

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 149    15 NOVEMBER 2013    PAGES 16591 TO 16710



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<p style="text-align: right;">Page 1</p> <p>1 [PROCEEDINGS ON 15 NOVEMBER 2013]  2 [09:17] CHAIRPERSON: The Commission resumes.  3 Major-General, you're still under oath.  4 WILLIAM MPEMBE: Yes, Chairperson.  5 CHAIRPERSON: As was indicated yesterday,  6 Mr Mpofu is not available today and his cross-examination  7 is standing over until Monday, which also means that the  8 documents that he was going to cross-examine the Major-  9 General on and which the Major-General was shown and given  10 opportunity to study, and also presumably that cross-  11 examination will presumably stand over until Monday. Mr  12 Chaskalson, you've said you will cross-examine this  13 morning.  14 MR CHASKALSON SC: That's correct,  15 Chairperson.  16 CHAIRPERSON: Am I correct saying the  17 documents which Mr Mpofu wants to rely on will therefore  18 also, that cross-examination will stand over till Monday?  19 Are you proposing to ask some questions about them, in  20 which case we must ascertain that the witness is ready to  21 be cross-examined on them.  22 MR CHASKALSON SC: I've provided a list  23 to the witness of documents to which I intended to refer.  24 There was some overlap between my list and Mr Mpofu's list,  25 but there is one document in respect of which we need to</p>	<p style="text-align: right;">Page 3</p> <p>1 Chairperson. But before I start, I do need to mention –  2 CHAIRPERSON: Yes, so please proceed.  3 MR CHASKALSON SC: I do need to mention  4 one document which was introduced by Mr Mpofu yesterday; it  5 is the unsigned statement of Major-General Mpebe which was  6 produced in August 2012. I think it was HHH62. SAPS have  7 indicated to us that this was in fact a draft document  8 prepared off notes taken at a consultation with Major-  9 General Mpebe and was never in fact signed and was  10 subsequently corrected in later consultations when certain  11 errors in the notes were picked up. In the circumstances I  12 do not propose to deal with that document in my cross-  13 examination today. There may be a debate over the status  14 of the document, whether privilege attaches to it. In our  15 submission that's a debate that would best be had in the  16 presence of Mr Mpofu because he may want to refer to the  17 document, and we would just want to consider our position  18 in that regard, and you know, may participate in that  19 debate if it ever takes place -  20 CHAIRPERSON: Yes.  21 MR CHASKALSON SC: - but do not propose  22 that it should take place.  23 CHAIRPERSON: Yes, obviously it doesn't  24 arise this morning. There was only one line that he wanted  25 to rely on, he told us. I don't know, but I suppose if the</p>
<p style="text-align: right;">Page 2</p> <p>1 place certain information on record. The –  2 CHAIRPERSON: [Microphone off, inaudible]  3 statements you were, Major-General, there are some  4 statements that you were asked to look at by Mr Mpofu,  5 which you were given at a very late stage yesterday. Have  6 you had an opportunity to study them in the interval  7 between yesterday and today?  8 MAJOR-GENERAL MPEMBE: Correct,  9 Chairperson, I had an opportunity, except the document that  10 I was given this morning again –  11 CHAIRPERSON: We'll talk – I don't know  12 anything about that, but we'll discuss that separately.  13 MAJOR-GENERAL MPEMBE: Okay.  14 CHAIRPERSON: And then there's the  15 question of the video clip, that presumably will also stand  16 over till Monday.  17 MAJOR-GENERAL MPEMBE: Correct,  18 Chairperson.  19 CHAIRPERSON: Mr Chaskalson, you are now  20 stepping into the breach to fill the gap caused by Mr  21 Mpofu's temporary absence, to ask the questions that you  22 were intending to ask after Mr Mpofu had finished, if he  23 hadn't dealt with those topics in the interim. Is that  24 correct?  25 MR CHASKALSON SC: That's correct,</p>	<p style="text-align: right;">Page 4</p> <p>1 whole statement - if the statement is privileged, the  2 statement is privileged, even the line that Mr Mpofu wants  3 to rely on. Whether privilege applies to draft statements  4 taken not for litigation purposes and not for purposes of  5 obtaining legal advice, but in respect of evidence to be  6 given at the Commission, is a matter that I suppose we  7 should all look at in the interim, so if the point is  8 argued we will have the authorities at our fingertips. But  9 anyway, that's a matter that will raise its countenance  10 from above the trench when we proceed on Monday. Mr  11 Chaskalson, subject to that, you're ready to cross-examine?  12 CROSS-EXAMINATION BY MR CHASKALSON SC:  13 Yes, Mr Chairperson, and Major-General, if I might begin my  14 cross-examination by just quickly running, well, running  15 through your movements on Monday the 13th, with you, and I  16 don't want to get into the events at the incident where  17 there was the confrontation between the strikers and the  18 police, but I just want to track broadly what your  19 movements on the day were, and what I understand from your  20 statement is that you arrived at Marikana on Monday morning  21 with the Provincial Commissioner. Is that correct? Sorry,  22 Major-General, I saw you nod but just for the record, if  23 you could say yes.  24 CHAIRPERSON: Yes, please remember that  25 the, though the proceedings are being televised on YouTube,</p>

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1 I'm not sure that a permanent record is being kept, but in  
 2 any event, the transcribers are simply transcribing what is  
 3 said and they can't pick up when you nod your head, or when  
 4 you shake your head, for that matter. So if the answer is  
 5 yes, please say yes, and if the answer is no, please say  
 6 no, and don't just nod your head or shake your head because  
 7 that's not going to help us. You understand?  
 8 MAJOR-GENERAL MPEMBE: Correct,  
 9 Chairperson.  
 10 CHAIRPERSON: [Microphone off, inaudible]  
 11 MAJOR-GENERAL MPEMBE: That's correct,  
 12 yes.  
 13 MR CHASKALSON SC: Thank you, Major-  
 14 General, and then from paragraph 4 of your first statement,  
 15 GGG12, it appears that at 10 o'clock you were briefed by  
 16 Lonmin Mine management, and can I clarify with you, was  
 17 that a –  
 18 CHAIRPERSON: I take it the Mr Natasha  
 19 Viljoen in the second line of that paragraph is probably Ms  
 20 Natasha Viljoen, otherwise it must be somebody else.  
 21 MAJOR-GENERAL MPEMBE: I was with the  
 22 Provincial Commissioner, yes.  
 23 CHAIRPERSON: If we then refer to  
 24 paragraph 4 of the statement GGG12, I think it's about a  
 25 meeting you had with mine management, and in the second

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1 line there's a reference to a Mr Natasha Viljoen, and I was  
 2 just clarifying, either that Ms Natasha Viljoen, or it's  
 3 somebody else. What is the position?  
 4 MR SHOZI: It is Ms Viljoen, Chairperson.  
 5 CHAIRPERSON: From the ranks of Lonmin we  
 6 are told it's Ms Viljoen. Thank you.  
 7 MR CHASKALSON SC: Major-General, can I  
 8 clarify that briefing from Lonmin, was that a briefing  
 9 which you attended together with the Provincial  
 10 Commissioner?  
 11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 12 MR CHASKALSON SC: And did you have any  
 13 other meetings with Lonmin on the Monday morning?  
 14 MAJOR-GENERAL MPEMBE: Correct,  
 15 Chairperson.  
 16 MR CHASKALSON SC: Can you tell me about  
 17 those meetings?  
 18 MAJOR-GENERAL MPEMBE: It was not a  
 19 meeting as such, but it was when I confronted them about  
 20 the photos.  
 21 MR CHASKALSON SC: And at what time was  
 22 that?  
 23 MAJOR-GENERAL MPEMBE: I said it was in  
 24 the afternoon, and then we were told that we will be  
 25 assisted on the following day.

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1 MR CHASKALSON SC: Was that on the  
 2 Monday?  
 3 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 4 MR CHASKALSON SC: And before or after  
 5 the incident with the strikers at the railway line?  
 6 MAJOR-GENERAL MPEMBE: Long after the  
 7 incident.  
 8 MR CHASKALSON SC: And who was present at  
 9 that exchange with Lonmin?  
 10 MAJOR-GENERAL MPEMBE: Adv Moolman was  
 11 there and I also had Brigadier Van Zyl, because at that  
 12 time dockets were already being opened. I don't know  
 13 whether Brigadier Engelbrecht was there, but what I know is  
 14 that Brigadier Van Zyl was there and Adv Moolman was also,  
 15 she was always with me.  
 16 MR CHASKALSON SC: And was the Provincial  
 17 Commissioner still in Marikana at that time?  
 18 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 19 MR CHASKALSON SC: When did she return to  
 20 Marikana?  
 21 MAJOR-GENERAL MPEMBE: She returned after  
 22 the incident, but she was not with me when I met the  
 23 management at that time.  
 24 MR CHASKALSON SC: If I can just clarify,  
 25 was she in Marikana but not with you at that time, or was

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1 she not yet back to Marikana?  
 2 MAJOR-GENERAL MPEMBE: She was in  
 3 Marikana, but not with me.  
 4 MR CHASKALSON SC: And are you aware of  
 5 any meetings that the Provincial Commissioner had with  
 6 Lonmin without you on that day? Are you aware whether or  
 7 not the Provincial Commissioner met with Lonmin without you  
 8 at any time on that day?  
 9 MAJOR-GENERAL MPEMBE: I'm not aware of  
 10 such a meeting.  
 11 MR CHASKALSON SC: Now later that evening  
 12 the National Commissioner came to Marikana. Is that  
 13 correct?  
 14 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 15 MR CHASKALSON SC: And as I understand  
 16 it, some time after the National Commissioner came to  
 17 Marikana there was another meeting at Lonmin at which SAPS  
 18 were again briefed by Lonmin, this time in the presence of  
 19 the National Commissioner. Are you aware of that?  
 20 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 21 MR CHASKALSON SC: And were you present  
 22 then?  
 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 24 MR CHASKALSON SC: Was the Provincial  
 25 Commissioner present?

<p style="text-align: right;">Page 9</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  2 MR CHASKALSON SC: And are you aware of  3 any meetings between Lonmin and the National and Provincial  4 Commissioner that took place on the 13th without your  5 participation, without your presence?  6 MAJOR-GENERAL MPEMBE: I'm not aware of  7 such meetings.  8 MR CHASKALSON SC: So as far as you are  9 aware, you were present whenever Lonmin met the National  10 Commissioner or the Provincial Commissioner on the 13th?  11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  12 MR MATHIBEDI SC: Sorry, Mr Chairman, I  13 thought the –  14 CHAIRPERSON: Yes, Mr Mathibedi?  15 MR MATHIBEDI SC: - the questions posed  16 to General will deal with, you know, matters arising from  17 documents that were discovered subsequent to the witness  18 having testified, but it appears it still covers things  19 that were covered by Adv Madlanga then.  20 CHAIRPERSON: [Microphone off, inaudible]  21 MR CHASKALSON SC: Chairperson, I  22 appreciate that these questions don't -  23 CHAIRPERSON: Yes, sorry, Mr Chaskalson,  24 I wasn't recorded. So what's your answer?  25 MR CHASKALSON SC: Chairperson, I</p>	<p style="text-align: right;">Page 11</p> <p>1 you is as overall commander what responsibilities did you  2 have in relation to the financial management of the  3 operation? Were questions of cost of the operation  4 questions which were relevant to your position as overall  5 commander?  6 MAJOR-GENERAL MPEMBE: Chairperson,  7 normally such matters they are being dealt by finance  8 people that will, just like the planning team, then you  9 will have also those that are issuing the radios, logistics  10 will be handled by logistics people. You'll also be  11 supported by financial people.  12 MR CHASKALSON SC: Major-General, I can  13 understand that answer in the ordinary course of events,  14 but this was a particular kind of operation because what  15 you could do at the operation would depend on what  16 resources were at your disposal. Is that not correct?  17 MAJOR-GENERAL MPEMBE: It is correct,  18 Chairperson, but those other matters you normally as an  19 overall commander arrange them with the relevant people.  20 MR CHASKALSON SC: And who are the  21 relevant people for an operation like this at Marikana?  22 MAJOR-GENERAL MPEMBE: Chairperson, I  23 remember that most of the matters relating to that to  24 support, they were being given to Major-General Naidoo, and  25 there were people that were there issuing hand radios and</p>
<p style="text-align: right;">Page 10</p> <p>1 appreciate that these questions on their face don't appear  2 to traverse new matter, but they are necessary in  3 anticipation of questions that I am going to ask about new  4 matter. Their relevance will become clear within a few  5 minutes.  6 CHAIRPERSON: Mr Mathibedi, I think we  7 have to accept Mr Chaskalson's assurance as counsel that  8 that's the reason for these questions, so in the  9 circumstances I think he can proceed.  10 MR MATHIBEDI SC: I do, Mr Chairman.  11 CHAIRPERSON: Yes.  12 MR CHASKALSON SC: I'm in a slightly  13 difficult situation, Chairperson, because I do need to ask  14 two or three further questions which are of a similar  15 nature –  16 CHAIRPERSON: No, I've said you can  17 proceed. I've said I – and your learned friend agreed with  18 me, you've given us your assurance that these questions are  19 directed to matters which are new matter, which are  20 necessary to ask before new matter is traversed, and both  21 he and I accept your assurance, so you can carry on.  22 MR CHASKALSON SC: Thank you,  23 Chairperson. Major-General, I now want to ask you about  24 your responsibilities in relation to your position as  25 overall commander, and the first question I want to put to</p>	<p style="text-align: right;">Page 12</p> <p>1 also were taking care of the logistical matters.  2 MR CHASKALSON SC: My question doesn't  3 relate to logistics in the narrow sense of handing out hand  4 radios and making sure that there are enough hand radios  5 available. It's a broader question of relating to the cost  6 of an operation of this size, because you need to get  7 support in from other provinces, you need vehicles, you  8 need policemen, you need ammunition possibly, certainly  9 need equipment. Whose responsibility is it to ensure that  10 you get that large level of support that you need for an  11 operation of this nature? Is it the overall commander's  12 responsibility or is it somebody else?  13 MAJOR-GENERAL MPEMBE: Chairperson, I've  14 already answered the question that once you took up an  15 operation such as this, you actually have certain people  16 that are assisting you in that matter, and I can give in a  17 similar operation that has taken place during the World  18 Cup, I cannot be able to handle the resources, the finance  19 and the other matters. You normally have the people who  20 are doing that for you.  21 MR CHASKALSON SC: So are you saying that  22 questions of costs were just questions that didn't concern  23 you at all? Questions of the cost of the operation and  24 how, what resources would be available, what resources you  25 could pay for, are those questions which fell outside your</p>

