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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

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<p style="text-align: right;">Page 11061</p> <p>1 [PROCEEDINGS ON 7 JUNE 2013] 2 [09:37] CHAIRPERSON: The Commission resumes. I 3 indicated yesterday that I hoped we'd be in a position to 4 make the rules which will apply to the future conduct of 5 proceedings on Monday but I understand that there are 6 certain things outstanding still being debated among some 7 of the parties, so I'm afraid the rules won't be in place 8 just as soon as I'd originally anticipated, but I hope that 9 we will still be able to have the rules in place sometime 10 in the course of next week. Mr Ngalwana, I understand 11 you're going to lead the next witness, is that correct? 12 MR NGALWANA: Yes, thank you Chair. 13 CHAIRPERSON: Who is he? Who is he? 14 MR NGALWANA: General Mpembe. 15 CHAIRPERSON: General, please stand. 16 Will you, are you prepared to swear or do you wish to 17 affirm? 18 GENERAL MPEMBE: I'm prepared to swear. 19 CHAIRPERSON: What are your full names? 20 I think best sit down first before you take the oath. What 21 are your full names? What are your full names? 22 GENERAL MPEMBE: Zondasi William Mpembe. 23 CHAIRPERSON: Thank you, would you please 24 stand? Do you swear the evidence you will give before this 25 Commission will be the truth, the whole truth and nothing</p>	<p style="text-align: right;">Page 11063</p> <p>1 Some of the documents are already exhibits, others are not. 2 The CV of the witness is in one of those files. I believe 3 they should have been given to you by now. I understand – 4 COMMISSIONER HEMRAJ: Are these the lever 5 arch A and B that were – 6 MR NGALWANA: That's precisely, yes, and 7 the Commission will see that in the statements file which 8 is bundle B, the supplementary statement – 9 CHAIRPERSON: I've got the index to 10 volume A in front of me and I see that there are a number 11 of documents listed with page numbers that are obviously 12 going to make things much easier. Those that are already 13 before us, you've already given an exhibit number. 14 MR NGALWANA: Yes, Chair. 15 CHAIRPERSON: But the two new documents 16 in volume A are the provincial structure which is at page 1 17 and the CV which is at pages 2 to 23. So I suppose we'd 18 better mark those as exhibits. 19 MR NGALWANA: Alright, Chairperson. 20 CHAIRPERSON: Perhaps Ms Pillay could 21 help us. Do you think we should move on to H by now, HHH? 22 MS PILLAY: HHH1, Chair. 23 CHAIRPERSON: So the provincial structure 24 which is page 1 will be HHH1 and I'll insert that in the 25 index as well and the document which is 2 to 23 will be, on</p>
<p style="text-align: right;">Page 11062</p> <p>1 but the truth. Would you please raise your right hand and 2 say, I swear, so help me God. 3 GENERAL MPEMBE: So help me God. 4 CHAIRPERSON: No, I swear, so help me 5 God. 6 GENERAL MPEMBE: I swear. So help me 7 God. 8 CHAIRPERSON: Thank you, you may be 9 seated. Yes, Mr Ngalwana? I think - yes, he speaks 10 English. Would you please remind us, what is the – I think 11 it's already before us, the statement of the witness is 12 already an exhibit. 13 MR NGALWANA: Yes, Chairperson. There is 14 an exhibit which is GGG12, I believe. The one that has 15 just been submitted is a supplementary statement which is 16 not yet an exhibit. 17 CHAIRPERSON: Well, I haven't had 18 anything submitted to me but presumably eventually things 19 will catch up with me as well. Give me the new statement. 20 Let's get all the housework, the homework done before you 21 start. Have you got a CV of the witness as well or is that 22 in the supplementary statement? 23 MR NGALWANA: Chairperson, we've prepared 24 for the convenience of the Commission, two bundles, the one 25 containing statements and the other containing documents.</p>	<p style="text-align: right;">Page 11064</p> <p>1 page 2 we will in fact put exhibit HHH2. Does that mean 2 all the documents in volume A have been – 3 MR NGALWANA: That should be, yes. 4 Chairperson, perhaps just one last thing to explain. Even 5 the police do have limited resources so what we've done is 6 we've prepared, I think six or eight sets of these files, 7 not for everybody and our thinking was – 8 CHAIRPERSON: How do you decide who gets 9 them, do they have draw lots? 10 MR NGALWANA: No, no, Chairperson. The 11 focus was on the Commissioners initially and then we 12 thought we should prepare one for the witness, one for the 13 interpreter, one for me, one for the attorney and possibly 14 one for the evidence leaders, I'm not sure. They have – 15 CHAIRPERSON: But inasmuch as many of the 16 documents will already be in possession of the other 17 parties, you only need give them copies of those documents 18 that we've now referred to, in other words HHH1 which is 19 one page and HHH2 which is effectively 22 pages but I think 20 they are entitled to copies of those, the parties who 21 haven't been favoured with bundle. 22 MR NGALWANA: Yes, naturally Chair, and I 23 understand that has been done, whether – 24 CHAIRPERSON: That's been done, then – 25 MR MPOFU: No, no, Chairperson I'm sorry,</p>

<p style="text-align: right;">Page 11065</p> <p>1 we – well, firstly I think that we are entitled to the 2 bundles as they are but even if, on the limited basis that 3 the Chairperson is describing we need – for example I'm 4 lost, I don't know what A or B. We need to either to get 5 an index or something so that we are on the same page. 6 CHAIRPERSON: That's a good point. You 7 should be given a copy of the index in volume A which lists 8 all the documents in that volume, most of which are already 9 before us as exhibits so you've already got copies, so you 10 won't have a problem if your exhibits are in proper order. 11 There are two new documents, those are the ones I've marked 12 HHH1 and HHH2. Then – but you obviously need the index 13 because you want to know what's what, to follow, in 14 addition to copies of those new documents you haven't got 15 already. Then as far as volume B is concerned, the same 16 problem, the same point arises in the sense that most of 17 the documents in B are already before us but there are – 18 there are six new documents which are not previously 19 exhibits. The first one is what they call 1A in file B. 20 It's called a supplementary statement and that will be, 21 that's page 1A actually and that will be exhibit HHH3. 22 Then we have a statement by Colonel Vermaak which is 23 exhibit GGG17 but there's a copy attached with two further 24 pages. 25 MR NGALWANA: No, I think it's a</p>	<p style="text-align: right;">Page 11067</p> <p>1 MR NGALWANA: The second statement 2 beginning at 52 is a different statement, it's a typed 3 statement. 4 CHAIRPERSON: Oh, I see. 5 MR NGALWANA: It's a later statement – 6 CHAIRPERSON: Alright. Well, we'll make 7 that one, okay, we'll make that one HHH8 then and in the 8 index we will put HHH7 next to 50. At the moment it says 9 50 to 54, we'll change that to 50 to 51 and below that we 10 will put HHH8, 52 to 54. 11 MR NGALWANA: Inasmuch as it's the 12 statement of the same person, wouldn't it be preferable to 13 call it 7.1 and 7.2? 14 CHAIRPERSON: Yes, well, I've marked it 15 already. Alright, if you want that – 16 MS PILLAY: If I could just indicate, the 17 difference between the two is that the one is a manuscript 18 and the other is typed. 19 CHAIRPERSON: - they can just stay at 20 HHH7 then. 21 MR NGALWANA: It's not the same 22 statement, Chairperson. 23 CHAIRPERSON: Alright, well I've changed 24 it now to triple – so as not to give the impression of 25 obstinacy. The first one is HHH7.1 and the second is</p>
<p style="text-align: right;">Page 11066</p> <p>1 different statement, Chair. 2 CHAIRPERSON: Yes, that's what I mean but 3 that doesn't appear to be an exhibit, is that correct? So 4 that then will be HHH4, that's pages 29 and 30 of index B. 5 MS PILLAY: Chair, could we just have the 6 date of that statement to distinguish it from the other 7 statements of Colonel Vermaak? 8 CHAIRPERSON: It looks like the 30th of 9 August 2012. It's a two page document. Then the next 10 document is a statement dated the 5th of November by Colonel 11 Vermaak, that's pages 31 to 32 of volume B. That will be 12 HHH5. That's followed by a further statement, the Colonel 13 has made a number of statements, a further statement dated 14 the 4th of February 2013, that's HHH6 and that is marked as 15 5 in volume B. It's a handwritten statement, it's in 16 Afrikaans. It's only one page essentially, the second page 17 is just the signature and so on. Then the next document 18 that's not before us is a statement by Mohammed Cassim 19 which is 8, marked 8 in index, in volume B, pages 50 to 54. 20 This will be HHH7. 21 MR NGALWANA: May I say, Chairperson, 22 there are in fact two statements under A, they've just been 23 treated as one. 24 CHAIRPERSON: Two statements, how do you 25 mean two statements under A?</p>	<p style="text-align: right;">Page 11068</p> <p>1 HHH7.2 and that's the one pages 52 to 54. And then we have 2 a statement marked 14, number 14, which is page 179. 3 That's a statement by Warrant Officer Mesinya and that will 4 be HHH8, so we finally got to HHH8 that remains as such. 5 Have I marked everything that has to be marked? 6 MR NGALWANA: I believe so, yes 7 Chairperson. 8 CHAIRPERSON: Alright, so we're now ready 9 to proceed with the evidence of the Major-General. 10 MR NGALWANA: Thank you, Chair, and I 11 believe the index has already been circulated so the 12 parties should be able to follow the evidence. 13 CHAIRPERSON: Proceed, Mr Ngalwana. 14 MR NGALWANA: Thank you, Chairperson. 15 ZONDASI WILLIAM MPEMBE: d.s.s. 16 EXAMINATION BY MR NGALWANA: General, 17 good morning. 18 GENERAL MPEMBE: Good morning, Advocate. 19 MR NGALWANA: You have already deposed to 20 a supplementary statement as well as the original 56 21 paragraph statement. We're not going to go into great 22 detail about that but there has been some challenge as 23 regards whether you were a suitable person to be an overall 24 commander and I want us to try and put that to bed, if we 25 may. We start with what appears at the first volume, which</p>

