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COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 127   30 AUGUST 2013   PAGES 13191 TO 13325

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1 [PROCEEDINGS ON 30 AUGUST 2013]

2 [09:14] CHAIRPERSON: The Commission resumes.

3 Before we continue with the evidence, I want to announce

4 that we will be adjourning at the end of this witness's

5 evidence until Thursday. We don't normally sit on the

6 first Monday and Wednesday of the month, and although the

7 Monday has now become available, it was announced to us at

8 a very late stage, and on Tuesday Mr Semenya, the leader of

9 the police team who will be leading the next witness, has

10 an important meeting with the Minister of Justice in his

11 capacity as Chairman of the General Council of the Bar. So

12 we thought it appropriate to adjourn at the end of this

13 witness until Thursday. We're informed by the evidence

14 leaders that they're going to give us three lengthy files

15 dealing with material that should be studied before the

16 next witness gives evidence, so we will spend the time

17 profitably, studying those documents.

18 Because we're not sitting on Tuesday, that means

19 that it will not be possible for those who wish to oppose

20 the postponement application to present the basis of their

21 opposition orally if they were intending to do that. So I

22 wish to state that they must file any material that they

23 wish to file which will be relevant to their opposition,

24 firstly by ensuring that all the other parties receive

25 copies, and secondly by giving the original to the

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1 secretary of the Commission, and we will hear the argument

2 on Friday. That's the first thing I want to do.

3 The second thing is the spokesman of the

4 Commission wishes to make a statement, which is important

5 for the way we proceed in future, and the steps that are to

6 be taken to ensure that what happens here is made available

7 to as many people across the world as it possible. Mr

8 Spokesperson, what do you wish to tell us?

9 MR MAHLANGU: Thank you, Chairperson. I

10 would like to read out a statement we've prepared in

11 respect of translations going forward. It's a good thing

12 that I'm still Mr Mahlangu, so there will not be much harm

13 intended. Chairperson, as from today the Commission will,

14 in partnership with the South African Broadcasting

15 Corporation, be making available through the internet, the

16 Commission's proceedings translated into isiXhosa. The

17 SABC has up to now been providing live streaming of all the

18 Commission's proceedings through the SABC News YouTube

19 channel, www.youtube.com/SABCNews. This service enables

20 viewers around the world to follow the Commission's

21 proceedings live as they happen. This is currently done in

22 the languages used during the Commission's proceedings. As

23 I address you now, Chairperson, Commissioners, we are

24 already providing a simultaneous translation of this

25 session into isiXhosa, Setswana, and Xitsonga. The SABC

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1 News YouTube channel will therefore from today provide live

2 streaming of the Commission's proceedings, using the

3 English soundtrack.

4 In addition, the Commission and the SABC will be

5 working together to provide audio podcast of the isiXhosa

6 soundtrack. This can be accessed on the SABC News profile

7 on the IONO.FM podcast service available on any device with

8 access to the internet, and this can be done by selecting

9 the channel called Marikana Commission in isiXhosa.

10 Chairperson and Commissioners, this initiative is

11 part of an effort aimed at cutting down the time a witness

12 spends on the witness table. The Commission is grateful to

13 the SABC for its assistance in this process and hopes that

14 the public will utilise this service and take advantage of

15 the access the Commission is providing to those interested

16 in its work. Thank you, Chairperson.

17 CHAIRPERSON: Thank you very much. Does

18 anyone wish to make any comments on the statement that has

19 been made before I remind the witness he's under oath and

20 his re-examination commences? The answer appears to be no.

21 Major-General, you're still under oath.

22 WILLIAM MPEMBE: Correct, Chairperson.

23 CHAIRPERSON: Mr Ngalwana, I understand

24 you have some questions to ask the witness in re-

25 examination.

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1 RE-EXAMINATION BY MR NGALWANA: Yes,

2 thank you, Chairperson. Morning, General. Chair, just one

3 housekeeping matter; I notice that we don't have audience

4 today and so a translation or interpretation may not really

5 be necessary –

6 CHAIRPERSON: What is happening is those

7 who wish to benefit from the translation are able to go to

8 a room across the corridor where there is audio equipment

9 and the interpreters are in separate booths, and the feed

10 is being streamed into that room and it's on a screen, and

11 anyone who wishes to hear the proceedings in Xhosa or in

12 Setswana, or I understand in the Tsonga language as well,

13 is able through the audio equipment to choose the channel

14 they wish to hear. So I'm also told that if anyone there

15 wishes to hear the proceedings in Xhosa but wishes to be

16 here in the chamber, the feed can be picked up by the

17 equipment if they sit here. I don't see anybody here

18 making use of that facility, but it is a facility

19 available. It was reported to us that certain of the

20 family members, who I think are presently abstaining from

21 the proceedings, wish to do that, possibly so they could

22 indicate their feelings as to things that are said. But

23 they are not being deprived of that opportunity. I hope

24 that satisfies your curiosity and the concerns that you

25 were about to express.

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1   MR NGALWANA: Thank you, Chair. They
2 were not so much concerns as happiness that matters will
3 proceed rather quickly. General, you've now been sitting
4 at the witness stand for more than 22 days. It's been a
5 lengthy 22 days and in that 22 days you've been asked many
6 questions, many of which travelling further and wider than
7 the terms of reference. Perhaps we should bring it back to
8 the terms of reference. Can I ask you, to begin with, that
9 you said in your evidence under cross-examination, "It is
10 going to be bloodshed. We want to avert the bloodshed."
11 When you made this plea to Mr Zokwana on the evening of the
12 15th of August, did you foresee the death of so many people
13 the following day?
14   MAJOR-GENERAL MPEMBE: No, Chairperson.
15   MR NGALWANA: You did of course foresee
16 the risk of protesters shooting at the police and the
17 police –
18   CHAIRPERSON: These leading questions
19 that you're asking, Mr Ngalwana, since when are counsel
20 entitled to ask leading questions in re-examination?
21   MR NGALWANA: Chair, it's in evidence. I
22 can refer, it's 11908, so he's already testified to it.
23   CHAIRPERSON: Well even so, the rules in
24 relation to leading questions aren't dispensed with if the
25 leading question consists of a repetition of the evidence

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1 that's been given earlier by the witness. So please adhere
2 to the rules.
3   MR NGALWANA: As the Chairperson pleases.
4 You testified earlier under cross-examination that you
5 foresaw the risk of people, of protesters shooting at the
6 police, and the police shooting back. Did you as CJOC take
7 any steps to avoid – or minimise, I think the word you used
8 was "mitigation," which the Chairperson wasn't happy with
9 the use of the word "mitigation." Did you as CJOC take any
10 steps to minimise the risk of the protesters shooting at
11 the police and the police shooting back?
12   MAJOR-GENERAL MPEMBE: Referring to –
13   MR NGALWANA: If you want me –
14   MAJOR-GENERAL MPEMBE: Referring to me as
15 the CJOC, I will start first for, about what I did on the
16 13th with the interception when I went there, personally to
17 go there, actually attempting to persuade them to lay down
18 their weapons. That is what I did personally, and then
19 secondly what I did personally as the CJOC is also to ask
20 Lonmin to arrange a meeting with the unions' presidents and
21 with Lonmin himself, and also to convey to Lonmin the
22 message that came from the protesters on the 13th, and also
23 to convey to Lonmin what the feedback that was obtained
24 also from the negotiators that were negotiating with the
25 protesters, but the attempts of showing of force, attempts

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1 of showing of force by means of Nyalas, those were steps or
2 actions that were taken to minimise the risk.
3   MR NGALWANA: You decided –
4   CHAIRPERSON: Sorry, could you repeat
5 that again? I didn't hear the full answer. Can you repeat
6 it?
7   MAJOR-GENERAL MPEMBE: Chairperson, I say
8 on the 13th personally for me to intercept, because the
9 question says, "You as a CJOC, what did you do?", is that
10 me going to talk to the protesters themselves, that I
11 thought it is a step that could have minimised the increase
12 of violence, and then secondly is that the protesters on
13 that day said they want to see "umlungu," and I think it's
14 also in the interpretation of the video, then I did ask
15 Lonmin to arrange a meeting with the – I did ask Lonmin.
16 That was conveyed to Lonmin, and I did ask Lonmin to have,
17 to arrange a meeting with the unions, together with Lonmin.
18 That's that initiative, and I personally chaired that
19 meeting where I pleaded with everybody that we should
20 actually try to de-escalate the violence, and I requested
21 the presidents, which they did, to go and address the
22 protesters at the mountain. I did make arrangements to say
23 how the presidents should go to the mountain.
24   Again having the hostage negotiators starting on
25 Tuesday, and I will refer in particular to what – because

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1 Colonel McIntosh said to me they wanted to see "umlungu,"
2 that was also conveyed to Lonmin, and then Lonmin also
3 answered me during that meeting to say, "General, we have
4 no problem to talk to the protesters, but in a safe
5 environment and then where, in Lonmin premises, and then
6 where they are not in possession of dangerous weapons,"
7 which I did understand their position.
8   CHAIRPERSON: Thank you.
9   MAJOR-GENERAL MPEMBE: I'm sorry,
10 Chairperson, I also said that there was a show of force
11 that was done in terms of putting the Nyalas, but also the
12 approach since from the 14th, show of force, visibility, and
13 - yes, Chairperson.
14   CHAIRPERSON: Thank you.
15   MR NGALWANA: You testified under cross,
16 General, at record 12060, line 18 and following, that you
17 decided that stage 3 be implemented, stage 3 being of
18 course the dispersal action. What I want to ask you is,
19 does SAPS usually use sharp ammunition in a dispersal
20 action?
21   MAJOR-GENERAL MPEMBE: No, Chairperson.
22   MR NGALWANA: Did you as CJOC contemplate
23 or have in mind the use of sharp ammunition when you
24 briefed the Provincial Commissioner about moving to stage
25 3, the dispersal action?

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1   MAJOR-GENERAL MPEMBE: No, Chairperson.
2   MR NGALWANA: But there were members of
3   the police who had sharp ammunition with them on the 16th of
4   August. What role were they to play – or let me phrase the
5   question this way. How do you explain their presence on
6   the 16th?
7   MAJOR-GENERAL MPEMBE: Chairperson, I did
8   say that they were there in support of the POP members, and
9   in case when POP becomes under attack, then they could
10   defend the POP members.
11   MR NGALWANA: Did that support function
12   form part of a dispersal action?
13   MAJOR-GENERAL MPEMBE: No, Chairperson.
14   It only formed part of a defence in case they become under
15   attack.
16   MR NGALWANA: Thank you. In deciding to
17   move on to stage 3, General, which includes the deployment
18   of barbed wire, did you foresee that the strikers would
19   come charging at the barbed wire when it was deployed?
20   MAJOR-GENERAL MPEMBE: Chairperson, I'm
21   requesting that the question be repeated.
22   MR NGALWANA: When you made a decision
23   that time was now ripe to move on to stage 3, the dispersal
24   action - and we know stage 3 includes the deployment of
25   barbed wire, right? – when you made that decision, did you

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1   foresee that if barbed wire is deployed, the strikers would
2   charge towards the barbed wire?
3   MAJOR-GENERAL MPEMBE: No, Chairperson.
4   MR NGALWANA: In your many years'
5   experience in dealing with Public Order Policing, including
6   the deployment of barbed wire, have you ever experienced a
7   situation where protesters, demonstrators, strikers, call
8   it what you may, charged towards the barbed wire when it's
9   deployed?
10   MAJOR-GENERAL MPEMBE: No, Chairperson.
11   CHAIRPERSON: How many times did you have
12   experience in the past of barbed wire being uncoiled, you
13   know, in the context of a public demonstration or
14   gathering? In your own experience.
15   MAJOR-GENERAL MPEMBE: Chairperson, I
16   said in – or the Chairperson wants the number, how many?
17   CHAIRPERSON: Yes.
18   MAJOR-GENERAL MPEMBE: I used it, as I
19   said, in Ventersdorp, I use it in Mafikeng when, with,
20   during public – what is it? – public service strikes. I
21   use it –
22   CHAIRPERSON: Sorry, for what purpose did
23   you use it? Did you use it to protect the public or did
24   you use it to confine the protesters into a particular
25   space, or to channel them into a particular direction?

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1   MAJOR-GENERAL MPEMBE: Chairperson, we
2   use it for various reasons. Maybe one will have to be very
3   specific. In the case of, in Ventersdorp in the case which
4   I quoted, we used it because the protesters of Mr
5   Terreblanche, they were going to have a clash with the
6   protesters, with the ANC protesters. So we used the barbed
7   wire to divide those protesters.
8   CHAIRPERSON: To keep them apart?
9   MAJOR-GENERAL MPEMBE: Ja, to keep them
10   apart, yes, and in the case of public strikes, all the
11   public strikes that we had in my years, we were using it to
12   channel them and also to keep a distance, because normally
13   they were marching to Mafikeng at buildings. We use it to
14   channel them and we use it also to keep a reasonable
15   distance from parliament. In the case of the example that
16   I quoted at Skierlik then where the gentleman shot the
17   people which I use as an example, we use it to keep the
18   public from going to the places where the people can be
19   attacked, like in this case we thought of the farmers and
20   all those people that could be used to attacked.
21   [09:34]   But there we use it as a filtering line, that we
22   put a filtering line, the vehicles could be searched with
23   the members of the police. Now during the court
24   proceedings we use it to channel the public and also to
25   have only a limited number of the people to enter inside

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1   the court building, and in another strikes, like when it's
2   a service, public service strikes, and we use it to divide
3   the line between the police, as well as the line between
4   the protesters themselves. So Chairperson, so it will
5   depend on the situation and the purpose that we are
6   intending to do.
7   CHAIRPERSON: Yes, thank you.
8   COMMISSIONER HEMRAJ: General, if not
9   charging towards the barbed wire, did you foresee that the
10   protesters might move towards the barbed wire at all? Not
11   charging, just moving towards it at all, did you foresee
12   that?
13   MAJOR-GENERAL MPEMBE: No, we didn't
14   foresee that, but what we did foresee is that some of them
15   they will remain. They will remain, others that they have
16   dispersed voluntarily.
17   MR NGALWANA: Yes, thank you,
18   Commissioner Hemraj, that's – General, I have between 20
19   and 24 propositions in my re-examination that I want to put
20   to you, 20 to 24, depending on how things go, and I would
21   like us to finish by tea. I'm at my fourth proposition.
22   It has been suggested that some protesters had taken
23   "muti," which they believed would make them invisible,
24   invincible, invulnerable, and strong. Now did you as CJOC
25   know as a matter of fact when you formed the view that time

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1 was ripe to go to stage 3, that the – please listen very
2 carefully to the question. As CJOC, did you know as a
3 matter of fact when you formed the view that we should now
4 move to stage 3, that the "muti" that the protesters were
5 taking would have the effect of making them invisible,
6 invulnerable, invincible, and strong?
7   MAJOR-GENERAL MPEMBE: Chairperson, I
8 will answer in the sense of what has happened and what came
9 to my knowledge at that time. We know that there were
10 vehicles that took "muti" to the mountain; that we know,
11 and secondly what we were informed in the JOCCOM meetings
12 is that protesters, they had dangerous weapons, they are
13 going to resist the police, and they are going to fight.
14 At the JOCCOM there was discussions of the "muti" and that
15 the view was never being brought to us either as an
16 intelligence or as a what, or as a – I don't know that it
17 will be, as in paper to say they believed in this belief,
18 that they will be invincible and they will not be seen by
19 the police. But what is more important is that the police
20 did not believe in that and it was just a discussion at the
21 JOCCOM about this, but it has never been taken as a matter
22 of fact because it did not come to us as an intelligence.
23   COMMISSIONER HEMRAJ: Well, the
24 intelligence was that the rituals did take place.
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2   COMMISSIONER HEMRAJ: Was any
3 intelligence available as to what the belief system was
4 surrounding the rituals?
5   MAJOR-GENERAL MPEMBE: Not in, as an
6 intelligence, but it was just being discussed. I remember
7 we spoke with it with General Annandale about it, but it
8 never came as an intelligence that this is what they
9 believed in.
10   COMMISSIONER HEMRAJ: Okay, so if it
11 didn't come as intelligence, then what was the discussion
12 about? Was the discussion that those who underwent the
13 ritual did believe, or thought they might be invincible and
14 invulnerable? Was that discussion held at all in those
15 terms?
16   MAJOR-GENERAL MPEMBE: No, Chairperson,
17 it was held – it was not held in that line, but we, it was
18 held in the line that they are going to use "muti," "muti"
19 to make them to be brave, and also taken from experience,
20 but what they believed that they will be invincible, that
21 could, that didn't come through as an intelligence.
22   CHAIRPERSON: I think General Annandale
23 said that it was discussed. I'm not sure about that, but I
24 seem to remember he said it was discussed, but he certainly
25 mentioned it in the context of what had happened at

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1 Implats, Impala Platinum, that apparently similar things
2 had happened at Impala Platinum, and I seem to remember
3 that he said that information had been received previously
4 in relation to Impala Platinum, the events at Impala
5 Platinum, to the effect that those who had the "muti" had
6 certain beliefs as to how effective it would be in
7 protecting them. Is my recollection in that respect
8 correct? Obviously you don't know what he said because you
9 weren't here, but you do know what was discussed in the
10 JOC. Is that correct? Is that the way the matter came up?
11   MAJOR-GENERAL MPEMBE: Chairperson, what
12 we discussed at the JOCCOM it was the rituals that took
13 place, the "muti" bucket and what we were reported when the
14 chopper was flying to say that that, what will they
15 believe, and as it will, that it will make them brave and
16 so that they can take the police on. But the Implats, I
17 don't remember speaking to him with the Implats, but I
18 don't rule that maybe we have touched on that, but what we
19 believed on is that for them to call the "inyanga," they
20 wanted to take us on, and that intelligence came to say
21 they are going to fight the police, they are also going to
22 resist the arrest.
23   MR NGALWANA: Alright, General, I'm going
24 to move on to the next proposition –
25   CHAIRPERSON: I'm not sure that

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1 "proposition" is the right word; possibly theme or topics.
2 Proposition gives a suggestion of some kind of leading,
3 which I'm sure you're not going to do, but "topics" is
4 perhaps a better phrase, word.
5   MR NGALWANA: I'm going to move to the
6 next rubric, topic. General, I'm sure you will accept that
7 you had – it's one of two things; either you had a torrid
8 time explaining to the Commission, or the Commission had a
9 torrid time understanding your explanation about why you
10 said one of the reasons why you made a decision to move to
11 stage 3 was that negotiations had failed, when Mr Mathunjwa
12 hadn't come back from the koppie to tell you at the JOC
13 that negotiations had indeed failed. Let me first
14 understand, do you understand what I've just put to you, or
15 do you want me to paraphrase and repeat it?
16   MAJOR-GENERAL MPEMBE: I understand what
17 the Advocate wants to ask me because what the Advocate
18 wants to ask me is in relation to my statement in HHH3 when
19 I said I briefed the Provincial Commissioner before 13:30.
20   MR NGALWANA: Yes, let me ask the
21 question then, the series of questions I want to put in
22 this regard. At 6AM on the 16th of August 2012, was the
23 implementation of stage 3, the dispersal action, was it a
24 foregone conclusion at 6AM on the 16th of August 2012?
25   MAJOR-GENERAL MPEMBE: No, Chairperson,