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1 responsibilities are overall commander?  
 2 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 3 MR CHASKALSON SC: So what then were your  
 4 responsibilities as overall commander in relation to cost?  
 5 MAJOR-GENERAL MPEMBE: I said,  
 6 Chairperson, normally there will be people that you will  
 7 choose, or you will delegate that that matter should be  
 8 handled.  
 9 MR CHASKALSON SC: And apart from  
 10 delegation to people, did you in your individual capacity  
 11 as overall commander perform any functions in that regard?  
 12 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 13 MR CHASKALSON SC: Major-General, if I  
 14 can then take you to GGG4, which is the at this stage un-  
 15 agreed transcript of the meeting between Major-General  
 16 Mpembe – sorry, no, not GGG4 – you are Major-General  
 17 Mpembe, I'm sorry. JJJ192. JJJ192, the un-agreed  
 18 transcript between the Provincial Commissioner and Lonmin  
 19 on the Tuesday afternoon.  
 20 MAJOR-GENERAL MPEMBE: I have it,  
 21 Chairperson.  
 22 MR CHASKALSON SC: And I've just lost my  
 23 reference for a moment and I need to find it.  
 24 [09:37] COMMISSIONER HEMRAJ: [Microphone off,  
 25 inaudible] perhaps page 15 that you're looking for, Mr

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1 Chaskalson?  
 2 MR CHASKALSON SC: Right, Major-General,  
 3 if you can go to page 15, if we can get page 15 up on the  
 4 screen, and if you can go down to line 10, there the  
 5 Provincial Commissioner is recorded as expressing a concern  
 6 about the cost of the operation, and the words that are  
 7 attributed to her is, "That is what I was saying, you know.  
 8 The other key challenge is that all of these members that  
 9 are here, I have to pay them. So how much am I going to  
 10 cough out for all these days? I mean I have to, I've given  
 11 them now up until the weekend if we cannot sort this thing,  
 12 but my hope is that by tomorrow the latest," and on the  
 13 goes. So she had some sort of concern about cost. Was  
 14 that a concern that was ever conveyed to you?  
 15 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 16 I've already said that I did not know about the transcript  
 17 and I was not present.  
 18 MR CHASKALSON SC: No, I'm not talking  
 19 about those specific words or that specific exchange; I'm  
 20 asking did the Provincial Commissioner ever convey to you  
 21 that she was concerned about how much this operation was  
 22 costing?  
 23 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 24 MR CHASKALSON SC: She didn't? Did she  
 25 ever convey to you that there was a deadline of the weekend

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1 for the operation, that people had been given up until the  
 2 weekend?  
 3 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 4 I've already said that she has never prescribed any time or  
 5 period for me, and even the how.  
 6 MR CHASKALSON SC: Can I take you back to  
 7 your answer in relation to cost? Because if we go to GGG4,  
 8 which is the transcript of your exchange with the union  
 9 presidents, you say something at page 13 that does mention  
 10 cost. Can we go to page 13 of GGG4? And there if you go  
 11 down to line 25, or let's start at line 19, if we go up a  
 12 bit, there one of the other SAPS officers present says,  
 13 "General, I think that is, yes, that is something that we  
 14 can specifically work on the specifics in terms of that  
 15 process. I think we can work on that." And then you say,  
 16 "Right, I'm just going to play devil's advocate. It's my  
 17 job as a General if they do not, if they do not, yesterday  
 18 I've been here, President" - and you're talking, I think to  
 19 Mr Mathunjwa - "if you see the number of police that are  
 20 here, it's a lot of money that's been paid and me as  
 21 management, I need to produce results and my results and  
 22 services is safety and security." So you suggested to Mr  
 23 Mathunjwa that cost was an issue to you. Do you accept  
 24 that?  
 25 MAJOR-GENERAL MPEMBE: The outcome,

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1 Chairperson.  
 2 MR CHASKALSON SC: But you said,  
 3 "President, if you see the number of police that are here,  
 4 it is a lot of money that has been paid and me as  
 5 management, I need to produce results."  
 6 MAJOR-GENERAL MPEMBE: Chairperson, I  
 7 also said in my evidence-in-chief that it is the  
 8 responsibility of each and every senior officer to apply  
 9 the government policy, that's EEE, and if a situation can  
 10 be solved within a reasonable time, let that be, it should  
 11 happen, but you, I was not suggesting that we couldn't stay  
 12 there any longer period, as long as the matter is not yet  
 13 solved, and Chairperson, it's an objective evidence in this  
 14 Commission how I intended to resolve the matter as an  
 15 overall commander.  
 16 CHAIRPERSON: Right, I'd like to take an  
 17 adjournment for five minutes at this point.  
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 19 [09:47] MR CHASKALSON SC: General, are you  
 20 saying that you didn't concern yourselves with matters of  
 21 cost at Marikana?  
 22 MAJOR-GENERAL MPEMBE: Correct,  
 23 Chairperson, but what I'm saying is in terms of explaining,  
 24 it is the duty of every senior officer to manage your  
 25 program and I used the word in my evidence EEE,

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1 economically, efficiently and effectiveness. And that's  
 2 the policy of government, but it doesn't mean that I ever  
 3 communicated with General Mbombo on the issue of money.  
 4 And Chairperson, I need just to add in the examples that I  
 5 gave in front of this Commission I mentioned operations  
 6 that I held in which similar were uttered and those  
 7 operations took even longer than what had happened in  
 8 Marikana. And by then General Mbombo was not my provincial  
 9 commissioner.

10 MR CHASKALSON SC: Now, Major-General,  
 11 are you aware whether people or forces from outside the  
 12 province that were called up to Marikana were given any  
 13 deadline on the call up, whether the call up terminated at  
 14 the end of the week or before the weekend?

15 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 16 and I said many of the other call ups they were done when I  
 17 was on leave and communications with head office was done  
 18 when I was on leave.

19 MR CHASKALSON SC: And these details were  
 20 not communicated to you as overall commander, the details  
 21 of the call ups weren't communicated to you as overall  
 22 commander?

23 MAJOR-GENERAL MPEMBE: Chairperson, they  
 24 were not communicated, but my provincial commissioner,  
 25 Brigadier Calitz, informed me that call ups, General, had

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1 been and that's all is my concern, that I will get the  
 2 resources. But in that respect, yes, they were  
 3 communicated, but looking at the call ups itself the  
 4 administrative part of it I didn't even look at it.

5 MR CHASKALSON SC: So you didn't know the  
 6 duration of the call ups, you didn't know whether these  
 7 forces that you had at your disposal would be there for 24  
 8 hours, 48 hours, a week?

9 MAJOR-GENERAL MPEMBE: I did know that  
 10 they will always be there when I needed them unless I am  
 11 informed that others they will be withdrawn. But whether  
 12 they will be there 24 hours or what, but always they'll be  
 13 at my disposal until the operation is finished. Unless  
 14 there will be any other communication that will come and  
 15 say others they should return back.

16 MR CHASKALSON SC: And on what basis did  
 17 you know that, who communicated that to you?

18 MAJOR-GENERAL MPEMBE: Chairperson,  
 19 normally the communication will be done via the NATJOC.

20 MR CHASKALSON SC: That may be the case  
 21 normally, but in this specific case who communicated to you  
 22 that you had the resources that you needed indefinitely?

23 MAJOR-GENERAL MPEMBE: It's Brigadier  
 24 Calitz who normally communicate with the NATJOC and the  
 25 NATJOC will inform him that and if maybe the others will be

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1 taken they will communicate with Brigadier Calitz as the  
 2 Provincial Head.

3 MR CHASKALSON SC: And then you as  
 4 overall commander get your information from Brigadier  
 5 Calitz, is that correct, in relation to these matters of  
 6 deployments and resources?

7 MAJOR-GENERAL MPEMBE: Correct,  
 8 Chairperson, as delegated by me.

9 MR CHASKALSON SC: Major-General, can I  
 10 take you to a document which is HHH69? It's a document  
 11 which relates to the STF call up or which on its face  
 12 relates to the STF call up. And maybe if we can just go to  
 13 the end of the document because there's a signature line  
 14 for Major-General Annandale, you'll see at the end of the  
 15 document and this is in fact the document that was on  
 16 Major-General Annandale's hard drive. And if we go back up  
 17 to the top of the document –

18 CHAIRPERSON: Perhaps we can describe it  
 19 as – as you've said you've already given it an exhibit  
 20 number, HHH69, it's a letter from General Annandale to the  
 21 section heads of the NIU, the STF and Mobile Operations, MO  
 22 dated the 12th of August 2012.

23 MR CHASKALSON SC: We probably shouldn't  
 24 say dated, well it is dated 12th of August 2012, but it was  
 25 clearly drafted after the 12th of August 2012 because it

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1 refers to events that happened on the 13th.

2 CHAIRPERSON: Well the date which is on  
 3 the letter-head is the 12th of August whether it was  
 4 actually issued on that date is another matter.

5 MR CHASKALSON SC: I think we can safely  
 6 say, Chairperson, it was not. But Major-General for  
 7 present purposes I merely emphasise the heading on this  
 8 documents which indicates that the STF call up was from 12  
 9 August to 17 August and 17 August was, of course, the  
 10 Friday. Were you aware of that?

11 MAJOR-GENERAL MPEMBE: I already said,  
 12 Chairperson, no.

13 MR CHASKALSON SC: And I take it you've  
 14 never seen this document before it was given to you  
 15 yesterday.

16 MAJOR-GENERAL MPEMBE: Correct,  
 17 Chairperson, but I was informed that the STF was, as I  
 18 said, was called up and I also in my testimony that I did  
 19 not call up STF.

20 MR CHASKALSON SC: Yes, but the 17th of  
 21 August end to that call up was, you say, something about  
 22 which you were not aware.

23 MAJOR-GENERAL MPEMBE: Correct,  
 24 Chairperson.

25 COMMISSIONER HEMRAJ: Mr Chaskalson, I'm

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1 sorry I'm just a bit lost. Where are you referring to that  
 2 STF call up is 12 to 17?  
 3 MR CHASKALSON SC: In the box heading on  
 4 the – if one goes a little bit down on the screen –  
 5 COMMISSIONER HEMRAJ: That says  
 6 specialised operations, is that -?  
 7 CHAIRPERSON: If you look at the next  
 8 page –  
 9 MR CHASKALSON SC: It's not just the STF,  
 10 it's the NIU and Mobile Operations, it's all three.  
 11 COMMISSIONER HEMRAJ: Sorry and you're  
 12 referring to? Oh that one, thank you.  
 13 CHAIRPERSON: Sorry, just for clarity,  
 14 the heading of the letter is Call Up Specialised Operations  
 15 Lonmin Mine Northwest 12 August 2012 to 17 August 2012 and  
 16 as I said it's addressed to the section heads of the  
 17 National Intervention Unit Special Task Force and Mobile  
 18 Operations. And then the body of the letter when the  
 19 financial implications are spelt out in paragraph 3 as far  
 20 as the NIU Umtata and NIU Durban is concerned S & T is  
 21 provided for days. The same applies to the STF people from  
 22 Pretoria and Durban so that's quite clear that the  
 23 financial implications as seen by General Annandale were  
 24 for 5 days which is in accordance with the heading of the  
 25 letter. But you didn't know anything about that. That's

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1 something perhaps that the Provincial Commissioner will be  
 2 able to deal with when she gives evidence and she's  
 3 questioned about the transcript that we were looking at a  
 4 moment ago.  
 5 MR MATHIBEDI SC: Sorry, Mr Chairman, I  
 6 think this exhibit should be properly described as the call  
 7 up for specialised operations unit.  
 8 CHAIRPERSON: That's why I said it's  
 9 addressed to the NIU and the STF as well. So it's not only  
 10 the STF, it's also the NIU and also the Mobile Operations,  
 11 but when you look at the financial implication section and  
 12 what is provided for in relation to S & T for the people  
 13 called up it talks about five days. But you're quite right  
 14 in saying it's not only the STF, it's also the NIU and  
 15 Mobile Operations and ja I think that's the answer isn't  
 16 it?  
 17 MR MATHIBEDI SC: Thanks, Mr Chairman.  
 18 MR CHASKALSON SC: And before I leave  
 19 this document, Major-General, paragraph 1 says a request  
 20 from the office of the Provincial Commissioner, Northwest  
 21 Province to assist in Lonmin Mine, Marikana. Did I  
 22 understand your earlier answer about Brigadier Calitz, that  
 23 he would be the person within the office of the Provincial  
 24 Commissioner who would deal with this sort of matter?  
 25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

