumstances you
13 would not be removed by a person who's junior to you, or
14 ordered around by your junior, correct?
15 MAJOR-GENERAL MPEMBE: No, Chairperson,
16 not necessarily a junior; any person.
17 MR MPOFU: You'll forgive me, because
18 once again I might take you to the area of speculation, but
19 you are aware that – or rather, did you observe the
20 seriousness of the injuries on Lieutenant Baloyi? Or were
21 they serious?
22 MAJOR-GENERAL MPEMBE: Chairperson, I, to
23 know about the real injuries it was later, because as it,
24 as I have testified already I entered into the Nyala and
25 while they attended to him, so on that scene on that day I

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1 didn't see him and, but I know that he was taken to the
2 hospital.
3 MR MPOFU: Yes, fair enough, but you know
4 now that he was seriously injured?
5 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
6 MR MPOFU: And you also know that he was
7 airlifted immediately after he sustained his injuries? Or
8 as soon as possible.
9 MAJOR-GENERAL MPEMBE: I also heard so.
10 MR MPOFU: Yes, and I know you are not a
11 doctor, but you would agree that had he been left there for
12 about an hour he might not have made it?
13 MAJOR-GENERAL MPEMBE: I don't know,
14 Chairperson.
15 MR MPOFU: Yes, given the rapidity with
16 which Mr Baloyi was airlifted to hospital, which – and
17 you're quite right – may or may not have saved his life, do
18 you have any comment about the fact that the strikers when
19 they were shot were left there for, I think Mr Chaskalson
20 will say 59 minutes before any medical assistance came?
21 MAJOR-GENERAL MPEMBE: I just want to
22 understand the question.
23 MR MPOFU: I'm sorry. Yes, I'm sorry, it
24 covered two days, so it might be confusing. I'm saying
25 given the fact that Lieutenant Baloyi was immediately

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1 airlifted and that may or may not have saved his life, do
 2 you have any comment about the fact that on the 16th when
 3 other people were injured, some of them riddled with
 4 bullets, they were not immediately airlifted but were left
 5 there for about an hour?
 6 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 7 not in a position to comment because I was not there.
 8 MR MPOFU: Ja.
 9 MAJOR-GENERAL MPEMBE: On the, all the
 10 things that I could say, it's the hearsay evidence, but I
 11 thought that it was on the 13th, but now that it's on the
 12 16th, I was not on the scene.
 13 CHAIRPERSON: I would have thought it's a
 14 matter of comment for the Commission to make if it's
 15 appropriate. I'm not sure what the witness would say if he
 16 were directly commenting on it, but I'm not sure his
 17 comment will take it any further from the comments we would
 18 make when we've heard argument from the various parties,
 19 and it might be advisable to leave it as a matter to be
 20 raised during the argument stage, and obviously if you
 21 raise the point in argument you have my assurance we will
 22 deal with it in the report. Either we will accept your
 23 comments or not, and if we don't, we will say why.
 24 MR MPOFU: No, thank you, Chairperson, I
 25 won't belabour the point. I was only raising it with him

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1 because he was overall responsible for everything,
 2 including medical assistance which may or may not be
 3 provided. But I'll –
 4 CHAIRPERSON: You may technically be
 5 responsible for everything that happened on the 16th at, in
 6 the vicinity of the koppies and the two scenes and so on,
 7 but did you at the time know anything about the fact that
 8 seriously injured people were left on the ground, insofar
 9 as this is supported by the evidence, seriously injured
 10 people were left on the ground, without receiving medical
 11 attention, for approximately an hour? Were you aware of
 12 that at the time insofar as it may be true?
 13 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 14 was not aware, but the plan that I approved provided
 15 medical assistance to the nearest where we were going to
 16 disperse, the plan that –
 17 CHAIRPERSON: Major-General Naidoo I
 18 think was the first, or at the forward holding area with
 19 paramedics and ambulances and so on. Is that right?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson. That's is a plan I approved.
 22 CHAIRPERSON: Yes, and the –
 23 MAJOR-GENERAL MPEMBE: But the attendance
 24 thereof, it could have been ordered by those that were at
 25 the operation –

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1 CHAIRPERSON: Yes, whatever the reason
 2 was for what happened or didn't happen, that's something
 3 you can't help us on.
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 CHAIRPERSON: If you had been aware of
 7 the fact that there were seriously injured people lying
 8 there who were in a position to receive medical attention
 9 and for some reason were not getting it, what would you
 10 have done? If you had been aware of it at the time, what
 11 would you have done?
 12 MAJOR-GENERAL MPEMBE: Chairperson,
 13 surely we could have communicated to those on the ground to
 14 make that to be attended because on the 13th that was not
 15 the case, because also on the 13th we did provide medical
 16 assistance like in the 16th.
 17 CHAIRPERSON: On a similar theme, I
 18 understand that two of the strikers were killed, well three
 19 were killed; one was killed I think more or less at the
 20 field where the fighting took place. One was killed some
 21 distance away on the other side of the river, and one as
 22 we've heard was killed in circumstances we're not sure
 23 about yet, in the informal settlement but I think some were
 24 injured as well, is that right, some of the strikers on the
 25 13th?

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1 [14:30] MAJOR-GENERAL MPEMBE: Chairperson, on
 2 the scene - maybe they ran away also – on the scene I did
 3 not see the others that were injured but what I do know is
 4 that there was one who died on the scene, like Warrant
 5 Officer Monene and there was also Warrant Officer Lepaaku
 6 who was also being taken to the hospital when he died.
 7 Then the other two strikers, the one died in the village
 8 which we were speaking about, the other one died over the
 9 river but those, Chairperson, I did not know of. It was
 10 the time when I said the operation should halt, who were on
 11 the scene.
 12 CHAIRPERSON: No, are you aware of any striker
 13 being injured, not fatally but injured?
 14 MAJOR-GENERAL MPEMBE: Chairperson, what
 15 I'm saying it's correct that there were others injured but
 16 they were not there on the scene to be attended.
 17 CHAIRPERSON: If you'd been aware, if they had
 18 been on the scene to be attended what would you have done?
 19 MAJOR-GENERAL MPEMBE: They could have
 20 been attended, Chairperson.
 21 MR MPOFU: After that incident did you
 22 know, and that means you personally and maybe, General, as
 23 the police, did you know who was at fault between the
 24 strikers or the police?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 don't understand who was at fault, where and so on.
 2 MR MPOFU: On the 13th.
 3 MAJOR-GENERAL MPEMBE: Chairperson, I
 4 don't understand the question.
 5 MR MPOFU: Which part don't you, is it
 6 the fault or you –
 7 CHAIRPERSON: Give us the question again.
 8 MR MPOFU: - which words don't you
 9 understand?
 10 CHAIRPERSON: Sorry, Mr Mpofo, Mr Mathibedi I
 11 think wants to object but I'm not quite sure what the
 12 question was. Would you rephrase, would you repeat the
 13 question please?
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: And then if the objection is
 16 persisted in, we'll have to consider it.
 17 MR MPOFU: At the time or subsequently,
 18 did you know whether it was the police or the strikers who
 19 were at fault in respect of the incident of the 15th – of
 20 the 13th, sorry.
 21 MAJOR-GENERAL MPEMBE: Chairperson –
 22 CHAIRPERSON: What is the objection?
 23 MR MATHIBEDI SC: Mr Chairman, I think
 24 this is an issue or aspect which the Commission is called
 25 upon to make a finding on.

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1 CHAIRPERSON: Well, perhaps – [microphone off,
 2 inaudible]. Sorry, were you aware subsequently of any
 3 facts which would be relevant to decide and would indicate
 4 that whether one or other of the parties, i.e. the police
 5 or the strikers were responsible for what happened on the
 6 13th?
 7 MAJOR-GENERAL MPEMBE: No, Chairperson,
 8 except to state what I have already said, to say the
 9 strikers refused vehemently to hand over weapons to me –
 10 CHAIRPERSON: Yes, you've told us that.
 11 MAJOR-GENERAL MPEMBE: And secondly –
 12 CHAIRPERSON: And you've also told us that that –
 13 yes, sorry, carry on.
 14 MAJOR-GENERAL MPEMBE: - is that I did
 15 also say that for the strikers to attack the police I said
 16 sparked off the teargas and the stun grenade.
 17 CHAIRPERSON: You also added that subsequently in
 18 your evidence, in your re-examination, that you had
 19 reconsidered your decision not to take steps against
 20 Warrant Officer Kuhn; you decided to institute disciplinary
 21 proceedings. I think that was your evidence in re-
 22 examination, is that correct?
 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 24 I said I will do so by that time, yes.
 25 MR MPOFU: Okay. By the way, while we

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1 are on that point, you promised, I think it was the 31st of
 2 August or somewhere there, that when you've finished your
 3 evidence you are going to take those steps against Warrant
 4 Officer Kuhn. Have you taken those steps now seeing that
 5 it's now November?
 6 MAJOR-GENERAL MPEMBE: Chairperson,
 7 Warrant Officer Kuhn is in Gauteng province. Normally what
 8 we do, we write the letters to another province, so then in
 9 terms of the disciplinary proceedings the commander, on
 10 receipting of the letter, then he is the one that
 11 institutes that to investigate the misconduct. Then I am
 12 supposed to submit the statement and I believe the
 13 investigation is still taking place but I cannot say
 14 because I have not yet been called to the what, to the
 15 hearing.
 16 CHAIRPERSON: Is it correct to say –
 17 MAJOR-GENERAL MPEMBE: But the
 18 investigation is being initiated.
 19 CHAIRPERSON: Yes, so you wrote the letter, you
 20 wrote the letter to the commander in Gauteng, is that
 21 right?
 22 MAJOR-GENERAL MPEMBE: Chairperson,
 23 normally what we do is that the deputy responsible for
 24 disciplinary is the one that I speak to her and then she
 25 will write that letter.