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1 because here were certain expectations, like Mr Mathunjwa
2 will go at 9 o'clock to address the protesters.
3   MR NGALWANA: By 1 o'clock on 16 August
4 2012, round about that time you are briefing, you said
5 between 1 and 1:30 you were briefing the Provincial
6 Commissioner about reasons for moving to stage 3. You
7 remember that?
8   MAJOR-GENERAL MPEMBE: I remember,
9 Chairperson.
10   MR NGALWANA: Now by that time Mr
11 Mathunjwa had not yet come back from the koppie to tell you
12 what, of the level of success that he had, or lack of it at
13 the koppie to try and get those people to lay down their
14 arms, as he had promised the previous evening, on the 15th.
15 Why did you take the view before Mr Mathunjwa had come back
16 that negotiations had failed?
17   MAJOR-GENERAL MPEMBE: When I take that
18 view it was based at 9 o'clock and at 6 o'clock meeting we
19 also say – no, at 6 o'clock when we reported to our members
20 we were saying that Mr Mathunjwa will address the people at
21 9 o'clock, and then when I briefed the Provincial
22 Commissioner I briefed her until up to at that stage of 9
23 o'clock.
24   MR NGALWANA: I see. We have minutes of
25 the special JOCCOM, I think it's TT4. Do you have it with

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1 you?
2   MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson, I do have it.
4   MR NGALWANA: It's EE, actually, not TT.
5 Exhibit EE.
6   MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson, I do have it.
8   MR NGALWANA: Now in paragraph 3 of that
9 statement, what reason, if any, is given for taking the
10 decision that was taken during that meeting, in fact for
11 deciding to implement it?
12   MAJOR-GENERAL MPEMBE: Is that Mr
13 Mathunjwa was supposed to indicate at 9 whether the
14 protesters on the koppie were prepared to lay down their
15 weapons. Then it was said that Mr Mathunjwa failed to
16 provide feedback as agreed at 9 o'clock.
17   MR NGALWANA: Now as I remember the
18 evidence, Mr Mathunjwa did come back from the koppie after
19 his address and came to report about his success or
20 otherwise at the koppie. What did he tell you? In other
21 words, did he tell you whether he succeeded or not when he
22 came to the koppie to report?
23   MAJOR-GENERAL MPEMBE: Chairperson, he
24 wanted to speak with the Provincial Commissioner and I said
25 the Provincial Commissioner is not there, he has gone to

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1 Ferncrest to visit Lieutenant Baloyi, who was injured, and
2 then I said I will phone the Provincial Commissioner. I
3 did phone the Provincial Commissioner and Provincial
4 Commissioner said, "No, talk to him; hear what he wants to
5 tell you," and then at that time when I go back to him, I
6 did not find him. He has already gone by that time, and
7 then I tried to, I did instruct, I think it's General
8 Annandale - I'll have to recall very well – to check with
9 Major-General Naidoo whether Mr Mathunjwa has passed
10 forward holding area 1 so that they should hear what he
11 wanted to tell us, but General Naidoo said that Mr
12 Mathunjwa has already passed, and at that time Mr Mathunjwa
13 has also sent an SMS to Major-General Annandale, and Major-
14 General Annandale did answer him. I did also try to phone
15 Mr Mathunjwa, but I did not get him at that time.
16   MR NGALWANA: Okay, well if Mr Mathunjwa,
17 General, had spoken to you, as you say the Provincial
18 Commissioner had indicated that he must tell you about the
19 success or otherwise of his endeavours at the koppie at
20 around 2PM that afternoon, if he had told you that the
21 strikers at the koppie had decided to lay down their arms
22 and leave the koppie, would stage 3, the dispersal action,
23 still have continued?
24   MAJOR-GENERAL MPEMBE: Chairperson, no,
25 because Brigadier Calitz he was there always. Mr Mathunjwa

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1 was given a chance to address the protesters. So if after
2 addressing the protesters he went to Brigadier Calitz to
3 say no, the protesters are prepared to lay down their
4 weapons, surely Brigadier Calitz could not have proceeded
5 with the implementation of stage 3.
6   MR NGALWANA: I'm going to move on to the
7 next topic. Can I refer you, and I promise this is the
8 only new document I'm going to suggest, to submit, it's
9 been suggested that the unfortunate passing of Warrant-
10 Officer Monene and Warrant-Officer Lepaaku and the assault
11 on Lieutenant Baloyi may have been caused by the actions or
12 conduct of the police either directly or indirectly. Can I
13 ask you to turn to a post mortem report relating to
14 Warrant-Officer Monene and Warrant-Officer Lepaaku –
15   MAJOR-GENERAL MPEMBE: Chairperson, I do
16 not have them.
17   MR NGALWANA: Yes, he will give them to
18 you.
19   CHAIRPERSON: Are they exhibits?
20 Otherwise I'll have to mark them.
21   MR NGALWANA: I don't believe so, Chair.
22   MS PILLAY: Chair, these documents form
23 part of exhibit A, which is a composite bundle of the post
24 mortem reports.
25   CHAIRPERSON: Exhibit A?

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1　　　MS PILLAY:　　　Yes, in relation to Monene
2　the document is at 43, page 43 of exhibit A, and in
3　relation to Warrant-Officer Lepaaku, it's at page 48 of
4　exhibit A.
5　　　CHAIRPERSON:　　　These are parts of exhibit
6　A and the one relating to Hendrik Tsietsi Monene, that's at
7　page 43, Ms Pillay?
8　　　MS PILLAY:　　　At pages 43 to 47 of exhibit
9　A.
10　　　CHAIRPERSON:　　　Thank you, and the document
11　relating to Sello Ronnie Lepaaku is pages 48 to?
12　　　MS PILLAY:　　　48 to 52 of exhibit A.
13　　　CHAIRPERSON:　　　Thank you.
14　　　MR NGALWANA:　　　I'm indebted to my learned
15　friend for the evidence leaders. General, may I ask you to
16　turn to the post mortem report in relation to Warrant-
17　Officer Lepaaku. What does it say about the cause of
18　death?
19　　　MAJOR-GENERAL MPEMBE:　　　Chairperson, that
20　is on paragraph E, it says "Head injuries."
21　　　MR NGALWANA:　　　And what chief post mortem
22　findings are there on his body?
23　　　CHAIRPERSON:　　　I think you can lead him on
24　that, Mr Ngalwana. I wouldn't have thought the rules in
25　relation to re-examination would prohibit that.

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1　[09:54]　MAJOR-GENERAL MPEMBE:　　　Chairperson, that
2　is paragraph D. It says, "A black adult male with a
3　history of multiple stab wounds, scalp laceration,
4　fractured skull, subdural and subarachnoid haemorrhages."
5　　　MR NGALWANA:　　　I hope the transcribers
6　will get the spelling right there.
7　　　CHAIRPERSON:　　　If they don't, they can
8　look at the exhibit to get the spelling. Would I be
9　correct in saying that – and I don't want this slide to be
10　exhibited, but am I correct in saying that slide 53 is a
11　slide of the first, what is described as the first deceased
12　member of the police? That, I take it, is – I think he's
13　Lieutenant Lepaaku, what was his rank? Was he Lieutenant
14　Lepaaku?
15　　　MR NGALWANA:　　　He's Warrant-Officer,
16　Chair.
17　　　CHAIRPERSON:　　　Warrant-Officer Lepaaku.
18　They were both Warrant Officers, weren't they? So Warrant-
19　Officer Lepaaku, that's a photographs of one at least, of
20　his injuries. It looks like it's slide 53, and the second
21　member of the force – sorry, of the service, who was
22　Warrant-Officer Monene, that I take it is slide 54 because
23　that's the slide of someone who was not only hacked, but
24　also shot. I repeat, I don't want that slide to be shown,
25　but am I correct in saying that, Major-General?

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1　　　MR NGALWANA:　　　I don't think he has the –
2　he was looking at exhibit L at the time, Chair. I've just
3　asked for it to be found for, or take mine.
4　　　CHAIRPERSON:　　　Just to repeat, it looks as
5　if slide 54, which is the slide of the deceased member of
6　the police who was not only hacked, but shot, that then
7　would be, I take it, a photograph of Warrant-Officer
8　Monene, and slide 53, which is a photograph of part of the
9　head of the other deceased member of the police who was
10　hacked and stabbed to death, that I take it is a photograph
11　of part of the head of Warrant-Officer Lepaaku. Is that
12　correct?
13　　　MAJOR-GENERAL MPEMBE:　　　Correct,
14　Chairperson.
15　　　MR NGALWANA:　　　General, with regard to
16　Warrant-Officer, I think it's Monene, we've dealt with
17　Lepaaku, is the cause of death head injuries? Let me
18　continue in the way that you've been doing it. You've been
19　leading me very nicely in this regard, General. What is
20　the cause of death according to the post mortem report in
21　relation to Warrant-Officer Monene's death?
22　　　MAJOR-GENERAL MPEMBE:　　　Chairperson, that
23　will be as far as paragraph E is concerned, head injuries.
24　　　MR NGALWANA:　　　And according to the post
25　mortem report, what chief post mortem findings on his body

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1　are there?
2　　　MAJOR-GENERAL MPEMBE:　　　"Black adult male
3　with a history of stab wounds and gunshot wounds, gunshot
4　neck and chest wounds, scalp lacerations, fractured skull,
5　cerebral multiple haemorrhages."
6　　　MR NGALWANA:　　　On the 13th, now these
7　deaths we know happened on the 13th of August. On the 13th
8　of August, were the police equipped with pangas, assegais,
9　and sharp-edged weapons of the sort that would cause the
10　kind of damage you've seen at exhibit L53 and 54?
11　　　MAJOR-GENERAL MPEMBE:　　　No, Chairperson.
12　　　MR NGALWANA:　　　I'll move on to the next
13　topic, topic 8 of 20 or 24. May I ask you to turn to
14　Lieutenant Baloyi's statement. It has been referred to you
15　on numerous occasions, or you have been referred to it on
16　numerous occasions. It's GGG16, 1-6. Have you found it,
17　General?
18　　　MAJOR-GENERAL MPEMBE:　　　No, Chairperson.
19　　　CHAIRPERSON:　　　Which paragraph are you
20　referring to?
21　　　MR NGALWANA:　　　No paragraph specifically,
22　Chair, general question. May I just say that my copy that
23　I've just handed the witness has highlights; perhaps if the
24　Chairperson wants to satisfy himself that it doesn't assist
25　the witness, but they're not relevant –

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1   CHAIRPERSON: I haven't got a problem
2   with that, and I doubt if my colleagues have either.
3   MR NGALWANA: Thank you, Chair. General,
4   is there anywhere – you have read this statement many
5   times. We dealt with this in chief. You were cross-
6   examined on it by no less than three cross-examiners. Is
7   there anywhere in that statement where Lieutenant Baloyi
8   lays blame on you for the assault on him by strikers on the
9   13th of August?
10   MAJOR-GENERAL MPEMBE: No, Chairperson.
11   MR NGALWANA: Is there anywhere in that
12 statement where he says you instructed him to get out of
13 his Nyala?
14   MAJOR-GENERAL MPEMBE: No, Chairperson.
15   MR NGALWANA: Is there anywhere in that
16 statement where he says you instructed him to throw a stun
17 grenade in the direction of strikers that were attacking
18 him?
19   MAJOR-GENERAL MPEMBE: No, Chairperson.
20   MR NGALWANA: Is there anywhere in that
21 statement where he says you instructed him to fire rubber
22 bullets, or rubber rounds at strikers who were chasing him?
23   MAJOR-GENERAL MPEMBE: No, Chairperson.
24   MR NGALWANA: Is there anywhere in that
25 statement that Lieutenant Baloyi says you as CJOC put him

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1   in harm's way in any way?
2   MAJOR-GENERAL MPEMBE: Chairperson, I
3   didn't hear the word, in what?
4   MR NGALWANA: That you put his life or
5   his body in danger.
6   MAJOR-GENERAL MPEMBE: No, Chairperson.
7   MR NGALWANA: Is there anywhere in his
8   statement where Lieutenant Baloyi says SAPS as an
9   organisation put his life and his health in danger on the
10 13th of August?
11   MAJOR-GENERAL MPEMBE: No, Chairperson.
12   MR NGALWANA: Next topic; on 13 August
13 2012, Warrant-Officer Kuhn shot teargas whilst you were
14 escorting the protesters towards the koppie. Does the
15 firing of teargas qualify as the use of force?
16   MAJOR-GENERAL MPEMBE: Chairperson, to be
17 precise I will say less lethal.
18   MR NGALWANA: Yes, but it does qualify as
19 use of force, correct?
20   MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson.
22   MR NGALWANA: Standing Order 262 requires
23 that use of force only be done on command either by the
24 CJOC or the operational commander. You know that?
25   MAJOR-GENERAL MPEMBE: Correct,

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1   Chairperson. I know that.
2   MR NGALWANA: Did you give Warrant-
3   Officer Kuhn a command to fire teargas on the 13th of August
4   2012?
5   MAJOR-GENERAL MPEMBE: No, Chairperson, I
6   did not give him a command.
7   MR NGALWANA: Did he tell you why he
8   fired teargas?
9   MAJOR-GENERAL MPEMBE: Chairperson, he
10 said he was ordered to fire the teargas, but he does not
11 know who ordered him to fire the teargas.
12   MR NGALWANA: Who was his commander?
13   MAJOR-GENERAL MPEMBE: According to
14 SAPS15 it was a captain, and that captain was falling under
15 Lieutenant-Colonel Tsiloane, but I just, but according to
16 SAPS15 the commander was there. His name will be found
17 there.
18   MR NGALWANA: So his commander was part
19 of the group that escorted the protesters towards the
20 koppie on the 13th of August?
21   MAJOR-GENERAL MPEMBE: Correct,
22 Chairperson, as he did appear in that SAPS15.
23   COMMISSIONER HEMRAJ: Can I just
24 interrupt you? Did you hear from Warrant-Officer Kuhn
25 whether the order to fire was received by him on the radio

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1   or he heard it being called out?
2   MAJOR-GENERAL MPEMBE: Chairperson, I
3   will say no, whether it's either by radio or verbally, I
4   did not ask him.
5   MR NGALWANA: Did his commander tell you
6   why Kuhn fired teargas?
7   MAJOR-GENERAL MPEMBE: No, Chairperson.
8   MR NGALWANA: Did his commander tell you
9   that he gave Kuhn the command to fire teargas?
10   MAJOR-GENERAL MPEMBE: The commander said
11 he did not give him the command, that captain, because I
12 did ask Lieutenant-Colonel Tsiloane to go and asked the
13 commander whether did he, the commander, give Kuhn the
14 command, he says no.
15   CHAIRPERSON: In fact, your evidence was
16 that at Rustenburg when you explained that you hadn't given
17 the command, and one of the officers there said he'd heard
18 – I'm not quite sure whether he said he'd heard you give
19 the command or he'd heard someone else say that you'd given
20 the command, when that was said you denied it. No
21 commanding officer there, or no officer there admitted
22 having given the order. They all denied it. Is that
23 right? It wasn't only those under whom he was immediately
24 subject who said that they hadn't given the order; there
25 was a general denial of all the officers there at

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1 Rustenburg that they'd given the command. Is that right?

2   MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson, that was in Potchefstroom, but I just want to

4 make sure whether that captain was also there, that one

5 that appeared on the 15.

6   CHAIRPERSON: But whether he's there or

7 not is something you can check now if you wish, but what

8 you say, his commanding officer in turn said he spoke to

9 him and he said he, they reported back to you, it was

10 reported back to you that it was denied that that

11 instruction was given by the captain also. Is that

12 correct?

13   MAJOR-GENERAL MPEMBE: According to

14 Colonel Tsiloane, yes, correct.

15   MR NGALWANA: When did Warrant-Officer

16 Kuhn tell you about the reason he fired teargas?

17   MAJOR-GENERAL MPEMBE: Chairperson, it

18 was on the 13th, but not at the scene, because at the scene

19 I was removed.

20   MR NGALWANA: How long after the scene

21 did he tell you?

22   MAJOR-GENERAL MPEMBE: It was during the

23 evening of that 13th, but I cannot be precisely about the

24 time.

25   MR NGALWANA: Now clause 8(2) of Standing

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1 Order 262 says as CJOC you are responsible for all actions

2 taken in an operation of which you are in overall command.

3 What do you understand "responsible" to mean in that

4 context, General?

5   MAJOR-GENERAL MPEMBE: Chairperson, in my

6 understanding is that "responsible" means the members who

7 have acted under my command, and the members acted in terms

8 of my instructions, and if members acted outside those

9 instructions, I cannot be responsible for them.

10   MR NGALWANA: You became aware that

11 Warrant-Officer Kuhn had fired teargas without command

12 either from you or from his commander. His commander also

13 became aware of this when you asked him. Whose

14 responsibility was it that Warrant-Officer Kuhn fired

15 without command, between you and the commander of Warrant-

16 Officer Kuhn?

17   MAJOR-GENERAL MPEMBE: Chairperson, I

18 will say first for the fact that he alleges that there was

19 a command that was given, I also thought that even a

20 section command could have given that, and the

21 responsibility lied with me and his commander, because they

22 were there, to say it's Lieutenant-Colonel Tsiloane and the

23 captain that will appear in that 15, but with the benefit

24 of the hindsight I think I should have initiated the

25 investigation, departmental investigation, and since he's

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1 in the POP in Gauteng, I should have followed it up with a

2 letter to say that that investigation should be done, and

3 he should actually be disciplined for not having acted

4 within the contents of the Standing Order 262. And

5 Chairperson, that is after my testimony I will take it upon

6 myself that that route and that should be followed. I

7 don't know whether I should give the feedback back to the

8 Commission.

9   MR NGALWANA: That's for the Commission

10 to decide. Now General, when he, Warrant-Officer Kuhn,

11 told you that he heard a command that he should fire

12 teargas, did you have reason to disbelieve him?

13   MAJOR-GENERAL MPEMBE: I did not have the

14 reason to disbelieve him.

15   MR NGALWANA: Why not?

16   MAJOR-GENERAL MPEMBE: For the fact that

17 I could not hear whether the command was given or was not

18 given to him, as he alleges, by this unknown command.

19   MR NGALWANA: Alright, next topic, 11 of

20 20 –

21   CHAIRPERSON: Before you move on from

22 that topic, I'm looking for the relevant pocketbook; I

23 can't find it, but I have a clear recollection of what was

24 in it. One of the pocketbooks that was put in by the Human

25 Rights Commission contained a statement by the member

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1 concerned that he heard you give the command, but what he

2 said was that the command was that teargas must be fired

3 and also rubber rounds, and I think he said one teargas

4 canister and two rubber rounds per person. In other words,

5 what he was recording was a general order, or instruction,

6 allegedly given by you to the members to fire in that way.

7 Now of course that can't be right because only Kuhn fired.

8 If there had been a general command of the kind that that

9 person recorded in his pocketbook, then one would have

10 expected more than one member to have fired off teargas,

11 because you told us previously that a number of them had

12 teargas. Isn't that so?

13   MAJOR-GENERAL MPEMBE: Correct,

14 Chairperson.

15   CHAIRPERSON: So that allegation by that

16 particular member who wrote that in his pocketbook was

17 patently false. Is that correct?

18   MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson.

20   CHAIRPERSON: And in fact, unless it was

21 an instruction limited to Kuhn, "Warrant-Officer Kuhn, do

22 this," it was a general instruction without anyone's name

23 being mentioned, one again would have expected more than

24 one person to have fired a teargas canister. Is that

25 correct?