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1 CHAIRPERSON: I said questions could be  
 2 asked about this letter to the Provincial Commissioner, it  
 3 sounds as if it might be a fruitful exercise to ask  
 4 Brigadier Calitz about it as well, but you can't comment on  
 5 that really can you?  
 6 MAJOR-GENERAL MPEMBE: Correct,  
 7 Chairperson.  
 8 COMMISSIONER HEMRAJ: General, who would  
 9 determine the term of the call up, the duration of it?  
 10 MAJOR-GENERAL MPEMBE: It is normally the  
 11 commander.  
 12 COMMISSIONER HEMRAJ: The overall  
 13 commander?  
 14 MAJOR-GENERAL MPEMBE: Not overall  
 15 commander, the commander of those members at that area.  
 16 For example if you do a request because Brigadier Calitz  
 17 will only do a request through NATJOC then the NATJOC will  
 18 contact the different provinces, so those people there they  
 19 will say yes we can give you these people until that time.  
 20 But when they come to you they still become available to  
 21 your disposal until they are needed back because that is  
 22 the normal – how it is normally taking place.  
 23 MR CHASKALSON SC: And what is the role  
 24 of the overall commander in relation to human resources of  
 25 this sort? As overall commander is it part of your

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1 responsibility to say I need, you know, certain specialised  
 2 operations and I'm going to need them for as long as it  
 3 takes or is that a matter that is dealt with by the  
 4 operational commander?  
 5 MAJOR-GENERAL MPEMBE: The overall  
 6 commander can do it also, but as far as the matters is  
 7 concerned Marikana operation and the violence there, still  
 8 that I was on leave, so Brigadier Calitz as Operational  
 9 Commander or as a Provincial Head for that matter he would  
 10 take such decisions together with the Provincial  
 11 Commissioner. And the Provincial Commissioner by then was  
 12 General Naidoo who was acting on behalf of Provincial  
 13 Commissioner Mbombo.  
 14 MR CHASKALSON SC: Yes, I understand  
 15 that's how the situation started, but once you had come in  
 16 as overall commander what was your role in relation to  
 17 these sorts of matters?  
 18 MAJOR-GENERAL MPEMBE: It is to utilise  
 19 the other level of resources and when to utilise them, that  
 20 is also part of it.  
 21 MR CHASKALSON SC: And to assess what  
 22 more you need or what you can do away with? I mean as  
 23 overall commander are you not responsible for deciding what  
 24 resources are necessary for the operation and then for  
 25 taking steps to ensure that you have those resources?

<p style="text-align: right;">Page 25</p> <p>1 MAJOR-GENERAL MPEMBE: I said you can 2 when you see that they are needed. 3 MR CHASKALSON SC: And in this case you 4 didn't take any steps in that regard. Well let's take it 5 in two steps. First of all you didn't take any steps in 6 that regard you had said earlier. 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR CHASKALSON SC: And your reason for 10 not taking any steps in that regard was what? 11 MAJOR-GENERAL MPEMBE: I said I was 12 already being briefed that that step has already been 13 taken. 14 MR CHASKALSON SC: So what you had when 15 you arrived on the Monday was in your view sufficient for 16 the operation going forward? 17 MAJOR-GENERAL MPEMBE: I was already 18 being informed that the necessary resources are already – 19 the need has already been placed at NAVJOC by Brigadier 20 Calitz. 21 MR CHASKALSON SC: And that had been done 22 prior to Monday you say? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR CHASKALSON SC: And was that done –</p>	<p style="text-align: right;">Page 27</p> <p>1 mobilisation after the Monday was there not? 2 MAJOR-GENERAL MPEMBE: Correct, 3 Chairperson. 4 MR CHASKALSON SC: And you as overall 5 commander say that you played no role in that substantial 6 increase in resources after the Monday. 7 MAJOR-GENERAL MPEMBE: I said that was 8 the response of already the mobilisation that was done. 9 MR MATHIBEDI SC: Sorry, Mr Chairman, I 10 think these questions that are being raised with General 11 Mpeembe do not arise from the new material that has been, 12 you know, discovered from the police, Mr Chairman. I think 13 this is really unfair. 14 CHAIRPERSON: I think to some extent 15 they've been canvassed before, but if what is required is 16 information as to how many people came from where or when I 17 take that can be obtained even by a request to the SAPS 18 legal team. I'm not sure it's necessary to ask the witness 19 unless you've got a specific reason for asking him at this 20 stage. 21 MR CHASKALSON SC: I was just interested 22 in the witness's functions as overall commander in relation 23 to the financial and resources which we've now discovered – 24 well some of which have emerged from the new documentation. 25 I don't need to take this further. If I move to a</p>
<p style="text-align: right;">Page 26</p> <p>1 were you informed of this fact before or after you were 2 initially appointed overall commander on the Monday? 3 MAJOR-GENERAL MPEMBE: I was informed 4 before. 5 MR CHASKALSON SC: Do you remember when? 6 MAJOR-GENERAL MPEMBE: I don't remember 7 when, we were communicating with Brigadier Calitz, but he 8 said, General, I've already done the mobilisation in terms 9 of getting additional resources. 10 MR CHASKALSON SC: And would that have 11 been before or after the confrontation with the strikers 12 at the railway line? 13 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 14 MR CHASKALSON SC: Before or after? 15 MAJOR-GENERAL MPEMBE: Before, 16 Chairperson. 17 MR CHASKALSON SC: Now, Major-General, 18 wasn't the situation markedly different after the 19 confrontation with the strikers at the railway line? 20 MAJOR-GENERAL MPEMBE: Chairperson, it is 21 my testimony that those that have already been mobilised, 22 others were already there when I arrived on Monday, that's 23 my testimony. 24 MR CHASKALSON SC: No, I appreciate that, 25 Major-General, but there was a substantial increase in the</p>	<p style="text-align: right;">Page 28</p> <p>1 different topic, a different but related topic, if I look 2 at your first statement at paragraph 8.22 you explain – 3 CHAIRPERSON: You say the first 4 statement, if you'll remember he made a short handwritten 5 statement on the 16th, then I there's a – I think it's GGG3, 6 I think isn't it? And there's one in the HHH series, which 7 one are you referring to? 8 MR CHASKALSON SC: GGG12. 9 CHAIRPERSON: Oh GGG12, sorry – 10 MR CHASKALSON SC: I'll just tell you – I 11 take back the description of the first statement. GGG12. 12 CHAIRPERSON: It was actually – GGG12 is 13 really the second statement I take it and HHH3 is the 14 supplementary one, but you're busy with GGG12. 15 MR CHASKALSON SC: And there you indicate 16 that at page 8 paragraph 22, you explain that why you 17 requested Major-General Annandale to chair the JOCCOM 18 meetings was that you wanted to concentrate on the 19 engagement and negotiation with mine management and labour 20 unions to find a speedy solution to the problem. Do you 21 see that at paragraph 22? So your focus was on the 22 relationship between SAPS and mine management and labour 23 unions. Is that correct, your primary focus? You wanted 24 to focus on what you say there "negotiations with mine 25 management and labour unions." You saw that as your</p>



<p style="text-align: right;">Page 29</p> <p>1 primary focuses as overall commander?  2 MAJOR-GENERAL MPEMBE: No, Chairperson,  3 but not as a primary focus, but as an overall commander you  4 need to take lead in determining strategies.  5 MR CHASKALSON SC: But you say that you  6 gave up the chair of the JOCCOM so that you could  7 concentrate on that.  8 MAJOR-GENERAL MPEMBE: It is to have time  9 in terms of communicating what is important about the  10 operation and determining the strategies. And I need also  11 to say on Monday when I arrive and with the briefing of the  12 mine management we were told certain things that as an  13 overall commander and by then General Annandale was not  14 there. I had to make a follow up and I can't send somebody  15 to talk on my behalf when that person was not there.  16 MR CHASKALSON SC: Well did you  17 communicate this reason for assigning Major-General  18 Annandale to chair the JOCCOM to the Provincial  19 Commissioner, your immediate superior that you wanted to  20 concentrate on engagement and negotiation with mine  21 management and labour unions? Was she aware of that?  22 [10.07  23 MAJOR-GENERAL MPEMBE: Correct,  24 Chairperson, the only thing that I wanted Major Annandale  25 is to understand, is that you will always be at the JOC and</p>	<p style="text-align: right;">Page 31</p> <p>1 MR CHASKALSON SC: And you weren't aware  2 of it before it happened and you weren't aware of it after  3 it had happened? It was not reported to you by the  4 Provincial Commissioner?  5 MAJOR-GENERAL MPEMBE: Chairperson, I  6 don't understand the question.  7 MR CHASKALSON SC: Well you weren't aware  8 that the Provincial Commissioner, let's start at the  9 beginning, you weren't aware that the Provincial  10 Commissioner was going to meet with Lonmin mine management  11 on the Tuesday?  12 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  13 MR CHASKALSON SC: And after she had met,  14 she didn't report to you or inform you that she had met?  15 MAJOR-GENERAL MPEMBE: Correct,  16 Chairperson.  17 MR CHASKALSON SC: So you were completely  18 ignorant of that meeting and what had happened there?  19 MAJOR-GENERAL MPEMBE: I didn't hear the  20 other sentence.  21 MR CHASKALSON SC: So you were completely  22 ignorant of that meeting and what had happened there?  23 MAJOR-GENERAL MPEMBE: Is it the word  24 ignorant?  25 MR CHASKALSON SC: Well unaware.</p>
<p style="text-align: right;">Page 30</p> <p>1 the Provincial Commissioner knew that this is the adoption  2 that I took and is not necessarily that she would be saying  3 no you cannot do that, because at the end of the day for  4 the operation to go well and to be resolved, it lies upon  5 my shoulders.  6 MR CHASKALSON SC: My question was  7 slightly different, Major-General, it was, was the  8 Provincial Commissioner aware you wanted to concentrate?  9 Not what Major-General Annandale was going to do but you  10 wanted to concentrate on engagement and negotiation with  11 mine management and the labour unions?  12 MAJOR-GENERAL MPEMBE: Chairperson, I  13 have said yes, because I was saying I have a meeting with  14 the unions, if she had a problem she could have raised  15 there with me to say don't go there, I want you in the JOC.  16 So she was aware.  17 MR CHASKALSON SC: Now if we can go to  18 the transcript of the meeting between the Provincial  19 Commissioner and Lonmin mine management on the Tuesday -  20 CHAIRPERSON: Exhibit JJJ192, what page  21 are you referring to?  22 MR CHASKALSON SC: Well before we get to  23 any detail of it, as I understand your evidence, you  24 weren't aware of this meeting?  25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>	<p style="text-align: right;">Page 32</p> <p>1 Unaware.  2 MAJOR-GENERAL MPEMBE: Not ignorant,  3 unaware, and I was told. I was not told but it is not that  4 I was ignorant of that meeting.  5 MR CHASKALSON SC: I think we are having  6 a language issue, I don't mean it pejoratively in any  7 sense, I just mean, you weren't, you had no knowledge of  8 it. If the Provincial Commissioner knew that you were  9 going to focus on dealing with mine management and the  10 trade unions, do you not think it strange that she didn't  11 report to you what she had communicated to mine management?  12 MAJOR-GENERAL MPEMBE: No, Chairperson, I  13 said she has no obligation to report anything to me because  14 I'm her junior. I have already testified about that.  15 MR CHASKALSON SC: But it's not an issue  16 of seniority or juniority, Major-General, presumably the  17 Provincial Commissioner didn't want you going to deal with  18 them and to say things that were contrary to what she had  19 said the previous day.  20 MAJOR-GENERAL MPEMBE: Chairperson, I  21 said she could have told me not to go to that area of  22 communicating with Lonmin management. She will, if because  23 my reports to her, she was aware that that is one of the  24 strategies of resolving the matter.  25 MR CHASKALSON SC: But she knew that, you</p>