<p style="text-align: right;">Page 11069</p> <p>1 is the documents volume, which places you in the province. 2 It's a provincial structure and organogram. Would you 3 care, very briefly General, to take the Commission through 4 the organogram as far as it relates to you? It's on page 1 5 of bundle A.</p> <p>6 GENERAL MPEMBE: Chairperson, I am a 7 Deputy Provincial Commissioner responsible for operational 8 services. According to the provincial organisational 9 structure, I would like to point out that the Provincial 10 Commissioner, she is at the top there in the box as a 11 Provincial Commissioner of the province, Lieutenant-General 12 Mbombo. Next to the office of Lieutenant-General Mbombo we 13 find that it's a Deputy Provincial Commissioner Operations 14 Officer, that is Major-General Naidoo.</p> <p>15 MR NGALWANA: Sorry to interrupt you, 16 General. I'm not sure if the Commissioners are with us. 17 Has the Chairperson found the organogram?</p> <p>18 CHAIRPERSON: Yes, you'll be surprised to 19 hear he has.</p> <p>20 MR NGALWANA: Thank you, Chair.</p> <p>21 CHAIRPERSON: Sorry if I disappointed 22 you.</p> <p>23 GENERAL MPEMBE: There are lines of, 24 there are six Deputy Provincial Commissioners on the 25 extreme left hand side you'll find that there is Deputy</p>	<p style="text-align: right;">Page 11071</p> <p>1 CHAIRPERSON: I'm sorry to interrupt you. 2 I notice that this document is headed "Provincial 3 organisational structure, South African Police Service 4 North-West as on 1 May 2013." Now were there any changes 5 between the situation as it existed during the period that 6 we're interested in from the 9th of August to the 16th of 7 August and the few days thereafter, and the 1st of May or 8 does this document set out completely and accurately the 9 organisational structure as it existed in August 2012? 10 [09:57] GENERAL MPEMBE: Chairperson, in August 11 it was the same structure.</p> <p>12 MR NGALWANA: Thank you. You've also 13 submitted a short, we call it a CV but in effect it's an 14 account of your progress in the police service. Your 15 development in the police service and that appears under 16 the second flag at page 2 of the second bundle, of bundle 17 B, sorry bundle A. Can I take you to the very first page, 18 not the cover page of the CV, the second page. The heading 19 is Employment History. You refer to having undergone basic 20 training, I'd like you to focus specifically on your 21 training on crowd management. Could you take the 22 Commission through very briefly, General? 23 GENERAL MPEMBE: Chairperson, immediately 24 when I completed my basic training in December 1986 I 25 underwent a course that is called riot control course in</p>
<p style="text-align: right;">Page 11070</p> <p>1 Provincial Commissioner operational services, it's myself, 2 Deputy Provincial Commissioner crime detection, Major- 3 General Jumani, Deputy Provincial Commissioner physical 4 resources management, Major-General Molale, Deputy 5 Provincial Commissioner human resource management, Major- 6 General Molefi. Chairperson, I would like to point out 7 that in the province we have 12 clusters, we have 82 police 8 stations. In addition to that, visible policing, all 9 specialised units in the province they do fall under me. 10 The cluster commanders are reporting to the Provincial 11 Commissioner through my office.</p> <p>12 MR NGALWANA: So just to point out one 13 example, Brigadier Calitz who is responsible as provincial 14 head detective services – oh, sorry, provincial head 15 operational response services, reports to – is it you or 16 does he report to the Provincial Commissioner through you? 17 GENERAL MPEMBE: Brigadier Calitz reports 18 directly to me as the provincial head, operational response 19 service.</p> <p>20 MR NGALWANA: And of course we know that 21 he was the operational commander for the platinum, 22 Operation Platinum, is that correct? 23 GENERAL MPEMBE: Chairperson, it is 24 correct.</p> <p>25 MR NGALWANA: Now you –</p>	<p style="text-align: right;">Page 11072</p> <p>1 1987. The course it was offered for three weeks, the 2 course it is still valid. The course it is still being 3 offered at the college. There are certain amendments, for 4 example at that time it was the Riot Control Act and in 5 1993 after the Commission of Inquiry, Goldstone Commission 6 of Inquiry there was a change in terms of the Act, that is 7 the Regulation of Gatherings Act, Act Number 205 of 1993. 8 Chairperson, I remember vividly well that we were also 9 retrained in the province, in all provinces with regard to 10 the changes that were brought by the Regulation of 11 Gatherings Act.</p> <p>12 MR NGALWANA: General, could you give 13 some detail as regards what the training entailed. What 14 was it that you were trained on during the riot, when it 15 was called the Riot Control Course? 16 GENERAL MPEMBE: Chairperson, we were 17 trained in the policies as I have indicated, the policy 18 that I've mentioned is the legal policy, we were also 19 trained in terms of Standing Order 262. That is being here 20 attached as FFF1. We were also trained with regard to the 21 policies with regard to the by then riot control and then 22 this time it is also as I've indicated with crowd 23 management. We were also trained in the compilation of the 24 plans, assessments in terms of planning. We were trained 25 in terms of the pre-planning phase and as well as the</p>

<p style="text-align: right;">Page 11073</p> <p>1 execution phase. Chairperson, we were also trained in 2 crowd management, by then it was Crowd Control Action Mode. 3 The application of these action modes with regard to law. 4 Chairperson, we were also trained by then how to go out of 5 the - we were calling it Nyala, a hippo by then now it's 6 being Nyala and to do crowd formation. We were trained how 7 to use the CS, we had to go through the CS without the 8 mask. 9 MR NGALWANA: When you say CS, do you 10 mean CS gas? 11 GENERAL MPEMBE: CS, yes. 12 CHAIRPERSON: It's commonly called 13 teargas. 14 GENERAL MPEMBE: Yes, it's a teargas, 15 Chairperson, you're correct. Chairperson, we were trained 16 by then to use the 37 millimetre launcher which is now 17 improved to a 40 millimetre launcher. We used the 37 18 millimetre launcher to use it when we were doing the tear 19 smoke and the rubber bullets and now it is still also that 20 40 millimetre which has been improved, it's still used for 21 the tear smoke as well as the impact rounds. 22 CHAIRPERSON: Forgive my ignorance but 23 what are impact rounds? 24 GENERAL MPEMBE: It is also another type 25 of the rubber bullets.</p>	<p style="text-align: right;">Page 11075</p> <p>1 HHH3 as well. That's the supplementary statement which is 2 pages 1A to 14A of the bundle B. D you confirm that as 3 well. 4 GENERAL MPEMBE: Yes, Chairperson, I will 5 confirm it, there are some amendments that I would like to 6 point out from the beginning. 7 MR NGALWANA: Well let's deal with those 8 now. Which of those amendments, General? 9 GENERAL MPEMBE: Chairperson, under 10 paragraph 7 of "being instructed," I would like that, it 11 should be, it should read "requested." 12 CHAIRPERSON: I don't see that. You said 13 page 4A is it? Para 7. We're talking about the 14 supplementary statement are we? 15 GENERAL MPEMBE: Yes. 16 CHAIRPERSON: Now where is the change 17 that you want to - 18 MR NGALWANA: Can I be of assistance, 19 Chair? 20 CHAIRPERSON: Yes, please. 21 MR NGALWANA: If Chairperson looks at the 22 right indent, Chair, four lines, it's the fourth line. 23 CHAIRPERSON: Oh, "it was a spontaneous 24 event to which I responded within two hours of being 25 instructed." You say instructed is not the right word what</p>
<p style="text-align: right;">Page 11074</p> <p>1 MR NGALWANA: Yes thank you, General. On 2 the 13th, Monday the 13th of August you then arrive at the 3 police station. You report for duty as I understand it, 4 won't you take - I don't want you to go into repeat of what 5 you've said in your supplementary statement and your 6 original statement the 56 paragraph one, but won't you take 7 the commission in fairly great detail - 8 CHAIRPERSON: Before we get should he not 9 confirm just for the sake of good order both the original 10 statement and the supplementary one, so that's dealt with 11 and then you can move on to which details you have. 12 MR NGALWANA: Obviously you have read 13 your own statement and both the original statement and the 14 supplementary statement, do you now confirm under oath that 15 the contents of those two statements, those statements 16 appearing at bundle B. 17 CHAIRPERSON: They're exhibits GGG12 and 18 HHH3. 19 MR NGALWANA: Do you confirm the contents 20 of those? Do you confirm the contents of those two 21 statements, General? 22 GENERAL MPEMBE: I confirm the contents 23 of GGG12. 24 CHAIRPERSON: While you're about it you'd 25 better confirm if you're prepared to do so, the contents of</p>	<p style="text-align: right;">Page 11076</p> <p>1 word do you want in substitute? 2 GENERAL MPEMBE: Chairperson, 3 "requested." 4 CHAIRPERSON: "Requested." 5 MR NGALWANA: Any other amendments, 6 General? 7 GENERAL MPEMBE: No, Chairperson. 8 MR NGALWANA: While we are there, there 9 was something you pointed out. Shall we go to the original 10 statement? There is a paragraph in which you indicated 11 that you said to the crowd as you were addressing that you 12 were going to count to 3. 13 CHAIRPERSON: Is that paragraph 18 on 14 page 7? 15 GENERAL MPEMBE: Chairperson, actually I 16 wanted to make an amendment to read, "I was going to count 17 to 10." 18 CHAIRPERSON: I thought so, that was the 19 evidence. That was the evidence so I think it seems to be 20 common cause that you said 10 and not 3. 21 MR NGALWANA: In fact you address that in 22 paragraph 8 of your supplementary statement, is that 23 correct? 24 GENERAL MPEMBE: It is correct, 25 Chairperson.</p>

<p style="text-align: right;">Page 11077</p> <p>1 CHAIRPERSON: Let's do all the other 2 corrections while we're about it so they don't disturb the 3 flow when he's giving his main evidence. Are there any 4 other changes you want to tell us about in, either the 5 original statement or the supplementary one? 6 GENERAL MPEMBE: No, Chairperson. 7 MR NGALWANA: Thank you. You then arrive 8 at Marikana on Monday the 13th of August 2012, General, 9 could you take the Commission briefly to what happened 10 within your personal knowledge from the time you arrived to 11 the time you received this request from the PC to go and 12 attend to the people marching from Karee Mine next to the 13 railway line to the time of the attack on the police? 14 GENERAL MPEMBE: Chairperson, on the 15 early hours of Monday I was phoned by the Provincial 16 Commissioner, Lieutenant-General Mbombo. I was from leave 17 and she indicated to me that she needs me, we should 18 accompany her and General Naidoo to Lonmin in Rustenburg. 19 On our arrival at Lonmin I arrived at an interim JOC which 20 is Joint Operational Centre and briefed by Brigadier 21 Calitz. And after Brigadier Calitz briefed us I saw a 22 number of people estimated by then between 2 000 to 3 000 23 at the koppie through the CCTV of the Lonmin. 24 MR NGALWANA: Just a moment, General. 25 What did Brigadier Calitz brief you on? What were the</p>	<p style="text-align: right;">Page 11079</p> <p>1 GENERAL MPEMBE: I would like to state 2 that only the incidents of those days he indicated to me 3 that the violence was increasing and then also there were 4 some deployments that were made and he has also made call 5 ups that are sent to head office and by that time he was 6 call ups that are sent to head office and by that time he 7 was under the supervision of Major-General Naidoo who was 8 by then the acting Provincial Commissioner when the 9 Provincial Commissioner was on sick leave. 10 [10:17] MR NGALWANA: Right then there is a 11 request made by the Provincial Commissioner, can you take 12 it from there? 13 GENERAL MPEMBE: After the briefing of 14 Brigadier Calitz, Chairperson, we went to a meeting with 15 Lonmin, myself, General Naidoo and the Provincial 16 Commissioner. In the meeting of Lonmin we were briefed by 17 Mr Barnard Mokwena who is actually the senior person at 18 Lonmin and he was also accompanied by Mr Hawker and Kwadi. 19 Chairperson, briefly they indicated to us the problems that 20 they have encountered since from the 9th and that they were 21 shocked with what has happened on Saturday and they also 22 indicated the labour problems that they have encountered 23 between the NUM as well as AMCU. 24 MR NGALWANA: Sorry General, when they 25 say they were shocked by what had happened on Saturday what</p>
<p style="text-align: right;">Page 11078</p> <p>1 contents of his brief to you? 2 GENERAL MPEMBE: Chairperson, Brigadier 3 Calitz briefed me with the incidents that were happening 4 since the 9th, the 10th, the 11th and the 12th and then until 5 at that time when he was showing me the CCTV camera or what 6 is happening at the koppie. 7 MR NGALWANA: What had Brigadier Calitz 8 said had happened on the 9th, 10th, 11th and 12th? 9 GENERAL MPEMBE: Brigadier Calitz 10 informed me that on the 9th the police station was informed 11 by one of the security personnel at Lonmin that there was a 12 gathering and these gathering they have decided that they 13 are going to march on the 10th. 14 MR NGALWANA: Sorry, Chairperson, just to 15 explain, just in case there will be some demurring murmurs 16 with regards hearsay, Brigadier Calitz is coming to testify 17 later on. 18 CHAIRPERSON: And I can say now that it 19 won't be necessary for counsel to cross-examine this 20 witness about what Brigadier Calitz told him. They'll be 21 able to cross-examine Brigadier Calitz directly and that 22 should save some time. 23 MR NGALWANA: General, you don't have to 24 go into much greater detail about what Calitz told you but 25 in very broad outline.</p>	<p style="text-align: right;">Page 11080</p> <p>1 were they referring to? 2 GENERAL MPEMBE: Actually they were 3 shocked with what happened on Sunday, that is the killing 4 of those two security personnel. Chairperson, in brief 5 they indicated that they actually don't know who are these 6 people who were involved in this violence. The term that 7 was used is that they were faceless. After the briefing we 8 went back to the JOC, when we were there at the interim JOC 9 Brigadier Calitz show me again the group that was moving 10 from Karee and coming back - coming along the railway line. 11 And while Brigadier Calitz showed me that the Provincial 12 Commissioner stood there and she said to me General I think 13 the situation warrants that as a DPC Operational service 14 you should remain and take charge of the situation. 15 MR NGALWANA: Let me just get some 16 clarity. Were you given this request, or was this made of 17 you in your capacity a Deputy Provincial Commissioner or in 18 your capacity as overall commander of the operation? 19 GENERAL MPEMBE: It was made as an 20 overall commander of - my understanding is it was the time 21 that I am now appointed as an overall commander of the 22 operation. 23 MR NGALWANA: Just so we make it clear, 24 General, sorry, were you appointed overall commander of the 25 operations before the request was made for you to go and</p>