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1   MAJOR-GENERAL MPEMBE: Correct,
2   Chairperson.
3   CHAIRPERSON: So I take it Kuhn doesn't
4   suggest that the instruction was directed to him only, does
5   he?
6   MAJOR-GENERAL MPEMBE: Chairperson, that
7   I cannot explain, but because he used the teargas, maybe he
8   might also say it was not directed only to him.
9   CHAIRPERSON: Ja, what I'm saying to you
10   is - I'm trying to test the veracity of the allegation that
11   you gave that instruction, and it seems to me, again prima
12   facie – and one must keep an open mind in these matters,
13   but it seems to me so far on the evidence before us it
14   seems very clear that you didn't give the instruction,
15   because if you had it would have been a general
16   instruction, certainly if it would have been as described
17   by the one member in his pocketbook, more than one person
18   would have fired, and generally speaking, if a general
19   instruction had been given, more than one person would have
20   fired. So it seems pretty clear, certainly on a balance of
21   probabilities at this stage, that you are correct when you
22   say you didn't give the instruction.
23   MAJOR-GENERAL MPEMBE: Correct,
24   Chairperson.
25   CHAIRPERSON: I take it you wouldn't have

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1   a problem disagreeing with that - from agreeing with that,
2   I mean. That's right, isn't it?
3   MAJOR-GENERAL MPEMBE: Correct,
4   Chairperson.
5   [10:13] CHAIRPERSON: I'm sorry to have
6   interrupted you, but I don't think you'll find that point
7   unhelpful.
8   MR NGALWANA: Not at all, Chair, thank
9   you. Neither will the General. General, topic 11 of 20;
10   many people were shot and killed on the 16th of August 2012.
11   Do you – and one of the things that the Commission have to
12   ascertain, or investigate, is the precise facts and
13   circumstances which gave rise to the use of all and any
14   force, and whether this was reasonable and justifiable in
15   the particular circumstances. I'm reading the terms of
16   reference, paragraph 1.2.2. Do you as CJOC have any direct
17   knowledge of the precise facts and circumstances in which
18   people were shot and killed on the 16th of August 2012?
19   MAJOR-GENERAL MPEMBE: No, Chairperson,
20   because I was not there, except what was reported to me and
21   also what I saw on the TV.
22   MR NGALWANA: Saw on the TV as the events
23   were happening, or subsequently?
24   MAJOR-GENERAL MPEMBE: No, it was
25   subsequently, it's thereafter, yes. It's after that.

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1   MR NGALWANA: As CJOC you made it your
2   business to find out what did happen. Is that correct?
3   MAJOR-GENERAL MPEMBE: Correct,
4   Chairperson.
5   MR NGALWANA: What did the people, the
6   members who shot people and killed them, tell you were the
7   circumstances, very briefly?
8   MAJOR-GENERAL MPEMBE: Chairperson, they
9   said, in brief, they did it in self-defence.
10   MR NGALWANA: Do you hold yourself
11   responsible for police members who shoot people, killing
12   them, and saying they acted in self-defence, or private
13   defence?
14   MAJOR-GENERAL MPEMBE: No, Chairperson.
15   MR NGALWANA: Topic 12 of 20; It was
16   suggested to you that the manner in which the entire
17   operation was handled, or the procedure in 262, Standing
18   Order 262 was short-circuited. You remember that? You
19   even asked what does short-circuit mean. You remember
20   that?
21   MAJOR-GENERAL MPEMBE: Correct,
22   Chairperson.
23   MR NGALWANA: Now Standing Order 262, I'm
24   going to ask you to have it in front of you. It's exhibit
25   SS3, I think. Sorry, SS2. I think 3 is the plan.

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1   CHAIRPERSON: SS2, yes. SS2.
2   MAJOR-GENERAL MPEMBE: Chairperson, I do
3   have it.
4   MR NGALWANA: General, SS2 talks of an
5   authorised member who has certain specified functions with
6   regard to gatherings and demonstrations. You'll see that
7   in clauses 5 and 6, and the authorised member is defined in
8   clause 2. May I take you to clause 2 first, the first page
9   of the Standing Order, clause 2.
10   MAJOR-GENERAL MPEMBE: I do have it,
11   Chairperson.
12   MR NGALWANA: You see an authorised
13   member is defined as, "A member of the service designated
14   in terms of section 2(2)(a) of the act to help with the
15   arrangements relating to gatherings or demonstrations."
16   You see that?
17   MAJOR-GENERAL MPEMBE: I see it,
18   Chairperson.
19   MR NGALWANA: Was an authorised member
20   designated?
21   MAJOR-GENERAL MPEMBE: Correct,
22   Chairperson.
23   MR NGALWANA: Was that done in writing?
24   MAJOR-GENERAL MPEMBE: Chairperson, as
25   deputy operations I remember that it was done in writing,

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1 and it should actually be signed by the Provincial
2 Commissioner. I can get that document to substantiate my
3 submission. I will phone the member too.
4   CHAIRPERSON: Can you tell us who the
5 authorised member was, and if someone queries it, then the
6 point can be taken further, but I would imagine it's a –
7   MAJOR-GENERAL MPEMBE: Captain Govender.
8   CHAIRPERSON: - a formal fact that
9 shouldn't be the subject of much dispute. Sorry, Captain?
10   MAJOR-GENERAL MPEMBE: Captain Govender
11 of Marikana Police Station.
12   CHAIRPERSON: Captain Govender of
13 Marikana, thank you. You said it yesterday, I think,
14 actually and –
15   MAJOR-GENERAL MPEMBE: I said it
16 yesterday, yes, Chairperson.
17   MR NGALWANA: In fact you do have written
18 proof of that designation, have you not, General?
19   MAJOR-GENERAL MPEMBE: Yes, I do have it,
20 Chairperson.
21   MR NGALWANA: We shall make that
22 available, Chair. He does have a copy. I thought perhaps
23 it can be given to the Commissioners and then copies can be
24 made later.
25   CHAIRPERSON: Possibly at some stage

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1 later you can hand it in from the bar and we'll give it an
2 exhibit number, if it's necessary.
3   MR NGALWANA: Thank you, Chair. Of
4 course it's in clause 4 that requires that the area
5 commissioner must designate an authorised member in
6 writing. Standing Order 262 also talks of a responsible
7 officer. What role does a responsible officer play in
8 relation to demonstrations and gatherings?
9   MAJOR-GENERAL MPEMBE: Chairperson, a
10 responsible officer chairs the section 4 meeting of the
11 RGA.
12   MR NGALWANA: Now I've treated this as a
13 separate topic, but it isn't really, so it can be taken to
14 be topic 13, but it's really part of 12. One of the duties
15 and responsibilities of an authorised member is to liaise
16 with convenors of demonstrations and gatherings for
17 consultation and negotiation purposes. Were the convenors
18 of the strikers gathering at the koppie during the period 9
19 to 16 August known to you as CJOC?
20   MAJOR-GENERAL MPEMBE: No, Chairperson,
21 the only people that I know were those that I spoke with
22 and which were not convenors - I could say they were
23 protesters - and the five "madoda" which were communicating
24 with Colonel McIntosh, and I took that they were
25 representatives, but I did not take them as convenors.

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1   MR NGALWANA: Of course this falls upon
2 the authorised member. Do you know if the authorised
3 member knew of the identity of the convenors of those
4 demonstrations and gatherings between the period 9 and 16
5 August 2012?
6   MAJOR-GENERAL MPEMBE: No, Chairperson,
7 and I did not ask him.
8   MR NGALWANA: Do you know whether the
9 responsible officer knew the identity of the convenors of
10 those gatherings and demonstrations?
11   MAJOR-GENERAL MPEMBE: No, Chairperson,
12 and I did also not ask him. It's actually a member of the
13 municipality, and I'll think Captain Govender will also
14 know who is that member.
15   MR NGALWANA: Next topic, also related,
16 topic 14 of 20; clause 6 of Standing Order 262 places
17 certain responsibilities on the authorised member. Can I
18 take you there, General? Clause 6, it says, "When an
19 authorised member receives a notice or information
20 regarding a gathering, the following action must be taken."
21 The first is if the authorised member receives a notice
22 from a gathering from a convenor or gathering, do you know
23 if any notice was served by the striking miners between the
24 9th and the 16th of August?
25   MAJOR-GENERAL MPEMBE: No, Chairperson, I

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1 do not know.
2   MR NGALWANA: We know that information of
3 these gatherings and demonstrations was received, correct?
4 Although notice wasn't given, we know that information was
5 received.
6   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
7 I will say with regard to the 13th, the information was
8 received when I was shown on the CCTV.
9   MR NGALWANA: Now the second duty of the
10 authorised member is if the authorised member receives
11 information from other internal police sources that a
12 gathering is to take place, then he is to consult with
13 convenors, and so on. I've already asked you the question.
14 Let me ask you again in this context. Do you know if there
15 were any convenors with whom the authorised member could
16 consult and negotiate in relation to the demonstrations and
17 gatherings between the 9th and the 16th of August 2012?
18   MAJOR-GENERAL MPEMBE: No, Chairperson.
19 But I do not know also did the authorised officer knew
20 them.
21   MR NGALWANA: We know from exhibit L,
22 slide 12 – I don't have to take you there – that
23 information, not notice, was received about an intended
24 march for the 10th of August. We know you were not there,
25 you were on leave, and that the authorised member was

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1 required to contact the convenor. You've already told us
2 you knew of no convenors. Now –
3   MR BUDLENDER SC: Chair, I don't want to
4 be disruptive, but we don't know from L that this happened.
5 That's an allegation in L, but L is not evidence.
6   MR NGALWANA: That's correct, Chair. I'm
7 indebted to my learned friend for reminding me. The third
8 duty of an authorised member, it's says, "If he or she is
9 contacted by the responsible officer to inform him that a
10 gathering is to take place, then the authorised member must
11 make an attempt to gather further information pertaining to
12 the proposed gathering, using ACU information," I take it
13 that's POP "information network, and requesting a meeting
14 in terms of section 4." Are you aware of any section 4
15 meeting in relation to any of the gatherings and
16 demonstrations by the strikers between the 9th and the 16th
17 of August?
18   MAJOR-GENERAL MPEMBE: No, Chairperson,
19 and also I did not ask either the authorised or the
20 responsible officer.
21   COMMISSIONER HEMRAJ: General, what form
22 do these notices generally take?
23   MAJOR-GENERAL MPEMBE: Chairperson, they
24 come also in different methods. It depends on the
25 knowledge of the people. Normally - I will speak in

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1 general ways – one is that the person will either go to the
2 municipality and talk with the responsible officer
3 directly. Then the responsible officer will inform the
4 authorised member about the date and the time for the
5 meeting, and in other matters is that the person who
6 doesn't know will go to a police station and when he's at
7 the police station, he will be advised to go to the
8 municipality, and then he will follow the right procedure.
9 The other one will go to a police station, but the members
10 there in the community service centre will refer him or her
11 to a, to the authorised member, then the authorised member
12 will help that person how to draft a notice and also
13 informed the convenor to send it to the responsible officer
14 before seven days.
15   MR NGALWANA: Now one of the things that
16 the authorised member has to do is to gather information,
17 as I've just indicated, about the proposed march and so on,
18 using the information network of POPS. What was the
19 status, the state of intelligence of the SAPS between the
20 9th and the 16th of August 2012, General? Was it reliable
21 intelligence? Were there any challenges to it?
22   MAJOR-GENERAL MPEMBE: Chairperson, the
23 intelligence that we use is what have happened, and with
24 regard to the reliability I will say because it was
25 something that has happened, one will say yes, but with

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1 regard to the challenges, yes, there were challenges with
2 regard to intelligence, as I have already indicated, what
3 challenges of different types of intelligence that we
4 needed that we couldn't get.
5   MR NGALWANA: Just explain briefly,
6 remind us what were those challenges? What were the
7 difficulties that you had in gathering intelligence?
8   MAJOR-GENERAL MPEMBE: I did say that
9 Brigadier Engelbrecht and also Colonel Isaacs, they were
10 saying with high rate of intimidation and people who were
11 scared, that they couldn't provide intelligence.
12   MR NGALWANA: Now in that climate would
13 the authorised member who has to use that intelligence have
14 been able to gather information, useful information, about
15 the gatherings and demonstrations of the strikers between
16 the 9th and the 16th of August 2012?
17   MAJOR-GENERAL MPEMBE: I will say no,
18 Chairperson, except tactical intelligence, which I spoke
19 about, of what has happened.
20   MR NGALWANA: Did you as CJOC consider Mr
21 Mathunjwa and Mr Zokwana as convenors of those
22 demonstrations and gatherings?
23   MAJOR-GENERAL MPEMBE: Chairperson, I
24 will say no, but we considered them as the leaders and
25 where those members actually took them in high esteem, that

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1 they can listen to them as their leaders.
2   MR NGALWANA: In your endeavours,
3 General, to get the union leaders to talk to their members
4 so that they can put down their weapons, were you
5 performing the functions of an authorised member as defined
6 in Standing Order 262?
7   MAJOR-GENERAL MPEMBE: No, Chairperson.
8   MR NGALWANA: So what do you say to the
9 proposition then that SAPS short-circuited Standing Order
10 262 procedure for handling of gatherings and
11 demonstrations, in light of the evidence you have now given
12 in relation to topics 12, 13, and 14?
13   MAJOR-GENERAL MPEMBE: No, Chairperson,
14 SAPS did not short-circuit it, as I did not perform the
15 duties of the authorised member, but I had to perform the
16 duties of a CJOC and at what time I performed
17 simultaneously the responsibilities and the work of a CJOC
18 and operational commander.
19   MR NGALWANA: You had already explained
20 why you did that with reference to Fanagalo and so on. I'm
21 not going to take you there.
22   MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson.
24   MR NGALWANA: And Calitz's ability or
25 otherwise of speaking Fanagalo, I won't go there. Topic 15

1 of 20; clause 7 of Standing Order 262 talks of the
2 assessment of threat levels immediately after notice or
3 information about a proposed gathering. Was a threat level
4 assessed or determined at the JOCCOM, and if so, when? Or
5 let's ask one question at a time. Was a threat level
6 assessed or determined at the JOCCOM?
7 MAJOR-GENERAL MPEMBE: Chairperson, at
8 the JOCCOM to follow the procedure of the threat assessment
9 determination, and I think the POP members and Crime
10 Intelligence can confirm that, but with regard to me as a
11 CJOC, I did it on the 13th and I took it right through all
12 out, but to confirm the paperwork and whether it was done
13 in the manner that it's supposed to be done with the
14 procedure, I think the POP member who's responsible for
15 that and whom we call Tactical Information Officer, who
16 works under Lieutenant-Colonel Merafe and also Brigadier
17 Engelbrecht, who's Crime Intelligence, can confirm that in
18 writing, but I can say that I did not see it during that
19 time.
20 MR NGALWANA: But your evidence is it was
21 done?
22 [10:33] MAJOR-GENERAL MPEMBE: The evidence is it
23 was done according to what I saw on the 13th, taking also
24 what has happened since I was on leave, to say it is threat
25 level 3 and above.

1 MR NGALWANA: After the events of the
2 13th, now going on to the 16th, was a threat assessment
3 done?
4 MAJOR-GENERAL MPEMBE: Chairperson, for
5 the fact that I have also already categorised it, I
6 couldn't consider it to go and check the papers, but I did
7 already categorise it and that's why I'm saying that can be
8 confirmed by either the officer responsible for that work,
9 and also with Crime Intelligence because they normally sit
10 and follow that procedure.
11 MR NGALWANA: Topic 16 of 20; clause 9 of
12 the Standing Order 262 says you as CJOC, General, are
13 responsible for a well planned, coordinated action for the
14 duration of an operation. You were criticised for
15 intercepting strikers near the railway line without a plan.
16 You remember that?
17 MAJOR-GENERAL MPEMBE: I remember,
18 Chairperson.
19 MR NGALWANA: Is it your understanding,
20 with reference to the prescripts governing the conduct of
21 the police, that if you see something unlawful but you
22 don't have a plan, that you shouldn't do anything about it?
23 MAJOR-GENERAL MPEMBE: No, Chairperson.
24 Chairperson, in my answer I need to indicate this, and
25 which also relates to an operation. If the members they

1 report on duty in a normal shift and then there is, on the
2 radio they said there is a bank robbery in progress, there
3 will be no time to sit and do a plan. The members will
4 respond according to their experience, according to how
5 they have been trained. So in a spontaneous gathering that
6 will also happen in that manner, but both, Chairperson, in
7 the terminology of the police, we refer them as operation,
8 but in reality the operation is the one that – and as I've
9 said, a notice has been served, we plan all together with
10 the role players, we also put responsibilities and to
11 ensure that each one knows exactly what is he doing, and
12 that is also referred as an operation.
13 MR NGALWANA: Thank you, General. Topic
14 17 of 20; it's common cause that SAPS had a plan for the
15 dispersal action of the 16th. It's been alleged that it's a
16 Scott's plan, but I think you've effectively dealt with it.
17 I think the evidence deals with that. I'm not going to go
18 far on that, but let me ask you this plain question. Do
19 you accept that you are responsible for the plan SS3?
20 MAJOR-GENERAL MPEMBE: Chairperson, maybe
21 responsible in ensuring that it has to be planned and
22 coordinated, in that sense, Chairperson, I will say yes.
23 MR NGALWANA: Yes, clause 9 says you are
24 responsible for a well planned and coordinated action.
25 CHAIRPERSON: I'm sorry to interrupt you.

1 You talked about [microphone off, inaudible] SS3 starts
2 with the plan relating to the 10th and then there's one, so
3 clearly you weren't responsible for that because you were
4 on leave then. Your responsibility only began when you
5 came there. Is that right?
6 MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson. The one that I have signed.
8 CHAIRPERSON: Yes.
9 MAJOR-GENERAL MPEMBE: Yes.
10 MR NGALWANA: Yes, thank you, Chair, I
11 should have phrased that question more clinically. Do you
12 accept that you are responsible in other words for the –
13 because clause 9 says you are responsible for a well
14 planned and coordinated action, that must include the
15 preparation and contribution to a plan for an operation.
16 Do you accept that?
17 MAJOR-GENERAL MPEMBE: Chairperson, I do
18 accept that.
19 MR NGALWANA: Did you have any input in
20 its preparation, in the preparation of the plan from the
21 13th to the 16th?
22 MAJOR-GENERAL MPEMBE: Chairperson, I did
23 say yes, when it was presented and also ensuring that the
24 responsible people are tasked, and also in contribution, me
25 contributing personally.

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1   MR NGALWANA: Yes, you've testified that
2   you've made contributions and changes. You were challenged
3   on the basis that nowhere does that appear in the minutes
4   of the various JOCCOMS. What would your response be to
5   that criticism that if you contributed then it should have
6   been minuted in the JOCCOM minutes? What's your answer to
7   that criticism?
8   MAJOR-GENERAL MPEMBE: Chairperson, I
9   would say in the JOCCOM I know that minutes should be
10   taken. With the situation at Marikana I will firstly also
11   say that the taking of the minutes, there were some
12   challenges there, but also in that sense the minutes, the
13   recording of the decisions were really recorded. Not
14   everything that was said in the JOCCOM was recorded. That
15   one I will also accept.
16   MR NGALWANA: Alright. When you approved
17   the plan – we're now not talking about the plan of the 10th,
18   obviously you didn't take any part in that, the rest of the
19   plan – did you satisfy yourself that it was a sound plan,
20   as CJOC?
21   MAJOR-GENERAL MPEMBE: I just wanted to
22   say "sound plan" –
23   MR NGALWANA: A good plan.
24   MAJOR-GENERAL MPEMBE: Okay. Yes, I did
25   take into account that it was a good plan.