<p style="text-align: right;">Page 33</p> <p>1 have said that she knew that you were going to concentrate 2 on engaging with them and with the unions, do you agree 3 with that? She knew that you were going to concentrate on 4 that.</p> <p>5 MAJOR-GENERAL MPEMBE: I just want the 6 clarity again about the question.</p> <p>7 MR CHASKALSON SC: Well you have 8 confirmed that she was aware that you were going to 9 concentrate on engagement with mine management and the 10 unions.</p> <p>11 MAJOR-GENERAL MPEMBE: Chairperson, I 12 just want to put it, I will say yes with this explanation, 13 when I was reporting my feedback to her, when I was 14 reporting my feedback to her, she was aware that I am 15 engaging in the negotiations because of the meeting that 16 took place also on Monday.</p> <p>17 MR CHASKALSON SC: So she didn't know 18 generally that you had decided to focus, to concentrate on 19 this and as a particular, as something that you wanted to 20 do?</p> <p>21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson.</p> <p>23 MR CHASKALSON SC: She didn't know that?</p> <p>24 MAJOR-GENERAL MPEMBE: She didn't know 25 that but she could have known when I'm giving her feedback.</p>	<p style="text-align: right;">Page 35</p> <p>1 MAJOR-GENERAL MPEMBE: What she raised on 2 Monday.</p> <p>3 MR CHASKALSON SC: Yes, that's what I 4 would like to know, Major-General. What was that? What 5 did she raise on Monday?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, in 7 the morning the Provincial Commissioner raised the issues 8 of what was precisely the conflict and we were informed, 9 and as I have illustrated it clearly in my statement, 10 firstly that people were faceless we don't know them and 11 what she raised is that then they need to get the unions to 12 resolve the matter. And then I made a follow up in terms 13 of that meeting.</p> <p>14 MR CHASKALSON SC: And you don't recall 15 her raising anything about management colluding with AMCU 16 in the morning?</p> <p>17 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>18 MR CHASKALSON SC: If you go to page 9 19 she suggests that she did. If we can just go to the next 20 page, and if we start at about line 5, "So I think 21 yesterday Abie will recall, you will recall when this 22 discussion with the National Commissioner, she also from 23 the discussion she raised with you, and you know some of 24 these questions that she raised, you will remember that I 25 raised them in the morning at our meeting, and she also</p>
<p style="text-align: right;">Page 34</p> <p>1 MR CHASKALSON SC: So if I understand you 2 correctly, when you previously said that she was aware of 3 this, that is something that you infer from the fact that 4 she received some feedback from you?</p> <p>5 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>6 MR CHASKALSON SC: Well let's go to the 7 transcript of this meeting, that took place in your 8 absence, on page 8, and if we can go down to line, about 9 line 15 where the Commissioner speaks, "You see I want us 10 to, you remember last night Abie I raised this thing when 11 we were dealing with Impala we had a lot of allegations and 12 rumours that some of these allegations that they were 13 pointing to the management, that the management is 14 colluding with AMCU and so." Now she says she raised that 15 last night, now that's the reference I presume to the 16 meeting that she had with Lonmin and the National 17 Commissioner, at which you were present. Do you recall her 18 raising something of this nature at that meeting?</p> <p>19 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>20 MR CHASKALSON SC: But you're not aware 21 of any other meetings that she held with Lonmin on the 22 Monday night?</p> <p>23 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>24 MR CHASKALSON SC: So what do you recall 25 her raising at the meeting with Lonmin on Monday night?</p>	<p style="text-align: right;">Page 36</p> <p>1 felt that you know it is difficult to separate management 2 from giving these people leeway and if management gave 3 these people this type of leeway, how do we separate this 4 from an allegation that can come and say but they are 5 supporting them. So I want us to, when you said people 6 must be arrested, I wanted us to be very clear that any 7 inclination we should get so that we arrest people, that is 8 our interest because yourselves here as management you will 9 clear yourselves from this and Mr Mokwena says perception." 10 And if we read it in the context is it quite clear, 11 perception that management is colluding with AMCU against 12 NUM. You can see that from line 3. "Also remember from a 13 political point of view there was even this feeling that 14 you know, the mining sector wants to replace NUM you know 15 with a new face, and maybe that is why these things are 16 erupting," and the Provincial Commissioner seems to be 17 saying that this was raised by the National Commissioner on 18 Monday night and also by her in the morning in our meeting. 19 Do you recall her raising it in the morning in the meeting?</p> <p>20 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>21 MR CHASKALSON SC: And do you recall the 22 National Commissioner raising it in the evening in the 23 meeting?</p> <p>24 MAJOR-GENERAL MPEMBE: No, Chairperson, 25 but what I recall what the National Commissioner and the</p>

<p style="text-align: right;">Page 37</p> <p>1 Provincial Commissioner raised, it was that that was 2 emphasised, that the police should be assisted in terms of 3 obtaining more information of those that have been 4 identified. 5 MR CHASKALSON SC: And you have got no 6 memory of something about mine management colluding with 7 AMCU to replace NUM? 8 MAJOR-GENERAL MPEMBE: I have never heard 9 that and in all of my role, we were very impartial. 10 MR CHASKALSON SC: I'm not asking about 11 what your role was. I'm asking about your recollection of 12 what was said by the National and Provincial Commissioners 13 on Monday night and Monday morning respectively. 14 MAJOR-GENERAL MPEMBE: I don't recall 15 anything said about collusion with AMCU. 16 MR CHASKALSON SC: We will take it 17 further with the Provincial Commissioner, who apparently 18 made these remarks. No yesterday, in response to 19 questioning from the Chairperson, and the reference is page 20 16245 to 16249. You were dealing with the stance of Lonmin 21 and NUM, that there was a wage agreement, that the wage 22 agreement and the bargaining structures had to be respected 23 and that it wasn't proper to talk to the people on the 24 koppie about wage demands. You recall that exchange with 25 the Chairperson?</p>	<p style="text-align: right;">Page 39</p> <p>1 Advocate. 2 MR CHASKALSON SC: And Major-General, you 3 testified yesterday that you found this attitude of Lonmin 4 frustrating. 5 MAJOR-GENERAL MPEMBE: My answer was in 6 two ways, frustrating yes and I also said that with regards 7 to the weapons that they were requesting that the 8 negotiations should take place unarmed, I said they had the 9 right to say so. 10 CHAIRPERSON: On that point you weren't 11 restrained, you felt Lonmin's attitude was a reasonable 12 one. 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 CHAIRPERSON: It was the other aspect 16 that was the source of the frustration as I understood it. 17 MAJOR-GENERAL MPEMBE: Definitely, 18 Chairperson. 19 MR CHASKALSON SC: But leaving aside the 20 question of negotiating with armed people, flatly refusing 21 to negotiate with people because there was a two year wage 22 agreement in place and NUM was the recognised bargaining 23 partner, you said you found that attitude frustrating is, 24 that correct? 25 MR NTSONKOTA: Chair, Thando Ntsonkota</p>
<p style="text-align: right;">Page 38</p> <p>1 MAJOR-GENERAL MPEMBE: May I request that 2 it should be placed there, Chairperson, it's my humble 3 request. 4 CHAIRPERSON: When I questioned you 5 yesterday, you were being asked about your attitude towards 6 Lonmin and the way Lonmin was acting and so on, their 7 attitude, by Mr Mpofu I think it was, and I then asked you 8 some questions flowing from questions Mr Mpofu had asked, 9 and they had to with Lonmin's lack of response, and Lonmin 10 was effectively saying two main things. The one was wages, 11 we are not prepared to talk about because there is a two 12 agreement in place, and secondly they were saying insofar 13 as there are negotiations, they have got to be through the 14 recognised channels which meant through NUM and NUM had 15 meanwhile adopted the stance, the local branch of NUM 16 adopted the stance of meetings and so forth with the rock 17 drill operators, to say there is nothing we can do about 18 the wages at this stage because there is the two year 19 agreement in place. That was the point I traversed with 20 you, do you remember? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: You remember that now, and 24 that's what Mr Chaskalson is coming to, I think. 25 MAJOR-GENERAL MPEMBE: I remember that,</p>	<p style="text-align: right;">Page 40</p> <p>1 from NUM, Chair, it is with great reluctance that I beg 2 leave to interject, Chair. I don't want to take the 3 thunder out my learned colleague's cross-examination, but 4 this is nothing new, Chair, this - 5 CHAIRPERSON: Yes, I understand so, but I 6 must assume, well let's just check it. Am I correct in 7 assuming that these questions are preparatory questions 8 leading up to something, which is covered by documents 9 which became available after the witnesses in the box 10 previously? You are not simply re-traversing the questions 11 that were asked yesterday? 12 MR CHASKALSON SC: Yes, I mean it will be 13 taken back to the transcript of the Commissioner, which is 14 a very important document in this regard. 15 CHAIRPERSON: You see the transcript of 16 the discussion, which I know the transcript is still 17 subject to debate but the transcript about the discussions 18 between the Provincial Commissioner and representatives of 19 Lonmin on the Tuesday is a new document that came to light 20 after General Mpembe was cross-examined by Mr Madlanga for 21 the evidence leaders, and so questions on that document 22 obviously are covered by the point we now, covered by the 23 cross-examination we are now busy with, and the preparatory 24 questions we are assured lead up to that. I take it, Mr 25 Chaskalson will take note of the fact that he mustn't spend</p>

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1 too much time on the preparatory material and get to the  
 2 transcript as soon as he can, but I think we must, for the  
 3 moment leave it to him. But if it gets unduly prolonged on  
 4 the foothills as it were, before we get further up the  
 5 mountain, then you can raise your objection, alright?  
 6 MR NTSONKOTA: Okay, thank you Chair,  
 7 save merely to say that even this transcript I'm not sure  
 8 that this particular witness is able fruitfully to can  
 9 clarify the issue.  
 10 CHAIRPERSON: Let's see, no-no that's a  
 11 very valid point, but let's see how Mr Chaskalson handles  
 12 it.  
 13 MR NTSONKHOTA: Thank you, Chair.  
 14 CHAIRPERSON: I take it, he is asking  
 15 questions of this witness which may be, the answers which  
 16 may be relevant when the Provincial Commissioner comes.  
 17 But anyway those are matters that will become clearer to us  
 18 with the passage of time. Mr Chaskalson?  
 19 MR CHASKALSON SC: Major-General, the  
 20 question is a very simple one, did you ever communicate to  
 21 Lonmin, well its two questions, did you ever communicate to  
 22 Lonmin that you were frustrated with their attitude of  
 23 refusing to negotiate with the strikers because there was  
 24 an existing two year agreement in place and NUM was the  
 25 recognised bargaining agent? Did you communicate that to

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1 Lonmin?  
 2 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 3 even at that time I didn't even know NUM that was the only  
 4 recognised union, but what I did is that whether AMCU or  
 5 NUM, immediately from the identification of that we had, I  
 6 call all of them, so it was upon Lonmin to say to me no we  
 7 cannot sit with AMCU because it is not a recognised union.  
 8 That is not within my knowledge of recognition in terms of  
 9 labour relations.  
 10 MR CHASKALSON SC: Well let's take the  
 11 question one step back, did you communicate to Lonmin that  
 12 you found it frustrating that they flatly refused to talk  
 13 to the strikers on the koppie?  
 14 MAJOR-GENERAL MPEMBE: Chairperson, I  
 15 will say to that extent not to use the word exactly  
 16 frustrating. But I used the word, I confronted them on  
 17 Monday and in that confrontation, the decision then that we  
 18 agreed with Lonmin is that they should facilitate the  
 19 meeting that I will have to meet them with the union. But  
 20 I didn't say I'm so frustrated with, but the words that I  
 21 used is confrontations and I even said to them you told me  
 22 that these people are faceless, and yet they are your  
 23 employees.  
 24 MR CHASKALSON SC: And at any stage after  
 25 Lonmin had met with the Provincial Commissioner on Tuesday,

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1 did you suggest to Lonmin that they should be speaking to  
 2 the strikers?  
 3 MAJOR-GENERAL MPEMBE: Chairperson, in  
 4 the first place I didn't know that the Provincial  
 5 Commissioner met with Lonmin.  
 6 MR CHASKALSON SC: That we have  
 7 established. She met on the afternoon of Tuesday, at any  
 8 stage after the afternoon of Tuesday, did you communicate  
 9 to Lonmin that you wanted them to talk to the strikers?  
 10 MAJOR-GENERAL MPEMBE: Chairperson, the  
 11 meeting that I held with Lonmin, it was when I held the  
 12 meeting with the unions and I didn't know by then that the  
 13 Provincial Commissioner held a meeting with them.  
 14 MR CHASKALSON SC: Major-General, my  
 15 questions is, forget the Provincial Commissioner, let's  
 16 just think of a time, 5 o'clock on Tuesday afternoon. At  
 17 any stage after 5 o'clock on Tuesday afternoon, did you  
 18 communicate to Lonmin that you wanted them to talk to the  
 19 strikers?  
 20 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 21 Except when I had a meeting with them and with the unions.  
 22 MR CHASKALSON SC: And when was that?  
 23 MAJOR-GENERAL MPEMBE: That was on the  
 24 15th.  
 25 MR CHASKALSON SC: And what did you

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1 communicate to them in relation to speaking to the  
 2 strikers?  
 3 MAJOR-GENERAL MPEMBE: I communicated  
 4 with them in relation to the strikers, all of them to say  
 5 you have a duty and an obligation to go and communicate  
 6 with the strikers to lay down their weapons and disperse.  
 7 CHAIRPERSON: When exactly did you say  
 8 that to them, to Lonmin?  
 9 MAJOR-GENERAL MPEMBE: I said,  
 10 Chairperson, it was to all of them.  
 11 CHAIRPERSON: No, no, when did you say  
 12 that to Lonmin? What day?  
 13 MAJOR-GENERAL MPEMBE: I said it is the  
 14 meeting that I had with the unions and Lonmin management on  
 15 the 15th.  
 16 [10:26] CHAIRPERSON: Yes, no the reason I asked  
 17 you that is because in your statement, Exhibit GGG12, at  
 18 paragraph 30, you mentioned a meeting you had with Lonmin,  
 19 on the 14th, that's the Tuesday at 17:30. This is when you  
 20 challenged them about their statement that the marches and  
 21 protesters were unknown to the mine, and faceless, and you  
 22 then go on to say in the last sentence of paragraph 30, "I  
 23 informed them that they have a duty in terms of the Labour  
 24 Relations Act, to engage respective unions and remind them  
 25 of their obligation to engage the company in negotiations