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1 CHAIRPERSON: Has that been done?
 2 MAJOR-GENERAL MPEMBE: I'm not sure,
 3 Chairperson, I can find out –
 4 CHAIRPERSON: No, sorry, did you speak to her?
 5 MAJOR-GENERAL MPEMBE: I did speak to
 6 her.
 7 CHAIRPERSON: So as far as you're concerned you
 8 have done what you had to do up to this stage to get
 9 disciplinary proceedings under way against Warrant Officer
 10 Kuhn. You spoke to the deputy commissioner responsible for
 11 disciplinary matters, is that right?
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson.
 14 CHAIRPERSON: What she did, you can't tell us.
 15 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 16 CHAIRPERSON: What has been happening across the
 17 border in Gauteng, across the boundary in Gauteng, you also
 18 can't tell us?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 20 except that if I am not called or I'm not asked to give a
 21 statement then I can enquire why, but I believe that there
 22 will be a time where I can be requested to give a statement
 23 and thereafter I can be called to the departmental hearing.
 24 MR MPOFU: When did you speak, when did
 25 you lay the complaint, if that's the correct term?

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1 MAJOR-GENERAL MPEMBE: Chairperson,
2 precisely the date I'm not sure but it was immediately
3 after my cross-examination and when I left the Commission
4 that time.
5 MR MPOFU: And who is, what is the name
6 of the person to whom you or with whom you communicated?
7 The name of the person?
8 MAJOR-GENERAL MPEMBE: Are you saying the
9 deputy or the name –
10 MR MPOFU: Yes, I'm saying the deputy –
11 CHAIRPERSON: You talked about the deputy
12 commissioner responsible for disciplinary matters to whom
13 you made the complaint, as it were. What is her name?
14 MAJOR-GENERAL MPEMBE: It's Major-General
15 Molefi.
16 CHAIRPERSON: Thank you.
17 MR MPOFU: And what did you say to Major-
18 General Molefi?
19 CHAIRPERSON: Mr Mpofo, I don't know that that's
20 going to help us at this stage. He's told us he laid a
21 complaint. He said he thought that disciplinary
22 proceedings should be brought against Warrant Officer Kuhn
23 and reported that to Major-General Molefi. Do we need more
24 detail than that at this stage?
25 MR MPOFU: Well –

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1 CHAIRPERSON: Unless you're going to suggest
2 MR MPOFU: If the Commission doesn't – it
3 was the Commission that was promised the thing, so I don't
4 care whether, what he says. I just thought if he promised
5 that he would do something, if the Commission is not
6 interested then neither am I.
7 CHAIRPERSON: No – no, Mr Mpofo, that's not right.
8 Of course we're interested but I'm not sure if Warrant
9 Officer Kuhn is going to give evidence, which he may, but
10 certainly we would want to know what the position is before
11 we start writing our report. So you can be assured that we
12 want to know.
13 MR MPOFU: Look, General –
14 CHAIRPERSON: Sorry, may I interrupt you, Mr
15 Mpofo. Adv Hemraj makes a suggestion which may save time.
16 Mr Mathibedi, can you please make enquiries, take
17 instructions on the matter, perhaps if necessary we want
18 the full ambit of the enquiries you make. You can speak to
19 Mr Mpofo afterwards and endeavour to get up-to-date
20 information on the point about which Mr Mpofo is asking
21 questions.
22 MR MPOFU: Thank you.
23 CHAIRPERSON: And then it can be placed before us
24 and of course given to Mr Mpofo.
25 MR MATHIBEDI SC: Thank you, Mr Chairman,

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1 we shall do so.
2 MR MPOFU: Thank you. General, sorry,
3 that was just a follow-up on the issue of the complaint but
4 the question really I was asking you was about the – should
5 I read from your answer that if it is true that people,
6 injured people were left lying there for about an hour,
7 that would have been a deviation from the plan that you
8 approved?
9 MAJOR-GENERAL MPEMBE: Chairperson, I
10 just wanted to find out whether is it on the 13th or on the
11 16th?
12 MR MPOFU: 16th. Well, on any day.
13 CHAIRPERSON: The question relates to the 16th.
14 You told us that you had in your plan, in the plan that you
15 were involved in, provided for paramedics and ambulances
16 and so on to be available at the forward holding area so
17 that if people were injured, steps could be taken to give
18 us medical assistance as soon as possible. I think that's
19 the evidence you gave, is that correct?
20 MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson, to say to provide medical assistance –
22 CHAIRPERSON: Yes.
23 MAJOR-GENERAL MPEMBE: - the plan and to
24 be nearer.
25 CHAIRPERSON: Yes.

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1 MAJOR-GENERAL MPEMBE: It's exactly for
2 the purpose that we were, that they should attend to them.
3 CHAIRPERSON: Now it's about that that Mr
4 Mpofo is going to question you, going to ask you a
5 question.
6 MAJOR-GENERAL MPEMBE: Okay, Chairperson.
7 MR MPOFU: Thank you. I'll repeat the
8 question, in fairness, General, now that we know we're both
9 talking about the 16th. I'm saying if it is true that
10 injured people, severely injured people were left lying
11 there for about an hour without being attended to, that
12 would have been a deviation from what, from the plan that
13 you had approved. Correct?
14 MR MATHIBEDI SC: Sorry, Mr Chairman. Is
15 this question being based on the premise that all the
16 people that were injured on that day were, you know,
17 attended after –
18 CHAIRPERSON: What was put –
19 MR MPOFU: Yes.
20 CHAIRPERSON: What was put earlier was that
21 according to information given to us by Mr Chaskalson based
22 on the time line and the narrative of the videos, it
23 appeared that some, I'm not quite sure how many but some
24 people only received medical attention, began receiving
25 medical attention something like 59 minutes after the shots

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1 which caused the injuries were fired. I think that's the
 2 basis of it, is that right, Mr Mpofo?
 3 MR MPOFU: That's correct. Well, it's
 4 stronger than that, not that some people – that no-one
 5 received any attention until 59 –
 6 CHAIRPERSON: Well, anyway, okay. Well, that
 7 answers the question that was put to you. What's your
 8 answer to that? You were asked whether, if that's so and
 9 insofar as that is so, would that be a deviation from the
 10 plan that you approved and expected to be implemented?
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 12 but those that were on the ground, they could explain if
 13 there was any deviation, why the deviation will take place
 14 but at this moment I cannot say there was a deviation. If
 15 it was, yes, it could be a deviation from the plan but
 16 those on the ground they could give an explanation why.
 17 CHAIRPERSON: Yes. Basically it sounds – I'm
 18 changing your answer slightly – it sounds as if there would
 19 have been a deviation but whether there was a satisfactory
 20 explanation for the deviation is something you can't help
 21 us on. The people concerned would be the only ones who
 22 could give the answer to that. Is that effectively what
 23 you're saying?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 MR MPOFU: Thank you very much,
 2 Chairperson. Now, I was saying that I was now going to
 3 deal with the events of the 13th at a broader level insofar
 4 as I said to you this morning we're going to argue that
 5 they constituted a major turning point. Remember that
 6 explanation I gave in the morning, right?
 7 MAJOR-GENERAL MPEMBE: Chairperson, there
 8 were many explanations. Maybe if it, I'm asking that it
 9 could be specific as they were specified in the morning.
 10 MR MPOFU: Yes, okay. I said in the
 11 morning to you one of the turning points at least that
 12 we're going to argue, or game changers in this whole saga,
 13 was the fact that policemen were killed on the 13th. You
 14 remember that?
 15 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 16 I remember the incidents on the 13th –
 17 MR MPOFU: It doesn't mean you agree with
 18 me.
 19 CHAIRPERSON: I don't think you're answering the
 20 question. Mr Mpofo has suggested there were certain, what
 21 he called game changers, events which changed the
 22 complexion, looking forward, of what happened over the
 23 period at Marikana and he listed them and one of them was
 24 the events on the afternoon of the 13th which you've
 25 testified about and – that's correct, isn't it?