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1   MR NGALWANA: Topic 18 of 20; it's been
2   suggested very strongly, General, that because people died
3   when SAPS sought to disperse people at the koppie, this was
4   a failure of Public Order Policing, and I imagine by
5   implication it was the failure of your plan. Do you accept
6   that it was a failure of Public Order Policing that caused
7   the death of many people on the 16th of August 2012?
8   MAJOR-GENERAL MPEMBE: No, Chairperson.
9   Chairperson, and my reasons are as follows. Firstly, as I
10   have indicated the different types of operations, the
11   operation of Marikana was not an operation as intended
12   whereby we had convenors, and we did not; that should be
13   considered by this Commission and the esteemed Chairperson.
14   And the second part is the plan, as I was informed -
15   Chairperson, as I have said I was not there - as I was
16   informed is that the plan was interrupted, that the plan
17   was not, the shooting happened where the plan was not yet
18   implemented, and I will ask that that should also be –
19   CHAIRPERSON: Sorry to interrupt you. It
20   was partly implemented. The barbed wire was already
21   uncoiled. That was the first part of the plan, but nothing
22   thereafter had happened yet when the shooting occurred, as
23   you point out. That's right, isn't it? To be strictly
24   accurate.
25   MAJOR-GENERAL MPEMBE: Correct,

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1   Chairperson, that's what I was also informed because it's
2   when Brigadier Calitz gave the command to Colonel Makhubela
3   to put the barbed wire, so when in that process, that
4   process of the putting the barbed wire, I was informed that
5   it's when then the plan was interrupted.
6   MR NGALWANA: Thank you, General. Still
7   on that theme, was it part of your plan that members could
8   shoot people in self-defence or private defence?
9   MAJOR-GENERAL MPEMBE: Chairperson, that
10   cannot be put into the plan because the members they do
11   know that if my life or the life of my colleague is in
12   danger, I can act.
13   MR NGALWANA: Does Standing Order 262
14   contemplate acting in private defence, maybe even causing
15   death? I think it may be reasonable to lead the witness.
16   If you look at clause 11, sub-clause 7 –
17   CHAIRPERSON: Ja, yes it's there. You
18   asked him if it's there. It is there. It's 11. We've
19   seen it, looked at it several times. You've still got my
20   copy of the Standing Order 262, but never mind; you can
21   give it back to me at teatime. If you look at clause 11, I
22   think it deals with it.
23   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
24   I see it in 11, paragraph 7, to say, "Common law principles
25   of self-defence or private defence are not affected by this

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1   order."
2   MR NGALWANA: Topic 19 of 20; I've just
3   heard whispers that I must put more questions, which I'll
4   consider, Chair. Topic 19 of 20; it's been suggested to
5   you that seven categories of what were called
6   contemporaneous documents have been put before the
7   Commission. Now General, "contemporaneous" means a
8   document that has been created at the same time as the
9   events to which the document relates, occur. Okay, that's
10   what "contemporaneous" means. Do you know whether
11   intelligence reports, TT5, were prepared at the time that
12   the events recorded therein happened? Let me take you to
13   TT5, the intelligence reports.
14   MAJOR-GENERAL MPEMBE: Chairperson, I do
15   have TT5 in front of me.
16   MR NGALWANA: Can you have a look,
17   General, at the second page of that document? You'll see
18   it's dated the 28th of August 2012. You see that?
19   MAJOR-GENERAL MPEMBE: Correct,
20   Chairperson.
21   MR NGALWANA: You will see that it
22   relates to events of the 16th of August, 21st of February
23   2012, 24th of February 2012, 16 May 2012, 17 May 2012, 11
24   August 2012, 10 August 2012, 12 August 2012, 13 August
25   2012, and 15 August 2012, and 16 August 2012. You see

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1 that?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MR NGALWANA: And the document itself is

5 dated 28 August 2012. Would you say that document was

6 created at the same time as these various events were

7 unfolding?

8 MAJOR-GENERAL MPEMBE: No, Chairperson,

9 but those that they are indicating the dates separately, I

10 would say those were contemporaneous with regard to those

11 dates.

12 CHAIRPERSON: The document appears to be

13 quoting or reporting what had been conveyed at earlier

14 stages, but if what is in each paragraph, numbered

15 paragraph, is an accurate transcript of what was said at

16 the time, the document of which it purports to be a report

17 would be contemporaneous, but the whole document itself

18 clearly it's not; it's a compilation after the event.

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson.

21 MR NGALWANA: Now Chair, I'm only dealing

22 with this because I'm not sure where the cross-examiner was

23 going with this, so I don't want to leave anything to

24 chance. It doesn't seem like an important point –

25 CHAIRPERSON: I'm not criticising you. I

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1 can't remember who the cross-examiner was, but some of the

2 examiners –

3 MR NGALWANA: Ms Le Roux.

4 CHAIRPERSON: Sorry?

5 MR NGALWANA: It was Ms Le Roux, Chair.

6 CHAIRPERSON: Ms Le Roux. Yes, well

7 anyway, I don't think she made much of the point, but

8 anyway –

9 MR NGALWANA: Then I'll leave it.

10 CHAIRPERSON: But if you consider that

11 it's necessary for you to dot the i's and cross the t's to

12 sort of deal with the point conclusively, I won't stop you,

13 but I think it is, as I put it to the witness and he

14 agreed. I don't know if anything else turns on the point,

15 but –

16 MR NGALWANA: Well, then I'll leave it,

17 Chair, because it also treated dockets as contemporaneous

18 documents and I'm not sure how that's possible.

19 CHAIRPERSON: That's a very loose

20 construction of the word "contemporaneous," wasn't it?

21 MR NGALWANA: Topic 20 of 20, subject to

22 instructions to my right; General, you were asked how would

23 SAPS disarm people who had decided they are not going to

24 disarm voluntarily. You didn't quite answer that question,

25 if I may say so, satisfactorily. Would you care to try

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1 again?

2 CHAIRPERSON: That sounds a bit like

3 cross-examination, you know, but a re-examiner doesn't

4 normally say your answer wasn't satisfactory, could you try

5 again. That's something a cross-examiner does, but you

6 didn't answer it in detail. Would you care to expand on

7 the answer you gave before on that topic?

8 MR NGALWANA: How do the police disarm

9 people who refuse to be disarmed?

10 MAJOR-GENERAL MPEMBE: Chairperson, I

11 said that the police are being taught different types of

12 tactics of disarming people of, but particularly when they

13 are being taught how to do methods of arrest and the one

14 that how to disarm a person in different ways, but why,

15 Chairperson, I did not elaborate more, maybe I need to get

16 a leave for the Chairperson, because sometimes –

17 CHAIRPERSON: I was actually going to ask

18 you that question too. It's something that I was

19 interested to hear what the answer was. As I remember, Ms

20 Le Roux took you up to a certain point and then stopped,

21 and the last section, your explanation of the general

22 statement you made, you didn't get a chance to give. So I

23 think it's only right that this topic should be dealt with.

24 MAJOR-GENERAL MPEMBE: Because I said,

25 that's why maybe I wanted your leave to, on this matter,

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1 because I don't know whether will, when I say it here and I

2 tell and the media picks up and when the police say I

3 wanted to do it, will not put them in, if I have to go in

4 deeper details, I don't know, but I will get that

5 permission from the Chairperson, because that is what I –

6 CHAIRPERSON: I don't know, I understand

7 the point you're making and I'm a bit concerned about it

8 actually, because if there are techniques which should

9 remain confidential, obviously it wouldn't be desirable for

10 it to be broadcast over the worldwide web on YouTube for

11 people all over the place to hear about it. Perhaps we can

12 – I was going to suggest that we take the tea adjournment

13 soon, because I understood you to say, Mr Ngalwana, that

14 further topics have been suggested to you for your

15 consideration. So it might be sensible for you to, if I

16 may say so, to take instructions on that during the tea

17 adjournment, which we can perhaps take now, and we can

18 possibly work out a way of – I think the answer is

19 important, but I'm concerned about the point that's made.

20 It might be possible for the information to be given in

21 some way which is in camera, as it were, isn't broadcast on

22 the worldwide web, and so on. But perhaps you can also

23 think about that and discuss it with your learned friends,

24 the evidence leaders as well, and your colleagues, because

25 while it's important information, I understand the

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1 necessity to keep it as confidential and restricted as
2 possible because of the sensitivity of the nature of the
3 information.
4   MR NGALWANA: Yes, I'm indebted –
5   CHAIRPERSON: So shall we take the tea
6 adjournment now for quarter of an hour?
7   MR NGALWANA: I'm indebted, Chair.
8   CHAIRPERSON: We've got to be back in
9 quarter of an hour.
10   [COMMISSION ADJOURNS   COMMISSION RESUMES]
11 [11:13] CHAIRPERSON: The Commission resumes. I
12 understand from Mr Ngalwana that he has a proposal to make
13 which he has discussed, I think, with the evidence leaders
14 as to how the problem we discussed before we adjourned can
15 be solved.
16   MR NGALWANA: Yes, Chair, it relates the
17 manner in which the police disarm people who refuse to be
18 disarmed. I understand from the General that it's very
19 sensitive information, so the evidence leaders and the
20 legal team of SAPS have agreed that that evidence may be
21 presented by way of affidavit which subject to the
22 Commission's imprimatur. The General, though wants to
23 explain how the - that some document that he says will be
24 put together and attached to this affidavit and we would
25 hope that the affidavit with an annexure would not be

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1 widely distributed. And of course, the Chairperson will
2 have the final say on these issues. That's that, Chair.
3   CHAIRPERSON: That seems to be a sensible
4 way forward. Obviously the affidavit circulation would
5 have to be restricted and a mechanism worked out for
6 preserving its confidentiality. And I would imagine the
7 way to do it would be anyone who's not either an evidence
8 leader or a representative of the police, who wants to see
9 would have to make special application and the police and
10 the evidence leaders would be heard on whether the
11 application should be granted. I understand that in itself
12 raises all sorts of issues but they may be necessary. It
13 may be necessary to have kind of ruling of that kind,
14 depending on the nature of the document. Obviously one
15 must decide when one sees the document but if it is as
16 sensitive as you say it is and there's no reason to doubt
17 your word on that point, then the matter's got to be dealt
18 with, with appropriate sensitivity in response. One of the
19 points raised by Advocate Hemraj is, of course, one of the
20 questions that may be raised is that you have this
21 technique why wasn't it used at scene 2 and so forth. But
22 at any rate one doesn't know whether that question can
23 appropriately be asked until one's seen the document but
24 anyway when will we see the document, obviously not today.
25 We're resuming on Thursday. I anticipate this will be over

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1 but I suppose if necessary he can always come back for
2 cross-examination and examination on this particular issue.
3 Is that right?
4   MR NGALWANA: Correct, Chair, just one
5 clarification, Chair.
6   CHAIRPERSON: Yes, carry on.
7   MR NGALWANA: It's not my word that I
8 give as a sensitive document, it's what my instructions
9 are. I don't know -
10   CHAIRPERSON: Yes, sorry I didn't - I
11 understood that you were conveying your instructions to us
12 but there's no reason at the moment to doubt either your
13 word or the word of those who gave you the instructions.
14   MR NGALWANA: Thank you, Chair. Chair,
15 the three questions that we had before we adjourned have
16 now whittled themselves down to a single question and they
17 relate to a death of one person, a civilian on the 13th of
18 August who was found next to the shack. General, may I ask
19 you to turn to exhibit L and look at slide 56? It
20 shouldn't be shown on the screen please.
21   CHAIRPERSON: - on the screen. If
22 there's anybody here who is linked in any way to - can you
23 remember what the gentleman's name was? I'm afraid I can't
24 -
25   MR NGALWANA: Mr Mati, is it Mr Mati?

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1   CHAIRPERSON: Mr Mati.
2   MR NGALWANA: Yes, Chair.
3   CHAIRPERSON: Is anyone here - I think we
4 must refer to him by his name in accordance with our
5 practice, is anyone here who is and if there are people
6 across the way watching this on the TV screen, or even
7 watching it on the world wide web, on UTube, does anyone
8 here or watching this elsewhere who is connected in any way
9 with Mr Mati who thinks - or indeed the other two, I think
10 the other two people who were killed -
11   MR NGALWANA: On the 13th.
12   CHAIRPERSON: - civilians who were killed
13 on the 13th are also depicted on this slide. And their
14 names?
15   MR NGALWANA: I don't have that
16 information, Chair.
17   CHAIRPERSON: Perhaps we should get the
18 names because it may be important. Can someone give us the
19 names please?
20   MR NGALWANA: I'm told one of them is
21 Langa.
22   CHAIRPERSON: Well I think we should get
23 that information before I'm able to give a warning and
24 before the slides are shown.
25   MS PILLAY: Chair, the one person's name

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1 is Semi Jokonisi and the other name is Pumzile Sokanyile,
2 it's Thembelaki and Mati.
3 CHAIRPERSON: So you heard the names,
4 anyone who is related or a loved one or connected in some
5 way with any of those three people, I must give you a
6 warning that we're going to have a picture of their dead
7 bodies depicted in a moment. That may cause distress and
8 emotional turmoil to those who look at it and I would ask
9 that - I haven't now got to have the time to elapse for the
10 translation because we're having simultaneous translation
11 but that slide must not be shown until a minute has elapsed
12 after I have stopped speaking. So that those who feel they
13 would be upset by this I suggest they look away. And we
14 will announce later when they can look again when the slide
15 is no longer being shown. I'll start the minute now.
16 We're actually concentrating on Mr Mati who is the
17 gentleman who's dead body was found with stab wounds in
18 front of a shack in the informal settlement, close to the
19 place where the engagement, if I can call it that, between
20 the police and some of the strikers took place. The
21 initial engagement on the 13th of August. The slide may now
22 be shown.
23 MR NGALWANA: General, it's the slide on
24 the bottom left-hand corner of the shot. The Commission
25 hasn't yet been referred to the exhibit, it's exhibit A

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1 page 1, Chair.
2 CHAIRPERSON: Thank you.
3 MR NGALWANA: We shall submit it as -
4 well it's not necessary.
5 CHAIRPERSON: Post-mortem report on the -
6 carried out on the late Mr Mati.
7 MR NGALWANA: Correct, Chair.
8 MR NGALWANA: General, you have seen the
9 post-mortem report. What does it say is the cause of death
10 for Mr Mati?
11 MAJOR-GENERAL MPEMBE: I do not have it
12 with me.
13 CHAIRPERSON: To save time may I suggest
14 you read it to us, Mr Ngalwana?
15 MR NGALWANA: It says "The cause of death
16 is stab wound of right femoral vessels.
17 CHAIRPERSON: Femoral, so one can see a
18 lot of blood on the upper part of the right leg, so I take
19 it that's where the stab wound was.
20 MR NGALWANA: You don't have any reason
21 to doubt that do you, General?
22 MAJOR-GENERAL MPEMBE: No, Chairperson.
23 MR NGALWANA: Chair, those are the
24 questions we have.
25 CHAIRPERSON: Thank you. We can now take

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1 the slide away. Those who stopped looking while the slide
2 was being displayed can now look again. I'd like to ask
3 you a few questions, General, but before I do so let me
4 find out if my colleagues want to ask questions. No, not
5 yet. I want to ask you a few questions first about the 13th
6 of August. We were given copies of witness statements
7 prepared by Mr Mpofu, settled I take it by Mr Mpofu at the
8 time when he was still representing the - some of the
9 victims and exhibit BBB3 is the statement of Simphiwe Booi.
10 He was the gentleman who was present at the inspection in
11 loco you remember at the scene of the events of the 13th.
12 And the other one is exhibit HHH21, it's the statement by
13 Xolani Nzuza. I don't know if he was at the inspection but
14 I remember Mr Booi, I take it you do also.
15 MAJOR-GENERAL MPEMBE: Correct,
16 Chairperson.
17 CHAIRPERSON: In paragraph 33 of the
18 statement of Mr Simphiwe Booi which is as I've said BBB3 he
19 deals at paragraph 33, page 7 with his version of what was
20 said. We'll lend you Advocate Hemraj's copy on two
21 conditions. One is that you give it back and secondly you
22 give me back my copy of the standing order after we
23 adjourn. Now, let me read you paragraph 33, or perhaps
24 let's read it together. "On 13 August I was part of the
25 delegation that was sent to K3. Everything went well until

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1 at the point when we met the police. Mambush negotiated
2 with the police who were led by General Mpembe. General
3 Mpembe wanted the traditional weapons. We requested the
4 police to accompany us to the koppie where we would hand
5 over the weapons. We also told the police that the weapons
6 were meant to defend ourselves against NUM official
7 attacks. When the negotiations failed and when the General
8 started counting we stood up, sang a song and left. It
9 seems as if there was a non-verbalised understanding in
10 terms of which the police" you understand non-verbalised
11 means not put into words, "non-verbalised understanding in
12 terms of which the police were to escort us until we got
13 back to the koppie." I think it's probably fair enough to
14 say that that statement, the last statement about the non-
15 verbalised understanding is correct. Would you agree with
16 that? I mean after all your instructions to your members
17 were to escort them to the koppie.
18 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
19 by me not telling the -
20 CHAIRPERSON: Yes, yes, yes I think I
21 know what they mean by non-verbalised understanding. They
22 picked up from your actions and your body language I take
23 it. The statement goes on "then out of the blue I later
24 heard shots being fired by the police. There was first
25 teargas and stun grenades fired by the police. Thereafter

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1 live ammunition was used. We ran until we got to the
2 koppie. At the koppie Mambush addressed the crowd and
3 reported back on our journey. The two injured members who
4 had been shot by the police were taken to hospital. If the
5 police had not fired at us without any reason all the five
6 who reportedly died in that incident including two
7 policemen would be alive today. I only learnt that five
8 people lost their lives" sorry, "I only learnt later that
9 five people," sorry I'll read it again and get it right
10 the third time. "I only learnt later that five people lost
11 their lives in that incident." And then he goes on in
12 paragraph 34 to say "I reiterate that we were a very small
13 group which posed no threat whatsoever either to the police
14 or any other person. The shooting which sparked the
15 violence was completely unnecessary and all the deaths
16 should accordingly laid squarely at the door of SAPS."
17   Now I read the whole passage, would you care to
18 comment on it? You may well find it appropriate to take it
19 sentence by sentence or a number of sentences together but
20 that's his version and settled by his erstwhile counsel or
21 I think he's still his counsel, settled by Mr Mpofu and
22 filed as being the statement of what he was going to say if
23 he gave evidence before this Commission. And if, of
24 course, Mr Mpofu comes back either, well in whatever
25 circumstances he comes back, I take it he will be led in

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1 evidence. If Mr Mpofu doesn't come back it may be
2 necessary for us and if we continue and don't grant the
3 postponement sought it will be necessary perhaps for him to
4 be subpoenaed. But this is the version in the words in his
5 statement as I've said by his own counsel, the copy I have
6 isn't signed but I assume that there may well be a signed
7 copy somewhere. Would you care to comment on it? Take
8 your time, take it sentence by sentence or a group of
9 sentences by group of sentences because I'd like to hear
10 your reaction to what he said.
11   MAJOR-GENERAL MPEMBE: Chairperson, on
12 the line which says, "I was part of the delegation until
13 General Mpembe wanted the traditional weapons" I did not
14 only say traditional weapons, I said all weapons that they
15 did have, they were in possession of. And on that day they
16 were in possession of different weapons, maybe a
17 traditional weapon in my understanding it's only a
18 knobkerrie, a Zulu traditional weapon but there they had
19 Inculas, they had also axe and they had also different,
20 Inculas, this one sharp pointed weapon.
21   CHAIRPERSON: I think we saw on the video
22 what the weapons were.
23   MAJOR-GENERAL MPEMBE: Yes, correct,
24 Chairperson.
25   CHAIRPERSON: And I know some people's

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1 traditional weapons may not be other people's traditional
2 weapons but on your description of it some of them don't
3 qualify for that euphemistic expression as traditional
4 weapons, would that be right?
5   MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson, hence I highlighted it.
7   CHAIRPERSON: Advocate Hemraj points out
8 that you specifically said on the video "I want all your
9 sharpened instruments" or words to that effect. In other
10 words you didn't want their knobkerries and their sticks
11 did you?
12   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
13 firstly I said I wanted those things and then later I
14 described it as dangerous weapons.
15   CHAIRPERSON: Ja, okay. So that's your
16 comment on the passage up to the statement "General Mpembe
17 wanted the traditional weapons."
18   MAJOR-GENERAL MPEMBE: Correct,
19 Chairperson.
20   CHAIRPERSON: Go on with your commentary
21 or reaction or response to the rest of the section I read
22 you.
23   MAJOR-GENERAL MPEMBE: Chairperson, I say
24 it here and also on the video it appears to say "we
25 requested the police to accompany us to the koppie where we

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1 would hand over the weapons." Chairperson, even on the
2 video I said to them I want them here and they said to me
3 no. I said, I was talking Zulu, I said [African language]
4 but they said [African language] and I asked them is it
5 where were coming from. They said yes. So then in my
6 understanding is that accompany us to the Koppie and there,
7 not only us, even those that are left there, they will
8 give, we will give you the dangerous weapons.
9   CHAIRPERSON: Is that your response to
10 that particular sentence?
11   MAJOR-GENERAL MPEMBE: It is my response
12 and my understanding why from their request on that.
13   CHAIRPERSON: Yes, I understand. And
14 then the next sentence says "we also told the police the
15 weapons were meant to defend ourselves against NUM official
16 attacks." I think there is something on the video about
17 that isn't there?
18   MAJOR-GENERAL MPEMBE: Correct,
19 Chairperson. And in my understanding in this one I did not
20 tell them, Chairperson, because at that stage I did not
21 know whether the NUM did attack them on the weekend because
22 I was not there.
23   CHAIRPERSON: No, it's not suggested that
24 you told them that, it's suggested that they told you that
25 the weapons were meant to defend themselves against NUM

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1 official attacks, did they say that to you?