<p style="text-align: right;">Page 11081</p> <p>1 attend to those people who were marching along the railway 2 line or after? 3 GENERAL MPEMBE: It was after the 4 Provincial Commissioner she has made an OB entry in the 5 JOC. 6 CHAIRPERSON: Now of course we've got the 7 OB, the occurrence book, it's one of the exhibits and there 8 is an entry signed by the Provincial Commissioner. Just 9 remind us what does that entry say? 10 MR NGALWANA: Well the question, Chair, 11 is a different one, I don't if he's answering - 12 CHAIRPERSON: He's answering it by 13 reference to an entry in the occurrence book by the 14 Provincial Commissioner. I think it will help us to 15 understand the flow of what he's saying if we have a look 16 at that. So the notes in the occurrence book which is 17 exhibit FFF25, at page 4, entry number 37 where it has an 18 entry made by Lieutenant-General Mbombo at 12:45. Is that 19 the note that you're referring to or is there another one? 20 GENERAL MPEMBE: That's correct, 21 Chairperson. 22 CHAIRPERSON: That reads, "And as shown 23 the different points of gathering, the planning is being 24 adjusted to disperse the gatherings. All police officials 25 on duty to conduct searches and confiscate all dangerous</p>	<p style="text-align: right;">Page 11083</p> <p>1 like this? When were you appointed overall commander of 2 operations? 3 GENERAL MPEMBE: It was when I was 4 informed that I should intervene, that I should remain and 5 also address the situation at the Lonmin. 6 MR NGALWANA: Was it on Monday during the 7 day or Monday in the evening? 8 GENERAL MPEMBE: Monday during the day. 9 MR NGALWANA: Right. So you go to attend 10 to this crowd next to the railway line. Can we just take 11 the commissioners through what then transpired, very 12 briefly? And then how the situation developed to the time 13 when there were attacks on the police. 14 GENERAL MPEMBE: Chairperson, firstly I 15 decided to take it upon myself to go to the railway line, I 16 called the commanders, that was Colonel Merafi, Brigadier 17 Calitz, Lieutenant-Colonel Tsiloane and it was also 18 Lieutenant Baloyi. There were other also members from 19 different units. I asked Colonel Merafi whether the people 20 have been orientated and he informed me that the people 21 were briefed when the report on duty orientated but he 22 mentioned also that because he's still waiting with them, 23 they are also further being orientated during the 24 operation. And Chairperson, I went to the railway line, on 25 our way to the railway line we also found some other</p>
<p style="text-align: right;">Page 11082</p> <p>1 weapons." That's the entry is it? And then it ends up, 2 "ensure that the peace prevails." 3 MR NGALWANA: The question was a slightly 4 different one, it was this, when the Provincial 5 Commissioner requested you to attend to the crowd who was 6 marching down the railway line or next to the railway line 7 had she already appointed you as overall commander of 8 operation platinum or not? 9 GENERAL MPEMBE: By that time when she 10 requested me to go there I had not yet made a plan, so by 11 that time I would just say I went there as an overall 12 commander appointed but without a plan and relying on my 13 own experience. 14 CHAIRPERSON: General, I don't think 15 you're understanding the question. What Mr Ngalwana is 16 concerned about is just whether you were appointed overall 17 commander first and then decided to go to deal with the 18 situation at the railway line or whether it was the other 19 way around. That the request that you go - suggestion 20 perhaps is more accurate, the suggestion that you go to the 21 railway line, was made by General Mbombo before you were 22 appointed overall commander or after you were appointed 23 overall commander? I think that is Mr Ngalwana's question. 24 It's just a question of what came first. 25 MR NGALWANA: Perhaps can we phrase it</p>	<p style="text-align: right;">Page 11084</p> <p>1 members, other protestors. I informed the police that they 2 should search these people and check whether are they 3 possessing any dangerous weapon and we found that some of 4 them they did have firearms and I said they must go to 5 Marikana police station to check as to whether those 6 firearms are legally possessed or are illegally possessed. 7 And the police confirmed with me that the firearms were 8 legally and I informed them, I instructed them to hand the 9 firearms back to the people. I was approaching the group 10 of people, by then my estimation at that time it was 11 between 100 and 200. I just wanted to say the number of 12 people that I was approaching. Chairperson, when I 13 approached them they went in a crouching position and while 14 singing a song, it has already been played before the 15 Commission. The words of the song I will not mention them 16 to the Commission because maybe they might also be 17 interpreted by the interpreter here, but to me the song was 18 saying that I must tighten up certain things so that 19 whatever I want to do I must know that I'm not going to do 20 it easy. 21 CHAIRPERSON: As far as I can remember we 22 saw a video clip of this encounter and the song was sung on 23 it and it was interpreted. I remember the interpreter was 24 rather embarrassed in interpreting it and originally gave a 25 version of the words but later on he had to give the full</p>

<p style="text-align: right;">Page 11085</p> <p>1 wording so we're aware of that. You don't have to go into 2 it now. If anyone wants to investigate it further they can 3 but you don't have to tell us, we already know about that, 4 we've already seen the video clip.</p> <p>5 MR NGALWANA: Yes then you say to them 6 I'm going to come, take us from there, General.</p> <p>7 GENERAL MPEMBE: I tried several ways of 8 negotiating, persuading them honestly and I realised that 9 they were very angry and I tried, I communicated to them in 10 Zulu and they communicated back to me and realising that we 11 are getting no any other way or getting a conclusion, 12 Chairperson, I called the commanders. Then I said to them 13 my scene is that it is not going to be possible that we 14 could disperse this crowd. And I did that in a way to get 15 the feeling in terms of whether are they assessing the 16 situation like myself and the majority of them they agreed 17 with me and I need to point out Lieutenant-Colonel Merafi 18 did not agree.</p> <p>19 CHAIRPERSON: I see that's a point you 20 deal with in paragraph 8 of your supplementary statement at 21 page 4A.</p> <p>22 MR NGALWANA: What did Colonel Merafi, 23 just briefly what did he prefer you should do?</p> <p>24 GENERAL MPEMBE: Colonel Merafi believed 25 that we should disperse the crowd there and there. And I</p>	<p style="text-align: right;">Page 11087</p> <p>1 GENERAL MPEMBE: Yes. Chairperson, there 2 is a principle or, in crowd management that always when you 3 have to intervene in any spontaneous group or any other 4 gathering you need to take into consideration and I would 5 like to refer the Commission to FFF5, FFF1.</p> <p>6 CHAIRPERSON: Which page of FFF1? FFF1 7 is the policy document on crowd management issued by the 8 Public Order Police. It's quite a lengthy document, what 9 particular passage in this document do you want to refer us 10 to?</p> <p>11 GENERAL MPEMBE: It is page 4.</p> <p>12 CHAIRPERSON: What on page 4 do you want 13 us to see?</p> <p>14 GENERAL MPEMBE: Two paragraphs, all the 15 basic principles but the one that I needed to speak about 16 is the situational appropriateness at that particular time, 17 taking both the participants and non-participants into 18 consideration.</p> <p>19 CHAIRPERSON: You say there are two 20 paragraphs. The one you've just read us is 3.1.2 which is 21 under the heading "Principles of crowd management" and is 22 there another paragraph you want us to look at as well?</p> <p>23 GENERAL MPEMBE: Chairperson, at that 24 time I looked at that, even those others apply but in this 25 case I only want to refer to paragraph 3.1.2.</p>
<p style="text-align: right;">Page 11086</p> <p>1 had a different view.</p> <p>2 MR NGALWANA: Can you tell us briefly 3 what the reasons for that different view that you held 4 were?</p> <p>5 [10:37] GENERAL MPEMBE: Briefly my view was that 6 there is a railway line and I didn't know at what time will 7 the train or anything pass. Chairperson, you have been on 8 the scene. There is also a road that I thought is a public 9 road or a service road for the railway line and I realised 10 that it will be unwise to disperse there and I also saw 11 just not very far from – I'm not good in measurements but 12 there is a business area just on the other side of the 13 railway line. At the same time, Chairperson, as I said I 14 relied on my experience, realising the mood of the 15 protesters and that they were at that time agitated, 16 refusing to drop the firearms, I thought that this is a 17 right –</p> <p>18 MR MPOFU: I'm sorry, Chairperson, I 19 don't want to interrupt but the dropping of the firearms is 20 either new stuff that has not been read or just a mistake.</p> <p>21 CHAIRPERSON: We think he said "their 22 arms" but anyway let's get clarity from him what he meant.</p> <p>23 GENERAL MPEMBE: Yes, I'm saying 24 dangerous weapons, ja, that's right, not firearms.</p> <p>25 CHAIRPERSON: "Their" not "fire."</p>	<p style="text-align: right;">Page 11088</p> <p>1 CHAIRPERSON: Yes, thank you.</p> <p>2 MR NGALWANA: And of course it's 3 discussed in greater detail on page 5 in paragraph 3.3, 4 Chairperson. Yes General, so you took into account 5 situational appropriateness, you decided you're not going 6 to disperse people right there and then. You then decided, 7 you say in your statement, to rather escort them, form a 8 sort of basic line behind them. Take the Commission 9 through what then happened.</p> <p>10 GENERAL MPEMBE: That's correct, 11 Chairperson. Always I was considering my actions that they 12 must be within the law, then I realised that there are 13 action modes that one will have to apply and at that time 14 it was escorting which –</p> <p>15 MR NGALWANA: Sorry General, before you 16 proceed, you indicated that there was some disagreement 17 with Lieutenant-Colonel Merafi. There has of course been a 18 suggestion that you changed your mind after officers of the 19 lower ranks were advising. Is that factually correct?</p> <p>20 GENERAL MPEMBE: Chairperson, there is no 21 truth in the claim that I changed my mind when I was 22 advised by the junior officers.</p> <p>23 MR NGALWANA: Okay, then you –</p> <p>24 CHAIRPERSON: To interrupt you, you're 25 referring to a claim that I've never heard of before and I</p>