<p style="text-align: right;">Page 45</p> <p>1 of issues the workers sought to have resolved." So there 2 already on the Tuesday, at 17:30, you raised this question, 3 and then you go on to say, of course that subsequently 4 later that – on the Tuesday, you again arranged through 5 mine management to have a meeting with the presidents of 6 the two unions. So you were actually dealing with this 7 matter, or aspects of it already on the Tuesday. 8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson. 10 CHAIRPERSON: And you say you dealt with 11 it again on the Wednesday, as you've just told Mr 12 Chaskalson. 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson, I was just relating to say it was making a 15 follow up of Monday meeting. 16 MR CHASKALSON SC: This meeting at 05:30 17 on the Tuesday, that took place approximately an hour after 18 the same Lonmin people had met the Provincial Commissioner 19 and heard something completely different from the 20 Provincial Commissioner. Did none of them say to you, but 21 your boss has just been in here and said we need to remove 22 the perception that we are colluding with AMCU? 23 MAJOR-GENERAL MPEMBE: No, Chairperson, 24 that could have appeared on the OO form. 25 MR CHASKALSON SC: I am talking about the</p>	<p style="text-align: right;">Page 47</p> <p>1 think that I, I mean, if I am not going to finish by tea, I 2 am not going to be more than 15 minutes longer than tea, so 3 my suggestion would be that we proceed. 4 CHAIRPERSON: I was proposing to take tea 5 now but if – proceed as you suggest, let's proceed until 6 say about 11, and then we'll see whether we need to take 7 tea or whether you can just proceed to the end, or you may 8 finish by then, so carry on then in the meanwhile. 9 MR CHASKALSON SC: Major-General, I want 10 to raise with you now two letters that were written by 11 Lieutenant-Colonel Vermaak, one on 28th May 2012 and the 12 other on 12 December 2012. The – 13 CHAIRPERSON: Before you do that, it's 14 been suggested to me that it might be sensible for us to 15 take a comfort break at this point. This letter of May, 16 before we take the comfort break though, this letter of May 17 to which you refer, has that got an – been given a 18 preliminary exhibit number? 19 MR CHASKALSON SC: The May letter has, 20 that has been given a preliminary exhibit number, or the 21 May letter's been given a formal exhibit number, if I can – 22 CHAIRPERSON: You see, I've got the 23 December one which is AAA68. 24 MR CHASKALSON SC: The May is JJJ. 25 CHAIRPERSON: Well, I haven't got the May</p>
<p style="text-align: right;">Page 46</p> <p>1 Tuesday afternoon meeting, the Tuesday afternoon meeting at 2 17:30. 3 MAJOR-GENERAL MPEMBE: No, Chairperson, 4 that I could have been informed. They could have said it 5 to me. 6 MR CHASKALSON SC: And they said nothing 7 of the sort? 8 MAJOR-GENERAL MPEMBE: No, Chairperson, 9 as far as I know, is that they agreed even to arrange the 10 meeting that I should meet the unions. 11 MR CHASKALSON SC: And they didn't even 12 mention that they'd met the Provincial Commissioner an hour 13 previous to your meeting? 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson, yes, Chairperson. 16 MR CHASKALSON SC: So they didn't mention 17 it? 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 19 CHAIRPERSON: Mr Chaskalson, can you give 20 me the indication of how much longer you think you'll be. 21 In other words, are you going to finish by tea? That 22 depends on when we are going to have tea, or do we take tea 23 and just, or do we just go on until you've finished? You 24 can help me on that. 25 MR CHASKALSON SC: Chairperson, I don't</p>	<p style="text-align: right;">Page 48</p> <p>1 one. What number is it? 2 MR CHASKALSON SC: It is JJJ137. 3 CHAIRPERSON: Has it already been handed 4 in? 5 MR CHASKALSON SC: It has been, I don't 6 it has – it's been handed in along with the rest of the 7 JJJs as part of the files. We can get a – 8 CHAIRPERSON: So I think, let's take a 9 comfort break, have a copy of that made in the meanwhile, 10 extra copies. We will take the comfort break now. 11 [COMMISSION ADJOURNS COMMISSION RESUMES] 12 [10:41] CHAIRPERSON: The Commission resumes. 13 Major-General, you're still under oath. 14 WILLIAM MPEMBE: Yes, Chairperson. 15 CHAIRPERSON: Mr Chaskalson. 16 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.): 17 Major-General, you've seen the two letters. Had you seen 18 either of these two letters before you were called to give 19 evidence to the Commission? 20 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 21 MR CHASKALSON SC: Let's start with the 22 JJJ137, the May letter. Sorry, JJJ137 is not the May 23 letter. 24 CHAIRPERSON: It is the May letter. 25 MR CHASKALSON SC: JJJ137 is the May</p>

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1 letter. I've got – JJJ137 is the May letter, I apologise.  
 2 The May letter, when did you first see JJJ137?  
 3 MAJOR-GENERAL MPEMBE: Chairperson, I  
 4 don't remember the exact date, but what I do know is that I  
 5 once discussed these letters with Brigadier Calitz and I  
 6 did task him about these letters of Colonel Vermaak.  
 7 MR CHASKALSON SC: Was it both letters or  
 8 when you discussed the matters with Brigadier Calitz, or  
 9 was it one letter?  
 10 MAJOR-GENERAL MPEMBE: Chairperson, it's  
 11 long time ago. I do not remember whether it was one or two  
 12 or three letters, but what I do know is that I did discuss  
 13 these letters with Brigadier Calitz and also to task him  
 14 about these letters.  
 15 CHAIRPERSON: What I'd like to ask you is  
 16 the letter of the 28th of May 2012, that's JJJ137, is there  
 17 are references in the letter to discussions with Brigadier  
 18 Calitz at a conference on the 17th of May 2012, so obviously  
 19 I take it we can assume that Brigadier Calitz knew about  
 20 this letter. It was addressed, I see, to the Provincial  
 21 Commissioner and the Provincial Head, Operational Response  
 22 Services, SA Police Service, North West. Now who was the  
 23 Provincial Head, Operational Response Services?  
 24 MAJOR-GENERAL MPEMBE: Brigadier Calitz.  
 25 CHAIRPERSON: Brigadier Calitz. So it's

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1 addressed to him and to General Mbombo.  
 2 MAJOR-GENERAL MPEMBE: Correct,  
 3 Chairperson.  
 4 CHAIRPERSON: Right, so he knew about it.  
 5 Now did you discuss it with him, or perhaps did he discuss  
 6 it with you - if it was addressed to him one would assume  
 7 he would have taken the initiative - did he discuss it with  
 8 you before the events at Marikana in August 2012?  
 9 MAJOR-GENERAL MPEMBE: Correct,  
 10 Chairperson.  
 11 CHAIRPERSON: Alright, that's what I want  
 12 to know. Thank you.  
 13 MR CHASKALSON SC: So then obviously  
 14 you'd have discussed this letter before the second letter  
 15 was sent, because that was sent only several months after  
 16 the Marikana events. But let's look at what Colonel  
 17 Vermaak says in the May letter, because it seems to me that  
 18 there are certain suggestions that Lieutenant-Colonel  
 19 Vermaak makes in this May letter that seem prima facie  
 20 sensible suggestions. He complains first of all about, or  
 21 sensible reports Lieutenant-Colonel Merafe's complaint  
 22 that, if we go to paragraph 3, "POPS members are withdrawn  
 23 from POPS units to form part of shifts at stations and the  
 24 resources that are available to POPS to handle unrest  
 25 situations are not effective enough. POPS members are

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1 divided to assist at different stations that are not unrest  
 2 related." So he's saying that there is the deployment of  
 3 POPS members for non-POPS related activities and as a  
 4 result POPS are under-resourced when they have to deal with  
 5 unrest situations. Does that strike you as a fair  
 6 criticism?  
 7 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 8 MR CHASKALSON SC: And why do you say no?  
 9 MAJOR-GENERAL MPEMBE: Chairperson, POPS  
 10 has got first priority and second priority, and in terms of  
 11 whatever they have to do they have to concentrate on their  
 12 first priority, and if their first priority is not there at  
 13 all, they cannot just sit and do nothing, and that's when  
 14 they are expected to assist in crime prevention and crime  
 15 combating, and there is also a mixture here, Chairperson,  
 16 that I wanted to shortly describe. That paragraph refers  
 17 before the restructuring of the POP, because POP has  
 18 undergone a certain restructuring, and after restructuring  
 19 that didn't happen. What did actually happen, it's the  
 20 primary functions of POPS was clearly defined and they  
 21 concentrate what they are supposed to do.  
 22 MR CHASKALSON SC: So even though you say  
 23 the criticism wasn't really a fair criticism, it's been  
 24 addressed anyway by the restructuring of POPS? Is that the  
 25 gist of your answer?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 2 Maybe I don't know whether I should repeat it. I said  
 3 paragraph 3.1 which says "POP members are withdrawn from  
 4 the POP units to form part of shifts at stations," only  
 5 that paragraph refers before the restructuring because  
 6 there was a time where in the police there were no unrest  
 7 at all and by that time it was the time of the National  
 8 Commissioner Selebi, there was a time where these members  
 9 had to be deployed for crime combating and they were called  
 10 crime combating units, but immediately after restructuring  
 11 some members of the POP were sent to station. It did not  
 12 happen anymore. Those that were left at the POP and that  
 13 is currently the POP, their main function is crowd  
 14 management, but if there is no crowd management at all,  
 15 then they are assisting in crime combating and in crime  
 16 prevention.  
 17 MR CHASKALSON SC: And are you now  
 18 satisfied that within your province the resources available  
 19 to POPS to handle unrest situations are adequate, POPS  
 20 isn't under-resources at the moment?  
 21 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 22 at the moment, since there were some certain development  
 23 that erupted and this was also addressed.  
 24 MR CHASKALSON SC: Sorry, Major-General,  
 25 I'm struggling to understand your answer. You must

<p style="text-align: right;">Page 53</p> <p>1 understand where I'm coming from. I mean one of the 2 recommendations that this Commission may have to make is – 3 well, one of the recommendations that this Commission may 4 have to consider relate to the resourcing of POPS and 5 whether POPS is sufficiently resourced to handle the unrest 6 situations that it confronts. As things stand at present, 7 are you satisfied that POPS in your province has the 8 resources it needs to deal with the unrest situations it 9 confronts?</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, my 11 answer is, says I did already raise that we need to 12 reconsider the restructuring process already, and that was 13 said to the acting National Commissioner Mkhwanazi by 14 myself.</p> <p>15 MR CHASKALSON SC: So you're saying that 16 restructuring that was done under then Commissioner Selebi 17 needs to be reconsidered, it hasn't yet been reconsidered, 18 or steps to reverse it haven't yet been taken?</p> <p>19 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>20 MR CHASKALSON SC: And from your 21 perspective you would like that process to be reversed?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct, 23 Chairperson.</p> <p>24 MR CHASKALSON SC: Then there's another 25 issue that Lieutenant-Colonel Vermaak raises partly in this</p>	<p style="text-align: right;">Page 55</p> <p>1 ground is that you cannot predict where the projectile will 2 end up. I have to withdraw the helicopters. We were 3 afraid it could be hit by live ammunition that were fired 4 by members of TRT as some were firing shots into the air as 5 well," and over the page, "Lieutenant-Colonel Merafe 6 handles the situation very good with minimum manpower, but 7 this incident could end in tragedy if the helicopter was 8 hit or a marcher was killed by an R5-round." And then that 9 is amplified much more emphatically in the December letter 10 at pages 12.3 and 12.4 –</p> <p>11 MAJOR-GENERAL MPEMBE: Sorry, 12 Chairperson, I do not have a December – I've got two May 13 letters.</p> <p>14 MR CHASKALSON SC: I'm sorry, Major- 15 General, HHH68, if we –</p> <p>16 CHAIRPERSON: Does that mean that you 17 haven't seen this letter recently? Do you want time to 18 read it, or do you remember the letter? It was, I think 19 you agreed that you saw it subsequent. Am I correct? You 20 have seen this letter before? It was sent to General 21 Mbombo and to Brigadier Calitz, but was it discussed with 22 you by either of them at any stage after December last 23 year?</p> <p>24 MAJOR-GENERAL MPEMBE: No, Chairperson – 25 CHAIRPERSON: Have you never seen this</p>
<p style="text-align: right;">Page 54</p> <p>1 letter, but more in the next letter, which is in December, 2 which is HHH68, which is the use of R5 rifles in crowd 3 management situations, and the suggestion, as I understand 4 it, partly from this letter in paragraphs 13, 14, and 15, 5 JJJ137, and much more clearly in the December letter, which 6 is HHH68 at paragraphs 12.3 and 12.4 –</p> <p>7 CHAIRPERSON: I'd better mark that 8 exhibit. This is HHH –</p> <p>9 MR CHASKALSON SC: 68.</p> <p>10 CHAIRPERSON: - 68, letter from, is he 11 Lieutenant-Colonel?</p> <p>12 MR CHASKALSON SC: Lieutenant-Colonel 13 Vermaak.</p> <p>14 CHAIRPERSON: Lieutenant-Colonel Vermaak, 15 dated 12 December 2012. It's a letter addressed to the, 16 well effectively addressed, I take it, again to General 17 Mbombo and Brigadier Calitz.</p> <p>18 MR CHASKALSON SC: That's correct, 19 Chairperson. If one reads paragraphs 13 to 15 of the May 20 letter, "The members put the R5 rifle on automatic when 21 they fire into the ground. I was afraid for recapitulation 22 of Ficksburg and phoned the Provincial Commissioner to 23 report the situation to her, as the cluster commander was 24 not answering his phone. No other senior officer was 25 available. The danger in firing live ammunition into the</p>	<p style="text-align: right;">Page 56</p> <p>1 letter before?</p> <p>2 MAJOR-GENERAL MPEMBE: The letters that I 3 saw were these letters where he complained and I remember 4 going to the meeting, addressing these issues that were 5 raised with head office, but the December one I just wanted 6 maybe to check the contents, whether were they also part of 7 the issues that I raised already.</p> <p>8 CHAIRPERSON: Yes, would you like me to 9 adjourn for a short while to enable you to read the letter, 10 or are you happy to read it there at the table where you're 11 sitting, or – you're going to be questioned about the 12 letter and it is only fair that you should get a chance to 13 consider it carefully. What do you want me to do?</p> <p>14 MAJOR-GENERAL MPEMBE: I can read it – 15 CHAIRPERSON: Quietly at the table? 16 MAJOR-GENERAL MPEMBE: Quiet, yes, 17 Chairperson, quickly. Thanks, Chairperson.</p> <p>18 MR CHASKALSON SC: Major-General, we'll 19 go a bit slower through the December letter later, but to 20 begin with if we can just, in fact we need to pick it up at 21 paragraph 9 in relation to the R5/R1 issue, and there 22 Lieutenant-Colonel Vermaak is essentially talking about the 23 difference in risk where there is Public Order Policing 24 with an R5 and when there is Public Order Policing with 25 number 5 shotgun birdshot weapons. Paragraph 9 he says,</p>