2   MAJOR-GENERAL MPEMBE: Yes.

3   CHAIRPERSON: They said something along

4 those lines, I remember from the video.

5   MAJOR-GENERAL MPEMBE: No, Chairperson,

6 it's correct that they said they wanted those weapons to

7 protect them against NUM. Chairperson, in my understanding

8 is that when they requested us to escort them I thought

9 that NUM is somewhere but at that point NUM was not there.

10 So then also I have in mind to say but they might be also

11 the people that might and attack those that were not on

12 duty because I don't know.

13 [11:33] Then when they said, they have this for

14 themselves to protect against NUM it's when I made it even

15 clear to the commanders to say it's either we, if we don't

16 escort them, if they get attacked they will have a case

17 against us. Because they will say they told us that we

18 should not disarm them because NUM is there. So then we

19 need to escort them. If NUM is somewhere and does attack

20 them then we need to defend them. But I did not say it to

21 them, Chairperson. I only use that when I was briefing the

22 officers. When I came to the conclusion of saying let us

23 escort them.

24   CHAIRPERSON: - is when the negotiations

25 failed and when the general started counting we stood up,

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1 sang a song and left," is that correct?

2   MAJOR-GENERAL MPEMBE: Chairperson, I

3 agree with that one. But the only thing that he does not

4 put there, Chairperson is that he didn't put the song and

5 what is the meaning of the song and the interpretation of

6 the song.

7   CHAIRPERSON: Tell us briefly what the

8 song was and what it means?

9   MAJOR-GENERAL MPEMBE: Chairperson, with

10 your permissions so that I should not be charged with

11 public indecency or vulgar words.

12   CHAIRPERSON: I understand if you're in a

13 court of in a commission where you're asked to say what

14 people said and they said something offence or indecent you

15 can't be blamed for that because you're simply reporting

16 what they said. So if there's any ladies who feel they

17 might be offended I give them 30 seconds to leave. It's on

18 the video, we've had it already. There was a vulgarised

19 translation initially I think by Mr Mahlangu but then later

20 on we got the un-vulgarised version. But tell us shortly,

21 just remind us what it was. You don't have to give us all

22 the words.

23   MAJOR-GENERAL MPEMBE: Yes. Chairperson,

24 the song while they were signing this song there was a

25 click so as and as I said in my statement I understand the

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1 culture. So once you were, they sing that [African

2 Language] meaning that you must tighten up your testicles

3 because what you want you're not going to get it easy. So

4 to me already informs me that I must be, I must know that

5 I'm not going to get what I want easy and what I wanted at

6 that time it was to get the dangerous weapons.

7   CHAIRPERSON: I'm reminded that there's

8 some confusion about the exact description of the exhibit

9 but apparently its RR2 and it's page 4, those words are

10 quoted and I think the translation is given in an un-

11 vulgarised form. So you repeated it now.

12   MAJOR-GENERAL MPEMBE: To repeat the

13 words –

14   CHAIRPERSON: I said you have repeated

15 it. It's transcribed in the vernacular on page 4 of the

16 exhibit which we are informed is RR2.

17   MAJOR-GENERAL MPEMBE: Correct,

18 Chairperson. Chairperson -

19   CHAIRPERSON: You were explaining the

20 cultural aspect of that, you said you heard clicks you

21 heard this song with these offensive expressions in it.

22 Did you want to say something about how you understood,

23 what you understood the situation to be?

24   MAJOR-GENERAL MPEMBE: Yes, Chairperson.

25 At that time I realised that what I wanted in terms of

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1 these dangerous weapons is not going to be easy because I

2 might tighten up my testicles and that might not be

3 possible. Chairperson, that is what influenced me to give

4 them the counting because even though I was letting them to

5 march illegally and to carry weapons I couldn't at that

6 stage let them to continue carrying the weapons. That is

7 then when I did, I give the counting, Chairperson and when

8 I give the counting I was actually expecting them to hand

9 over the weapons which I did really expect at that time.

10 But with that song and the, and with my, with that song I

11 could realise that yes they are determined to do anything,

12 they will take us on. But for the fact that they

13 communicated with me I couldn't say for the fact that they

14 communicated with me they didn't attack us. That gave me a

15 hope that nothing could happen on the way, they're honest

16 by saying go with us and then we'll hand over the weapons

17 to you, because I did explain to them to say after I've

18 spoken to you here, I'm going there to the mountain and

19 those that are at the mountain I'm going to tell them that

20 their actions of staying at the mountain with dangerous is

21 illegal. So in my understanding it was that we agree on

22 that one.

23   CHAIRPERSON: So, the next sentence, "it

24 seems as if there's a non verbalised understanding in terms

25 of peace, in which of which the police would escort us till

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1 we got back to the koppie," that's correct you've said that
2 already?
3   MAJOR-GENERAL MPEMBE: Correct,
4 Chairperson.
5   CHAIRPERSON: Then the next sentence is
6 then, "out of the blue I later heard shots being fired by
7 the police, there was first teargas and stun grenades fired
8 by the police. Thereafter live ammunition was used." Now
9 would you like to comment on those sentences?
10   MAJOR-GENERAL MPEMBE: Chairperson, I
11 couldn't say that live ammunition was used. With regard to
12 the teargas as I've explained, yes the teargas was used and
13 the stun grenades was used and I did explain that to say
14 with regard to my earlier briefing to the commanders and I
15 did not hide it, I said which is non verbalised to them. I
16 said to the commanders we should not allow them to go
17 through the informal settlement, neither to go through that
18 shaft. But I did not tell them that I told the police that
19 and so I thought that then the commanders, they informed
20 the members, their members that the general has said they
21 must not go there. Hence I was keeping on saying that the
22 shooting of the teargas by Warrant Officer Koen could have
23 been done with my earlier briefing. Even though I did not
24 give the command.
25   CHAIRPERSON: We can talk about that

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1 later. I'm just getting your reactions to what he said.
2 Now what he alleges is there were teargas, well there was
3 teargas and there were stun grenades, there were stun
4 grenades.
5   MAJOR-GENERAL MPEMBE: Yes but not –
6   CHAIRPERSON: What he says is thereafter
7 live ammunition was used. Now do you, did the live
8 ammunition follow immediately on the teargas and stun
9 grenades or did something happen in between the teargas and
10 the stun grenades before the live ammunition was used?
11   MAJOR-GENERAL MPEMBE: No, Chairperson
12 that –
13   CHAIRPERSON: No, something from their
14 side, not necessarily from your side.
15   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
16 the only time that I know the live ammunition has been used
17 its when the police were attacked and they used that in
18 self defence.
19   CHAIRPERSON: Don't say they ran, well I
20 think that's correct is it not, they ran away, there was an
21 incident, I don't know if you know about it on the other
22 side of the river. One of them apparently was shot on the
23 scene, they then ran away and the rest to the koppie,
24 according to the evidence we've heard and one of them was
25 shot on the other side of the river, you remember the body

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1 was found there. Do you know anything about that or were
2 you not present when that happened?
3   MAJOR-GENERAL MPEMBE: Chairperson, I
4 will say I do not know anything about that one and I will
5 explain.
6   CHAIRPERSON: Yes, well you don't have to
7 explain. If you weren't there you don't know about it.
8   MAJOR-GENERAL MPEMBE: Yes, but I did
9 know but not on that day, later thereafter.
10   CHAIRPERSON: You heard about it later?
11   MAJOR-GENERAL MPEMBE: When actually
12 there was, when we were doing the inspection in loco and
13 then –
14   CHAIRPERSON: That, after the commission
15 was appointed?
16   MAJOR-GENERAL MPEMBE: Yes.
17   CHAIRPERSON: So we don't have to go
18 there, I don't think.
19   MAJOR-GENERAL MPEMBE: That's it. I need
20 also to say that immediately thereafter that's where I
21 stopped them to and then I was taken to the, that's why I
22 did not know about that one.
23   CHAIRPERSON: Yes, we've already heard
24 that evidence and then he then says we ran until we got to
25 the koppie. At the koppie Mambush addressed the crowd,

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1 reported back on our journey, I don't suppose you have to
2 deal with that sentence. Anyway you weren't at the koppie,
3 you don't know what Mambush did and then the two injured
4 men that had been shot by the police were taken to
5 hospital. I take it that's correct?
6   MAJOR-GENERAL MPEMBE: The two members
7 were taken to the hospital?
8   CHAIRPERSON: No the two injured men who
9 had been shot by the police. I take it there were also
10 strikers who were injured, not just two who were killed,
11 two or three, we'll come to the third in a moment. There
12 were, as I understand it also strikers injured, is that
13 correct, who were taken to hospital?
14   MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson, and they were taken to the hospital by the
16 police with the assistance of the mine ambulance.
17   CHAIRPERSON: Yes. Then the next
18 sentence is, "if the police had not fired at us without any
19 reason all the five people who reportedly died in that
20 incident including two policemen would be alive today." Do
21 you have any comment on that?
22   MAJOR-GENERAL MPEMBE: Chairperson, I
23 really have a comment on that. If the protesters, they did
24 give me their weapons when I requested them and I persisted
25 them and, Chairperson, I even said why I went there because

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1 I did not send Brigadier Calitz because I could see at that
2 stage that the situation needs me, a person who understands
3 them, that I can talk their language, they will understand
4 what I will say and in my communication nobody can ever say
5 he did not understand me. So what I'm saying is
6 Chairperson if at that stage they have handed me the
7 weapons and they have requested me to escort them we could
8 have escorted them and if we saw them as we saw them
9 verging to a, or veering to the direction of the
10 settlement, if we had used a teargas they could have got
11 nothing to use to attack us or to attack the police and we
12 could have defended them to any attack that could have come
13 to the NUM as they allege that they were armed for
14 protecting themselves against the NUM and surely the police
15 could not have attacked them on their way to the koppie.
16   CHAIRPERSON: What he says is, "if the
17 police had not fired at us without any reason all five
18 people who reportedly died will be alive today," and lets
19 break that up. Obviously the teargas and the stun grenades
20 in themselves wouldn't have caused anybody's death, is that
21 correct?
22   MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson.
24   CHAIRPERSON: The, I take it the strikers
25 who died, died and those who were injured too, died, I'm

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1 not talking about the third man because he was only
2 stabbed. But the two strikers who died, died as a result
3 of being shot by the police, whether the police were
4 justified in doing it is not the issue. But its correct is
5 it not that the two strikers were shot by the police. They
6 wouldn't have died if the police hadn't fired at them.
7 That must be right?
8   MAJOR-GENERAL MPEMBE: Chair –
9   CHAIRPERSON: Yes, I asked the question
10 on the assumption, I'm not sure it's being established yet
11 that the two miners who died were shot, were shot by the
12 police, it may be that that hasn't been established either
13 but on the assumption that that's correct this is what they
14 say. Now, shots you say were only fired after they had in
15 fact attacked the police? Is that your evidence, is that
16 right?
17   MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson.
19   CHAIRPERSON: Ja. Of course the stun
20 grenades wouldn't have killed anybody might have created
21 the impression on the part of the strikers that live
22 ammunition is being used, I think you conceded that? Is
23 that correct?
24   MAJOR-GENERAL MPEMBE: Correct,
25 Chairperson, but knowing very well that it was not like

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1 that.
2   CHAIRPERSON: No, no I know that, but a
3 striker who has a stun grenade, who doesn't know about the
4 stun grenades who had a stun grenade fired at him or near
5 him might think, particularly when he hears the noise that
6 live ammunition is being used, is that correct?
7   MAJOR-GENERAL MPEMBE: Seeing the noise,
8 yes, he might think that.
9   CHAIRPERSON: Anyway I don't think we
10 have to any further with this point and then he says in 34,
11 "I reiterate we were a very small group which posed no
12 threat whatsoever either to the police or any other
13 person," two points. Were they a very small group?
14   MAJOR-GENERAL MPEMBE: Chairperson, to me
15 with those dangerous weapons I did not see them as a small
16 group.
17   CHAIRPERSON: How many were there?
18   MAJOR-GENERAL MPEMBE: Chairperson, in my
19 estimation I said that 100, between a 100 and 200.
20   CHAIRPERSON: That's not a small group in
21 any one's language I take it. That's not a small group.
22   MAJOR-GENERAL MPEMBE: Yes, it is not
23 small group.
24   CHAIRPERSON: Not a very small group.
25   MAJOR-GENERAL MPEMBE: What was more

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1 important, Chairperson, to see that there is, that the
2 weapons that they are using, Chairperson, may I explain
3 this.
4   CHAIRPERSON: Yes you may.
5   MAJOR-GENERAL MPEMBE: If you may allow
6 me.
7   CHAIRPERSON: No, please carry on.
8   MAJOR-GENERAL MPEMBE: I know that I
9 might talk a history here. But in my belief and that came
10 in my mind that I know that a Zulu person and Nguni
11 speaking person, even if only with a dangerous weapon in
12 the history that I've studied of the war that was [African
13 Language] where the Zulu's defeated the English army, so
14 that to say but with Inculas, I could see it could be more
15 dangerous because it is not only, what is it, traditional
16 weapon but it's also another weapons.
17   CHAIRPERSON: Yes, I understand. So just
18 to sum up your answer so far you don't say, you don't agree
19 they were a very small group and you don't agree that they
20 posed no threat. Is that correct?
21   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
22   CHAIRPERSON: Right then the second
23 statement is a statement of Balani Mzusa HHH21 and he deals
24 with them, with the matter in paragraph 8, 9 and 10. Have
25 you got it in front of you? He told earlier in this

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1 statement how they went to the K3 shafts to request that
2 mine management to close the mine and so forth and then he
3 explains how they came back and he says in 8, "after
4 passing the bridge again and near the Karee mine time
5 office we were again stopped, this time by members of SAPS.
6 Upon seeing them we knelt or sat down and signalled that we
7 were not fighting. Their leader told us he wanted us to
8 surrender our weapons, we told him via our spokesmen
9 Mambush Noki that we were not fighting with anyone, the
10 weapons were only for self defence against further attacks
11 by NUM and that we would surrender the weapons once we
12 reached the koppie. As a compromise we asked the police to
13 escort us back to the koppie. After a long debate the
14 leader of the police, General Mpembe, said he would count
15 to 10 after which there would be trouble. We then decided
16 to sign a song, we proceeded to the koppie. It looked like
17 the police had decided to escort us as requested. All of a
18 sudden the police released teargas into the crowd followed
19 by stun grenades and live ammunition from the ground and
20 from a helicopter. There was pandemonium with strikers
21 running away, mainly in the direction of the koppie. Some
22 of the policemen were among the fleeing crowd and there
23 were violent encounters with the strikers. I saw one of
24 the workers collapsing in front of me and realised he had
25 been shot by the police fire. Some of the workers were

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1 fighting back. The majority of us somehow managed to
2 escape and run back to the koppie. Some of us assisted the
3 injured back to the koppie and they were rushed to the
4 hospital. I personally tried to assist another injured
5 worker but we were forced to leave him next to a shack and
6 continue running. When I eventually arrived at the koppie
7 I found Mambush busy giving a report back to the crowd."
8 Now that's the section that relevant. Now do you have any
9 comments to make on that?
10   MAJOR-GENERAL MPEMBE: Correct,
11 Chairperson. Chairperson with regard to the self against
12 NUM it will remain the same as I said earlier on and my
13 escorting, briefing with the members. But I did not say
14 them there will be trouble. Because I knew that that word
15 could have make them to feel more anger. I even said to
16 them I want those weapons but when I count to three, to ten
17 I only want dangerous weapons. I even emphasis in Zulu
18 bela, I didn't want to say to them you'll get trouble and –
19   CHAIRPERSON: Can I interpose by saying,
20 what you in fact said and what happened is visible I think
21 on the video.
22   MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson, and then, Chairperson, also to the escorting
24 and this is a second person that confirms then it was my
25 understanding that they did expect us to escort them.