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1 MR MPOFU: That's correct, yes. Now I'm
 2 moving -
 3 CHAIRPERSON: Now ask your question about that.
 4 MR MPOFU: Yes. First question is,
 5 according to you, do you agree or disagree, according to
 6 you, until that point of the 13th when those members were
 7 killed you had regarded the situation as a normal – well,
 8 maybe not normal but you regarded it as a crowd management
 9 operation, correct?
 10 MAJOR-GENERAL MPEMBE: Chairperson, my
 11 testimony and also my statement is very clear, that by the
 12 time on Monday when I arrived there, I could realise that
 13 that could be a combination, taking into account that the
 14 people were possessing dangerous weapons.
 15 MR MPOFU: General, can you please answer
 16 my question? You can disagree or agree with me. Is it
 17 correct or is it not correct that until that incident where
 18 the policemen were killed you regarded the Marikana
 19 situation as a crowd management operation.
 20 MAJOR-GENERAL MPEMBE: No, Chairperson.
 21 MR MPOFU: Or to put it even stronger,
 22 you regarded it as a normal crowd management situation.
 23 MAJOR-GENERAL MPEMBE: No, Chairperson.
 24 MR MPOFU: Then can you go to paragraph
 25 22 of your statement? Sorry, the original –

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1 CHAIRPERSON: Which statement? We've got three
 2 statements by him.
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: Which one are you referring to, the
 5 supplementary one or the main one?
 6 MR MPOFU: The main one, Chairperson.
 7 I'm sorry, I just forgot the exhibit number.
 8 CHAIRPERSON: I think you're referring to GGG12.
 9 MR MPOFU: Triple – that's correct. It's
 10 GGG. GGG12, if you can go to paragraph 22 thereof, can I
 11 read it out to you?
 12 CHAIRPERSON: What paragraph, number 22?
 13 MR MPOFU: 22, Chairperson.
 14 CHAIRPERSON: Okay, thank you. I see it's on the
 15 screen.
 16 MR MPOFU: Yes. You say there,
 17 "Following the attack on the police I formed the view that
 18 this was not a crowd management situation." Is that
 19 correct?
 20 MAJOR-GENERAL MPEMBE: It's correct,
 21 Chairperson.
 22 MR MPOFU: So somebody reading that would
 23 be forgiven for saying that after the attack on the police,
 24 as you call it, you formed a view that it was no longer a
 25 crowd management, correct?

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1 MAJOR-GENERAL MPEMBE: Chairperson, I
 2 will say yes, with an explanation. It is my evidence
 3 before this Commission that I took a decision personally to
 4 have two caps on Monday and that could also show that that
 5 was not normal and the reasons I explained very clear,
 6 following what has happened before, but yes, on Monday when
 7 I arrived there what I said is when I saw the people were
 8 injured but taking into account what has happened on the
 9 weekend, I could not have just decided that I personally
 10 take charge of the situation on the ground as a general.
 11 CHAIRPERSON: I'm not sure whether you took that
 12 view but we know that on the Sunday two security personnel
 13 were killed, we know that two cars were burnt, we know that
 14 that evening there was an incident at Karee, I think, where
 15 – K4 actually – where four, seven vehicles were burnt and
 16 one pedestrian was stabbed and another miner who was
 17 employed at K4 was taken to hospital where he died. So it
 18 looks as if two people were killed that night, mineworkers
 19 at Karee, vehicles were burnt, early in the day on the
 20 Sunday two security personnel were killed and two vehicles
 21 were burnt. There were other incidents as appears from the
 22 occurrence book of Lonmin and of the police. There were
 23 incidents of intimidation, not – so was it really just an
 24 ordinary crowd management situation that was existing at
 25 Marikana? Before, I'm talking about before the police were

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1 killed.
 2 MAJOR-GENERAL MPEMBE: AS I've said,
 3 Chairperson, no, it was not a normal one and also I say
 4 that's also the reason why I personally went to speak to
 5 the miners themselves. I –
 6 CHAIRPERSON: Yes, I understand. Sorry, can I
 7 interrupt you and just put one further thing to you?
 8 According to the police occurrence book which is FFF25,
 9 dealing with the Monday now before the incident, of course,
 10 in the afternoon I see there's an entry at 3:30. There's a
 11 reference to people gathered at the [inaudible] Wonderkop
 12 bridge, throwing something at, throwing at vehicles passing
 13 by. Captain Sefiki was informed, TRT members were deployed
 14 and then there's a subsequent reference also to TRT members
 15 on the scene. It's further on in the occurrence book,
 16 again on the Monday morning. So it does appear that TRT
 17 members were deployed to Marikana together with POP members
 18 prior to the events of the Monday afternoon, is that
 19 correct?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson, and they also, they were with me when I go to
 22 do the interception.
 23 [14:49] CHAIRPERSON: Yes, so do you normally
 24 deploy TRT members in normal crowd management situations?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson,

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1 it is always in support of POP where we consider that the
 2 POP will need that support.
 3 CHAIRPERSON: Yes, so I see you did say
 4 in the statement and Mr Mpfu is quite right to draw
 5 attention to it, you did say in your statement that you
 6 formed the view after the attack on the police that this
 7 was not a normal crowd management situation. But looking
 8 back, for instance to whether it was a normal crowd
 9 management situation after for example the deaths of the
 10 two security personnel and the burning of their cars. And
 11 the killing of the two mineworkers on the Sunday night and
 12 the damaging of the cars and the events of incidents of
 13 intimidation and so forth. Clearly it tends to enforce an
 14 unprotected strike. Would you regard – in other words
 15 putting the clock back to say noon on Monday, 8 o'clock in
 16 the morning, on Monday morning was it even at that stage to
 17 be described as a normal crowd management situation?
 18 MAJOR-GENERAL MPEMBE: No, Chairperson,
 19 and I want also to add that there's a reason why I
 20 personally intercepted. And Q2 can also explain when I say
 21 to the crowd managers, to the strikers to say we are the
 22 police. We are here and concerned of what was happening.
 23 COMMISSIONER TOKOTA: Sorry, did you at
 24 any stage prior to the 13th form a view that this was a
 25 normal crowd management situation?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson,
 2 that's also the same reason that's why I intercepted and
 3 that could also be seen with my communication to the
 4 strikers to say we are the police, we are here and we are
 5 concerned of what was happening.
 6 MR MPOFU: Would you agree that that does
 7 not make sense. If you had always at all material times
 8 held a view that this was not a normal crowd management
 9 situation then what is stated in paragraph 22 would be
 10 senseless. That "following the attack on the police I
 11 formed a view that this was not a normal management
 12 situation."
 13 MAJOR-GENERAL MPEMBE: Chairperson, what
 14 happened there actually confirmed my view, in my view. But
 15 it could have changed if the strikers themselves handed
 16 dangerous weapons to me because if the strikers did hand
 17 over the dangerous weapons to me and it came out clearly,
 18 Chairperson, that they were actually the leaders of those
 19 that were at the koppie. They could have made the work of
 20 the police more easier to let the others get disarmed
 21 because they could have listened to them.
 22 MR MPOFU: That cannot be correct. The
 23 people told you that they are leaders at the koppie. The
 24 told you that, agreed?
 25 MAJOR-GENERAL MPEMBE: Chairperson, no,