<p style="text-align: right;">Page 11089</p> <p>1 get the impression that you are, quite appropriately, 2 defending your action against critics who have – not to our 3 knowledge but who have, outside, criticised you for acting 4 as you did, but can you tell me something about the claim 5 that was made against, to which you are in effect 6 responding? Who made that claim? 7 GENERAL MPEMBE: Chairperson, the 8 question that I was asked by the legal representative is 9 that I changed my intentions. I think the criticism comes 10 from Mr White to say that I changed my intentions because I 11 was advised by my junior officers. 12 CHAIRPERSON: Do you say Mr – I don't 13 remember Mr White saying that but I won't quarrel with you 14 about that. You say that that criticism is not justified 15 because it's not correct. You didn't change your mind 16 because of what you were advised by the junior officers, is 17 that correct? 18 GENERAL MPEMBE: That's correct, 19 Chairperson. 20 MR NGALWANA: It's in Mr White's 21 statement, Chairperson, I'll find it in due course. 22 CHAIRPERSON: No, let's not hold up the 23 proceeding, I'll find it in due course. 24 MR NGALWANA: Yes, please proceed, 25 General.</p>	<p style="text-align: right;">Page 11091</p> <p>1 MR MAHLANGU: Sorry, I'm – 2 CHAIRPERSON: Your function, I mean what 3 happened was – no, no, I understand exactly what you mean. 4 He used the word "mlungu" you see, which you then, which 5 then pressed a button in your mind that you had to 6 interpret that from Xhosa to English. 7 MR MAHLANGU: Yes. 8 CHAIRPERSON: And you then carried on in 9 English, repeating what he'd said but with a bit of a 10 paraphrase and commentary of your own. May I suggest that 11 we ask him to repeat the previous paragraph of his evidence 12 in English, you can then interpret it into Xhosa and if 13 there are any Xhosa words that the General uses, you can 14 interpret those for our benefit as well but I'm sure we've 15 got a number of people here who are rather mystified. 16 They've heard some evidence in English, they heard it being 17 interpreted in English and they don't understand what was 18 said. 19 MR MAHLANGU: The problem, sir, is I 20 think interpreting has been so much in my mind that it 21 changes it automatically. I'm sorry for this. 22 CHAIRPERSON: It happens to everybody. 23 MR MAHLANGU: Thank you. 24 GENERAL MPEMBE: Chairperson, in deciding 25 that we should escort them, in my mind was that if we</p>
<p style="text-align: right;">Page 11090</p> <p>1 GENERAL MPEMBE: Chairperson, within a 2 reasonable distance – as I have said earlier, I'm not good 3 in measurements – the police and myself we followed the, I 4 will say the strikers within a reasonable distance at the 5 back. There were some soft top vehicles that they were 6 also moving on, they were also driving on the gravel roads. 7 And during the time when I was briefing the officers I 8 indicated to them that during my briefing earlier by 9 Brigadier Calitz what was happening, the modus operandi of 10 the strikers by then, it was to assault, maim or kill any 11 person who is going at work. And when I was talking to the 12 strikers they also indicated that they wanted to go and 13 talk to Mlungu. 14 MR MAHLANGU: Mlungu meaning the white 15 person or the employer. 16 GENERAL MPEMBE: And as I was informed, 17 it was that now it means they were also going to the LPD 18 offices when we intercept them, that was in my mind. 19 CHAIRPERSON: Mr Mahlangu, the witness is 20 giving evidence in English and you are paraphrasing his 21 evidence in English as well. 22 MR MAHLANGU: I'm sorry, Chair. 23 CHAIRPERSON: Now I've never noticed 24 that, I've never seen that happen before and I don't think 25 it's a good precedent that we should allow it continue.</p>	<p style="text-align: right;">Page 11092</p> <p>1 withdrew at that time then the strikers in the manner in 2 which they are moving, they might also injure, kill or maim 3 these people and at that time we don't know where they are 4 staying and I find that it could not be acceptable to the 5 community when they realise that the stability of the 6 police and we withdrew it and later something happens, I 7 understand that and that is my decision in terms of 8 escorting them. And that I was also entitled or in terms 9 of the same principle which I quoted and that is the crowd 10 management FFF1 that is legally, legal consideration. In 11 terms of section 9(1)(c) I am, whether legally or an 12 illegal gathering, you can escort it and determine the 13 route. In my briefing to the officers I said, as I have 14 already indicated, that we should make sure that they don't 15 go into the informal settlement or in any of the business 16 areas. No, I was talking about the residential area as 17 well as informal settlement. With the briefing that I got, 18 I understand that the people, this group was also in the 19 morning at the koppie. So they did go to the - in that 20 mine, not through the villages but they knew how to get 21 where they were without entering the village. Chairperson, 22 while we were escorting them and while I was also at the 23 back I saw them – because when they were moving towards the 24 kop, while they were also moving I saw just after a certain 25 time, I saw as if they are also going to go to the informal</p>

<p style="text-align: right;">Page 11093</p> <p>1 settlement. I heard a fierce shooting from one of the 2 members and through that shooting I realised that the 3 strikers turned against the police. It was not a very good 4 scene. I saw Warrant Officer Monene being chopped and 5 killed in front of me. I saw how Warrant Officer Lepaaku 6 was killed. Lieutenant Baloyi fought a fight, he defended 7 himself in many ways. At the same time the police came to 8 his rescue and he was saved, taken to hospital. 9 [10:56] Chairperson, I need to indicate that later I 10 found out that the person who used the CS, it was Warrant 11 Officer Koen and Warrant Officer Koen informed me that he 12 heard an order and he couldn't tell me who gave him the 13 order. Chairperson, the emotions were extremely high but 14 as a senior officer at the scene, I did take control, cool 15 up the members and I said that the members should not 16 follow the protesters because by that time I could see that 17 there is no more any attack and I said that we should 18 withdraw and we go back at the JOC. 19 I need to just state at the moment that I was 20 approached by Lieutenant-Colonel Vermaak. Colonel Vermaak 21 said that at the moment my life is in danger. In 22 Afrikaans, "Generaal se lewe is in gevaar," and I said back 23 to him, "Salmon, ek gaan nie nou loop nie, ek sal moet eers 24 die toneel oorhandig aan Brigadier Van Zyl." 25 CHAIRPERSON: I said to him I shan't</p>	<p style="text-align: right;">Page 11095</p> <p>1 just to go back for a moment to deal with that part before 2 you carry on, if we may be permitted to say so. 3 ZONDASI WILLIAM MPEMBE: s.u.o. 4 EXAMINATION BY MR NGALWANA (CONTD): You 5 may be happy to learn that that's exactly the conversation 6 that we had about five minutes ago. Chair, before the 7 General proceeds, you recall that there was reference I 8 made to a charge that the General was changing his 9 intentions on the advice of junior officers and I said it 10 was Mr White. That reference is to be found at paragraph 11 4.4.12 of Mr White's statement. General – exhibit WW2 – 12 General, could we take a couple of steps back and we're 13 still on Monday the 13th of August 2012. Let's start at the 14 time when you request Lonmin mine to provide an 15 interpreter. I think there's Mr Blou – 16 CHAIRPERSON: That is the foot of 17 paragraph 12 on page 5 of his main statement which is 18 exhibit GGG12. 19 MR NGALWANA: Yes, General? 20 GENERAL MPEMBE: Chairperson, I need to 21 just state also that when I was going there I had Adv 22 Moolman who is a legal officer of the police, together with 23 Mr Henry Blou. 24 MR NGALWANA: Just for the record, who is 25 Mr Henry Blou?</p>
<p style="text-align: right;">Page 11094</p> <p>1 leave the scene till I hand it over to Brigadier Van Zyl. 2 Is this perhaps a suitable stage for us to take the tea 3 adjournment, Mr Ngalwana? We'll take the tea adjournment. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [11:35] CHAIRPERSON: The Commission resumes. We 6 had a discussion during the adjournment with the 7 representatives of some of the parties in an endeavour to 8 reach agreement or something closer to agreement on the 9 draft rules and I'm happy to report that it seems as if 10 something positive may well come out of the discussions. 11 Major-General, you're still under oath. Mr Ngalwana, you 12 have questions for the witness? 13 MR NGALWANA: Thank you, Chair. 14 COMMISSIONER HEMRAJ: Mr Ngalwana, before 15 you start I was going to ask, are you going to deal with 16 the, that part of the incident when the General was 17 counting down, are you – 18 MR NGALWANA: Yes, we've just – 19 CHAIRPERSON: We've actually gone ahead 20 of that. 21 COMMISSIONER HEMRAJ: Yes. 22 CHAIRPERSON: But that was the point 23 where he stressed the direction that was necessary in the 24 statement and then – but obviously in the desire to get to 25 the main part, that got left out but it might be sensible</p>	<p style="text-align: right;">Page 11096</p> <p>1 GENERAL MPEMBE: Mr Henry Blou is one of 2 the security personnel of the Lonmin mine. When I wanted 3 to request the interpreter, it was when I realised that the 4 strikers were talking to me in Fanagolo. Mr Blou, however, 5 he phoned one of the senior managers which I did not know 6 and asked him whether can't they send an interpreter. Mr 7 Blou informed me to say that the management said that they 8 are not prepared to negotiate with the strikers. I said to 9 Mr Blou, I don't say they should come and negotiate, I say 10 I'm only requesting an interpreter. He went on to say the 11 management said that there are structures in which, where 12 grievances have to be raised and this is not the way. 13 Realising that I do not have an interpreter, I started 14 speaking in Zulu and I could see they hear me because they 15 were also responding even though some of them were talking 16 to me in Fanagolo. Chairperson, I do hear Fanagolo but I 17 cannot speak it properly because I once worked in the mine 18 before. 19 CHAIRPERSON: You said you can hear it. 20 I take it you mean you can understand Fanagolo but you 21 can't speak it fluently yourself, is that the position? 22 GENERAL MPEMBE: That's correct, 23 Chairperson. Chairperson, after briefing the officers in 24 terms of intended actions, I said to them I am going to 25 count for the protesters in tens. I was always keeping in</p>