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1 Chairperson, with the police releasing teargas I also said
2 that was done and also the stun grenade but I deny,
3 Chairperson, that the live ammunition was used and one
4 protestor went down.
5   CHAIRPERSON: Well live ammunition was
6 used but on your version it was later on after the strikers
7 had attacked the police, is that your version, is that
8 right?
9 [11:52] MAJOR-GENERAL MPEMBE: It's correct,
10 Chairperson. But the way in which he put it here and if
11 live ammunition was used at that time, surely one could not
12 have died there on, there could, more people could have
13 died there because the bullet could have hit many people,
14 and that's why I'm saying it's, we only use the live
15 ammunition when the individual were attacking the police.
16   CHAIRPERSON: Was live ammunition fired
17 from the helicopter? That's the other statement he makes.
18   MAJOR-GENERAL MPEMBE: Chairperson, as
19 far as –
20   CHAIRPERSON: To your knowledge.
21   MAJOR-GENERAL MPEMBE: To my knowledge no
22 live ammunition was fired, but stun grenades were fired.
23   CHAIRPERSON: Colonel Vermaak will be
24 able to answer that.
25   MAJOR-GENERAL MPEMBE: Chairperson, it's

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1 Colonel Vermaak and I need also to say Captain Loest was
2 also in that chopper.
3   CHAIRPERSON: He then goes on –
4   MAJOR-GENERAL MPEMBE: Chair –
5   CHAIRPERSON: Sorry, you want to comment
6 further?
7   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
8 Then this thing of saying some of the workers were fighting
9 there, Chairperson, there's no protester that was fighting
10 there. They actually attacked the police. They actually
11 attacked, they actually take the police on. It's not that
12 they were fighting back, as if there was a fight between
13 them and the police.
14   CHAIRPERSON: So those essentially are
15 your answers to the versions of these two witnesses who are
16 going to be called by Mr Mpofu?
17   MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson.
19   CHAIRPERSON: Alright, now I'd like to
20 ask you a few other questions about the 13th. When the
21 group of miners, of strikers march off to the koppie, as
22 you've discussed, how many Nyalas went on to the gravel
23 road to their right and were lined up to the left of the
24 informal settlement? As I understand the position,
25 originally you had the Nyalas more or less parallel with

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1 the railway line. Is that right?
2   MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson.
4   CHAIRPERSON: But I think one can see
5 from the video that the Nyalas then moved and some of them
6 went along the gravel road which was between the field
7 where they were marching, and the informal settlement. Is
8 that correct?
9   MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11   CHAIRPERSON: Did you send them there?
12   MAJOR-GENERAL MPEMBE: Chairperson, also
13 these, to say specifically to the members go there, I did
14 not say it, but I take it that with my earlier briefing
15 again, because they could use those Nyalas to veer off if
16 the people come there.
17   CHAIRPERSON: Yes, your earlier briefing
18 was they must make sure the people don't, the strikers
19 don't veer off into the informal settlement –
20   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
21 and –
22   CHAIRPERSON: - because you feared there
23 might be trouble.
24   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
25 but doing that, you could use a Nyala –

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1   CHAIRPERSON: Yes.
2   MAJOR-GENERAL MPEMBE: - to channel them.
3   CHAIRPERSON: Yes, yes, I understand
4 that. Now what I want to know is how many Nyalas were
5 there on that gravel road between the field and the
6 informal settlement? Can you remember?
7   MAJOR-GENERAL MPEMBE: Chairperson, in my
8 understanding there were two Nyalas and there was a Nyala
9 where Warrant-Officer Lepaaku was in, and there was also a
10 Nyala that was used by Lieutenant Baloyi and where Warrant-
11 Officer Monene was in.
12   CHAIRPERSON: Yes, but anyway, the point
13 is as a consequence of the instruction you gave, these
14 Nyalas, the two Nyalas you spoke about, and I remember
15 about Lepaaku's Nyala as well, went to form a barrier, as
16 it were, between the marching strikers and the informal
17 settlement. Is that correct? That was a precaution taken
18 effectively to give effect to the instruction you gave. Is
19 that correct?
20   MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson, that was my understanding also.
22   CHAIRPERSON: Now you were on the extreme
23 right, you explained to us, of the group of police who were
24 walking behind the strikers. Is that right?
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2   CHAIRPERSON: So you could see the
3 extreme right-hand side of the strikers; you could see the
4 informal settlement, and you could see the Nyalas. Is that
5 right?
6   MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.
8   CHAIRPERSON: And if it had been
9 necessary for you to give any instruction that teargas be
10 fired or anything of that kind, you would have done so.
11   MAJOR-GENERAL MPEMBE: Correct,
12 Chairperson.
13   CHAIRPERSON: And you didn't.
14   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
15   CHAIRPERSON: Now the next question I
16 want to ask you is you've already dealt with a number of
17 other aspects that are relevant, which I won't repeat. I'd
18 now like to move on to the 15th. You have told us about the
19 interview you had with the two presidents of the trade
20 unions, and in particular you told us about what you said
21 to Mr Zokwana. Now would you explain to me what exactly
22 you said to him that was untrue? You say you said
23 something that was untrue. If I misunderstood, then please
24 correct me. Did you perhaps – let me put it this way.
25 You're looking puzzled. Did you say anything to him that

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1 was untrue, Mr Zokwana?
2   MAJOR-GENERAL MPEMBE: Chairperson, if
3 you say it was untrue, are you referring to when I said –
4   CHAIRPERSON: No well, I asked you did
5 you say anything to him that was untrue?
6   MAJOR-GENERAL MPEMBE: Chairperson, to
7 him what I said, and maybe that's where the Chairperson
8 will interpret it as untrue, is to say to him what has
9 happened –
10   CHAIRPERSON: No, no, I'm sorry, don't
11 misunderstand me. I'm not suggesting to you that you said
12 anything was untrue. I'm just asking you a simple
13 question; did you in fact say anything to him that was
14 untrue?
15   MAJOR-GENERAL MPEMBE: Chairperson, what
16 I said to him that I know I wanted him to make sure that he
17 takes the matter seriously, is that what is happening now
18 of people dying and they can die also, and that is what I
19 was emphasising. Whether it was true or not true, I might
20 not be saying it was untrue because taking with what was
21 happening –
22   CHAIRPERSON: Alright, well let me put
23 the question from a slightly different angle. Did you
24 deliberately say anything to him that you knew was untrue?
25   MAJOR-GENERAL MPEMBE: I will say no,

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1 Chairperson, because what I was saying, it was based on
2 what was happening, and I wanted him he must take that
3 matter seriously to say hey, this can also happen.
4   CHAIRPERSON: You wanted him to get his
5 members to give you the information as to where people had
6 weapons in the hostels and in the shacks in the informal
7 settlement so that you could go, you could send your men to
8 those hostels and to those shacks to disarm the people and
9 get their weapons. Isn't that right? You needed that
10 information -MAJOR-GENERAL MPEMBE: Correct,
11 Chairperson.
12   CHAIRPERSON: - and without that
13 information obviously it was difficult to disarm to people
14 in their homes, whether they lived in the hostels or the
15 shacks. Is that right?
16   MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.
18   CHAIRPERSON: And you expressed to him
19 that you need the cooperation of his members in order to
20 achieve what he'd asked you to achieve, namely to disarm
21 the strikers. Is that correct?
22   MAJOR-GENERAL MPEMBE: It is correct,
23 Chairperson.
24   CHAIRPERSON: Now I want to deal with
25 another aspect, but I'm going to deal with it fairly

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1 obliquely because part of your evidence we haven't got yet
2 and we're only going to get it in a confidential form.
3 It's a question of how you with a firearm can disarm
4 someone with an axe. Now the difficulty that you had, as I
5 understand it – and if I'm wrong, you must correct me – the
6 difficulty that you had was that you knew these people had,
7 to use your word, been psyched up. They'd been involved in
8 this engagement on the 13th and also you knew they'd
9 received "muti." Is that right?
10   MAJOR-GENERAL MPEMBE: It's correct,
11 Chairperson.
12   CHAIRPERSON: Which obviously gave rise
13 to a false sense of confidence as far as they were
14 concerned. I mean the "muti" wouldn't work, but if they
15 believed it would, that would give rise to false bravado,
16 false sense of confidence, and you knew that. Isn't that
17 right?
18   MAJOR-GENERAL MPEMBE: With regard to
19 false bravado, yes, Chairperson.
20   CHAIRPERSON: Yes, and to use another one
21 of your expressions, they would be prepared - rather
22 foolishly, in the circumstances - to take on the police.
23 Is that right?
24   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
25 because that was also provided as part of intelligence –

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1   CHAIRPERSON: Yes, that's why –
2   MAJOR-GENERAL MPEMBE: - to say they will
3 resist arrest and they will not hand over their weapons.
4   CHAIRPERSON: So the danger existed, I
5 take it, and you foresaw this, I would think, that when
6 your people tried to disarm the strikers, even if they used
7 these confidential methods that we're going to hear about
8 later, there was a danger that the person whom you were
9 trying to disarm might attack the police, as in fact
10 happened in Captain Kidd's case, might attack the police
11 with his axe or his spear or his cutlass or panga, or
12 whatever it was. That's right, isn't it? There was that
13 danger.
14   MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson.
16   CHAIRPERSON: And even though he
17 obviously wouldn't have wanted to do it, the policeman
18 concerned who was trying to disarm, do the disarming, or
19 someone who was with him, would have been obliged to defend
20 himself or his colleague. Is that right?
21   MAJOR-GENERAL MPEMBE: If Chairperson may
22 repeat the –
23   CHAIRPERSON: I say if that happened, if
24 the striker didn't want to be disarmed and had this false
25 bravado and so on, he might have attacked the person who

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1 was trying to disarm him, as happened in the case of
2 Captain Kidd, and either the actual potential disarmer or
3 his colleague would have been obliged to have acted in
4 either self-defence or private defence. Isn't that right?
5   MAJOR-GENERAL MPEMBE: It is correct,
6 Chairperson.
7   CHAIRPERSON: And so there was a danger
8 that even though the police concerned would have been
9 acting legally, there was still a danger that the striker
10 concerned would have either died or been injured in the
11 attempted disarmament operation. Is that not right?
12   MAJOR-GENERAL MPEMBE: Chairperson, as I
13 indicated that the steps to minimise that risk –
14   CHAIRPERSON: Yes, no I understand it
15 could be minimised. You used, you were very careful to use
16 the word "mitigate" –
17   MAJOR-GENERAL MPEMBE: Yes.
18   CHAIRPERSON: And I thought "minimise"
19 might be a better word, but never mind; we don't have to
20 fight about the word. Clearly the steps were designed to
21 minimise that, but without going into them, I think it's
22 clear from what you've told us that it was impossible to
23 eliminate the risk completely. That must be right. You
24 agree with that?
25   MAJOR-GENERAL MPEMBE: Yes, Chairperson,

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1 I was looking at the injuries –
2   CHAIRPERSON: Yes.
3   MAJOR-GENERAL MPEMBE: - but not the
4 deaths.
5   CHAIRPERSON: Well, the injuries, you
6 could have fatal injuries or non-fatal injuries. I mean
7 people are injured.
8   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
9   CHAIRPERSON: Some of them die from the
10 injuries, some of them don't. Is that right?
11   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
12   CHAIRPERSON: But there was a risk of
13 bloodshed. That you foresaw. Is that correct? And you
14 were concerned to avoid bloodshed, if possible. That is
15 evidenced by your very proper behaviour on the 13th. Will
16 you agree with that?
17   MAJOR-GENERAL MPEMBE: Chairperson, with
18 regard to the – ja, let me say yes, but not at that scale –
19   CHAIRPERSON: No, no, no, no –
20   MAJOR-GENERAL MPEMBE: As I've said, with
21 the, with hindsight –
22   CHAIRPERSON: I don't think anyone can
23 suggest, and if they try to suggest it, I'll listen to them
24 patiently, but I don't think anyone can suggest that you
25 foresaw for a moment that there'd be bloodshed on the scale

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1 that took place.
2   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
3   CHAIRPERSON: This was far from your
4 contemplation. Am I right?
5   MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7   CHAIRPERSON: But what you did foresee
8 the possibility, as you've conceded very fairly and very
9 honestly, you did foresee the possibility of bloodshed. Is
10 that right? And that's in fact why, I take it, you said to
11 Zokwana, "Look here, the best way to deal with this thing,
12 the only way really to do it without bloodshed is you tell
13 me where the weapons are and I'll send my men to get them."
14 That's what happened, isn't it?
15   MAJOR-GENERAL MPEMBE: Correct,
16 Chairperson.
17   CHAIRPERSON: Alright. Now let's move on
18 to the 16th. Now there are a number of points I don't
19 understand about your evidence. The first thing I want to
20 deal with is this decision that you say you took at 1
21 o'clock, and you discussed it again this morning when Mr
22 Ngalwana questioned you. Just give me in a sentence what
23 precisely was that decision?
24   MAJOR-GENERAL MPEMBE: Chairperson, if I
25 may check it in terms of my HHH3 –

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1   CHAIRPERSON: Yes, yes you can. It's a
2 decision that you, I think you said you took at about 1
3 o'clock. Am I right?
4   MAJOR-GENERAL MPEMBE: It was before the
5 meeting of 13:30.
6   CHAIRPERSON: Yes, before the JOCCOM
7 meeting at 13:30.
8   MAJOR-GENERAL MPEMBE: Correct.
9   CHAIRPERSON: I think you said it's about
10 1 o'clock. Nothing really turns on that.
11   MAJOR-GENERAL MPEMBE: Yes, correct,
12 Chairperson.
13   CHAIRPERSON: About 1 o'clock.
14   MAJOR-GENERAL MPEMBE: Yes, correct,
15 Chairperson.
16   CHAIRPERSON: What exactly was the
17 decision?
18   MAJOR-GENERAL MPEMBE: Chairperson, it is
19 the briefing that I did to the Provincial Commissioner. It
20 was when Major-General Annandale was to prepare the meeting
21 and chair the meeting.
22   CHAIRPERSON: I know you gave her a
23 briefing, but I want to know, I understood you to say you
24 made a decision. I understood you to say – if I
25 misunderstood you, you must correct me, but I understood

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1 you to say in your capacity as CJOC, as the overall
2 commander of the operation you made a decision which you
3 communicated to the Provincial Commissioner. Did I
4 understand you correctly?
5   MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson, of –
7   CHAIRPERSON: What was that decision,
8 stated in a sentence?
9   MAJOR-GENERAL MPEMBE: The decision of
10 going to stage 3.
11   CHAIRPERSON: That meant in effect a
12 decision to use force to disperse and disarm the strikers
13 if they didn't voluntarily lay down their arms. Is that
14 correct?
15   MAJOR-GENERAL MPEMBE: Chairperson, in my
16 understanding it was in the manner as I explained it –
17   CHAIRPERSON: Yes, but am I summarising
18 correct? I mean obviously if they lay down their arms
19 voluntarily you didn't have to go to stage 3, did you?
20   MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson.
22   CHAIRPERSON: And if they didn't lay down
23 their arms voluntarily, what you wanted to do was – well, I
24 think there were three things actually, but let's take them
25 one by one. You wanted to disperse them; you wanted to

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1 disarm them; and in the case of some of them, you wanted to
2 arrest them. Is that right?
3   MAJOR-GENERAL MPEMBE: Correct,
4 Chairperson.
5   CHAIRPERSON: That was what it's all
6 about.
7   MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.
9   CHAIRPERSON: And you decided that that
10 had to be done that day after you communicated it to the
11 Provincial Commissioner round about 1 o'clock. Is that
12 right?
13   MAJOR-GENERAL MPEMBE: Not necessarily at
14 that time, but –
15   CHAIRPERSON: But that day.
16   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
17   CHAIRPERSON: Alright. Now I must tell
18 you, I have great difficulty in understanding your evidence
19 on that point, and I'll tell you why. I've got a couple of
20 problems and I must put them to you. The first is you were
21 at the media briefing which the Commissioner held at about
22 half past 9 that morning. Is that right?
23   MAJOR-GENERAL MPEMBE: Correct,
24 Chairperson.
25   CHAIRPERSON: And did you hear what she

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1 said?
2   MAJOR-GENERAL MPEMBE: Correct,
3 Chairperson.
4   CHAIRPERSON: Tell me, before she had the
5 briefing, did you talk to her at all?
6   MAJOR-GENERAL MPEMBE: Chairperson, we
7 didn't speak even about what will be the media briefing
8 about, but we were just giving her feedback of what was
9 happening.
10   CHAIRPERSON: General Annandale in fact
11 said that he was surprised by what she said. Were you
12 surprised too?
13   MAJOR-GENERAL MPEMBE: Actually what he
14 said, she said there, it was what I thought I reported to
15 her to say, to me it was seemed as if she was referring if
16 the process which we thought of Mr Mathunjwa.
17   CHAIRPERSON: Ja, alright. Anyway, let
18 me read you what she said. It's page 7 of exhibit HHH40,
19 4-0. It's line 13 and following. Have you got that
20 exhibit? Have you got it?
21   MAJOR-GENERAL MPEMBE: Not – I will, with
22 respect, if Chairperson can read it to me, yes.
23   CHAIRPERSON: Alright. Having stated the
24 problem and what had preceded it, she said at line 13, "As
25 the police therefore" – I think it's being handed to you.

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1 Page 7, line 13.
2   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
3   CHAIRPERSON: Got it?
4   MAJOR-GENERAL MPEMBE: Page 7, line 14?
5   CHAIRPERSON: Line 13.
6   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
7   CHAIRPERSON: Or perhaps one should
8 actually start at the foot of page 6, just to see it in
9 context. Line 25, page 6, have you got that? "I also want
10 to indicate to everyone that we cannot continue to allow
11 that state of affairs because it undermines the efforts
12 that we are putting in," something inaudible, "the
13 colleagues ensuring there's peace and stability in the
14 country." And then at line 13 on page 7 she says this, "As
15 the police, therefore, we have deployed these various means
16 in order to make sure that today we end this violence. My
17 wish, and the wish of the South African Police leaders is
18 that we will end it still amicable." I think she means
19 amicably.
20 [12:12]   "We will end it still amicable and very danger-
21 free. But I want to caution us all; there's something I
22 can't talk about. What will happen? It's only God that
23 knows. My prayer with you all is that today we're going to
24 be able to," I think the word must be "end these things,"
25 and then she goes on to deal with something else. So it's

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1 clear, is it not, that at that media conference at half
2 past 9 she told the assembled media, and thereby the world,
3 that the situation at Marikana was going to end that day.
4 It was either going to end amicably because the miners were
5 going to hand their weapons, were going to be disarmed,
6 hand their weapons over voluntarily, and if they didn't do
7 so, they would have to be forced to do so. That must
8 follow from what she said. Is that right?
9   MAJOR-GENERAL MPEMBE: Yes, Chairperson –
10   CHAIRPERSON: She had therefore made the
11 decision already before 9:30 on Thursday – in fact, I think
12 she made it the Wednesday night, but we won't go there
13 because you don't know about that –
14   MAJOR-GENERAL MPEMBE: Yes.
15   CHAIRPERSON: But quite clearly by 9:30
16 on Thursday morning she had not only made the decision that
17 that day if the miners didn't hand over their weapons
18 voluntarily, they would be forcibly disarmed and dispersed.
19 Isn't that right?
20   MAJOR-GENERAL MPEMBE: With the statement
21 it's correct, Chairperson.
22   CHAIRPERSON: That's right. So, and she
23 told that – you didn't know she was going to say that in
24 advance, did you? She didn't speak to you earlier.
25 Annandale was surprised. General Annandale said he was

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1 surprised when he heard it, and I take it you were
2 surprised too, weren't you?
3   MAJOR-GENERAL MPEMBE: Chairperson, now
4 that I see these words of what "the God will only know,"
5 then those, that is one that really will I say it surprised
6 me. But with the matter being ending, that's what I
7 explained. I was thinking that she was referring to what I
8 told her about Mr Mathunjwa.
9   CHAIRPERSON: Yes.
10   MAJOR-GENERAL MPEMBE: But which to say
11 what will happen, it's only God that knows, that one I –
12   CHAIRPERSON: You see, she says, "We want
13 to do it amicably." What she's also saying is that we're
14 going to end this violence today, it's going to end, we're
15 going to end it. So that being so, I don't understand what
16 decision you could have made and conveyed to her at 1
17 o'clock. The decision was already made and conveyed to the
18 world. Isn't that correct?
19   MAJOR-GENERAL MPEMBE: Chairperson, in
20 terms of this I understand, it's correct, but as I said
21 earlier on, I was doing the work as an overall commander to
22 say that – and that's why I say at that time, 13:30 –
23   CHAIRPERSON: Yes. No, no, I understand
24 that. Now I want to ask you something else about this
25 decision of yours. Something else I want to ask you about