<p style="text-align: right;">Page 16363</p> <p>1 Chairperson, I'm saying it came out later on that those 2 that I intercepted on the 13th they were actually at the 3 koppie and it came out later that those could have been the 4 leaders because later on, Chairperson, in the evidence 5 before this Commission they formed what we call the five 6 brave Madoda. 7 CHAIRPERSON: - we're busy with that I 8 want to draw your attention to a passage in your affidavit, 9 GGG12. It's paragraph 5, it deals with something that 10 happened shortly after 10am. on the morning of the 13th of 11 August. After you'd been briefed about certain things had 12 happened at Marikana by people from Lonmin. Paragraph 5 13 reads as follows, "Shortly thereafter Brigadier Calitz who 14 was monitoring the Lonmin CCTV footage in the JOC informed 15 us there were about 2000 to 3000 people at the Wonderkop 16 koppie, the koppie. Later some of these protesters left 17 the koppie and were seen headed in the direction of the 18 Karee mine. They then marched back from the Karee mine 19 towards the koppie." And then it goes on about how you 20 received instructions to deal with those who were marching 21 illegally from the Karee mine. So it does appear from that 22 passage in your statement that in fact you knew already, 23 before you set out for the area next to the railway line 24 that the people whom you were going to confront had been at 25 the koppie earlier that day, were part of a group of about</p>	<p style="text-align: right;">Page 16365</p> <p>1 instructions from the Provincial Commissioner at 12:45 and 2 before you set out to the area next to the railway line. 3 You knew they'd come from the koppie and knew they'd gone 4 towards Karee mine and knew they'd come back and were going 5 back towards the koppie. Is that right? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 MR MPOFU: But when I asked you the same 9 question this morning you said you heard it from the 10 strikers. Correct? 11 MAJOR-GENERAL MPEMBE: Chairperson, I was 12 saying I heard it from the strikers who were actually 13 confirming what I was told. It was just a hear evidence by 14 them. 15 MR MPOFU: Okay, the record will speak 16 for itself on that one. 17 CHAIRPERSON: The record may speak for 18 itself on that. 19 MR MPOFU: That I thought was different, 20 ja. Anyway the point I'm dealing is that all these tragic 21 things that the Chairperson has enumerated to you do not 22 seem to have featured in your mind. What you have put in 23 paragraph 22 of the turning point if I may use my own 24 phrase, is that following the attack on the police, okay, 25 you formed the view that this was not a normal crowd</p>
<p style="text-align: right;">Page 16364</p> <p>1 2 to 3000 people. But they, the group that left the koppie 2 had gone in the direction of the Karee mine and then for 3 some reason turned back and come back towards the koppie. 4 Now that was according to what you say in Para 5 was 5 something you knew already before you received the 6 instructions which you set out in paragraph 6 from the 7 Provincial Commissioner. Is that Para 5 wrong or can we 8 accept that it's in accordance with your recollection? 9 MAJOR-GENERAL MPEMBE: Chairperson, as I 10 said - 11 CHAIRPERSON: Sorry, your answer? 12 MAJOR-GENERAL MPEMBE: Chairperson, as I 13 said I also earlier on in my testimony that he was not 14 monitoring, I corrected the monitoring to say he only 15 showed me on the Lonmin CCTV, then he said he was also 16 informed then he informed. It was actually confirmed by 17 the protesters themselves when I was there. 18 CHAIRPERSON: Yes, yes. 19 MAJOR-GENERAL MPEMBE: He said, General, 20 these are the people but I'm also informed. So he was not 21 sure, but here I was saying what I was told by Brigadier - 22 CHAIRPERSON: Yes, yes, I'm sorry. I had 23 forgotten, I'm glad you reminded me of the correction that 24 you gave us in respect of Para 5. But the point is you had 25 that knowledge albeit hearsay before you received the</p>	<p style="text-align: right;">Page 16366</p> <p>1 management situation or it was more abnormal, or whatever. 2 But it was a turning point. 3 MAJOR-GENERAL MPEMBE: Chairperson, I 4 said no for the main reason is that - the main reason is 5 that that's one of the reasons also I went personally to do 6 the interception. 7 MR MPOFU: General, I'm prepared to 8 accept that the situation described by the Chairperson is 9 not normal, okay. There were already four people who had 10 died. As the Chairperson said there were seven cars or 11 whatever that had been burnt down. All I'm saying to you 12 is that the killing of the police, if that was on a scale, 13 abnormal 4, the killing of the police was a turning point 14 which made it abnormal 10. Correct? 15 MAJOR-GENERAL MPEMBE: No, Chairperson, I 16 am on record to this Commission that things, after the 17 incidents of the weekend, the operation was rated 3. 18 MR MPOFU: All right. Now then the 19 orders stated in paragraph 22 doesn't make sense. If 20 things were the same before and after the killing of the 21 police as far as your views were concerned, correct? 22 MAJOR-GENERAL MPEMBE: I said, 23 Chairperson, that if the protesters gave me the dangerous 24 weapons we could have been speaking currently even today a 25 different story. But that was the confirmation of the view</p>

<p style="text-align: right;">Page 16367</p> <p>1 that I had and I put it on record again, if I didn't form 2 up any view I could not have been personally, as a general, 3 responsible for operations in the province, have gone there 4 personally. 5 MR MPOFU: Yes, in other words what you 6 are now telling the Commission is that the killing of those 7 policemen did not change your view as to how bad things 8 were. It was just another day in the office. 9 MAJOR-GENERAL MPEMBE: No, Chairperson, 10 that's not what I am saying. 11 CHAIRPERSON: Well - 12 MAJOR-GENERAL MPEMBE: What I'm saying 13 is, Chairperson, I repeat and I'll keep on repeating it, if 14 the protesters themselves gave me the dangerous weapons we 15 might not have been speaking about the killing of the 16 police officers. 17 MR MPOFU: General, that is mightily 18 irrelevant to the question I'm asking you. Do you 19 understand that? I'm saying to you, forget about if the 20 strikers, what have you, you've been saying that all 21 morning, all I'm saying to you is this, you are telling 22 this Commission that the issue of the killing, of the 23 policemen had no bearing whatsoever on your assessment of 24 the situation. Is that what you are telling the 25 Commission?</p>	<p style="text-align: right;">Page 16369</p> <p>1 MAJOR-GENERAL MPEMBE: Ja, yes, 2 Chairperson. 3 CHAIRPERSON: So it was at the top level. 4 So presumably if they even grade the seriousness in the top 5 level, it was already in the top level before you got 6 there. 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 CHAIRPERSON: Ja, but never mind the 10 official levels, did you regard it and did the SAPS 11 generally regard it as even more serious once this incident 12 took place in which the police were killed? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 CHAIRPERSON: All right that sounds like 16 a suitable note upon which - 17 MR MPOFU: I am so indebted to the 18 Chairperson, we can have tea now, Chairperson, thank you. 19 CHAIRPERSON: All right, I'm so grateful 20 for you to acknowledge your indebtedness. We'll take the 21 tea adjournment, thank you. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [15:21] CHAIRPERSON: Major-General, you're still 24 under oath. 25 WILLIAM MPEMBE: Yes, Chairperson.</p>
<p style="text-align: right;">Page 16368</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, 2 that's not what I'm saying. 3 CHAIRPERSON: Tell us what's your answer. 4 MAJOR-GENERAL MPEMBE: Chairperson, I 5 said the killing of the police officials confirmed the view 6 of this is not normal crowd management, but what I'm 7 saying, Chairperson, is if the protesters gave me the 8 dangerous on that day - 9 CHAIRPERSON: Yes, you've explained that, 10 if they'd given you the dangerous weapons it wouldn't have 11 happened. I understand that, but I think what Mr Mpofu is 12 trying to get to and perhaps we can make this point before 13 we take the tea adjournment, what he's trying to get you to 14 say is did you - and if I'm wrong he'll correct me. Did 15 your assessment of the seriousness of the situation remain 16 the same after the incident when the police were killed or 17 did you from that point on regard the matter as even more 18 serious than you had previously seen it? 19 MAJOR-GENERAL MPEMBE: Chairperson, as 20 I'm saying is that it was rated 3. Chairperson will 21 understand that the levels of crowd management in terms of 22 assessment that is serious, more serious and so on. It was 23 rated even before I came there as - that's why I was 24 speaking about level 3. 25 CHAIRPERSON: Is that the top level?</p>	<p style="text-align: right;">Page 16370</p> <p>1 CHAIRPERSON: Mr Mpofu. 2 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 3 Thank you. General, I'm now going to give you, to say to 4 you that not only was the killing of the policemen a 5 turning point in the sense that you agreed with the 6 Chairperson, but that it also led to the introduction of 7 the paramilitary unit called the STF into the mix. 8 CHAIRPERSON: The question has been asked 9 and answered already. I think you asked the question 10 earlier and the answer given was General Annandale brought 11 the STF, but of course your point is that General Annandale 12 came after the incident in which the police were killed on 13 the afternoon of the 13th. 14 MR MPOFU: Yes, Chairperson, I'm asking 15 it in a different context now. I'm saying that the - it's 16 not something about the - 17 CHAIRPERSON: Okay, alright, just ask the 18 question - 19 MR MPOFU: - the [inaudible] of time ja, 20 it's about the turning point. I'm saying to you, General, 21 that the issue of the killing of the policemen among other 22 things brought about the introduction of the STF into the 23 picture, correct? 24 MAJOR-GENERAL MPEMBE: Chairperson, as I 25 indicated earlier, it's, I don't know whether, because a</p>

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1 decision of calling the STF was not taken by me and that
 2 makes it more difficult to answer the question because the
 3 one who called the STF would, might be in a better position
 4 to explain this.
 5 CHAIRPERSON: And who was that? Who was
 6 that?
 7 MAJOR-GENERAL MPEMBE: Chairperson, what
 8 I know is that Major-General Naidoo was the acting and the
 9 PC arrived, some, between –
 10 CHAIRPERSON: I see. So it's either the
 11 acting PC, that's Major-General Naidoo, or the PC herself,
 12 Lieutenant-General Mbombo. They will be able to answer the
 13 question. Is that correct?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson, because I don't know even when was, when were
 16 they –
 17 CHAIRPERSON: No, no, I understand. You
 18 don't know exactly when the decision was taken. I take it
 19 the follow-up question would be before the events of the
 20 Monday afternoon when you were at meetings earlier in that
 21 day, was there any mention of the STF being called up?
 22 MAJOR-GENERAL MPEMBE: No, Chairperson.
 23 CHAIRPERSON: We know the TRT had come,
 24 but the NIU weren't there yet and the STF weren't there.
 25 Was there any mention of them possibly being called up or