<p style="text-align: right;">Page 11097</p> <p>1 mind what legal action and I'm supposed to do and check 2 that all my actions within, should be in the legal ambit. 3 MR NGALWANA: Sorry General, before we 4 get to the counting, you said you briefed the officers 5 about what it is that they should be doing. Could you just 6 take the Commission briefly to what precisely it is that 7 you briefed them on? What did you tell them, the officers? 8 GENERAL MPEMBE: Chairperson, I said to 9 them earlier on that the way in which I see the situation, 10 when I count for the protesters to hand, to hand their 11 firearms voluntarily – 12 CHAIRPERSON: You say firearms, are you – 13 GENERAL MPEMBE: I'm saying – 14 CHAIRPERSON: Do you mean the weapons – 15 GENERAL MPEMBE: Dangerous weapons. 16 CHAIRPERSON: Did anybody, to your 17 knowledge, have a firearm – to your knowledge, have a 18 firearm, of the strikers when you saw them by the railway 19 line there on the Monday? 20 GENERAL MPEMBE: No, Chairperson. 21 CHAIRPERSON: So when you say firearms 22 it's a slip of the tongue, you mean dangerous weapons? 23 GENERAL MPEMBE: Yes. 24 MR NGALWANA: Can we just clarify – 25 CHAIRPERSON: You said when you count to</p>	<p style="text-align: right;">Page 11099</p> <p>1 the member must address them in a language that they 2 understand. Yes, General? 3 GENERAL MPEMBE: When I record, when I 4 informed them that I'm going to count until 10 which I, in 5 my understanding by that time that was a reasonable time – 6 MR NGALWANA: Sorry, General, before we 7 get to the counting, I know this is contained in the video 8 but for purposes of the record could we just take the 9 Commission briefly to what it is that you said to them, to 10 the strikers and what it is, to your recollection, that 11 they said in return and then what happened thereafter? 12 GENERAL MPEMBE: I did say to them, 13 (Speaking Zulu). 14 MR MAHLANGU: I said to them I want the 15 spears that you have. 16 GENERAL MPEMBE: And when they said to 17 me, (speaking Zulu) I said – 18 MR MAHLANGU: When they said to me we are 19 not going to give these spears to you, I said to them – 20 GENERAL MPEMBE: (Speaking Zulu) 21 MR MAHLANGU: I said to them, if you 22 don't hand over those spears I will not allow you to 23 proceed. 24 GENERAL MPEMBE: And they said to me we 25 will give you these dangerous weapons. I said, I asked</p>
<p style="text-align: right;">Page 11098</p> <p>1 10 you expect them to hand over or put down, lay down I 2 suppose, their weapons. Is that so? Is that what you said 3 to your officers? 4 GENERAL MPEMBE: Yes, that's correct, 5 Chairperson. 6 MR NGALWANA: Sorry General, can we just 7 clarify this, your previous answer? Do you mean to say or 8 did you say that none of the strikers, to your knowledge, 9 had firearms or are you saying you did not know whether or 10 not they had firearms? I just want some clarity there. 11 GENERAL MPEMBE: I did not know whether 12 they have firearms or not. Chairperson, to continue with 13 the briefing and I said to them as I have testified 14 earlier, the agitation, the mood of the strikers, 15 Chairperson, I did inform the police officials to say we 16 need to be careful so that we should not be seen acting 17 like in the case of Tatane but we should be seen as acting 18 in a highly justified manner, taking into account what the 19 Lieutenant-General Mbombo said to me. Chairperson, it's 20 correct that I informed the strikers in the language that 21 they understand, that is Zulu, complying with section 9 of 22 the Regulation of Gatherings Act, where they understood 23 exactly what I wanted from them. 24 MR NGALWANA: Sorry, just for clarity, 25 section 9(1)(c) of the Regulation of Gatherings Act says</p>	<p style="text-align: right;">Page 11100</p> <p>1 them where? They said at the mountain. Then I said I am 2 not going to allow you to continue marching while carrying 3 these dangerous weapons and now I am going to count and 4 when I count up to 10 you need to voluntarily hand these 5 dangerous weapons. Chairperson, at that time there were 6 police on the line of the railway, there were police at the 7 back, there were also police at the side, there was also 8 another police official of POP at the big stone where there 9 was a place where they can go out. And when I said one, 10 they disobeyed the instruction and they moved. In 11 accordance with my earlier briefing to the commanders, the 12 police they did not act. 13 MR NGALWANA: When you say they moved, 14 General, in what manner were they moving? Were they walked 15 straight up or how were they moving and what were they 16 doing? 17 GENERAL MPEMBE: Chairperson, they 18 actually charged and also moving in an almost, not 19 crouching but in a position as if they are charging and 20 while also playing their weapons. 21 MR NGALWANA: And can you give a, I don't 22 know, some – can you explain how they were playing with 23 their weapons? 24 GENERAL MPEMBE: When they charged, 25 moving, they wielded their weapons and they were also</p>

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1 singing.

2 CHAIRPERSON: If I can interrupt for a

3 moment, Ms Pillay perhaps you can help us. The transcript

4 of the video which deals with the matter, that covers the

5 matter the witness is testifying about, we're not sure

6 whether it's QQ3 or RR2 or RR3. Can you tell us?

7 MS PILLAY: Just give me a second, Chair,

8 I'll tell you now.

9 MR NGALWANA: Must I wait, Chair, or

10 shall I continue?

11 CHAIRPERSON: It would be helpful if we

12 get this because –

13 MS PILLAY: It's QQ2, Chair.

14 CHAIRPERSON: Thank you. Now the video

15 clip has got one exhibit number I think and then the

16 transcript of the soundtrack is another.

17 MS PILLAY: The video clip is Z1, exhibit

18 Z1.

19 CHAIRPERSON: Yes?

20 MS PILLAY: And the transcript is exhibit

21 QQ2.

22 CHAIRPERSON: Thank you very much.

23 According to our records it looks as if it's QQ3. There is

24 another transcript which seems to be QQ2. If we can't sort

25 it out quickly now, we can do it during the lunch

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1 adjournment but –

2 MS PILLAY: Chair, I don't have an

3 exhibit QQ3.

4 CHAIRPERSON: Look at RR3.

5 MS PILLAY: There's an RR2 which is the

6 translation of ZZ1, it's the translation of –

7 CHAIRPERSON: Well, that's it, you see.

8 ZZ1 is the video clip of the General addressing the

9 strikers at the railway line, is ZZ1, then the transcript

10 of the soundtrack of that video then appears to be RR2, is

11 that right?

12 MS PILLAY: It's the translation, yes.

13 CHAIRPERSON: Well yes, it's the

14 translation because it's all in Zulu or most – it's in Zulu

15 and Xhosa and a bit of Fanagolo apparently. Anyway, this

16 is why we identified the video clip and the transcript of

17 the translation so that it can help us in relation to the

18 evidence that's now being given.

19 MR NGALWANA: Chair, perhaps it might be

20 best to play Z1 and for the General to talk through it.

21 Now I haven't made previous arrangements for this to be

22 played, it's just something that occurs to me now –

23 CHAIRPERSON: That sounds, if I may say

24 so, a very sensible suggestion. Let's go forward with

25 that.

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1 MR NGALWANA: Perhaps if it's not ready

2 now, we can come back because I haven't made prior

3 arrangements.

4 CHAIRPERSON: You have or you haven't?

5 MR NGALWANA: Have not.

6 [11:55] CHAIRPERSON: Have not. Alright, well,

7 let's move on and perhaps after the lunch adjournment if

8 you – I'm reminded we're not sitting after lunch today.

9 Monday morning perhaps you can do it, so carry on with the

10 evidence as you lead it now and if you want to take us,

11 with the witness, through the video clip then you can do it

12 perhaps first thing Monday morning.

13 MR NGALWANA: Yes, I think it might very

14 well be done on Monday because I'm told the technicians are

15 not here today.

16 CHAIRPERSON: Alright, well they can do

17 that and we can also do something about ascertaining

18 precisely what the relevant exhibit numbers are so that,

19 you know, we can move forward without any difficulty in

20 future when we have to look at these –

21 MR NGALWANA: Thank you, Chair.

22 CHAIRPERSON: - these particular video,

23 this particular video clip and transcript because it's

24 quite important for this part of the case, isn't it?

25 MR NGALWANA: Thank you, Chair. Of

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1 course the video clip doesn't quite cover the escorting.

2 You have another –

3 CHAIRPERSON: It's the first part, the

4 address by the witness to the strikers and their replies.

5 MR NGALWANA: Yes. Yes, General, we'll

6 come back on another day about your exchange with the

7 protesters whom you call strikers. Can we just then take

8 the Commission through, you are now counting, you're

9 indicating that you're going to count and they've moved

10 through, you're saying in a charging position. What then

11 happens?

12 GENERAL MPEMBE: I said that they crossed

13 the police line and they go in the direction of the koppie.

14 I said we followed them within a reasonable distance at the

15 back.

16 MR NGALWANA: In what formation? Can you

17 explain briefly –

18 COMMISSIONER HEMRAJ: Can you please

19 clarify for us where the police line was?

20 MR NGALWANA: That's what I'm doing. In

21 what formation of the police as you are escorting them?

22 GENERAL MPEMBE: While they were moving

23 in front of us, we were making a line at the back and we

24 were moving with that line at a reasonable distance at the

25 back of the strikers.