<p style="text-align: right;">Page 57</p> <p>1 "The period from '90 to '94 the country experienced some of 2 the worst unrests and members most the time handled it 3 without loss of lives. The members were permitted to use 4 number 5 shotgun birdshot cartridges and in my 15 years in 5 the POPS there was only two protesters killed by number 5 6 birdshot shotgun rounds." And then over the page, "At this 7 stage the SAPS members have no other means than to use 8 either his R5/R1 when other resources fail, there's nothing 9 in between to use. Pyrotechnical equipment don't always 10 have the required outcome when used in open areas or rural 11 areas." And then 12.3 to 12.4 where he makes suggestions, 12 "Reconsider the fact to issue members again with number 5 13 birdshot shotgun rounds instead of R5. I'd rather wound a 14 protester with a number 5 shotgun birdshot than kill him 15 with an R5 rifle." And 12.4, "In past ever section of POPS 16 was issued with only one R5/R1 and all the other members 17 were issued with shotguns and rubber rounds and number 5 18 birdshot. A section consists out of eight members." Now 19 there Lieutenant-Colonel Vermaak is pointing to a problem 20 that between, that when the current POPS non-lethal 21 resources are inadequate, in other words teargas, stun 22 grenades, and rubber bullets, the next step up is an R5 23 rifle which has lethal consequences, and he's suggesting 24 this is not appropriate for Public Order Policing or crowd 25 management situations. What is your assessment of that</p>	<p style="text-align: right;">Page 59</p> <p>1 MR CHASKALSON SC: You may not be in a 2 position to inform us as to what the SAPS official view is, 3 but as a senior SAPS officer, do you not have a view 4 yourself? 5 MAJOR-GENERAL MPEMBE: Chairperson, 6 whether I do know, as I've said I was not in that team. 7 This matter, I think General Annandale also address it that 8 there are still investigations taking place in terms of 9 what type of firearms, even including the R5s and the R1s, 10 whether they are still going to be there or not. 11 MR CHASKALSON SC: Do you accept that 12 there is a problem that between rubber bullets and R5s 13 there is this gap with nothing in between? 14 MAJOR-GENERAL MPEMBE: I just want the 15 clarity that in, is it said in the, in which context? 16 [11:00] MR CHASKALSON SC: In a crowd management 17 situation where rubber bullets, teargas, and stun grenades, 18 are inadequate to resolve the problem, the next step up at 19 present is an R5 rifle. Do you accept that that is a 20 problem? 21 MR MATHIBEDI SC: Sorry, Mr Chairman, the 22 letter may be new, but these issues were extensively raised 23 with Brigadier Mkhwanazi, so my submission is that the 24 topic is not new. 25 CHAIRPERSON: Well, ja, there are two</p>
<p style="text-align: right;">Page 58</p> <p>1 criticism and suggestion that he makes? 2 MAJOR-GENERAL MPEMBE: Chairperson, that 3 criticism, the way in which it was said to me, because the 4 letters were, as I discuss it with Brigadier Van Zyl, there 5 was a time where the rubber bullets were reduced and when 6 we have got the blue rubber bullets, and that's when then I 7 took it up with head office and that was ratified with the 8 letter of the National Commissioner replacing the previous 9 letter, and – 10 CHAIRPERSON: Sorry, you're not really 11 answering the question. The question is that the jump from 12 rubber bullets to R5s is too big a jump. There should be 13 something in between, something less lethal than R5, but 14 something more effective than rubber bullets. So I think 15 that's his point. I don't know whether there is such a 16 thing, but that's something which Mr Chaskalson is asking 17 you to give us the benefit of your experience and expertise 18 by commenting on this proposal which is made by Lieutenant- 19 Colonel Vermaak. 20 MAJOR-GENERAL MPEMBE: I am not, 21 Chairperson, in a position in the sense that I was not in 22 that team which made decisions in terms of other firearms 23 that were retracted and then others were left, and I think 24 maybe that's the main reason why I'm not in a position to 25 comment on this issue.</p>	<p style="text-align: right;">Page 60</p> <p>1 points to it, aren't there? The one is these matters were 2 raised to some extent with Mkhwanazi, but of course some of 3 the facts or allegations in these letters weren't 4 available, so they weren't put to Brigadier Mkhwanazi. 5 That's the first point. The second point is it relates, I 6 would think, to the knowledge of those concerned, because 7 one of his complaints in the letter is that warnings were 8 given and weren't heeded. Now that's also a relevant 9 factor, is it not? I don't know to what extent the 10 allegation is correct, but it looks like something that's 11 got to be investigated. So I think I'll allow Mr 12 Chaskalson to proceed, but on the basis that we don't want 13 a repetition simply of what was covered when Brigadier 14 Mkhwanazi was in the witness box. 15 MR CHASKALSON SC: Let's go back to the 16 May letter then. Do you know what steps, if any, were 17 taken in response to the May letter? 18 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 19 MR CHASKALSON SC: Can you tell us what 20 steps were taken? 21 MAJOR-GENERAL MPEMBE: I've already said 22 that it's replacement of the previously issued letter of by 23 then Lieutenant-General Mkhwanazi by the new National 24 Commissioner. 25 MR CHASKALSON SC: Was that a direct</p>



<p style="text-align: right;">Page 61</p> <p>1 response to Lieutenant-Colonel Vermaak's May letter?</p> <p>2 MAJOR-GENERAL MPEMBE: According to me</p> <p>3 what was conveyed by Brigadier Calitz, and that was a</p> <p>4 direct answer because with regard to the R5s and the R1s,</p> <p>5 we do not use them in crowd management at all. We don't</p> <p>6 use them, and that's why I wanted the clarity in terms of</p> <p>7 the question.</p> <p>8 MR CHASKALSON SC: But with respect,</p> <p>9 Colonel, if you don't use them in crowd management - Major-</p> <p>10 General, I apologise – if you don't use them in crowd</p> <p>11 management, why are POPS members then issued with R5</p> <p>12 rifles?</p> <p>13 MAJOR-GENERAL MPEMBE: It is only to</p> <p>14 engage when they are being faced with people who are using</p> <p>15 other rifles. It's not that they are supposed to use it in</p> <p>16 crowd management. They are also as police officials, they</p> <p>17 can see hijackers, bank robberies, where they have to</p> <p>18 engage those that will be shooting at them in terms of R5s,</p> <p>19 but in terms of the crowd management policy you do not use</p> <p>20 any sharp ammunition at all. That's why maybe I don't</p> <p>21 understand the question, where is the question leading in</p> <p>22 terms of why of the R5s, but this issue that I'm talking</p> <p>23 about in terms of engaging and using any other weapons,</p> <p>24 that's the one that I said I know that head office is still</p> <p>25 considering it and is investigating it, but in crowd</p>	<p style="text-align: right;">Page 63</p> <p>1 MAJOR-GENERAL MPEMBE: Correct,</p> <p>2 Chairperson, it was within correct management because we do</p> <p>3 have Standing Order 262 at that time, so what was, to me in</p> <p>4 my mind it was a crowd management situation.</p> <p>5 CHAIRPERSON: You know, you say that, but</p> <p>6 in fairness to you, I'm not sure that you're necessarily</p> <p>7 doing justice to your own position. I mean you were</p> <p>8 managing a crowd, but it was a crowd armed with dangerous</p> <p>9 weapons. So it's not quite as – perhaps it's a particular</p> <p>10 kind of crowd management situation we're dealing with, but</p> <p>11 you certainly took with you people who were armed with R5s.</p> <p>12 That's right, isn't it?</p> <p>13 MAJOR-GENERAL MPEMBE: Correct,</p> <p>14 Chairperson.</p> <p>15 MR MATHIBEDI SC: Sorry, Mr Chairman,</p> <p>16 with –</p> <p>17 CHAIRPERSON: Mr Mathibedi, sorry, I see</p> <p>18 your light has come on.</p> <p>19 MR MATHIBEDI SC: With regard to the</p> <p>20 shooting incident that occurred on the 16th, SAPS case is</p> <p>21 that the shooting was done by the TRT members and not POP,</p> <p>22 and this letter relates to POP.</p> <p>23 CHAIRPERSON: I'm informed by Adv Hemraj,</p> <p>24 who has been looking at the relevant slide of exhibit L,</p> <p>25 that according to slide 211 of exhibit L some POP members</p>
<p style="text-align: right;">Page 62</p> <p>1 management we do not use at all sharp ammunition.</p> <p>2 MR CHASKALSON SC: Well, Major-General,</p> <p>3 we deal in this Commission with two incidents, one of which</p> <p>4 on the 13th started out certainly as a crowd management</p> <p>5 situation, and we would submit the 16th was at least in</p> <p>6 large part a crowd management situation, and people were</p> <p>7 killed with sharp-point ammunition, R5 ammunition, fired by</p> <p>8 SAPS members, on both occasions.</p> <p>9 MAJOR-GENERAL MPEMBE: Correct,</p> <p>10 Chairperson, but that was not a crowd management situation.</p> <p>11 CHAIRPERSON: [Microphone off, inaudible]</p> <p>12 talking about the 13th as well as the 16th?</p> <p>13 MAJOR-GENERAL MPEMBE: Correct,</p> <p>14 Chairperson, I was saying the members they were using those</p> <p>15 weapons in defending themselves, or other members. It was</p> <p>16 not a crowd management.</p> <p>17 CHAIRPERSON: No, I understand that.</p> <p>18 That's the contention advanced by the SAPS and it may well</p> <p>19 be correct, but the point is slightly different. If people</p> <p>20 were killed with sharp ammunition on the 13th, it means the</p> <p>21 members who went to deal with the situation had R5s with</p> <p>22 them, I take it. Now when you went to deal with the</p> <p>23 situation by the railway line, did you see it as a crowd</p> <p>24 management situation or how did you see it? I'm waiting</p> <p>25 for your answer.</p>	<p style="text-align: right;">Page 64</p> <p>1 did shoot with R5s. So that factual statement you make is</p> <p>2 not entirely correct, but –</p> <p>3 MR MATHIBEDI SC: Thanks. I'm sorry, I</p> <p>4 withdraw that, Mr Chairman.</p> <p>5 MR CHASKALSON SC: And Mr Chairperson, at</p> <p>6 scene 2 the bulk of the shooting was done by units other</p> <p>7 than the TRT. In fact it was the dog squads, POPS and NIU.</p> <p>8 CHAIRPERSON: At the moment you're being</p> <p>9 granted, you are questioning the Major-General on specific</p> <p>10 aspects flowing from these letters of Lieutenant-Colonel</p> <p>11 Vermaak, and you're giving him an opportunity in effect to</p> <p>12 deal with the criticisms expressed by Lieutenant-Colonel</p> <p>13 Vermaak. Now you saw both letters, I think you said. You</p> <p>14 unfortunately only saw the December letter now, it would</p> <p>15 appear. Is that correct? Exhibit HHH68 hasn't been shown</p> <p>16 to you until now. Is that what you tell us? You never saw</p> <p>17 it in the course of your ordinary work as a deputy</p> <p>18 commissioner in the North West Province. Your attention</p> <p>19 was never drawn, if I understand you correctly – if I don't</p> <p>20 please correct me – was never drawn to exhibit HHH68. Is</p> <p>21 that right?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, it</p> <p>23 might be during the course of my work Brigadier Calitz</p> <p>24 might have mentioned it to me that I got another letter</p> <p>25 from Colonel Vermaak –</p>