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1 not, that you heard?
 2 MAJOR-GENERAL MPEMBE: No, Chairperson,
 3 that was not even said then.
 4 CHAIRPERSON: Alright, okay.
 5 MR MPOFU: Thank you, Chairperson, again.
 6 And you would also agree that the introduction of Colonel
 7 Scott was also linked to the death of the policemen?
 8 MAJOR-GENERAL MPEMBE: Definitely no,
 9 Chairperson. This one I know precisely is because Captain
 10 Bembe, he was at the course, he's normally the person that
 11 is doing the planning that Colonel Scott does –
 12 CHAIRPERSON: What's his name?
 13 MAJOR-GENERAL MPEMBE: Captain Bembe –
 14 CHAIRPERSON: It's not Mpeembe, Mbembe?
 15 MAJOR-GENERAL MPEMBE: Bembe, but he's B-
 16 E-M-B-E.
 17 CHAIRPERSON: I see.
 18 MAJOR-GENERAL MPEMBE: Bembe, yes.
 19 CHAIRPERSON: Not a relation of yours.
 20 MAJOR-GENERAL MPEMBE: He was –
 21 CHAIRPERSON: So Captain Bembe, what
 22 about Captain Bembe?
 23 MAJOR-GENERAL MPEMBE: Captain Bembe, he
 24 is the planning member for me in the province. He was at
 25 the course at that time and when he was supposed to have

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1 been there available, he was not available, and I didn't
 2 have any problem with Major-General Annandale to call
 3 Duncan Scott.
 4 MR MPOFU: Yes, but we've already agreed
 5 that Annandale would not even have been there to call
 6 Scott, but that's not the point. I'll refer you to
 7 Scott's, FFF18 –
 8 CHAIRPERSON: Sorry, what paragraph?
 9 What does it say?
 10 MR MPOFU: 2. 2, Chairperson.
 11 CHAIRPERSON: What does it say?
 12 MR MPOFU: "On 13 August 2012 at about 6
 13 I was phoned by Brigadier Fritz, the section head of the
 14 Special Task Force, and instructed to report Lonmin Mine in
 15 Marikana to assist in planning an operation to apprehend a
 16 crowd of protesters who had reportedly killed two police
 17 officials and critically wounded a third earlier in the
 18 day."
 19 CHAIRPERSON: Yes, now what the witness
 20 says is that he was quite happy that Lieutenant-Colonel
 21 Scott should come because his planner wasn't available.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: He was happy with General
 24 Annandale getting him. Brigadier Fritz I think served
 25 directly under General Annandale, didn't he?

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1 MR MPOFU: No, that's correct, Chair.
 2 I'm not making that point. I'm making the point that the,
 3 which is made in what I've just read, namely that Scott was
 4 called by Fritz because two police officials had been
 5 killed and a third had been wounded. So it was –
 6 CHAIRPERSON: No, it doesn't say
 7 "because." It describes the crowd of protesters and it
 8 says that the operation was to be planned to apprehend them
 9 and then in describing them it says that they had
 10 reportedly killed two police officials and critically
 11 wounded a third. Now it may well be a correct inference
 12 that there was a causal connection between the death of the
 13 two policemen and the wounding of a third and the calling
 14 up of Lieutenant-Colonel Scott, but I'm not sure that the
 15 statement says it in as many words, but in any event, it's
 16 a point that can be argued.
 17 MR MPOFU: That's fine. I also want to
 18 put it to you that as of the time of the killing of the
 19 policemen in respect of which you were accused of being
 20 culpable, from that point you were effectively removed not
 21 only from the scene but from being effectively the real
 22 CJOC, and the CJOC was now Annandale.
 23 CHAIRPERSON: What do you say about that,
 24 Major-General?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson, I

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1 was still the CJOC, and as I have explained and I also put
 2 my evidence is that Major-General Annandale was my deputy
 3 and he was always at the JOC.
 4 CHAIRPERSON: I think you said you
 5 actually appointed him to be the chairman of the JOCCOM.
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson, I also gave reasons why.
 8 CHAIRPERSON: Yes, the reason was that
 9 you wouldn't be there all the time because you had a lot of
 10 other matters to deal with, including dealing with Lonmin
 11 and dealing with the trade unions and so on. Is that
 12 right?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 MR MPOFU: Yes, in fact one of the
 16 reasons you gave for asking him to chair is that sometimes
 17 you would be dealing with the unions and management,
 18 correct?
 19 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 20 MR MPOFU: But we know that when the
 21 decisive meeting of taking the operation that killed 34
 22 people, that he was chairing and you were there, you were
 23 not speaking to management, correct?
 24 MAJOR-GENERAL MPEMBE: He was chairing,
 25 Chairperson.

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1 MR MPOFU: And you were there.
 2 MAJOR-GENERAL MPEMBE: Correct,
 3 Chairperson.
 4 CHAIRPERSON: I don't think the
 5 suggestion was that Annandale was appointed to take the
 6 chair in the absence of this witness. The witness says he
 7 appointed him chair and the reason was because he wouldn't
 8 always be there, but there's something to be said in favour
 9 of having continuity in the chair and not having different
 10 people in the chair from time to time. Of course it's not
 11 just the fact that he was the chairman of the JOC, he was
 12 also according to slide 67 the chief of staff, and he had
 13 to coordinate the running of the operation by managing the
 14 JOC with the designated role players representing each
 15 field. But was he subject to you? He was effectively your
 16 chief of staff, wasn't he?
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 CHAIRPERSON: But the point put to you is
 20 that when the Provincial Commissioner announced her
 21 decision - if it was her decision is something we'll hear
 22 later, I suppose - announced her decision that stage 3
 23 should be implemented on Thursday afternoon, he was in the
 24 chair. Well, that followed I suppose from the fact that he
 25 was the chairman, but what was then explained to the

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1 committee as to how the operation was to take place was
 2 done by Colonel Scott. Now I think Mr Mpofu is suggesting
 3 that these facts that I've summarised to you are indicative
 4 of, or rather are support for his allegation that you were
 5 sidelined, you were no longer really the overall commander.
 6 Is that correct, Mr Mpofu?
 7 MR MPOFU: Yes, but -
 8 CHAIRPERSON: Are there any other factors
 9 that you would rely on in this regard which you can put to
 10 him so that he can comment on them?
 11 MR MPOFU: Yes, Chairperson, but that's
 12 not even the proposition I'm putting to him now. I put
 13 that proposition in the morning, the one that the
 14 Chairperson is putting. What I'm putting now is that this
 15 is the turning point issue; I'm saying that installation,
 16 if you like, of Annandale as the effective CJOC happened
 17 after the disastrous handling allegedly, at least according
 18 to some view that the alleged disastrous handling of the
 19 incident of the 13th by the General; not that I agree with
 20 those people who were criticising him, but I'm just saying
 21 that there was that criticism. There were threats of death
 22 and then Annandale was installed. That's basically what -
 23 CHAIRPERSON: You've got his answer. He
 24 doesn't agree with you. So that's again a matter for
 25 argument, I would have thought.

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1 MR MPOFU: Yes. No, I was just answering
 2 you when you're saying is that the point. Also the - well,
 3 this point that I'm making is actually amplified by the
 4 fact that, which you have just confirmed now, that
 5 Annandale had all these different appellations and
 6 descriptions, depending on the day of the week. He was
 7 your deputy, he was the chief of staff, and then what else?
 8 CHAIRPERSON: Chairman of the JOCCOM.
 9 MR MPOFU: And the chairman of the JOC,
 10 depending on what day of the week it was.
 11 CHAIRPERSON: No, I don't think there's
 12 any suggestion that the day of the week had any bearing
 13 upon which particular hat he was regarded as wearing at any
 14 particular time -
 15 MR MPOFU: It's obviously an
 16 exaggeration, Chairperson -
 17 CHAIRPERSON: But so -
 18 MR MPOFU: It's a figure of speech.
 19 CHAIRPERSON: It's a poetic description
 20 perhaps which -
 21 MR MPOFU: It's a figure of speech.
 22 CHAIRPERSON: - a methodical one, but
 23 again I don't know if the witness -
 24 MR MPOFU: Anyway, that's fine -
 25 CHAIRPERSON: I don't know if the witness