<p style="text-align: right;">Page 11105</p> <p>1 MR NGALWANA: Was it a straight line 2 behind the strikers as they're moving towards the koppie or 3 were you flanking them? 4 GENERAL MPEMBE: Chairperson, while we 5 were moving at the back, at the back it was a straight line 6 but I need to state that there was a Nyala which was on the 7 left that was checking one of the area points that we 8 didn't want the strikers to go and there were also other 9 Nyalas that they drove and they were in line with the 10 informal settlement. 11 MR NGALWANA: When you say in line with 12 the informal settlement to the right of the marchers, just 13 explain briefly what the purpose of that Nyala was. 14 GENERAL MPEMBE: It was just not, to 15 block them not to go to the village but not to block them 16 in front but just to block them to go to the village and 17 there were others, also soft vehicles after that Nyala. 18 MR NGALWANA: Just to clarify you, you've 19 already explained why but just in case it's missed, why 20 would you want to block them from going into the village? 21 GENERAL MPEMBE: Chairperson, I testified 22 earlier to say that during the briefing that I received in 23 the morning, it was that when these strikers are moving in 24 that way they will either maim, kill or injure those that 25 are going at work and they also wanted to injure or, any</p>	<p style="text-align: right;">Page 11107</p> <p>1 QQ2 is the transcript of Z1. RR2, Chair, is a translation 2 of one of the songs from Z1, the song that the General 3 referred to earlier. 4 CHAIRPERSON: The indecent one. 5 MS PILLAY: That's right. 6 CHAIRPERSON: Yes. Thank you, Ms Pillay. 7 MR NGALWANA: General, I shall ask you to 8 – a video clip of your address and your interaction with 9 the protesters or strikers, as you call them, on Monday the 10 13th will be played now. I shall ask you to take us through 11 as the clip is played. You'll indicate when you want it to 12 be stopped so that you can tell us, tell the Commission 13 what now is happening and what's going on in your mind. 14 CHAIRPERSON: I take it you'll raise your 15 hand when you want the clip stopped, if you'll raise your 16 hand when you want the clip stopped so that the technician 17 can then stop it. You can then give some commentary and 18 then lower, then we can carry on. 19 GENERAL MPEMBE: Yes, Chairperson. 20 CHAIRPERSON: Can you see, from where 21 you're sitting can you see the screen? 22 GENERAL MPEMBE: I will see, yes, I'll 23 move to this – 24 CHAIRPERSON: Alright, as long as you can 25 see the screen because if you can't see the screen then the</p>
<p style="text-align: right;">Page 11106</p> <p>1 other of the mineworkers. So in responding to that threat, 2 that's why then I decided that they should not move within 3 either in the informal settlement or any other location 4 because we did not know at that time who is staying there 5 of those people that might also be injured, maimed or 6 killed by the strikers. 7 MR NGALWANA: Chair, I'm told that the 8 technicians have emerged and are ready to play the clip. 9 Is that – 10 CHAIRPERSON: You're leading the witness, 11 so if you want the clip to be shown now you may do so. 12 Where did they emerge from? 13 MR SETATI: Sorry Chairperson, 14 Chairperson the technicians have always been here and all 15 they need is just an exhibit number. They say they're 16 ready to play that video. 17 MS PILLAY: Chair, for the benefit of the 18 technician, it's exhibit Z1. 19 MR NGALWANA: I'm told there are in fact 20 three exhibits, it's Z1, 2 and 3. I don't know what the 21 difference is. 22 CHAIRPERSON: Well, let's take Z1 to 23 start with. 24 MS PILLAY: While we're waiting for the 25 videos if I may just clear up the issue of the transcript.</p>	<p style="text-align: right;">Page 11108</p> <p>1 result could be chaos. 2 [VIDEO CLIP IS SHOWN] 3 MR NGALWANA: Perhaps audio would be 4 useful. 5 [VIDEO CLIP IS SHOWN] 6 CHAIRPERSON: - the sound yet? 7 [VIDEO CLIP IS SHOWN] 8 MR NGALWANA: Is there anything you want 9 to – is there any comment you wish to make at this stage, 10 General, about what's going on? 11 GENERAL MPEMBE: I just wanted to say 12 that he approached me to tell that where we are coming from 13 we didn't do anything wrong and they are asking their way 14 to go where they are staying, but one could see the way in 15 which they crouched, the click of the weapons when the 16 police were approaching them and I'm just going to address 17 them. 18 CHAIRPERSON: Can I ask you a question? 19 How many members of the police service did you have with 20 you at that stage? 21 GENERAL MPEMBE: Chairperson, when I led 22 that time I didn't lead them - I didn't lead them but I 23 estimated them at more than 70. 24 CHAIRPERSON: You mean the crowd were 25 more than 70? How many police people, police, members of</p>

<p style="text-align: right;">Page 11109</p> <p>1 the police service did you have with you?</p> <p>2 GENERAL MPEMBE: I estimated them more</p> <p>3 than 70.</p> <p>4 CHAIRPERSON: There were 70 police</p> <p>5 people?</p> <p>6 GENERAL MPEMBE: More than 70.</p> <p>7 CHAIRPERSON: And how many strikers were</p> <p>8 there?</p> <p>9 GENERAL MPEMBE: The strikers, I</p> <p>10 estimated them to be between 100 and 200.</p> <p>11 CHAIRPERSON: Did you have enough members</p> <p>12 of the police service to disarm these people? Or were you</p> <p>13 outnumbered in fact by the strikers?</p> <p>14 GENERAL MPEMBE: Chairperson, as I</p> <p>15 testified earlier, is that not necessarily that we were</p> <p>16 outnumbered but what I was thinking of, it is in terms of</p> <p>17 the roads and the railway and that, not that necessarily</p> <p>18 that we are outnumbered but that's why I went there with</p> <p>19 the police.</p> <p>20 MR NGALWANA: General, can you just</p> <p>21 explain the scene? Of course we can see the video but the</p> <p>22 transcript cannot see the video. Could you just set the</p> <p>23 scene as regards where these people were crouching and</p> <p>24 where the railway line was and where this public service</p> <p>25 road was? Perhaps if the clip could continue a bit so that</p>	<p style="text-align: right;">Page 11111</p> <p>1 GENERAL MPEMBE: On my side where I was</p> <p>2 standing, the railway line was on the left and the public –</p> <p>3 the road that I was speaking about is the one that they</p> <p>4 were crouching on it.</p> <p>5 MR NGALWANA: And the residential or</p> <p>6 business area to which you referred earlier before the clip</p> <p>7 was played, where would it be in relation to where they</p> <p>8 are?</p> <p>9 GENERAL MPEMBE: It will also be on the</p> <p>10 left hand side, on the other side of the railway line.</p> <p>11 MR NGALWANA: Right. Please continue</p> <p>12 with the clip.</p> <p>13 [VIDEO CLIP IS SHOWN]</p> <p>14 MR NGALWANA: Could you stop the clip</p> <p>15 please, briefly? I'm not sure what's happening now.</p> <p>16 General, at the time you're addressing the strikers, as you</p> <p>17 call them, and they are talking back to you, did you know</p> <p>18 the identity of the people who were addressing you?</p> <p>19 GENERAL MPEMBE: Chairperson, no.</p> <p>20 MR NGALWANA: Okay, could we continue</p> <p>21 with the clip?</p> <p>22 [VIDEO CLIP IS SHOWN]</p> <p>23 MR NGALWANA: Okay, can you stop the –</p> <p>24 essentially I'm not asking you now to interpret what you</p> <p>25 are saying or to repeat what you're saying, could you tell</p>
<p style="text-align: right;">Page 11110</p> <p>1 you can see.</p> <p>2 [VIDEO CLIP IS SHOWN]</p> <p>3 MR NGALWANA: Okay, can you just explain</p> <p>4 briefly what it is that you're saying to them there, in</p> <p>5 English?</p> <p>6 GENERAL MPEMBE: I said to them we are</p> <p>7 the police and we came here because of what has happened</p> <p>8 and the problems that we have as the police is what has</p> <p>9 been happening and the problem that we have with you, not</p> <p>10 that we are coming here to arrest you, is the possession of</p> <p>11 these dangerous weapons.</p> <p>12 MR NGALWANA: Chairperson, I'm sorry –</p> <p>13 MR MADLANGA SC: Mr Chairman, may the</p> <p>14 Commission perhaps ask my learned friend Mr Ngalwana not to</p> <p>15 ask the General to translate what he is saying because the</p> <p>16 transcription is there, but rather highlight whatever it is</p> <p>17 my learned friend might want him to highlight.</p> <p>18 MR NGALWANA: Yes.</p> <p>19 CHAIRPERSON: Sensible suggestion.</p> <p>20 MR NGALWANA: Okay. Can you – can the</p> <p>21 clip continue, please?</p> <p>22 [VIDEO CLIP IS SHOWN]</p> <p>23 MR NGALWANA: Can you stop there? We can</p> <p>24 see now where they are seated. Where is the railway line</p> <p>25 in relation to where they are?</p>	<p style="text-align: right;">Page 11112</p> <p>1 in broad terms what the general message is that you seek to</p> <p>2 convey to the protesters and what it's based on?</p> <p>3 [12:15] GENERAL MPEMBE: Chairperson, I found it</p> <p>4 in a best way to say that I need to explain to them to say</p> <p>5 the marching and also the gathering that has to take place,</p> <p>6 someone has to give a notice. There should be a convenor</p> <p>7 or someone that will have to give a notice and if one has</p> <p>8 to give a notice, then the police will attend to the matter</p> <p>9 and arrange in terms of how that gathering has to take</p> <p>10 place. I was explaining to them to say gatherings and</p> <p>11 marching that is illegal, it's when there's no notice that</p> <p>12 has been served and then in terms of the Regulation of</p> <p>13 Gatherings Act such gathering and the marching, and</p> <p>14 consequent marching is illegal.</p> <p>15 MR NGALWANA: I take it what you're</p> <p>16 saying now is what informed you in giving them or in</p> <p>17 conveying that general message. You didn't in fact say to</p> <p>18 them in terms of section this of this Act and so on, is</p> <p>19 that – would that be an accurate assessment?</p> <p>20 GENERAL MPEMBE: Yes, Chairperson.</p> <p>21 MR NGALWANA: Yes. Is there anything</p> <p>22 else you wish to add, General, about what we've seen thus</p> <p>23 far?</p> <p>24 GENERAL MPEMBE: No, Chairperson.</p> <p>25 MR NGALWANA: Could we continue with the</p>

<p style="text-align: right;">Page 11113</p> <p>1 clip?</p> <p>2 [VIDEO CLIP IS SHOWN]</p> <p>3 MR NGALWANA: What is the general sense</p> <p>4 of, what did you understand him to be saying?</p> <p>5 GENERAL MPEMBE: My understanding was</p> <p>6 that we are not fighting you but we want to take these</p> <p>7 weapons to the place where we are getting to.</p> <p>8 MR NGALWANA: Okay, continue with the</p> <p>9 clip.</p> <p>10 [VIDEO CLIP IS SHOWN]</p> <p>11 MR NGALWANA: General, as you are</p> <p>12 listening now to the strikers addressing you, what is going</p> <p>13 through your mind at this stage?</p> <p>14 GENERAL MPEMBE: It was that they're</p> <p>15 saying we are not fighting you but we wanted to get our</p> <p>16 salary, our salaries. We are working at the mine</p> <p>17 underground but we are not fighting. In my understanding</p> <p>18 by that time it was saying no, we are not fighting you but</p> <p>19 we wanted to get our salaries increased with Lonmin mine.</p> <p>20 MR NGALWANA: I take it that at this</p> <p>21 stage the difference of opinion between yourself as the</p> <p>22 General and Lieutenant-Colonel Merafi hasn't happened yet,</p> <p>23 or had it?</p> <p>24 GENERAL MPEMBE: Not yet, Chairperson.</p> <p>25 MR NGALWANA: Can we continue with the</p>	<p style="text-align: right;">Page 11115</p> <p>1 maybe the conversation of that meeting took place.</p> <p>2 MR NGALWANA: Okay, before we go there</p> <p>3 can we just deal with whether the police, inasmuch as</p> <p>4 there's a request by the strikers that the police bring the</p> <p>5 Mlungu to them, presumably with a view to resolving their</p> <p>6 labour problems, would the police be in a position to</p> <p>7 resolve labour problems between the strikers and Lonmin?</p> <p>8 GENERAL MPEMBE: No, Chairperson.</p> <p>9 MR NGALWANA: We'll come to OO4 in due</p> <p>10 course.</p> <p>11 COMMISSIONER HEMRAJ: But the question</p> <p>12 that you asked the witness is whether he contacted Lonmin</p> <p>13 on the 13th itself.</p> <p>14 MR NGALWANA: Yes.</p> <p>15 COMMISSIONER HEMRAJ: At the scene.</p> <p>16 MR NGALWANA: That's correct.</p> <p>17 COMMISSIONER HEMRAJ: He hasn't quite</p> <p>18 answered that.</p> <p>19 MR NGALWANA: Yes.</p> <p>20 CHAIRPERSON: No, before he goes further</p> <p>21 OO4 is a transcript of a meeting that took place on the</p> <p>22 15th. We'll get there obviously in the story. The question</p> <p>23 at the moment is, when they asked to speak to someone from</p> <p>24 Lonmin and they put that to you on the 13th by the railway</p> <p>25 line, the only representative you had of Lonmin at the</p>
<p style="text-align: right;">Page 11114</p> <p>1 clip?</p> <p>2 [VIDEO CLIP IS SHOWN]</p> <p>3 MR NGALWANA: Okay, can we stop the</p> <p>4 video? Now it appears and I think we have a transcript for</p> <p>5 this, that they want the police to bring the employer to</p> <p>6 them to talk to them. Could you explain to the Commission</p> <p>7 why the police didn't or wouldn't do that?</p> <p>8 GENERAL MPEMBE: By the time when we go</p> <p>9 there, I was only accompanied by Mr Henry Blou but when</p> <p>10 they had, when I heard them saying this also came into my</p> <p>11 mind and it's one of the points that later on I considered</p> <p>12 to follow them, follow it up and then I will also testify</p> <p>13 that I did also approach the mine management.</p> <p>14 MR NGALWANA: Yes and you said you took</p> <p>15 this up with Lonmin management. What was their response?</p> <p>16 GENERAL MPEMBE: I will testify that on</p> <p>17 the 15th I did request the Lonmin management, personally so</p> <p>18 through Mr Kwadi who was the labour relations officer and</p> <p>19 to say that I would like to see the management together</p> <p>20 with the unions.</p> <p>21 MR NGALWANA: Was Lonmin management</p> <p>22 willing to come and address the workers where they were,</p> <p>23 General?</p> <p>24 GENERAL MPEMBE: Chairperson, I would</p> <p>25 like maybe to take the Commission to exhibit OO4 where</p>	<p style="text-align: right;">Page 11116</p> <p>1 scene with you was Mr Blou who was on the security side of</p> <p>2 Lonmin, is that correct??</p> <p>3 GENERAL MPEMBE: Correct, Chairperson.</p> <p>4 CHAIRPERSON: Did you convey to him at</p> <p>5 that stage on the 13th the request which he's obviously</p> <p>6 heard which had been put to you by the representative of</p> <p>7 the strikers that they wanted someone from Lonmin to come</p> <p>8 and see them then and there? Did you put that to Mr Blou?</p> <p>9 GENERAL MPEMBE: Chairperson, I testified</p> <p>10 on that when I needed an interpreter the management was not</p> <p>11 willing, so when they were saying that, I found it proper</p> <p>12 that I couldn't go back to him because he has already</p> <p>13 informed me that they are not prepared to negotiate.</p> <p>14 MR NGALWANA: Right. Is there anything</p> <p>15 else you wish to add from what has appeared on the video or</p> <p>16 do you want us to continue playing the video and then</p> <p>17 you'll comment later, General?</p> <p>18 GENERAL MPEMBE: That's correct,</p> <p>19 Chairperson.</p> <p>20 MR NGALWANA: Okay, play the video,</p> <p>21 please?</p> <p>22 [VIDEO CLIP IS SHOWN]</p> <p>23 MR NGALWANA: Please stop there. Yes,</p> <p>24 General, would you like to comment?</p> <p>25 GENERAL MPEMBE: Chairperson, I just want</p>