<p style="text-align: right;">Page 65</p> <p>1 CHAIRPERSON: Yes, so he may have 2 mentioned it to you, but you never saw the letter. You 3 see, what I – 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 CHAIRPERSON: As I say, I find it a bit 7 awkward, to put it gently, is that here's a letter written 8 by one of those who participated in the events of both the 9 13th and the 16th of August at Marikana, writes a letter to 10 your superior, the Provincial Commissioner, and Brigadier 11 Calitz, who I presume is effectively your subordinate to 12 some extent – 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 CHAIRPERSON: - and in that he expresses 16 criticism of the senior management involved in Marikana, 17 and you see that from 11.4 of that letter. Now this is 18 criticism which is essentially directed at a group of 19 people of whom you were one, and I must say that I think 20 it's very unfair to you that you weren't at the time given 21 an opportunity pertinently to study this letter and 22 formulate a view about it, whether the criticism was 23 justified, in which case you presumably would hope to do 24 better next time, or if it was unjustified, so that you 25 would be able to if necessary reply and tell Lieutenant-</p>	<p style="text-align: right;">Page 67</p> <p>1 instructions on this – 2 COMMISSIONER HEMRAJ: Perhaps you could 3 take some instructions and – 4 MR MATHIBEDI SC: Thanks. 5 MR CHASKALSON SC: We'll get to the 6 criticisms in due, but maybe if we can start with a more 7 neutral issue, which is the suggestions, because again we 8 need in this Commission to consider what recommendations 9 would be appropriate, and in paragraph 12 there are a range 10 of suggestions that Lieutenant-Colonel Vermaak makes. He 11 says, "Go back to the basics that worked in the past, for 12 example SAPS15s." There are two questions that flow from 13 that. The first is, are SAPS15s something that should be 14 implemented? 15 MAJOR-GENERAL MPEMBE: We are still using 16 SAPS15. I don't know what is he referring to. 17 MR CHASKALSON SC: Because it seems 18 implicit in his suggestion that there has been some degree 19 of breakdown in the system of SAPS15s. Are you aware of 20 any such breakdown? 21 MAJOR-GENERAL MPEMBE: No, Chairperson, 22 but what I do know is that there are some amendments to the 23 SAPS15 than those of the past. Maybe he still wants the 24 past 15s, not the new one. 25 COMMISSIONER HEMRAJ: Haven't we in fact</p>
<p style="text-align: right;">Page 66</p> <p>1 Colonel Vermaak that he's wrong, at least insofar as he's 2 discussing you as a member of the senior management 3 involved in Marikana. But anyway, that's just my own 4 comment. I take it you'd agree with me on that. 5 MAJOR-GENERAL MPEMBE: I will agree, 6 Chairperson. I only want to add to say even on the 16th 7 himself, Colonel Vermaak, he was not with me, but he made, 8 he phoned the Provincial Commissioner, he spoke about me 9 and he never told me that he phoned the Provincial 10 Commissioner, and he made certain remarks, that he didn't 11 make those remarks in my presence, whether I agree or I 12 disagree with them. I just want to add to what the 13 Chairperson is saying, that that is his modus operandi. 14 CHAIRPERSON: But the big point we're 15 busy with at the moment is, which Mr Chaskalson I take it 16 will take further, is there is criticism here, and I take 17 it, it's being put to you so you can give us your response, 18 in fairness to you, and also to guide us as to whether this 19 is criticism we must accept or criticism we mustn't accept, 20 from your point of view. 21 COMMISSIONER HEMRAJ: Mr Mathibedi, do 22 you know if these criticisms have been taken to any 23 particular person or body and are being discussed? Is 24 there any feedback on it? 25 MR MATHIBEDI SC: We don't have</p>	<p style="text-align: right;">Page 68</p> <p>1 had a whole series of SAPS15s handed in? 2 MR CHASKALSON SC: We have, Commissioner 3 Hemraj, but we've also had a video of Brigadier Calitz on 4 the Saturday, indicating that large numbers of those 5 SAPS15s were filled out two days after the event, and I 6 think that may be something that, or hadn't yet been filled 7 out on the Saturday. I think that may be something that 8 Lieutenant-Colonel Vermaak has in mind here, I don't know; 9 we can raise it with him. "An operational diary for each 10 section," that suggestion, what is your response to that? 11 MAJOR-GENERAL MPEMBE: It's my testimony 12 that each Nyala should have, and they should complete an 13 operational diary. That has never been taken away. 14 MR CHASKALSON SC: And is that properly 15 implemented? 16 MAJOR-GENERAL MPEMBE: According to me, 17 yes, but in terms of management thereof, that's the one 18 that I cannot say, because that has to be done by section 19 commanders themselves. But it has to be implemented and it 20 has to be managed correctly. 21 MR CHASKALSON SC: You see, Major- 22 General, as evidence leaders we've been trying to collect 23 from SAPS all of the operational diaries and all of the 24 pocketbooks from members who were present at Marikana, and 25 there is a very large proportion of the pocketbooks and</p>

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1 operational diaries that should be here that have either  
 2 been lost or disappeared or are otherwise unavailable. So  
 3 it seems to us that the system as it's currently being  
 4 implemented has some problems. Can you comment on that?  
 5 MAJOR-GENERAL MPEMBE: As it put to me  
 6 now, the problem is not that they are not there, and that's  
 7 what I said; they are there, but it could be a problem, it  
 8 could be management thereof by the commanders themselves.  
 9 MR CHASKALSON SC: And you'd agree that  
 10 it's very important that the proper management of that  
 11 system takes place?  
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 13 MR CHASKALSON SC: And then, "Out-handing  
 14 and back-handing register for equipment signed by the  
 15 platoons and section commanders," is that a system that's  
 16 in place in SAPS?  
 17 MAJOR-GENERAL MPEMBE: I just wanted to  
 18 find out whether is he speaking about when they are booking  
 19 it from the logistic, that I will say it is still being  
 20 done, and I don't know what is he referring by that, out-  
 21 handing and – because any equipment, any government  
 22 equipment when you book it out, you need to sign it in the  
 23 register and you need to bring it back, and there must be  
 24 entries made in your pocketbook, in the occurrence book,  
 25 and that according to me is still being done.

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1 MR CHASKALSON SC: And as far as you are  
 2 concerned, that's being properly administered within SAPS  
 3 at the moment?  
 4 MAJOR-GENERAL MPEMBE: I would say it is  
 5 supposed to be properly administered, those that I have  
 6 checked, yes. But what is he referring specifically, I'm  
 7 not aware of.  
 8 MR CHASKALSON SC: Well, that's a matter  
 9 we'll take further with him. "Tasking form issued by the  
 10 commander," do you know what he's referring to there?  
 11 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 12 MR CHASKALSON SC: And "Post shift report  
 13 where all successes are mentioned and also information that  
 14 the commander must have knowledge of." Are you aware of  
 15 what he's referring to there?  
 16 MAJOR-GENERAL MPEMBE: Yes, I'm aware of  
 17 what he's referring to and it's also applied in different  
 18 units. In terms of crime prevention I think that's where  
 19 the problem is. It depends which priority that they have  
 20 done, because in others it's a sector report which I know  
 21 that they had to complete, and then also this one where  
 22 successes are being mentioned.  
 23 MR CHASKALSON SC: And is that a  
 24 suggestion with which you agree, that that's a useful  
 25 system?

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1 MAJOR-GENERAL MPEMBE: No, I agree,  
 2 Chairperson.  
 3 MR CHASKALSON SC: If we can then go to  
 4 the criticisms, let's start with paragraph 11.4, "Senior  
 5 officers do planning without any experience in serious  
 6 incidents and this caused that the SAPS must afterwards  
 7 explain their actions. Marikana Lonmin is a very good  
 8 example where senior management was warned before specific  
 9 actions were taken, but they did not give any attention to  
 10 the advice. This type of ignorance put the National and  
 11 Provincial Commissioners in a very difficult situation."  
 12 Now are you aware of any warnings that were given before  
 13 specific actions were taken at Marikana which had  
 14 unfortunate consequences?  
 15 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 16 MR CHASKALSON SC: You're not aware?  
 17 MAJOR-GENERAL MPEMBE: I say no,  
 18 Chairperson.  
 19 MR CHASKALSON SC: And nothing in this  
 20 regard has been brought to your attention since Lieutenant-  
 21 Colonel Vermaak wrote this letter?  
 22 MAJOR-GENERAL MPEMBE: Correct,  
 23 Chairperson. As I've pointed out, it is his modus operandi  
 24 that he does not communicate with me.  
 25 MR CHASKALSON SC: That may be so, Major-

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1 General, but he clearly does communicate both with  
 2 Brigadier Calitz and Lieutenant-General Mbombo, and they've  
 3 had this letter, it would appear, but they haven't conveyed  
 4 any specific concerns in this regard to you? That's my  
 5 question. Have they conveyed any specific concerns in this  
 6 regard to you?  
 7 MAJOR-GENERAL MPEMBE: Which particular –  
 8 the one of December?  
 9 MR CHASKALSON SC: 11.4, "Senior  
 10 management was warned before specific actions were taken,  
 11 but they did not give any attention to the advice."  
 12 COMMISSIONER HEMRAJ: That is a bit of a  
 13 vague statement though, isn't it, Mr Chaskalson?  
 14 MR CHASKALSON SC: It's a very vague  
 15 statement. We'll have to find out from Lieutenant-Colonel  
 16 Vermaak –  
 17 COMMISSIONER HEMRAJ: What he meant by  
 18 that.  
 19 MR CHASKALSON SC: - what specifically he  
 20 meant by it, but I would have thought that that's something  
 21 that would have been canvassed with him either by Brigadier  
 22 Calitz or Lieutenant-General Mbombo in response to this  
 23 letter, and I was hoping that the witness might be able to  
 24 help us, but it seems he's not.  
 25 COMMISSIONER HEMRAJ: Maybe he's

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1 hamstrung by the fact that we don't really know what the  
 2 specific actions are, or what the warnings are.  
 3 [11:20] CHAIRPERSON: Ja, I can see the witness  
 4 has got a problem. You know, you talk about Lieutenant-  
 5 Colonel Vermaak's modus operandi, but of course it sounds  
 6 as if it's the modus operandi of the Provincial  
 7 Commissioner and Brigadier Calitz not to raise these things  
 8 with you either when they get a letter dealing with it, but  
 9 that's something we'll have to take up with them, but I  
 10 understand your problem is if they didn't raise it with you  
 11 either because of their modus operandi or otherwise, it  
 12 puts you at a distinct disadvantage in dealing now with the  
 13 letter in these vague terms. That's correct, isn't it?  
 14 You're at a distinct disadvantage of dealing with this.  
 15 MAJOR-GENERAL MPEMBE: It is correct,  
 16 Chairperson, because I don't specifically know about the  
 17 warnings, but the warning that I do know, which I was told  
 18 by the Provincial Commissioner, is a threat on my life that  
 19 was said by Brigadier, that was said by Lieutenant-Colonel  
 20 Merafe. The Provincial Commissioner did communicate that  
 21 with me and him, Colonel, when I was on the scene, then I  
 22 also said that he did communicate, but before that - and  
 23 that is what is, my answer should be read in that context -  
 24 before that he has never communicated with me with any  
 25 warnings.

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1 MR CHASKALSON SC: I don't think that's  
 2 the sort of warning to which Lieutenant-Colonel Vermaak is  
 3 referring, because this seems to be a warning in relation  
 4 to the advisability of a particular course of conduct being  
 5 followed, and we'll have to canvass it with Lieutenant-  
 6 Colonel Vermaak. "Members don't have commanders with  
 7 experience in charge at unrest scenes." Are you aware of  
 8 any instances of this nature?  
 9 CHAIRPERSON: That is 11.1?  
 10 MR CHASKALSON SC: 11.1.  
 11 MAJOR-GENERAL MPEMBE: Chairperson, I'm  
 12 not aware of that, but what I do know, that, is that all  
 13 members in the command positions in POP, they do have  
 14 experience in POP matters.  
 15 MR CHASKALSON SC: Yes, but he's talking  
 16 about the unrest at Lonmin, Amplats, and Impala, where  
 17 there were a large number of members drawn from other  
 18 units, apart from POPS, and what he was saying is that some  
 19 of the commanders in that situation do not have, did not  
 20 have experience at unrest scenes. Is that a fair  
 21 criticism?  
 22 MAJOR-GENERAL MPEMBE: No, Chairperson, I  
 23 don't know what is he referring to.  
 24 MR CHASKALSON SC: And as far as you are  
 25 concerned, all of the commanders of the non-POPS units who

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1 were at the unrest scenes at Marikana had had previous  
 2 experience being in charge in unrest scenes?  
 3 MAJOR-GENERAL MPEMBE: It's really  
 4 difficult to refer to unrest situations because those who  
 5 were there for unrest situations were highly experienced  
 6 officers. So I don't know whether was he saying TRT,  
 7 because the role of TRT it was made clearly to the  
 8 Commission what was the role, NIU, and STF. So I don't  
 9 know whether was, what was he referring to as his unrest  
 10 situations.  
 11 MR CHASKALSON SC: Well, we'll take it  
 12 further with him and get some particulars from him.  
 13 "Commanders don't know or have the legislation under which  
 14 they can act." Are you aware of any commanders at Marikana  
 15 who weren't aware of the legislation under which they were  
 16 acting at Marikana?  
 17 MAJOR-GENERAL MPEMBE: At that time I  
 18 wasn't aware, but the Commission made me aware of  
 19 Lieutenant-Colonel Scott - Colonel Scott, I'm sorry,  
 20 because he's now a full colonel, that he said he was not  
 21 aware, but what I do know is that all members have gone  
 22 courses and they have -  
 23 MR CHASKALSON SC: I think that relates  
 24 more specifically to 11.5, "Officers and members do  
 25 planning without any knowledge of the Gatherings Act or