<p style="text-align: right;">Page 16379</p> <p>1 has got any comment. The suggestion is that depending on 2 the day of the week that Major-General Annandale had 3 another title, was wearing another hat. Do you agree with 4 that?</p> <p>5 MAJOR-GENERAL MPEMBE: No, Chairperson, I 6 do not agree. I think I need just to explain the word 7 "chief of staff," it's actually the relatively word that 8 came to the police after 20 – I think after 2010 whereby it 9 describes the person that actually is managing the forces 10 in the JOC permanently, and as the Chairperson could see 11 that there is no preemptory policy that says that the CJOC 12 can stay in the JOC, but the chief of staff is that person 13 does the most, ensures that the most administrative 14 instructions in the absence, and even when the chief, the 15 CJOC is there, and he's always there, and being a 16 chairperson of the JOC, of the JOCCOM, is that normally he 17 was the one that was chairing the JOCCOM every day and thus 18 he was also referred as, but not as the days of the week 19 changes.</p> <p>20 CHAIRPERSON: Chief of staff is really a 21 military term. During the war all the major commanders had 22 chiefs of staff who played the kind of role that you've 23 described, but you wouldn't necessarily know that. Mr 24 Mpofo, the next question?</p> <p>25 MR MPOFU: Yes, well, as far as this war</p>	<p style="text-align: right;">Page 16381</p> <p>1 CHAIRPERSON: Yes, the short point of 2 course, Major-General Annandale only arrived on the scene 3 in the evening after the incident in the afternoon. 4 MR MPOFU: Exactly. 5 CHAIRPERSON: And you took a decision to 6 appoint the permanent SAPS JOC and then presumably 7 thereafter at some stage you filled in the various 8 positions that you summarise in para 7. Is that right? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. It's actually after the incident, and I would 11 say – 12 CHAIRPERSON: Well, you couldn't have 13 appointed Annandale before the incident – 14 MAJOR-GENERAL MPEMBE: - because he was 15 not – I'm sorry, Chairperson. 16 CHAIRPERSON: Ja, you didn't know he was 17 coming. Sorry, you and I are talking over each other. 18 It's my fault, but you didn't even know he was coming, I 19 take it, till after the incident. Is that right? 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson. 22 MR MPOFU: And not only after the killing 23 of the policeman, not only was there a deluge, as I said 24 earlier, of personnel, another 600 or so added, but also 25 the amount and type of arms that were brought, which</p>
<p style="text-align: right;">Page 16380</p> <p>1 of Marikana was concerned you did not – or rather let me 2 put it this way. The suggestion in your statement is that 3 you appointed Major-General Annandale as a chairperson of 4 the JOCCOM even before the incident of the 13th, and I must 5 admit that that's not what it says. I'm just saying you 6 say in paragraph 6 of your statement, of GGG12, you say at 7 paragraph 6, "At about 12:45," and so on, Provincial 8 Commissioner instructed you, which we know about, and then 9 the next paragraph 7, you say, "On the same day I took a 10 decision to establish a permanent SAPS JOC," and so on, and 11 appointed, the structure was myself, number 2 was 12 Annandale, and so on and so on. And then you say you had a 13 briefing with them and then following the briefing, and 14 then you went and encountered the marchers. Do you 15 understand what I'm saying?</p> <p>16 MR MATHIBEDI SC: Sorry, Mr Chairman. 17 CHAIRPERSON: Sorry, before the witness 18 answers, yes? 19 MR MATHIBEDI SC: Paragraph 7 reads, "On 20 the same day," it does not say before or after the 21 incident. 22 MR MPOFU: but that's exactly what I said 23 to assist the witness, that I'm not suggesting that he said 24 it in so many words. That's why I wouldn't have used the 25 word the impression if he'd said so in so many words.</p>	<p style="text-align: right;">Page 16382</p> <p>1 bordered on being weapons of war, increased significantly. 2 What do you have to say about that? That's probably why 3 you needed a chief of staff. 4 MR MATHIBEDI SC: Which weapons of war is 5 reference being made to, Mr Chairperson? 6 CHAIRPERSON: Presumably assault rifles, 7 but before we get on to that, just for the purposes of 8 rounding the other point off, paragraph 22 of exhibit GGG12 9 is where the witness says he, because he thought this 10 wasn't a normal crowd management – sorry, where he says 11 that on the arrival of General Annandale he requested him 12 to chair the JOCCOM meetings, and he gives the reason, and 13 then in his supplementary statement, which is HHH3, para 14 11, he elaborates on that and he gives the reasons why he 15 tasks General Annandale to chair the JOCCOM. It's not 16 necessary for that evidence to be repeated, but that's 17 where you state it. 18 MAJOR-GENERAL MPEMBE: Correct, 19 Chairperson. 20 CHAIRPERSON: On the arrival of 21 Annandale, it says at para 22 of GGG12, you requested him 22 to chair the JOCCOM meetings. So it's quite clear when, 23 what the timing was and you give the reasons in your 24 statement, the two statements, which you don't have to 25 repeat.</p>

<p style="text-align: right;">Page 16383</p> <p>1 MAJOR-GENERAL MPEMBE: Thanks, 2 Chairperson. 3 CHAIRPERSON: Now you're dealing with the 4 weapons of war. 5 MR MPOFU: Yes. 6 CHAIRPERSON: Now the objection was 7 raised that the expression "weapons of war" is not 8 sufficiently precise, so perhaps you could reformulate the 9 question so that your learned friend will not be able to 10 persist in his objection. 11 MR MPOFU: We're going to assist my 12 learned friend very shortly, but at this stage let me just 13 clarify something. Before the killing of the police you 14 did not see any need for a chief of staff, correct? Which 15 according to the Chairperson is used in war. 16 CHAIRPERSON: Inter alia in war. Inter 17 alia in war, possibly used in peace as well. 18 MR MPOFU: Correct. You didn't have a 19 chief of staff – on a serious note, you didn't have a chief 20 of staff before the killing of the police, correct? 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 22 but also I need just to give the qualification. It's my 23 testimony to this Commission that on the same day, on 24 Monday, it was my first day from leave. I couldn't have 25 any opportunity of sitting and planning with the people.</p>	<p style="text-align: right;">Page 16385</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 2 I did call her, but I need to explain. Chairperson, it's 3 not only when police are being killed, but you need to 4 appraise the Provincial Commissioner with any developments 5 or any event that has taken place. 6 MR MPOFU: Ja, but your evidence is not 7 that you said Commissioner, two policemen have been killed 8 and two strikers and another one, and so on. You called 9 her to tell her that members had been killed, irrespective 10 of the other, the fact that other lives were lost. What 11 was more important to you was the lives of the police, not 12 of the other human beings. That's what I'm suggesting to 13 you. 14 MAJOR-GENERAL MPEMBE: No, Chairperson. 15 MR MPOFU: Then why did you say at page 16 12788, Chairperson, this is what you said when you were 17 being cross-examined by Ms Le Roux, you say, "I could not 18 establish whether stun grenades were utilised under the 19 circumstances. I informed her," talking about the 20 Provincial Commissioner, "I informed her telephonically 21 while I was still on the scene, and that there are members 22 who have been killed. The other one was killed already on 23 the scene, and the other member, I also said that he should 24 be taken to hospital and he later passed on, and the other 25 one I informed the Provincial Commissioner is that it's</p>
<p style="text-align: right;">Page 16384</p> <p>1 It is also my evidence to this Commission that by that time 2 one could not, it's true that one could not even think 3 about a chief of staff, but that does not necessarily mean 4 that I could not have got him. 5 [15:41] MR MPOFU: Yes, but what we know for sure 6 is that even if you had the idea of a chief of staff in 7 mind, it would not have been Annandale because that was not 8 in your mind. Correct? 9 CHAIRPERSON: [Microphone off, inaudible] 10 why he hadn't come yet. If he hadn't come and 11 reinforcements hadn't come, you might well have appointed 12 some local person as the chief of staff. Is that right? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson, as it has happened with other operations. 15 MR MPOFU: Yes, good. So at least the 16 minimum we can say is that the identity of the chief of 17 staff that you did appoint had something to do with the 18 issues we have discussed, which are the so-called 19 reinforcement, the calling of Annandale by someone else, 20 not you, correct? 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 22 MR MPOFU: Thank you. And the issue of 23 the killing of the policemen was so important that you 24 called the Provincial Commissioner from the scene to advise 25 her about the fact that members had been killed, correct?</p>	<p style="text-align: right;">Page 16386</p> <p>1 Lieutenant Baloyi who has been critically injured and so 2 he's also been airlifted on that day," and then it was 3 discovered that Baloyi utilised the stun grenade, and so 4 on. That's what you say you reported to her. Do you 5 agree? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson, when I was responding to the question at the 8 time. But it doesn't necessarily mean that I did not 9 inform her about the protesters, strikers that have, that 10 have been killed on that day, but there, yes, it's my 11 answer when I was responding to a question. 12 MR MPOFU: And are you aware that when 13 the briefings were being done for the 16th, that the members 14 that we have loosely called "the troops," meaning not the 15 commanders, were informed that the incident of the 13th was 16 something they had to bear in mind, of the killing of the 17 policemen? 18 MAJOR-GENERAL MPEMBE: I do not 19 understand "bear in mind." Maybe if I might be shown the 20 video to interpret it in the correct way, or I'm shown 21 where maybe the quotation has been taken, because I'll be 22 able to interpret it. 23 MR MATHIBEDI SC: Mr Chairman, if the 24 witness could be told who said that, I think it will assist 25 him.</p>