<p style="text-align: right;">Page 11117</p> <p>1 to point out that at this time I realised that the 2 gentleman that was speaking there, he was actually giving 3 command to the others and the manner in which they were 4 responding, to me I find it really amazing. 5 MR NGALWANA: In what way was he giving 6 commands, General? Could you explain that briefly? 7 GENERAL MPEMBE: I could see that if 8 others they wanted to talk, voluntarily so, individually, 9 he would show them by means of the hands to say to sit down 10 and then he will, he will talk. 11 MR NGALWANA: Okay, could we continue 12 with the clip? 13 [VIDEO CLIP IS SHOWN] 14 MR NGALWANA: General, and was the 15 general sense now of what you understand – 16 GENERAL MPEMBE: My understanding at this 17 time, Chairperson, they were still telling me how many 18 times attempts they were making going to the employer. 19 MR NGALWANA: Okay. Please stop the clip 20 any time you feel you want to make a comment. Could you 21 play the clip again, please? 22 [VIDEO CLIP IS SHOWN] 23 MR NGALWANA: Would you stop the clip? 24 General, you've testified that at this time you didn't know 25 the identity of these people. Did you later learn what the</p>	<p style="text-align: right;">Page 11119</p> <p>1 found that that was not correct because the incident that 2 he was referring to, it was the incident that happened 3 probably when there was a clash between them and the NUM. 4 CHAIRPERSON: It sounds like the incident 5 on Saturday the 11th in the vicinity of the NUM office where 6 it was alleged that two of the strikers were killed. It 7 subsequently turned out, I think it's common cause now 8 before this Commission that two people were injured and 9 taken to hospital, two of the strikers but neither of them 10 died but it was a constant refrain from that time onwards 11 to the effect that two people had in fact been killed, two 12 of the strikers had been killed by people who had come out 13 of the NUM office but it's now, I think it's common cause 14 now that that was a mistaken impression, that the two were 15 injured but not killed. 16 MR NGALWANA: Thank you, Chair. One can 17 never be too careful these days. Sorry, Chair, I meant to 18 say one can never be too careful as regards what is common 19 cause and what isn't. 20 CHAIRPERSON: Mr Mathunjwa gave evidence 21 and conceded that he was not satisfied or accepted that the 22 two people concerned had been injured on the 11th and taken 23 to hospital but did not in fact die. 24 MR NGALWANA: Thank you. Can we continue 25 with the clip, please?</p>
<p style="text-align: right;">Page 11118</p> <p>1 identity of this particular person is? 2 GENERAL MPEMBE: No, Chairperson. 3 MR NGALWANA: As you sit there now 4 testifying, do you now know who that person was? 5 GENERAL MPEMBE: That's correct, 6 Chairperson. 7 MR NGALWANA: When did you discover who 8 he was? 9 GENERAL MPEMBE: Chairperson, after the 10 event of the 16th when the, when all the people were 11 identified by the mine. 12 MR NGALWANA: And who is that person? 13 GENERAL MPEMBE: It's Mr Noki. 14 MR NGALWANA: Could the clip continue, 15 please? 16 [VIDEO CLIP IS SHOWN] 17 [12:35] MR NGALWANA: Could you stop the clip, 18 please? Now I don't know if I heard him correctly. He 19 seems to say two of their members were killed. Now, is 20 that what you heard, General? 21 GENERAL MPEMBE: Correct, Chairperson. 22 MR NGALWANA: Did the police subsequently 23 find out whether or not that had indeed happened? This is 24 now before this address, before the afternoon of the 13th. 25 GENERAL MPEMBE: I did follow it up and I</p>	<p style="text-align: right;">Page 11120</p> <p>1 [VIDEO CLIP IS SHOWN] 2 MR NGALWANA: Yes, General? 3 GENERAL MPEMBE: I just want to point out 4 that at this time, that's when I consulted with the 5 commanders. 6 MR NGALWANA: What was the content of 7 your consulting? What were you saying to them? 8 GENERAL MPEMBE: That's when I briefed 9 them to say, realising the circumstances in which these 10 people are behaving, the agitation and the railway line, 11 the public road as I've explained earlier on, that when I 12 started counting, I'm going to count for them so that they 13 should drop their firearms – 14 MR NGALWANA: Their dangerous weapons. 15 GENERAL MPEMBE: Their dangerous weapons, 16 I'm sorry Chairperson, I'm always going to the firearms, I 17 don't know what's the problem with the firearms but as a 18 police officer maybe it's because I'm always thinking of a 19 firearm. 20 MR NGALWANA: Yes, General, you were 21 still explaining what was happening? Anything else you 22 said to them that you haven't mentioned yet? 23 GENERAL MPEMBE: I also indicated that if 24 they don't want, then we should allow them to go and – but 25 I am going to indicate to them that I am going to count and</p>

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1 with the reasons that I have already given to the
 2 commanders and then I said that we should then escort them.
 3 MR NGALWANA: I take it, it's around this
 4 time when Lieutenant-Colonel Merafi disagrees, is that
 5 correct?
 6 GENERAL MPEMBE: That's correct, yes.
 7 MR NGALWANA: Now before we play the
 8 clip, we resume with the clip –
 9 CHAIRPERSON: Before you do that, can I
 10 just make a point that it appears from paragraph 1 of your
 11 supplementary statement, page 4A, which is in the second
 12 volume that we've been given and which is exhibit HHH3, it
 13 appears that what happened was that Lieutenant-Colonel
 14 Merafi wanted you to disperse the, what we call the
 15 protesters but I prefer to call the strikers, wanted you to
 16 – wanted the strikers to be dispersed and arrested, as you
 17 put it, right there and then and you said it was unwise,
 18 that it will be unwise to arrest and disperse at that time
 19 and then you gave the reasons. That's correct, is it?
 20 GENERAL MPEMBE: That's correct,
 21 Chairperson.
 22 COMMISSIONER HEMRAJ: General, was there
 23 no plan on your part to arrest and disperse? You were
 24 simply relying on their co-operation to put down their
 25 weapons and leave, that was your approach.

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1 GENERAL MPEMBE: Chairperson, I did
 2 indicate earlier on that when I took it upon myself to
 3 intervene, I relied on my experience. There was no as a
 4 plan for that because it was actually, I took it as I
 5 indicated there and as we were speaking there. There were
 6 others that were at the koppie, they were at the koppie.
 7 So this was a spontaneous grouping, which of course at that
 8 time we didn't have a plan. If maybe we can check in terms
 9 of the time when the Provincial Commissioner requested me
 10 and the time when I was there.
 11 MR NGALWANA: Yes, and you've indicated
 12 in paragraph 7 of your supplementary statement the length
 13 of time between the request by the Provincial Commissioner
 14 and the time that you were there, I think it's within two
 15 hours. Just for purposes of the record, General, could you
 16 – purely for record purposes – explain the reasons or the
 17 factors that you took into account why you wouldn't
 18 disperse and arrest people right there and then as
 19 Lieutenant-Colonel Merafi wanted you to do? It's at
 20 paragraph 8 of your statement.
 21 GENERAL MPEMBE: I said earlier on, the
 22 railway line, the public road –
 23 COMMISSIONER TOKOTA: General, can you
 24 just read them as they – I think he wants you to read the
 25 bullets there. There are the reasons, you stated them

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1 there. You said what you were saying earlier.
 2 GENERAL MPEMBE: There was no plan on how
 3 the disarmament would happen beyond the request by the
 4 Provincial Commissioner.
 5 MR NGALWANA: You left out the first
 6 bullet point.
 7 GENERAL MPEMBE: "The group of protesters
 8 were mobile, moving from one point to another when we
 9 confronted them. There was no plan on how the disarmament
 10 would happen beyond the request by the Provincial
 11 Commissioner. There is a public and service road running
 12 parallel to the railway line and civilians might appear at
 13 any moment and be caught up in possible clashes between the
 14 protesters and the police if they resisted the police
 15 action. There is a residential area behind the railway
 16 line, this was also sensitivity in relation to a dispersal
 17 action.
 18 MR NGALWANA: Could you explain briefly
 19 why it would be sensitivity, the residential area on the
 20 other side of the railway line, for the record?
 21 GENERAL MPEMBE: When the dispersal takes
 22 place, there might also be the use of force or in terms of
 23 either from the police or from the protesters. One could
 24 not know what will happen but probably if any shooting had
 25 to take place or whatever, so that there's a sensitivity

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1 that I was referring to.
 2 MR NGALWANA: You indicated earlier that
 3 you wanted to stop people from going into the residential
 4 areas. Would this sensitivity be the same reason as you
 5 had given earlier? General, you indicated earlier that you
 6 didn't want the protesters or the strikers to go into
 7 residential areas, correct?
 8 GENERAL MPEMBE: That's correct,
 9 Chairperson.
 10 MR NGALWANA: You gave a reason why you
 11 didn't want that to happen.
 12 GENERAL MPEMBE: That's correct,
 13 Chairperson.
 14 MR NGALWANA: Would that be the same
 15 reason as causes sensitivity in this bullet point that we
 16 just read?
 17 MR MPOFU: Chairperson, that's a leading
 18 question.
 19 CHAIRPERSON: I'll allow it, though,
 20 because I think the answer is going to be –
 21 MR MPOFU: The answer can only be yes –
 22 CHAIRPERSON: No –
 23 MR MPOFU: The evidence comes from the –
 24 CHAIRPERSON: No, the answer may well be
 25 something different, as I suspect.