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1 the decision you say you made; would I be correct in saying
2 that that decision, if you made it, was the most important
3 thing you did on the 16th as overall commander? The most
4 important thing you did that day is to make that decision.
5 Is that right?
6   MAJOR-GENERAL MPEMBE: I'm requesting
7 Chairperson to repeat the question.
8   CHAIRPERSON: Sure. What I'm saying to
9 you is, would I be correct in saying that that decision, if
10 you made it, was the most important thing you did on the
11 16th of August? You did other things, obviously other
12 things too, but the most important thing you did, surely,
13 was to make that decision, if you did make it. Is that
14 right?
15   MAJOR-GENERAL MPEMBE: It's correct,
16 Chairperson.
17   CHAIRPERSON: Now would you be kind
18 enough to look at the first statement, sorry, the second
19 statement you made in this matter, which is exhibit GGG12.
20 Please look at page 17, foot of page 17. In paragraph 39 –
21 have you got it? Not yet.
22   MAJOR-GENERAL MPEMBE: Paragraph 39,
23 Chairperson.
24   CHAIRPERSON: Ja, "At about 11 o'clock
25 the Provincial Commissioner, Lieutenant-General Mbombo,

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1 phoned Mr Mathunjwa concerning his failure to address the
2 protesters. He reported to us outside the JOC in person,
3 where Lieutenant-General Mbombo entered into dialogue with
4 him. I overheard the conversation between the Provincial
5 Commissioner and Mr Mathunjwa. The Provincial Commissioner
6 enquired from Mr Mathunjwa as to why he'd gone back on his
7 word. She reminded him of the importance of his
8 commitments and how critical it was that he convinced the
9 protesters to lay down their arms. Mr Mathunjwa responded
10 by saying that he'd been at the Lonmin management's offices
11 from early morning, and that management didn't want to
12 commit to continued negotiations. He stated that was the
13 reason for him not addressing the protesters. The
14 Provincial Commissioner emphasised that her concern was
15 with his commitment to finding a peaceful solution and that
16 he had to honour his commitment to convince the group to
17 disarm. He then proceeded to the koppie." Next paragraph
18 40, "At about 13:30 the Chairperson of the special JOCCOM,
19 Major-General Annandale, acting on the instruction of the
20 Provincial Commissioner, called a special JOCCOM meeting to
21 evaluate the current strategy and the possible
22 implementation of stage 3." Now before that, the most
23 important thing you did that day had been done, namely you
24 made the decision and you conveyed it to the, you say to
25 the Provincial Commissioner. Why didn't you mention it in

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1 the statement? I would have expected the most important
2 thing that you did to have been recorded in that statement.
3 How can you explain that? Or sorry, how do you explain
4 that?
5   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
6 for the fact that I did not put it in my statement at that
7 time, I did not think that I wanted to hide it, but when it
8 came to say but actually who made the decision, then I
9 realised that I made a decision and I wanted to state that
10 I made it at, and even at what time, and –
11   CHAIRPERSON: The decision had already
12 been made by the Provincial Commissioner herself at 9:30.
13 I mean where do you go to if you say you've already made
14 the decision, you've told the world about it, but I want to
15 tell you I've now made the same decision and I'm telling
16 you about it? I mean I must tell you, I don't understand
17 that. If I'm misunderstanding the situation, now is your
18 chance to put me right.
19   MAJOR-GENERAL MPEMBE: Chairperson, I'm
20 not denying of what has happened to the media, and even
21 also the other things they came out, I did tell, as I've
22 said even on the 17th I did brief the media, but with regard
23 to this, I was just explaining what I did at what time for
24 any other – it was to explain that also I had that decision
25 at that time. But, and also I made that decision at that

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1 time, but I'm not saying that the Provincial Commissioner
2 has not yet made the decision, but as an overall commander
3 I also made that decision, Chairperson.
4   CHAIRPERSON: One of the points that was
5 raised with you, I think by Mr Bizos – he didn't raise it
6 with you, sorry; he raised it with Major-General Annandale,
7 but it was raised with you as well, was the question as to
8 whether you were effectively functioning as the overall
9 commander, or whether you had been sidelined, and one of
10 the questions you were asked related to the statement in
11 the minutes of the meeting of 1:30 by the Provincial
12 Commissioner that she had requested Major-General Annandale
13 to implement stage 3. But you were asked that question and
14 the answer you gave was, "That's a question you must ask
15 the Provincial Commissioner, you mustn't ask me," which I
16 think is a fair answer in the circumstances. But another
17 point wasn't put to you, that I think you must deal with,
18 and that is the evidence was that Major Annandale said that
19 he wanted the operation to take place at 3:30. He'd fixed
20 the time, in other words, at 3:30. Now did you hear him
21 say that at the JOC?
22   MAJOR-GENERAL MPEMBE: Chairperson, yes,
23 and I think it was also minuted.
24   CHAIRPERSON: Ja, now you see, if you
25 were the overall commander, why didn't you fix the time?

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1 Wasn't it a function of the overall commander to say when
2 the operation should take place, should commence? What
3 your answer to that?
4   MAJOR-GENERAL MPEMBE: Ja, Chairperson,
5 at that stage I did not see it as a problem, but I was also
6 thinking that if there could be any other problem or any
7 other changes, since Brigadier Calitz as an operational
8 commander was there, he could change or communicate to us.
9   CHAIRPERSON: But shouldn't you have
10 fixed the time as overall commander at the time? Shouldn't
11 you have done that? You see, so those people who argue
12 that you were sidelined, they're going to rely on that
13 fact. So they didn't put it to you, but that's why I'm
14 putting it to you so we get your answer. We've obviously
15 got to keep an open mind on the question as to whether you
16 were sidelined. We'll decide that at the end of the day
17 when we've heard all the evidence and the arguments, but
18 that's got to be, I predict that's going to be one of the
19 points that are relied on, you see. So we must give you a
20 chance to deal with it. So how do you deal with it?
21   MAJOR-GENERAL MPEMBE: Chairperson, what
22 I would say is that at that time, as I say, I did not see
23 it as a problem, knowing that if there could be any problem
24 about time, then Brigadier Calitz will communicate. But I
25 understand what Chairperson is saying, that I was actually

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1 supposed to say no, not 3:30, 15:30, this time.
2   CHAIRPERSON: No, but you should have
3 taken the initiative.
4   MAJOR-GENERAL MPEMBE: Yes.
5   CHAIRPERSON: You should have said, "Look
6 here, I'm in charge here; I'm the overall commander. I say
7 3:30." The fact that you left it to Major-General
8 Annandale and he in fact took the initiative and fixed the
9 time, may be used as a factor, as a fact to argue that you
10 were sidelined. I'm just giving you a chance to deal with
11 it, that's all.
12   MAJOR-GENERAL MPEMBE: Chairperson,
13 knowing that Major-General Annandale as chairing, knowing
14 that Major-General Annandale was chairing, as I normally
15 do, I was checking those that I would see it could cause an
16 immediate problem, I will stop it and change it. But as
17 I'm saying it on that day I couldn't see it that way, but
18 as you, as I understand is that I should actually have said
19 but no, not 15:30, maybe at what time.
20   CHAIRPERSON: Now in the statement that I
21 was quoting to you from, which is GGG12, you said this in
22 the last paragraph 56, "I wish to state that if I'd been
23 told immediately after scene 1, but before scene 2, that
24 people had been killed, I would have directed that police
25 members do a show of force and contain the situation while

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1 attending to the scene around the kraal. Effectively I
2 would have directed that we do the same thing that I'd done
3 on Monday, 13 August." So you say "If I'd been told that
4 people had been killed," but I take it you didn't have to
5 be told in as many words. If you realised that people had
6 been killed, you would have done that. Is that right?
7   MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson, if I realised, or if I was made being aware –
9   CHAIRPERSON: Yes, yes, I understand.
10   MAJOR-GENERAL MPEMBE: Yes.
11   CHAIRPERSON: Would you have only done
12 that if you'd been, if you'd realised that people were
13 actually killed, or would it have been enough for you to do
14 what you say you would have done, if you'd realised that
15 there was a very strong possibility, if not probability,
16 that people had been killed?
17   MR NGALWANA: Perhaps the witness doesn't
18 understand the difference between probability and
19 possibility –
20   CHAIRPERSON: Well, do you understand the
21 question, or don't you?
22   MAJOR-GENERAL MPEMBE: Chairperson,
23 saying with the probability or –
24   CHAIRPERSON: Yes, there was a strong
25 probability. I originally said possibility. I withdraw

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1   that. If you'd realised that there was a strong
2   probability that people had been killed, you didn't know
3   they actually were killed but there was a strong
4   probability, it was very probable that they were, would you
5   have also acted as you say here in paragraph 56? Or did
6   you have to know they were actually killed before you did
7   what, or before you would have done what you describe there
8   in para 56?
9   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
10   and that, as I have explained it in my statement, that it
11   was, I said it with the benefit of hindsight –
12   CHAIRPERSON: Yes, yes, no, no, I
13   understand that. So you agree with me then, or don't you?
14   Do you agree with me that even if you hadn't been told that
15   people had died, even if you hadn't realised that people,
16   that definitely people had died, but there was a strong
17   probability, it was very probable that people had died,
18   would you also have acted as you're saying here in para 56?
19   MAJOR-GENERAL MPEMBE: Correct,
20   Chairperson.
21   CHAIRPERSON: Alright. Now in the
22   occurrence book there is an entry which I want to read to
23   you. It's exhibit FFF25. It's paragraph 25, and it's note
24   1017. It reads as follows. If you want to see it, you
25   can, but it's quite short. 15:55, I'm not sure if the time

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1   is right, but I think it's probably more or less.
2   "Situation report, Papa1 reporting the group are moving to
3   TRT members and they try to attack them. Papa1 reporting
4   that the people are moving around and some are down." Now
5   I think you told us that you actually heard that over the
6   radio when you walked to the helicopter. Is that right?
7   MAJOR-GENERAL MPEMBE: Correct,
8   Chairperson.
9   CHAIRPERSON: Now the implications of
10   that surely were clear to you. The group means the
11   strikers, isn't it?
12   MAJOR-GENERAL MPEMBE: Correct,
13   Chairperson.
14   CHAIRPERSON: Now originally the people,
15   the TRT were going to be behind the POP people, weren't
16   they?
17   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
18   CHAIRPERSON: And the POP people were
19   going to use less than lethal force, right? Water cannon,
20   teargas, stun grenades, and so on. Is that right?
21   MAJOR-GENERAL MPEMBE: Correct,
22   Chairperson.
23   CHAIRPERSON: If those methods weren't
24   enough to disperse the people, deter them from advancing,
25   then the plan was, as I understand it, the POP people were

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1   going to take refuge in the Nyalas. Is that right? And
2   the TRT people would take over because the POP people
3   wouldn't be able to defend themselves against an attack by
4   armed strikers. Do I understand the plan correctly?
5   MAJOR-GENERAL MPEMBE: Correct,
6   Chairperson.
7   CHAIRPERSON: Now the fact that this
8   report said that the group are moving to TRT members,
9   clearly conveys that the POP people then got out of the
10   way, the TRT people are now in the front line, and the note
11   continues, "They try to attack them." Now "they" obviously
12   means the strikers, not the TRT people. Now if the
13   strikers had tried to attack the TRT people, what would the
14   TRT people have done in response? They would have defended
15   themselves, I take it. Is that right?
16   MAJOR-GENERAL MPEMBE: Correct,
17   Chairperson.
18   CHAIRPERSON: They would have used their
19   assault rifles and fired at the advancing strikers. Is
20   that right?
21   MAJOR-GENERAL MPEMBE: Correct,
22   Chairperson.
23   CHAIRPERSON: I know that wasn't intended
24   as the first part of the plan. The first part of the plan
25   was the POP people would deal with them with less than

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1   lethal force, but obviously that is now, that stage had
2   been passed. The TRT people would have fired their assault
3   rifles. Some of the group would have been injured at the
4   very least, or possibly killed. Is that right?
5   MAJOR-GENERAL MPEMBE: Correct,
6   Chairperson.
7   CHAIRPERSON: And that's why when the
8   report went on, people moving around and some are down,
9   surely that would have indicated to you that there was – to
10   put it gently – a strong probability that people had been
11   killed. You heard that. You agree with that proposition
12   that I put to you?
13   MAJOR-GENERAL MPEMBE: Chairperson, with
14   the proposition I agree, but when it was said by Papa1, I
15   couldn't understand because Papa1, it was Brigadier Calitz.
16   CHAIRPERSON: Ja.
17   MAJOR-GENERAL MPEMBE: And now to me I
18   couldn't understand where, now where was Brigadier Calitz
19   by then, because if he says he's Papa1 and he's Brigadier
20   Calitz, there was a confusion there.
21   CHAIRPERSON: Ja, but wherever he was,
22   does his actual position matter? He was clearly in a
23   position to see what was happening, and what he saw was a
24   group of strikers advancing on the TRT members, which means
25   the POP people had already gone, trying to attack them,

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1 with obviously predictable consequence, and then after that
2 some were down. Now surely that conveyed - being realistic
3 about the matter - as a high degree of probability, that
4 some people had been shot and were at the very least lying
5 injured. Isn't that right?
6   MAJOR-GENERAL MPEMBE: Correct,
7 Chairperson.
8   CHAIRPERSON: Well, if that's so, why
9 didn't you act as you say you would have acted in para 56?
10   MAJOR-GENERAL MPEMBE: Chairperson, why I
11 was talking about Brigadier Calitz, because the policy in
12 Public Order Policing says that if the people have
13 regrouped, because that's the, have regrouped again, you
14 should continue disarming the people. But now Papa1, that
15 report in the OB, that's why I say if it was Papa, if it
16 was really Brigadier Calitz, then I couldn't understand why
17 it could not have been said it's him but with the benefit
18 of the hindsight, Chairperson, as I said he said also he
19 did not even see that people have died.
20 [12:32] CHAIRPERSON: Does it matter who it was.
21 If someone in PAPA 1 gave that report over the radio, the
22 person concerned wouldn't have made it up, wouldn't have
23 broadcast false information, whoever said it, who heard and
24 there was no reason to not believe it, isn't that right?
25   MAJOR-GENERAL MPEMBE: I think my problem

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1 was there because when the operation is in the hands of the
2 operational commander actually he is the one because what I
3 was afraid of is to confuse the people. To give an
4 instruction where I was not there on the scene because
5 probably of what was happening that is what was my problem
6 at that time.
7   CHAIRPERSON: Ja, but you see the problem
8 is you were the overall commander. You tell us in Para 56
9 what you would have done in certain circumstances, it
10 appears that that circumstance something close to it
11 existed. You say you then issued a direction to the police
12 members to do a show of force and contain the situation
13 while attending to the scene around the kraal. Effectively
14 you would have stopped the advance to scene 2 because the
15 situation would have been frozen. The situation could then
16 have been assessed as to what was happening and then the
17 situation at scene might well have been dealt with
18 differently. That's effectively what you're saying isn't
19 it? And that would have saved - is that right?
20   MAJOR-GENERAL MPEMBE: In a sense of
21 saying particularly for Brigadier Calitz, as I have
22 explained that with regard to General Naidoo and Kidd I
23 could not have done anything, Chairperson because that was
24 not reported to me.
25   CHAIRPERSON: I understand that.

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1   MAJOR-GENERAL MPEMBE: Yes.
2   CHAIRPERSON: But if tell everyone must
3 do what you said here in 56 I take it Kidd denied he would
4 have heard that too. If you'd said what you say in 56 you
5 would have done, now I take it Kidd and Naidoo would have
6 heard you also wouldn't they?
7   MAJOR-GENERAL MPEMBE: They could have
8 heard me yes, Chairperson.
9   CHAIRPERSON: And if that had happened
10 then there is - it's difficult to predict exactly what
11 would have happened but it does look as if some of the
12 killings at scene 2, some at least of the killings at scene
13 2 might not have happened. Is that right?
14   MAJOR-GENERAL MPEMBE: Chairperson, I am
15 not sure. As I understand from General Naidoo and Captain
16 Kidd and as I'm saying, Chairperson, again it was my
17 problem to say but where was Brigadier Calitz and why it
18 was not reported by him but I was afraid of confusing the
19 members on the ground.
20   CHAIRPERSON: If you'd taken the risk of
21 confusion the results might have been different but let's
22 not take that any further. The next point I want to -
23 paragraph I want to deal with is paragraph 52 and 53 of
24 that statement, page 22. This is GGG12 again, paragraph 52
25 and 53. If you've got that in front of you it's page 22.

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1   MAJOR-GENERAL MPEMBE: Chairperson, it's
2 paragraph?
3   CHAIRPERSON: 52 and 53.
4   MAJOR-GENERAL MPEMBE: Oh yes,
5 Chairperson.
6   CHAIRPERSON: You've got them? Page 22,
7 you've got them?
8   MAJOR-GENERAL MPEMBE: Yes, Chairperson.
9   CHAIRPERSON: In 52 you tell us that you
10 went back to the JOC, after having been in the helicopter
11 for about 20 minutes and you say how you arrived, when you
12 arrived at the JOC you enquired whether the scene was being
13 attended to and you're now telling us what happened when
14 you got back at the JOC which must been, I don't know
15 exactly when but sometime after quarter past four, probably
16 closer to half past four was it? Is that right? Am I
17 right?
18   MAJOR-GENERAL MPEMBE: Correct,
19 Chairperson.
20   CHAIRPERSON: So you went back to the JOC
21 and you enquired whether the scene was being attended to,
22 Brigadier Van Zyl confirmed so, Brigadier Pretorius said
23 IPID had been informed. Major Naidoo confirmed he was
24 taking emergency medical services based at forward holding
25 area 1 to the koppie. Next paragraph "I immediately left

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1 for the Marikana Police Station with Brigadier Seboloke. I
2 found the conditions not conducive, the police station was
3 under renovation, it didn't have power, cells to detain the
4 arrested. I approached mine management and SAPS was
5 provided with a processing space, a short distance from the
6 JOC to utilise as a processing centre." Now that according
7 to this statement made by you in November appears to have
8 taken place immediately after what's set out in 52, Para 52
9 which was after you got back to the JOC, having been in the
10 helicopter. It didn't happen in the morning. It happened
11 in the afternoon after you got back to the JOC from the
12 helicopter. That's what this paragraph says. Is that
13 wrong?
14   MAJOR-GENERAL MPEMBE: Chairperson, you
15 interpreting correct but what I was actually trying to
16 explain here and that's what you even asked me did you
17 approach them. I was going to check what was given to
18 Brigadier Seboloke and Van Zyl in the morning. I wanted to
19 confirm it myself and also to make sure that what we tasked
20 them in the morning is actually have happened.
21   CHAIRPERSON: I don't understand that.
22 Why didn't you just phone them up and say look here I
23 received a report about the situation at your police
24 station. We've got some arrested people we want to detain
25 have you got cells in which we can detain them and have you

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1 got power. You didn't have to go there, did you?
2   MAJOR-GENERAL MPEMBE: Chairperson, with
3 my experience with some of the members they will say things
4 are right and when you wanted to actually to effect what
5 they have said you normally find it very different.
6   CHAIRPERSON: I understand, this is the
7 converse case. You'd been told in the morning as I
8 understand it that things weren't right, isn't that
9 correct? They didn't tell you in the morning, ja sure
10 bring as many arrested people as you can find, we can
11 accommodate them. They told you did they not, according to
12 you, you didn't enquire yourself, I think you asked someone
13 else to enquire for you but you were told that there was
14 this problem, weren't you?
15   MAJOR-GENERAL MPEMBE: In the morning,
16 Chairperson, we were told that this is the condition of the
17 police station.
18   CHAIRPERSON: Ja.
19   MAJOR-GENERAL MPEMBE: And then I said to
20 Brigadier Seboloke and Van Zyl because they were given
21 different tasking probably, precisely each one of them knew
22 what was given. But when I was given the feedback then I
23 had just to confirm what was said there could actually have
24 been correct.
25   CHAIRPERSON: I see, thank you. Now, I