<p style="text-align: right;">Page 16387</p> <p>1 CHAIRPERSON: My recollection is it was 2 in one of the pocketbooks or one of the IPID statements, I 3 can't remember which – 4 MR MPOFU: Yes. 5 CHAIRPERSON: But I think it's a fair 6 request. 7 MR MPOFU: It is, Chair, but 8 unfortunately I can't accede to it right now. I will in 9 due course provide – 10 CHAIRPERSON: Otherwise we can cut it 11 short. You've heard it's being suggested in other a 12 pocketbook or an IPID statement or both, that that was what 13 was said as part of the briefings of the ordinary members 14 on the 16th before the operation in the afternoon. Now if 15 you have never heard of that before, you didn't know about 16 it, then it's pointless even giving you the reference. 17 Does it ring a bell with you? You obviously weren't there. 18 You don't know what briefing - from your own knowledge at 19 the time, what briefings were given. Were you aware that 20 such points, or such a point was made in any of the 21 briefings given to the ordinary members that afternoon by 22 one of the commanders? 23 MAJOR-GENERAL MPEMBE: No, Chairperson. 24 CHAIRPERSON: Doesn't that take - 25 MR MPOFU: It does.</p>	<p style="text-align: right;">Page 16389</p> <p>1 statement. 2 CHAIRPERSON: Well Mr Mpofu, let's not 3 waste time on it at the moment. 4 MR MPOFU: Yes. In fact, Chairperson, I 5 will give you the reference. All I wanted, because – 6 CHAIRPERSON: You've identified it; you 7 can give it to us later. 8 MR MPOFU: Correct. 9 CHAIRPERSON: Carry on. 10 MR MPOFU: Yes, Mr Mathibedi wanted the 11 name, that was the name; K-I-D-D, but I'll give the 12 reference, thanks. Were you aware that – and I'm 13 paraphrasing now – Colonel Scott, that after the killing of 14 the policemen "tensions were high on both sides," so high 15 that Colonel Scott thought it might not be advisable to 16 launch an operation? 17 MAJOR-GENERAL MPEMBE: I don't 18 understand, Chairperson, when was it – 19 CHAIRPERSON: Colonel Scott said that on 20 the Monday evening, going on into early Tuesday morning, he 21 was working out the plans for what operation should be 22 launched, and he said that one of the thoughts that 23 occurred to him was that it might be inappropriate to 24 launch an operation on the Tuesday morning, so soon after 25 the events of the Monday afternoon, it might be</p>
<p style="text-align: right;">Page 16388</p> <p>1 CHAIRPERSON: - dispose of the point? 2 MR MPOFU: Yes. Were you aware that 3 after the killing of the policemen, to quote Lieutenant- 4 Colonel Scott – 5 CHAIRPERSON: Sorry, before you go 6 there – 7 MR MPOFU: I'm sorry, Chairperson – 8 CHAIRPERSON: My recollection of course 9 may be faulty that that was in fact said at that occasion, 10 on that occasion. It may have been said on some other 11 occasion, but, so it might be helpful if at some stage you 12 could give us – not necessarily the witness because in the 13 light of what the witness says it's not a matter of 14 importance for him – if you could give us the reference. I 15 know you haven't got it now, but when you find it, it will 16 be appreciated, because I may be wrong in thinking that it 17 was actually part, it was actually said to any of the 18 members of the service on the Thursday. But anyway, let's 19 not waste time on it now; let's move on. Ms Lewis has got 20 something. Can she help us? She's looking modest. 21 MR MPOFU: Yes, this is exactly what I 22 was suspecting, Chairperson. I have said this so many 23 times; there's a person called Captain Kidd, K-I-D-D – 24 CHAIRPERSON: What's the page? 25 MR MPOFU: This is probably his</p>	<p style="text-align: right;">Page 16390</p> <p>1 misinterpreted by the, as some kind of retaliation by the 2 police, and he said, in support of his views on the matter 3 he said this was because - the phrase that was put to you 4 by Mr Mpofu – tensions were high on both sides. Now that 5 was presumably based on information he had received, but 6 are you able to throw any light on that? Would you – yes, 7 I think he said emotions, I think he said emotions were 8 high on both sides and the situation was very tense and so 9 on. Anyway, that's just a summary, paraphrase of what he 10 said. Can you help us about that? Do you know anything 11 about that, whether that was factually correct, what he 12 said in that regard? 13 MAJOR-GENERAL MPEMBE: No, Chairperson, I 14 don't know, but what I know is that even if after that 15 incident, I even said that despite what happened on Monday 16 we continued with the negotiations, but not that because 17 patience were high. 18 MR MPOFU: We were also told that 19 Lieutenant-Colonel Merafe was emotional about what had 20 happened. Were you aware of that? 21 MAJOR-GENERAL MPEMBE: Chairperson, I may 22 not say emotional. I don't know when, but what I know is 23 that - I even said it myself – that when police were killed 24 on that day I did control every member and that's all what 25 I know.</p>

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1 CHAIRPERSON: No, what's being referred
 2 to is that that evening when the people who had come from
 3 elsewhere were being told what had happened, I think the
 4 National Commissioner and the Provincial Commissioner and
 5 Provincial Commissioner Petros and various other people,
 6 and Colonel Scott and General Annandale, when they were
 7 told by Lieutenant-Colonel Merafe what happened, he'd given
 8 his version or his account of what happened, he appeared to
 9 Lieutenant-Colonel Scott to be very emotional. I think
 10 that's a correct summary, isn't that, Mr Mpofu?
 11 MR MPOFU: [Microphone off, inaudible]
 12 CHAIRPERSON: Now the question is were
 13 you present when Lieutenant-Colonel Merafe gave his account
 14 to the visitors, the people who'd come that evening? Were
 15 you?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson,
 17 I'm not aware when he was giving the version and showing
 18 some emotions.
 19 CHAIRPERSON: So did you have much to do
 20 with him that evening back at the JOC, Lieutenant-Colonel
 21 Merafe? Did you talk to him, see him? Can you tell us
 22 what his mental state, or emotional state was at that time?
 23 MAJOR-GENERAL MPEMBE: Chairperson, at
 24 that time I know that there was a time where we called even
 25 the people for doing, for the debriefing, and the last time

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1 that I saw Colonel Merafe, it was when he was tasked by
 2 Brigadier Calitz, that was also after the incident, to work
 3 with Colonel Scott.
 4 CHAIRPERSON: But you can't help us as to
 5 whether he was in an emotional state?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson. I think he will be in a better position to
 8 say he was or not.
 9 MR MPOFU: If you can just bear with me;
 10 I'm not sure if the picture I want to show has been loaded
 11 yet.
 12 CHAIRPERSON: Mr Mpofu, is this the
 13 stage –
 14 MR MPOFU: Oh, I'm told –
 15 CHAIRPERSON: Is this a picture in
 16 respect of which I must issue a warning?
 17 MR MPOFU: No, Chairperson, certainly
 18 not. I'm told it's in HHH55.
 19 CHAIRPERSON: This is the photograph we
 20 saw, I think it was on Friday, pictures of the Scorpion.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: Ja, we saw that picture –
 23 MR MPOFU: That's correct, yes.
 24 CHAIRPERSON: There was some time spent
 25 on Friday looking at this picture. The two red circles on

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1 this one that we now see were firearms. The one was
 2 protruding from the windscreen of the vehicle. The other
 3 one was a machinegun, I think, on the back of the vehicle.
 4 MR MPOFU: I want the other one, the
 5 third one. I think it's the one –
 6 CHAIRPERSON: Mr Mathibedi put on record
 7 that not one of these vehicles actually – sorry, one of
 8 these firearms was in fact loaded at the time. They were
 9 there more for show, as part of the show of force. That's
 10 what was put on record then. Mr Tokota says he seems to
 11 remember that we were told they weren't genuine
 12 machineguns, but Mr Mathibedi can tell us what he said. My
 13 recollection, he either said they weren't working or they
 14 weren't loaded.
 15 MR MPOFU: Sorry, Chair –
 16 MR MATHIBEDI SC: [Microphone off,
 17 inaudible] not working, Mr Chairman.
 18 CHAIRPERSON: Not working, ja.
 19 MR MPOFU: Not working.
 20 CHAIRPERSON: Alright, anyway, Mr Mpofu
 21 wants to ask you a question. This particular one we're
 22 looking at, is this one of the ones we saw on Friday? I
 23 think it was.
 24 MR MPOFU: It must be one of them.
 25 CHAIRPERSON: Okay, now ask your question