<p style="text-align: right;">Page 11125</p> <p>1 MR MPOFU: Well –</p> <p>2 CHAIRPERSON: Let's see what happens.</p> <p>3 GENERAL MPEMBE: The sensitivity that I'm</p> <p>4 referring here is when, if there can be a clash between the</p> <p>5 police and the protesters. The one that I indicated</p> <p>6 earlier on, it was that we did not know as the police whom</p> <p>7 the protesters might injure, kill or maim if they enter</p> <p>8 into the informal settlement.</p> <p>9 CHAIRPERSON: You see, Mr Mpofo, the</p> <p>10 answer was no, not yes. It was a different sensitivity.</p> <p>11 The leading question seemed to indicate an answer that it</p> <p>12 was the same sensitivity. The witness says no, a different</p> <p>13 sensitivity. The first sensitivity was, if we tried to</p> <p>14 disarm them and disperse them at the railway line there'll</p> <p>15 be an all-out fight and civilians passing by and so on can</p> <p>16 be injured and - but he allowed them to move forward but he</p> <p>17 wanted to funnel them away from the informal settlement</p> <p>18 because they might go into the informal settlement and</p> <p>19 attack people there because they thought they were going to</p> <p>20 go to work or something of that kind. That he explains is</p> <p>21 a different sensitivity.</p> <p>22 MR MPOFU: Yes -</p> <p>23 CHAIRPERSON: So your objection wasn't a</p> <p>24 good one, so let's –</p> <p>25 MR MPOFU: No, Chairperson, the law is</p>	<p style="text-align: right;">Page 11127</p> <p>1 MR NGALWANA: With whom are you</p> <p>2 communicating there?</p> <p>3 GENERAL MPEMBE: I was communicating with</p> <p>4 the JOC and also informing the Provincial Commissioner</p> <p>5 about the situation that I'd encountered.</p> <p>6 MR NGALWANA: Do you remember in precise</p> <p>7 terms what the nature of the conversation was, the content</p> <p>8 of what you were telling them?</p> <p>9 GENERAL MPEMBE: I informed the JOC that</p> <p>10 the strikers seem not to co-operate to hand over their</p> <p>11 weapons, precisely the reason that I have given to the</p> <p>12 Commission, that I have taken a decision that we will</p> <p>13 escort them. The same I did communicate to the Provincial</p> <p>14 Commissioner and she said to me I am the best placed person</p> <p>15 on the ground to take a decision and she agreed with me.</p> <p>16 MR NGALWANA: Right, so you took the</p> <p>17 decision that you took. Can we continue with the clip?</p> <p>18 [VIDEO CLIP IS SHOWN]</p> <p>19 MR NGALWANA: Could you pause the clip?</p> <p>20 I take it at this time – well, did you know the identity of</p> <p>21 this person at the time he was addressing you on the 13th?</p> <p>22 GENERAL MPEMBE: No, Chairperson.</p> <p>23 MR NGALWANA: Do you now know who it is?</p> <p>24 GENERAL MPEMBE: I know now who he is but</p> <p>25 I don't remember his name and the second time when I saw</p>
<p style="text-align: right;">Page 11126</p> <p>1 that leading questions may not be asked. It's got nothing</p> <p>2 to do with the answer. They may not be –</p> <p>3 CHAIRPERSON: No –</p> <p>4 MR MPOFU: - asked in cross-examination.</p> <p>5 CHAIRPERSON: But a presiding officer has</p> <p>6 a bit of a discretion to use sensibly, which was the case</p> <p>7 here. But you also summed up, I think, your reasons for</p> <p>8 not wanting to take action by the railway line as you'd</p> <p>9 been asked to do by Lieutenant-Colonel Merafi, to disperse</p> <p>10 and arrest, because you were afraid that it might develop</p> <p>11 into a Tatane kind of situation, is that correct?</p> <p>12 GENERAL MPEMBE: Correct, Chairperson.</p> <p>13 MR NGALWANA: There's one last bullet</p> <p>14 point, General, you haven' read into the record.</p> <p>15 GENERAL MPEMBE: "I did not know when the</p> <p>16 next train would pass by. If it passed by during a</p> <p>17 dispersal process, people might get injured or, worse,</p> <p>18 killed."</p> <p>19 MR NGALWANA: Can we continue with the</p> <p>20 clip or is there anything else you wish to add, General?</p> <p>21 GENERAL MPEMBE: Nothing, Chairperson.</p> <p>22 [VIDEO CLIP IS SHOWN]</p> <p>23 MR NGALWANA: Can you stop the – is that</p> <p>24 you seemingly on the telephone, General?</p> <p>25 GENERAL MPEMBE: Correct, Chairperson.</p>	<p style="text-align: right;">Page 11128</p> <p>1 him is when we were doing the inspection and he was walking</p> <p>2 with Adv Mpofo.</p> <p>3 [12:54] MR NGALWANA: Okay. Can you continue</p> <p>4 with the clip?</p> <p>5 [VIDEO CLIP IS SHOWN]</p> <p>6 MR NGALWANA: Yes, General?</p> <p>7 GENERAL MPEMBE: I just also want to</p> <p>8 point out to the Commission to say that speaker after</p> <p>9 speaker, when they were talking to me and emphasising the</p> <p>10 fact that they are not fighting with us and that we should</p> <p>11 go with them there at the mountain and when they are at the</p> <p>12 mountain they will also co-operate, I just wanted to point</p> <p>13 out to say by then I did not even anticipate that, what was</p> <p>14 going to happen on the way.</p> <p>15 MR NGALWANA: When you say you didn't</p> <p>16 even anticipate what was going to happen along the way, to</p> <p>17 what are you referring to specifically? What is it that</p> <p>18 you didn't anticipate would happen?</p> <p>19 GENERAL MPEMBE: I just say now that I</p> <p>20 know what happened by then, with the benefit of hindsight,</p> <p>21 I did not even know that on our way that there will be an</p> <p>22 attack to the police, taking into account that in the way</p> <p>23 in which one is working in terms of community policing, the</p> <p>24 relationship that I spoke with them, without even knowing</p> <p>25 their names, I never expected them to do what could happen</p>

<p style="text-align: right;">Page 11129</p> <p>1 on the way.</p> <p>2 MR NGALWANA: Did you believe them, the</p> <p>3 strikers, when they said when they get to the koppie</p> <p>4 they're going to lay down their dangerous weapons?</p> <p>5 GENERAL MPEMBE: Chairperson, even though</p> <p>6 I did not believe with them, but I was also having the mind</p> <p>7 that if we continue communicating, negotiating with them,</p> <p>8 they might also at the end hand over their weapons.</p> <p>9 MR NGALWANA: Yes, General, you wanted to</p> <p>10 add something?</p> <p>11 GENERAL MPEMBE: Chairperson, I saw it as</p> <p>12 an appropriate, from the side of the police to continue</p> <p>13 through the negotiation as a gradual way of getting to</p> <p>14 resolve the problem.</p> <p>15 CHAIRPERSON: Mr Ngalwana, I see it's now</p> <p>16 nearly 1 o'clock, so when you reach a suitable stage for us</p> <p>17 to take the adjournment until Monday morning, would you</p> <p>18 please let me know?</p> <p>19 MR NGALWANA: Yes, we'll do that,</p> <p>20 Chairperson. I was thinking of dealing with the 13th and</p> <p>21 finishing it today, would that be –</p> <p>22 CHAIRPERSON: If you can do that in two</p> <p>23 minutes, Mr Ngalwana. If this is a suitable stage perhaps</p> <p>24 we could take the adjournment now. It's a point from which</p> <p>25 you can easily proceed, I think, on Monday.</p>	<p style="text-align: right;">Page 11131</p> <p>1 in chambers but perhaps this might be an appropriate time</p> <p>2 to make a remark or two.</p> <p>3 CHAIRPERSON: I understand that when</p> <p>4 General Mpembe described the situation when he saw his two</p> <p>5 colleagues in the police being killed, being fatally</p> <p>6 injured, the one dying on the spot, the other one dying</p> <p>7 later and also saw one of his other colleagues who has</p> <p>8 survived, fortunately, but very severely injured, members</p> <p>9 of the families of those persons found that very</p> <p>10 distressing and left the auditorium and I want to convey to</p> <p>11 them, on behalf of the Commission, our feelings of sympathy</p> <p>12 and empathy. We understand the distress that this</p> <p>13 occasioned to them. I take it that's the point that you</p> <p>14 want me to deal with?</p> <p>15 MR NGALWANA: Yes, thank you, Chair.</p> <p>16 CHAIRPERSON: We will now adjourn until</p> <p>17 9:30 on Monday morning.</p> <p>18 [COMMISSION ADJOURNED]</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>
<p style="text-align: right;">Page 11130</p> <p>1 MR NGALWANA: Perhaps we could finish the</p> <p>2 – I'm not sure how much longer the clip has to run. Is it</p> <p>3 – well, Chairperson, we can adjourn now. We're in your</p> <p>4 hands.</p> <p>5 CHAIRPERSON: Before we adjourn I want to</p> <p>6 say that we've been following on the transcript that's an</p> <p>7 exhibit and it does appear as if the transcript in fact is</p> <p>8 not complete. Commissioner Tokota, who is able to follow</p> <p>9 the – also, tells me that a number of things were said and</p> <p>10 in fact the General in fact referred also to things such as</p> <p>11 the attack on the NUM office or the shooting at the NUM</p> <p>12 office on the Saturday, which is not – and the alleged</p> <p>13 killing of two people, which is not in the transcript. So</p> <p>14 I would like to suggest to the evidence leaders that they</p> <p>15 commission a further transcript of the soundtrack of this</p> <p>16 clip, obviously with the translation, so that – which then</p> <p>17 presumably will then be agreed, so that we have a complete</p> <p>18 transcript because it's obviously a very important part of</p> <p>19 one aspect of the matter. Having said that, we'll now</p> <p>20 adjourn until 9:30 on Monday morning. Mr Ngalwana –</p> <p>21 MR NGALWANA: Sorry, Chairperson –</p> <p>22 CHAIRPERSON: Before we go you want to</p> <p>23 say something?</p> <p>24 MR NGALWANA: There was a matter about</p> <p>25 which we came to see the Chairperson and the Commissioners</p>	

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