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1 want to move to another topic. I think it's been put over
2 and over again in this Commission and I think it's accepted
3 by SAPS that it's not a crime to take part in an
4 unprotected strike. If you take part in an unprotected
5 strike you run severe civil consequences, you can be
6 dismissed and you can't an order that you be reinstated.
7 It's not a crime.
8   MR NGALWANA: Chair, that's not a correct
9 legal proposition -
10   CHAIRPERSON: It is as a matter of fact.
11 I'm not prepared to argue it with you now, that is correct.
12 Shall we carry on? It's not a crime, that's the legal
13 proposition I'm putting, it's not a crime to take part in
14 an unprotected strike. Do you accept that?
15   MR NGALWANA: Chair, that's not a correct
16 legal proposition.
17   CHAIRPERSON: Is it a crime?
18   MR NGALWANA: Yes, it is a criminal
19 offence, Chair which -
20   CHAIRPERSON: To do what?
21   MR NGALWANA: - which is punishable by a
22 term of imprisonment or a fine.
23   CHAIRPERSON: Under what section of the
24 Labour Relations Act?
25   MR NGALWANA: No, it's not the Labour

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1 Relations Act, it's the Regulation of Gatherings Act,
2 Chair.
3   CHAIRPERSON: No, we're not talking about
4 gatherings, we're talking about taking part in an
5 unprotected strike. It's a different matter.
6   MR NGALWANA: I beg your pardon.
7   CHAIRPERSON: Yes, alright. You'll
8 withdraw your objection before I overrule it.
9   MR NGALWANA: Absolutely, Chair,
10 absolutely.
11   CHAIRPERSON: Now let's go back to where
12 we were. It's not a crime to take part in an unprotected
13 strike, do you accept that? Do you accept that?
14   MAJOR-GENERAL MPEMBE: I'll accept it,
15 Chairperson.
16   CHAIRPERSON: And I think to be fair to
17 you, you made it quite clear on the 13th when you addressed
18 the strikers by the railway line. You weren't going to
19 deal with them for taking part in a strike, all you were
20 concerned about was the violence. And the violence which
21 was rendered probably by the fact that they were in
22 possession of dangerous weapons. Is that right?
23   MAJOR-GENERAL MPEMBE: Correct,
24 Chairperson.
25   CHAIRPERSON: And I think it's also fair

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1 to say that the police attitude was, up to a certain point
2 was consistent in that regard. I think Lieutenant-Colonel
3 McIntosh also stressed, did he not that we're not concerned
4 with the strike, that's between you and Lonmin and we're
5 not dealing with that. We're just concerned about the
6 dangerous weapons. Is that correct? It was because the
7 dangerous weapons were there that the section that Mr
8 Ngalwana refers to comes into operation because the
9 gathering then became an illegal gathering because the
10 people were armed. That's correct isn't it?
11 　　　　MAJOR-GENERAL MPEMBE:　　　　It's correct,
12 Chairperson, maybe I may add that also with the killings
13 and the -
14 　　　　CHAIRPERSON:　　　　Yes, yes, yes, sorry, sorry
15 what had happened - there are protected - I'm sorry, there
16 are unprotected strikes and unprotected strikes. There are
17 unprotected strikes that are peaceful, there's nothing with
18 them as far as the criminal law is concerned, there are
19 unprotected strikes which people try to enforce by
20 violence, intimidation and violence, in some cases even
21 murder. So if there's an unprotected strike which people
22 to enforce by murder and mayhem the police have to deal
23 with that to uphold the criminal law. To arrest the
24 murderers, arrest the intimidators and deal with the
25 situation from a law and order perspective. Is that

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1 correct?
2 　　　　MAJOR-GENERAL MPEMBE:　　　　Correct,
3 Chairperson.
4 　　　　CHAIRPERSON:　　　　But it's not the police's
5 job to end the strike, that's a civil matter, that's
6 between the strikers and the employers and you to be fair
7 acted consistently in accordance with that principle. Is
8 that correct?
9 　　　　MAJOR-GENERAL MPEMBE:　　　　Correct,
10 Chairperson.
11 　　　　CHAIRPERSON:　　　　As did Lieutenant-Colonel
12 McIntosh. Right?
13 　　　　MAJOR-GENERAL MPEMBE:　　　　Correct,
14 Chairperson.
15 　　　　CHAIRPERSON:　　　　You were present at the
16 media conference addressed by the Provincial Commissioner
17 at 9:30. You were, I think, given a copy of HHH40. Would
18 you look at it again please? Turn this time to page 11.
19 Have you got it?
20 　　　　MAJOR-GENERAL MPEMBE:　　　　Chairperson, I am
21 on page 11.
22 　　　　CHAIRPERSON:　　　　Good, would you look at
23 line 18 please? Now remember she's already said that we're
24 going to end the situation today and now in answer to a
25 question, I think, from one of the reporters there she says

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1 this "I think the question that relates to that I'm saying
2 we are ending the strike today." Now it wasn't the
3 intention of the police to end the strike was it? That
4 we've agreed would have been inappropriate. That wouldn't
5 have been enforcing the criminal law, that would be have
6 been invading the civil sphere. So when she said "we are
7 ending the strike today" she wasn't correct was she?
8 　　　　MAJOR-GENERAL MPEMBE:　　　　I would say,
9 Chairperson, I don't how she said it.
10 　　　　CHAIRPERSON:　　　　Well I read you what she
11 from the transcript.
12 　　　　MAJOR-GENERAL MPEMBE:　　　　But I'll tell you
13 what I would say that it was to say to end what was
14 happening -
15 　　　　CHAIRPERSON:　　　　Well that's not the
16 language she used. She earlier had spoken about the
17 violence, I think, but she now she says she's going to end
18 the strike. Now did you remonstrate with her afterwards
19 and say look here, Provincial Commissioner, we're not here
20 to end the strike, that would be an improper act, exercise
21 of police power. We are simply here to end the violence.
22 Did you say that to her?
23 　　　　MAJOR-GENERAL MPEMBE:　　　　Chairperson, I
24 didn't say it. Actually when she gave the speech or talk
25 there I didn't see any speech that was written as is

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1 normally done, as I've indicated earlier to say whether was
2 there any speech prepared or was it prepared by somebody
3 else. These notes as the Chairperson can see it we found
4 them after the media briefing and then what then he has
5 said sometimes it might not have been have been
6 understanding it in the manner that is now written here.
7 And that is as a result of that, Chairperson, I did not go
8 to her and say but it's not our work to end up the strike.
9 　　　　CHAIRPERSON:　　　　You see if you read the
10 whole transcript you'll see that after she'd made the
11 initial remarks, part of which I quoted to you, they then
12 took questions and she got some questions from various
13 journalists there and when she answered the question you
14 see, and the paragraph I read you now is an answer to one
15 of the questions. So she wasn't speaking from prepared
16 speech at that stage. She was ad-libbing as we would say.
17 Now the point is it was quite a serious statement for her
18 to make "we're ending the strike," which we've agreed would
19 not be an appropriate exercise to police power. Do you
20 agree with that?
21 　　　　MAJOR-GENERAL MPEMBE:　　　　Ja, I agree with
22 that, Chairperson.
23 　　　　CHAIRPERSON:　　　　So I must - you're the
24 Deputy Commissioner, so why didn't you go to the Provincial
25 Commissioner and say look here, perhaps afterwards, it

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1 might have been a bit embarrassing to do it there in front
2 of the journalists, but afterwards to say to her look for
3 heaven's sake we're not here ending the strike if that's
4 what you think. You must disabuse your mind of that
5 immediately and you never raised it with her at all.
6   MAJOR-GENERAL MPEMBE: Chairperson, now
7 that the Chairperson put it also in perspective to say she
8 was answering the questions, she did not answer all the
9 questions and when we were all there. There were other
10 medias that were late where she could go there like I
11 remember of the Etv but there were other medias where I was
12 present and that's why I am saying if this was said in my
13 presence and I agree, Chairperson, that I should have done
14 it. But as I have explained earlier my interpretation as I
15 said there no notes but if it was done by Etv then I would
16 say to the Chairperson I was not there.
17   CHAIRPERSON: I understand, not on
18 evidence that I've heard in the Commission, I understand
19 from a recording I heard that she also said something like
20 that on the ENCA interview afterwards. "We'll end the
21 strike," but I didn't ask you about that because I assumed
22 you weren't present. That's something which she will
23 presumably be asked about when she gives evidence.
24   MAJOR-GENERAL MPEMBE: Correct,
25 Chairperson.

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1   CHAIRPERSON: Anyway I've put my
2 questions to you, thank you very much. Anyone wish to ask
3 any questions arising from any of the questions I asked?
4   MR NGALWANA: Yes, I do, Chair. May I go
5 ahead, Chair? General, you were asked by the Chairman
6 whether you agree that the strikers on the 13th of August
7 2012 may have thought that they were being fired at with
8 live ammunition when the stun grenade was thrown. Do you
9 remember that?
10   MAJOR-GENERAL MPEMBE: Correct,
11 Chairperson.
12   MR NGALWANA: Did you know what the
13 strikers were thinking when Lieutenant Baloyi threw the
14 stun grenade at them on the 13th of August 2012?
15   MAJOR-GENERAL MPEMBE: Chairperson is
16 saying that at that time did I know what they were
17 thinking?
18   MR NGALWANA: Yes, did you know what they
19 were thinking?
20   MAJOR-GENERAL MPEMBE: At that time I did
21 not know but what I'm saying now with what they are saying
22 to the statement is that the sounds of the stun grenade
23 that could have given them to say that that could have been
24 a firearm.
25   MR NGALWANA: But that's not what I'm

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1 asking, General. General, on the 13th of August 2012 a stun
2 grenade is thrown, at that time it's suggested to you that
3 the strikers may have thought they were being fired at with
4 live ammunition. Did you, at the time when the stun
5 grenade was thrown by Lieutenant Baloyi, know what the
6 strikers were thinking? Did you know what was going on in
7 their minds?
8   MAJOR-GENERAL MPEMBE: No but what I'm
9 saying - I'm sorry, Chairperson, I always like to explain.
10   CHAIRPERSON: Explain. It's important he
11 be given a chance to explain. It was never put to you that
12 that's what you thought at the time but Mr Ngalwana is
13 entitled to ask you whether you realised it at the time and
14 I understood you to say you didn't. With hindsight you
15 recognised that it's so but if you want to explain
16 something further go ahead, it's your evidence.
17   MAJOR-GENERAL MPEMBE: My explanation is
18 with the sounds of the - they could have think at that time
19 but that me I could have realised that that is what they
20 were thinking.
21   MR NGALWANA: The Chairperson put to you
22 that you must have foreseen the possibility of blood shed,
23 perhaps not on the scale at which it happened. Do you
24 remember that?
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2   MR NGALWANA: I'm sorry that's not a
3 question, I just put this as a note.
4   CHAIRPERSON: - say perhaps, I think he
5 said and I didn't suggest there was anything wrong with it,
6 he did not foresee, I think I indicated that didn't I? Did
7 not foresee bloodshed on the scale that took place.
8   MR NGALWANA: Yes, that's why I only put
9 it as a note, Chair. General, there was also a proposition
10 put to you which had been put by Mr Bizos some time ago
11 about your being side-lined. One of the indications it was
12 alleged was that the instruction was given to Major-General
13 Annandale to implement stage 3 and not to you who were a
14 CJOC. Did you have reason to disagree, well let me start
15 this, was Major-General Annandale your deputy as a CJOC in
16 the hierarchy?
17   MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson, that's also it.
19   MR NGALWANA: Did you have any reason to
20 disagree with him saying the implementation should start at
21 3:30?
22 [12:52] MAJOR-GENERAL MPEMBE: No, as I said that
23 I didn't see it as a problem at the time.
24   COMMISSIONER HEMRAJ: That decision to
25 start –

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1   MR NGALWANA: You were referred –
2   COMMISSIONER HEMRAJ: Sorry, that
3   decision to start at 3:30, was there any discussion about
4   it prior to it being recorded as a discussion, as a
5   decision?
6   MAJOR-GENERAL MPEMBE: No, Chairperson,
7   the only thing that I remember General Annandale, it was
8   that it should be done before it becomes sunset, but –
9   COMMISSIONER HEMRAJ: Was there no
10   discussion about that?
11   MAJOR-GENERAL MPEMBE: No, it was raised
12   there already to say at least let us start by 13:30 so that
13   it could not take us until it is very late and it is dark.
14   MR NGALWANA: You were referred to FFF25,
15   entry 1017, and with your finger on that, you were also
16   referred to GGG12, paragraph 56 of your second statement.
17   I recall your first statement was an IPID statement.
18   GGG12, paragraph 56, and it was put to you that you would
19   have known with reference to entry 1017 in FFF25, that
20   people would have been shot, some of them injured, perhaps
21   some of them killed when they attacked the TRT. That was a
22   situational report at 1017. You recall that?
23   MAJOR-GENERAL MPEMBE: Correct,
24   Chairperson.
25   MR NGALWANA: When, or did you hear that

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1   situational report on your radio?
2   MAJOR-GENERAL MPEMBE: I did hear when it
3   was said that the people were attacked – what is it? – the
4   group were moving and attacking TRT.
5   MR NGALWANA: When did you hear it? Do
6   you remember?
7   MAJOR-GENERAL MPEMBE: No, it is on the
8   radio. It was on the radio.
9   MR NGALWANA: Yes, at roughly what time?
10   If you remember.
11   MAJOR-GENERAL MPEMBE: I would not be
12   precise with the time, but I, it was the time when I was
13   going to the chopper.
14   MR NGALWANA: With reference to what you
15   say in paragraph 56 of your statement, let's read it
16   together, General. It's exhibit GGG4. This is what you
17   say, and I quote – have you got it with you?
18   MAJOR-GENERAL MPEMBE: Is it GGG?
19   MR NGALWANA: 12, I beg your pardon.
20   MAJOR-GENERAL MPEMBE: Yes, yes.
21   MR NGALWANA: GGG12, paragraph 56.
22   MAJOR-GENERAL MPEMBE: I do have GGG12,
23   yes.
24   MR NGALWANA: You say, "I wish to state
25   that if I had been told immediately after scene 1, but

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1   before scene 2, that people had been killed, I would have
2   directed that police members do a show of force and contain
3   the situation while attending to the scene around the
4   kraal. Effectively I would have directly that we do the
5   same thing that I had done on Monday, 13 August 2012." Now
6   as CJOC, would you have been able to stop the operation
7   from the dizzy heights of the Coin Security chopper?
8   CHAIRPERSON: [Microphone off, inaudible]
9   interrupt you –
10   MR NGALWANA: Let me rephrase the
11   question –
12   CHAIRPERSON: But were you in the dizzy
13   heights in the Coin helicopter when you heard that over the
14   radio? I understood you were on the ground, walking
15   towards the helicopter. Is that right?
16   MAJOR-GENERAL MPEMBE: Correct,
17   Chairperson.
18   MR NGALWANA: Would you have been able to
19   stop that operation without the concurrence of the
20   operational commander?
21   MAJOR-GENERAL MPEMBE: No, Chairperson,
22   as I want to explain this, because even though the entry
23   said Papa1, that was my worry to say but Papa1 should be
24   Brigadier Calitz and as an operational commander he should,
25   because he's in a better view to see what is happening, so

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1   that is where the confusion came, as I've said, so that's
2   why I could not have done and expected Brigadier Calitz to
3   do it. But if it's that the people were really dead, then
4   I could have stopped it.
5   MR NGALWANA: Could you have stopped it
6   without visuals of what was going on at the scene, General?
7   MAJOR-GENERAL MPEMBE: No, Chairperson,
8   and this is what already I've said, because I expected that
9   Brigadier Calitz will say people have died. At least if
10   that could have been confirmed by Brigadier Calitz.
11   MR NGALWANA: So when you say in
12   paragraph 56 of GGG12, "If I had been told immediately
13   after the scene," you're not saying if I were at the scene,
14   if you had been told and you are at the JOC, you have no
15   visuals, so you don't see what's going on at the scene,
16   would you have been able to stop, without the visuals,
17   without seeing what is going on at the scene?
18   MAJOR-GENERAL MPEMBE: Without the visual
19   I could not have done, but what I was talking – okay,
20   because even on the radio, as I said it was not clear, even
21   though it was reported to say by Papa1, but my worry was
22   that is it, have people died or not.
23   MR NGALWANA: I'm not sure what the
24   elaboration is about. General, let me ask it finally, this
25   is the last question I'm putting to you on this issue,

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1   paragraph 56. You are at the JOC. You receive a
2   situational report that strikers are attacking TRT; TRT are
3   shooting in self-defence or private defence. Some of the
4   strikers are down. You hear this on the radio at the JOC.
5   You're not seeing anything, right. You're not the
6   operational commander. You're sitting there, you're the
7   CJOC. Is it within your power to stop the operation just
8   by hearing, not seeing, and without consulting the
9   operational commander, who sees things?
10   MAJOR-GENERAL MPEMBE: No, Chairperson.
11 As I've said, I do not want to confuse.
12   MR NGALWANA: Thank you, Chair, those are
13 the question.
14   MR SHOZI: Chair, just one small point,
15 with your leave –
16   CHAIRPERSON: Yes.
17   MR SHOZI: And this arises really –
18   CHAIRPERSON: You can even ask it if it's
19 a big point.
20   MR SHOZI: Chair, this arises in the
21 context of the questioning which you had with General
22 Mpembe earlier in the context of HHH40. Now you will
23 recall, Chair, that on the 10th of August, it's a Friday,
24 Lonmin obtained a court order which declared, among other
25 things, the strike unprotected. Now that order was served

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1   on both unions and was displayed on the notice boards. So
2   to the extent that the strikers embarked upon the strike
3   beyond the 10th of August, they were in contempt of a court
4   order. We thought we must just bring it to your attention,
5   Chair.
6   CHAIRPERSON: I take it that's an issue
7   that can be argued later, but it is common cause there was
8   such an order –
9   MR SHOZI: The point, Chair –
10   CHAIRPERSON: Yes, yes, I think I
11 understand what the point is, but if you want to elaborate
12 on it you may do so. You don't want to elaborate on it;
13 you just made the point, right.
14   MR SHOZI: Ja, I've made the point,
15 Chair. Thanks.
16   CHAIRPERSON: Anyone else want to ask
17 questions arising? It seems not. We will adjourn now
18 until Thursday morning at 9 o'clock. I've explained
19 already what will happen between now and then. The
20 General, you're excused. Thank you for your attendance
21 over this long period and for the evidence you gave, and as
22 I've said before, those who wish to oppose the application
23 for postponement must file their papers with the secretary
24 of the Commission before close of business on Tuesday, and
25 obviously you'll arrange that copies are given to the other

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1   parties, and the application for postponement will be
2   argued on Friday. We will now adjourn.
3   [13:01] [Microphone off, inaudible] adjourn the
4   proceedings, I understand you want to say something.
5   MAJOR-GENERAL MPEMBE: Chairperson, it
6   was to express my gratitude in the manner in which the
7   Commissioners and esteemed Commission, they have asked me
8   and they have guided me in giving this evidence, and to me
9   it was also a learning curve, and I could be able to put
10 the story the way in which I understand what could have
11 happened. Thanks, Chairperson.
12   CHAIRPERSON: Thank you, General. We now
13 will adjourn.
14   [NO FURTHER QUESTIONS – WITNESS EXCUSED]
15   [COMMISSION ADJOURNED]
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