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1 and then let's give the witness a chance to answer. What
 2 do you want to know about this, or what do you want him to
 3 tell us about it?
 4 MR MPOFU: Well, I want to tell him.
 5 When I was referring to weapons of war, this is one of
 6 them. If it's necessary, in fact a member of the public
 7 has written me about this picture and if it's necessary,
 8 he'll be called, or asked to give evidence, or rather
 9 affidavit evidence that this calibre of a weapon is so
 10 strong that it could flatten a building or a house. Do you
 11 know anything about –
 12 CHAIRPERSON: If it was in working order,
 13 I take it. But do you know anything about these weapons
 14 that –
 15 MR MPOFU: Well, it was there.
 16 CHAIRPERSON: No, but if it wasn't in
 17 working order all the buildings were safe. But let the
 18 witness tell us. Do you know anything about these weapons,
 19 which were obviously there, I think it's not disputed that,
 20 I think the STF brought them. I think it was the STF who
 21 brought them, and we were told on Friday, you'll remember,
 22 that they were there as part of the show of force. Now are
 23 you able to tell us anything more about them from your own
 24 knowledge?
 25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 testified on Friday that I know that all the equipment of
 2 the Scorpions, like - of the STF, like the Scorpion
 3 vehicles were going to be part of the show of force and I
 4 further testified that I did not know that they were
 5 loading machineguns.
 6 CHAIRPERSON: Yes, I don't quite know
 7 where this point is going, because the evidence is of
 8 course that the STF didn't fire a single shot on the 16th,
 9 but anyway, I'm just asking you where this point is going
 10 because -
 11 MR MPOFU: Sorry, Chairperson. Sorry.
 12 CHAIRPERSON: Okay, no alright. I'm just
 13 asking you where this point is going to take us.
 14 MR MPOFU: Well, can you see the bullets
 15 hanging from that weapon that I've just described? Yes?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 17 I can see it.
 18 MR MPOFU: And would you agree that from
 19 the point of view of the civilians who did not know whether
 20 the - or let me put it this way. Would you agree that the
 21 posture that is even assumed by those people holding that
 22 weapon is intended to give the impression that it can be
 23 fired at any time, with bullets hanging all over?
 24 MAJOR-GENERAL MPEMBE: Chairperson, as I
 25 said earlier on that I knew about the Scorpions going to be

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1 part and show of force. Maybe the person who let the
 2 hanging of bullets there could explain that, because -
 3 CHAIRPERSON: If they are real bullets,
 4 or - you know.
 5 MAJOR-GENERAL MPEMBE: Yes.
 6 CHAIRPERSON: But the point is, to put it
 7 crisply, it was there as part of the show of force. It was
 8 intended to intimidate those who saw it, right? Whether it
 9 did intimidate them is a question we'll presumably have to
 10 look at. Whether any shots were fired, we are told no
 11 shots were fired by the STF, but it was a show of force.
 12 Whether it was effective is a matter which we will consider
 13 in due course. Certainly it was designed to intimidate, to
 14 presumably frighten people into submission, but whether it
 15 had that effect is questionable, but can you take the point
 16 any further than that?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson.
 18 COMMISSIONER HEMRAJ: We can't help
 19 noticing that the photograph does show a number of
 20 gentlemen who don't appear to be intimidated, and in fact
 21 some of them appear to be taking photographs of this
 22 vehicle.
 23 CHAIRPERSON: They weren't in any danger,
 24 they or any buildings in the vicinity were in any danger at
 25 the time. But anyway, the fact of the matter is the

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1 witness very fairly concedes that these weapons were
 2 brought there to frighten the daylighters out of various
 3 people, and whether they achieved that effect, purpose, is
 4 another matter.
 5 MR MPOFU: Do you, General, think that in
 6 a democratic South Africa it's appropriate -
 7 CHAIRPERSON: I'm not sure that his
 8 opinion on the matter is something that I want to hear.
 9 It's a matter you can argue at the end. You may well be
 10 able to persuade us -
 11 MR MPOFU: I want to put it to him first,
 12 Chairperson.
 13 CHAIRPERSON: But how is his answer going
 14 to help us? It is value judgment that we would have to
 15 make. If you were right we will make the value judgment.
 16 If you raise the point in argument we will have to deal
 17 with it. If you're right, we will uphold you. If you're
 18 wrong, we disagree with you, we will say so and give
 19 reasons. Can you take it further than that with this
 20 witness?
 21 MR MPOFU: Yes. Did you, General Mpeembe,
 22 approve the so-called show of force which included the
 23 display of a gun that can flatten a building?
 24 MAJOR-GENERAL MPEMBE: Chairperson, I
 25 said I did not know -

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1 CHAIRPERSON: Well, we don't know it can
 2 flatten a building -
 3 MR MPOFU: According to the witness, I've
 4 said I'm going to call a witness.
 5 CHAIRPERSON: Ja, no, no, but you then
 6 put it as an objective fact, did he approve of the show of
 7 force including a gun which -
 8 MR MPOFU: Okay, that gun, whatever it
 9 can do.
 10 [16:01] CHAIRPERSON: Which can flatten the
 11 building, whether it can flatten the building is a matter
 12 which hasn't been proved. Anyway I understand what you are
 13 saying, it is obviously a fearsome weapon, right? It is a
 14 fearsome weapon, if it is in working order neither you nor
 15 I would like to be at the receiving end of what's fired
 16 from it, would we?
 17 MR MPEMBE: Yes, Chairperson, but that it
 18 could flatten the building -
 19 CHAIRPERSON: Well, I have left that out,
 20 I have left that out in the way I phrased the question.
 21 The point is, Mr Mpofo wants to know, remind us what
 22 exactly did you want to know? We leave out the flattened
 23 building, what exactly did you want to know? Did you
 24 approve of the use of that as part of the show of force,
 25 that's the question?

<p style="text-align: right;">Page 16399</p> <p>1 MR MPEMBE: Chairperson, I said no, I 2 knew about the scorpion vehicles but I did not know that 3 they were having, they were loaded with the machine guns. 4 MR MPOFU: General, did you approve a 5 plan that included a show of force such as the one we are 6 seeing in that picture, where bullets are hanging from a 7 big gun like that, yes or no? 8 CHAIRPERSON: It appeared to be bullets 9 of course. 10 MR MPOFU: No, they are bullets. 11 CHAIRPERSON: Well anyway, this will be 12 the last question for the day, but let's get the answer. 13 MR MPEMBE: I said the approval of the 14 plan was the vehicles, the scorpions of the STF, without 15 and I didn't mention the machine guns. But I did not know 16 that even the machine guns were on that vehicle. 17 CHAIRPERSON: You did not specifically 18 approve the use of these machine guns? You didn't 19 specifically approve it but you knew that the scorpions 20 would be there and they would be used as part of the show 21 of force? 22 MR MPEMBE: Correct, Chairperson. 23 CHAIRPERSON: And presumable there would 24 be weapons on them but you didn't know the details of them, 25 is that the summary?</p>	<p style="text-align: right;">Page 16401</p> <p>1 because to know the name of the gun is not going to assist 2 me as to whether you wanted to intimidate the public or 3 not. 4 CHAIRPERSON: Yes, yes I understand that 5 but endeavour to put procedure in motion which will give 6 you the information you, give you and us the information. 7 MR MPEMBE: Thank you, Chairperson. 8 COMMISSIONER HEMRAJ: Mr Mpofu, the point 9 is the make of the firearm will determine its capacity and 10 that will affect one of the questions you put. That's why 11 I put it to Mr Mathibedi. 12 MR MPEMBE: I am just saying that was the 13 only reason I was putting the question. 14 CHAIRPERSON: Anyway you have now got on 15 to the events of the 16th which is a helpful sign and we 16 will carry on, on Thursday morning at 9 o'clock. 17 MR MPEMBE: That's correct, thank you 18 very much, Chairperson. 19 [COMMISSION ADJOURNED] 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 16400</p> <p>1 MR MPEMBE: Correct, Chairperson. 2 CHAIRPERSON: I think on that note we can 3 end for the – sorry, I am being overruled here from my 4 right. 5 COMMISSIONER HEMRAJ: Mr Mathibedi, could 6 you please take instructions as to exactly, precisely what 7 this firearm is because I have an idea that it might be 8 confused with something else. Do you think you might take 9 instructions overnight and let us know on Thursday, please? 10 MR MATHIBEDI SC: I will. 11 MR MPOFU: Yes, that's correct, 12 Chairperson, I will also look for the email that I was 13 referring to. It's something, something 40 and its 14 qualities were described. But I will, maybe with Mr 15 Mathebedi we can put a common description. 16 CHAIRPERSON: - is that time is a 17 problem, then may I suggest that all questions which can 18 appropriately be addressed by sending queries to the legal 19 representatives of the police, to which we get their 20 answers in writing, should be done. So that you can 21 concentrate on Thursday on questions in a sense which we 22 need his answers, so that you have a chance of finishing by 23 the end of the day. 24 MR MPOFU: Yes, that's correct, 25 Chairperson. This one is one where I needed his answer</p>	

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