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1 Standing Order 262." Lieutenant-Colonel Scott fairly  
 2 conceded that he wasn't aware of the provisions of Standing  
 3 Order 262 in its current form. You say that you didn't  
 4 know that at Marikana.  
 5 MAJOR-GENERAL MPEMBE: I didn't know that  
 6 he said he did not know the Standing Order, but it is my  
 7 testimony to this Commission that Colonel Scott did not  
 8 plan for us. The POP members and the commanders with their  
 9 wealth of experience did do the planning, and I've said it  
 10 many times through my testimony.  
 11 MR CHASKALSON SC: That was an issue to  
 12 which I was going to turn, Major-General, because we've  
 13 heard the testimony of Lieutenant-Colonel Scott, and he has  
 14 now confirmed that the plan for stage 3, which was the plan  
 15 that was ultimately implemented on the 16th, was a plan, the  
 16 details of which were determined, or were provided  
 17 exclusively by him. Do you dispute that?  
 18 MAJOR-GENERAL MPEMBE: Correct,  
 19 Chairperson, because what I said is to this Commission, the  
 20 plan that was discussed, it was discussed with all stages,  
 21 so I don't know at what time he provided it exclusively  
 22 without us.  
 23 MR CHASKALSON SC: Well, perhaps I can  
 24 help you there, Major-General. The plan for stage 3  
 25 changed. Stage 3 in its original form changed at some

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1 stage on the 16th of August. Either at the morning meeting  
 2 at 6 o'clock on the 16th of August, or at the 1:30 JOCCOM,  
 3 the JOC for the first time abandoned the encirclement plan,  
 4 that was the original plan, and adopted a new plan,  
 5 disperse and disarm. Now the details of the dispersal and  
 6 disarm plan were not put to the JOC before the 1:30 JOCCOM.  
 7 Do you accept that?

8 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 9 it is my testimony to this, unless he will come with any  
 10 other one.

11 MR CHASKALSON SC: Well, he has already  
 12 come with other one, Major-General.

13 MAJOR-GENERAL MPEMBE: Ja, what I'm  
 14 saying is that I did mention in my testimony to say the  
 15 first plan that we had, it was to encircle the whole koppie  
 16 and that we realised that we were running short of the  
 17 barbed wire, and that it was abandoned. So I, that's what,  
 18 that's the context in which I don't know what he was  
 19 referring to, unless he was speaking something that he  
 20 thought of.

21 MR CHASKALSON SC: That plan, Major-  
 22 General - and it's an issue on which we spent, gosh, the  
 23 better part of a day in cross-examination with Colonel  
 24 Scott - that plan was not abandoned before the 16th of  
 25 August, and I don't want to rehash that cross-examination

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1 with you, but if needs be I can take you to reams of, well  
 2 at least 10 contemporaneous documents which show that that  
 3 plan was on the table at the JOCCOM on the 16th of August.  
 4 Are you suggesting that that plan had been abandoned before  
 5 the 16th of August?

6 MAJOR-GENERAL MPEMBE: Chairperson, what  
 7 is now put to me by Advocate, I had no knowledge of. The  
 8 knowledge that I had is that that plan was abandoned  
 9 immediately when we realised that we do not have enough  
 10 barbed wire to -

11 CHAIRPERSON: When was that? When was  
 12 the decision taken -

13 MAJOR-GENERAL MPEMBE: It was before the  
 14 16th.

15 CHAIRPERSON: On the Tuesday or the  
 16 Wednesday?

17 MAJOR-GENERAL MPEMBE: Chairperson, I  
 18 just have to check my records when what was then abandoned,  
 19 but it could be on Tuesday when we were going through the  
 20 stages of the plan.

21 CHAIRPERSON: Ja. You see, there's also  
 22 been evidence, or a suggestion at the very least, which I  
 23 think was put to Colonel Scott, that in fact Brigadier  
 24 Calitz asked Lonmin for more barbed wire, and Lonmin had  
 25 more barbed wire available. That was covered in evidence.

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1 But anyway, I don't know if you were aware of that, but  
 2 were you aware of that?

3 MAJOR-GENERAL MPEMBE: No, Chairperson, I  
 4 was not aware of that.

5 CHAIRPERSON: I understand your previous  
 6 answer then. But the evidence we got was that Brigadier  
 7 Calitz asked Lonmin for more barbed wire and they had more  
 8 barbed wire, but that's obviously a matter that you don't  
 9 know anything about, so you can't help us. But Colonel  
 10 Scott said expressly here when giving evidence that the  
 11 encirclement plan, what we call plan A, was on the table in  
 12 the JOC on the 16th and was only abandoned there, and was  
 13 abandoned for a number of reasons, which he elaborated on,  
 14 and the other plan was first tabled in the JOC on the 16th,  
 15 and the details of it were given at the 1:30 meeting when  
 16 there were apparently no commanders present, you know the  
 17 POP commanders present. That was his evidence on the  
 18 matter. Now if you don't agree with him, obviously you  
 19 must say so, but I must tell you, that was his evidence,  
 20 and as Mr Chaskalson says, it was dealt with extensively in  
 21 cross-examination over - my recollection is it was more  
 22 than a day, but if Mr Chaskalson says it was a day, well, I  
 23 won't fight with him. But anyway that was his evidence,  
 24 you see. Now is that in accordance with your recollection  
 25 or - there are two, there are three possibilities, aren't

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1 there? The one is in accordance with your recollection.  
 2 The second is you remember that's not correct. The third  
 3 one is you can't help us from your own recollection as you  
 4 sit there at the table today. Now which of the three is  
 5 it?

6 MAJOR-GENERAL MPEMBE: Chairperson, to me  
 7 it is that that plan, once we ran short of the barbed wire,  
 8 it was abandoned.

9 CHAIRPERSON: Expressly at the JOC?

10 MAJOR-GENERAL MPEMBE: According to me,  
 11 yes, Chairperson, but not -

12 CHAIRPERSON: Recorded in a minute?

13 MAJOR-GENERAL MPEMBE: No, it was not  
 14 recorded in the minutes.

15 CHAIRPERSON: And you say you can't  
 16 remember when it was, but it was either the Tuesday or the  
 17 Wednesday?

18 MAJOR-GENERAL MPEMBE: Correct,  
 19 Chairperson, but I was personally present in the JOC and he  
 20 was the one that was showing us how much - what is it? -  
 21 barbed wire is needed and then we asked, "Do we have that  
 22 barbed wire?" He said no.

23 CHAIRPERSON: Well anyway, according to  
 24 the evidence Brigadier Calitz asked - I don't know whether  
 25 it was before or after that discussion - asked Lonmin if

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1 they could provide more barbed wire. But anyway, you don't  
 2 know about that, so it's pointless discussing it with you.  
 3 MR CHASKALSON SC: You say that the plan  
 4 was not a Scott plan, it was a plan into which POPS  
 5 commanders contributed a great deal. That's what I  
 6 understood your evidence to be a short while ago. Am I  
 7 correct?  
 8 MAJOR-GENERAL MPEMBE: Correct,  
 9 Chairperson.  
 10 MR CHASKALSON SC: Which POPS commanders  
 11 made a contribution to stage 3 of the plan as it was  
 12 implemented?  
 13 MAJOR-GENERAL MPEMBE: I did mentioned  
 14 their names. Brigadier Calitz, Brigadier Makhubela, those  
 15 who were forming part of the JOCCOM meeting.  
 16 MR CHASKALSON SC: And do you remember  
 17 when they made these contributions?  
 18 MAJOR-GENERAL MPEMBE: It is the same  
 19 date that I'm speaking to the Chairperson about, and the  
 20 date when we were dealing with all the stages of the plan,  
 21 because on the 16th that plan had all the different stages.  
 22 MR CHASKALSON SC: Well, the  
 23 contemporaneous documents and the evidence of Colonel Scott  
 24 suggests that the date on which all of the stages of the  
 25 plan were first recorded, was the Tuesday, Tuesday the 14th.

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1 Is it your suggestion that it was on Tuesday the 14th that  
 2 the encirclement plan was abandoned?  
 3 MAJOR-GENERAL MPEMBE: I'll just have to  
 4 check, Chairperson. That's why I said Tuesday, either  
 5 Tuesday or Wednesday, but it was when we were dealing with  
 6 all the stages of the plan.  
 7 MR CHASKALSON SC: And do you recall what  
 8 contributions were made by what POPS officers?  
 9 MR MATHIBEDI SC: Sorry, Mr Chairman,  
 10 this ground has been covered before. I don't think it's  
 11 new –  
 12 CHAIRPERSON: Well, it was covered by  
 13 Colonel Scott, but I mean if Colonel Scott's evidence is  
 14 not accepted by an important witness from the police in the  
 15 form of the Major-General, it's got to be covered with him  
 16 as well, surely. I mean the ground has been covered with  
 17 Colonel Scott, that's correct, but he's not the only  
 18 witness on the matter and if a different version has been  
 19 given to us by somebody else, that's got to be looked at  
 20 because we can't automatically assume that Colonel Scott's  
 21 evidence is right and the contradictory evidence isn't.  
 22 MR MATHIBEDI SC: Sorry, Mr Chairman, it  
 23 was dealt with during the evidence of this witness by Adv  
 24 Madlanga.  
 25 CHAIRPERSON: Yes, no I understand that,

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1 but what wasn't covered was what Colonel Scott was going to  
 2 say, which was different from what's in exhibit L, and  
 3 Colonel Scott's evidence insofar as it differs from exhibit  
 4 L was obviously not put by Mr Madlanga because nobody knew  
 5 about it. Mr Chaskalson can carry on.  
 6 MR CHASKALSON SC: Mr Chairperson, it  
 7 goes considerably further than that because there are  
 8 hundreds of documents that were disclosed during the course  
 9 of Colonel Scott's evidence that are directly relevant to  
 10 this issue. The documents that were put to Colonel Scott,  
 11 none of them had been, well with one or two exceptions none  
 12 of them had been disclosed prior to his giving our access  
 13 to his hard drive. So if we have to canvass this issue  
 14 afresh with Lieutenant-General Mbombo there are a plethora  
 15 of documents that we will –  
 16 CHAIRPERSON: With Major-General Mpeembe.  
 17 MR CHASKALSON SC: Major-General Mpeembe.  
 18 There are a wide range of contemporaneous documents that  
 19 support Colonel Scott's evidence and that are at odds with  
 20 Major-General Mpeembe's evidence, which we will have to put  
 21 to him.  
 22 CHAIRPERSON: Yes, now it would appear  
 23 that the Major-General doesn't know what happened when  
 24 Colonel Scott gave evidence. He doesn't know about these  
 25 documents. So I don't know that it's fair to cross-examine

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1 him on documents he hasn't seen, on evidence he doesn't  
 2 know about. I'm not saying that that means that the cross-  
 3 examination can't take place, but I am saying that in  
 4 fairness to the witness, to enable him to give meaningful  
 5 answers that can be relied on, if it's appropriate to do  
 6 so, that he should be given the opportunity to look at  
 7 those documents. Of course when you say hundreds, you  
 8 don't seriously mean he must be shown all the documents,  
 9 but I wonder whether the manner in which the plan developed  
 10 and the stages of it, which you covered fully with Colonel  
 11 Scott, this is what you're now covering with this witness  
 12 and it would appear, at least prima facie, that what he's  
 13 saying differs from what Colonel Scott said, so I wonder  
 14 whether it's not appropriate for us at this stage to call a  
 15 halt to the proceedings today. The witness is coming back  
 16 on Monday anyway. He could be given an opportunity to look  
 17 at the document to which you are referring and possibly  
 18 even be given reference to the transcript of Colonel  
 19 Scott's evidence, so when Colonel Scott's evidence is put  
 20 to him and he's asked whether he agrees or doesn't agree,  
 21 the documents that were dealt with in that cross-  
 22 examination are put to him and at least he'll be able to  
 23 deal with it in an appropriate manner.  
 24 MR CHASKALSON SC: Chairperson, I –  
 25 CHAIRPERSON: What Adv Hemraj says, and I

<p style="text-align: right;">Page 85</p> <p>1 haven't had a chance to consult my other colleague yet, but  2 I will in a moment, but what Adv Hemraj says is, you know,  3 he's being questioned at the moment and expected to answer  4 from memory. It may be when he sees the documents and even  5 when he reads Colonel Scott's evidence, that his memory may  6 be jolted. So I've got to be fair to him, but let me first  7 see what Adv Tokota has to say.  8 Yes, Mr Tokota says that it's your cross-  9 examination; the documents you want to rely on, you know, I  10 must leave it to you to pick them, if you are going to rely  11 on any other documents, but my suggestion was that we call  12 a halt now, you carry on with your cross-examination on  13 Monday, and the witness be given an opportunity to have his  14 memory jolted, if necessary, by such documents as you want  15 to put to him, and perhaps even passages in Colonel Scott's  16 evidence. But I think to be fair, he's testifying at the  17 moment under a bit of a disadvantage and I don't think  18 that's something we should permit.  19 MAJOR-GENERAL MPEMBE: Correct,  20 Chairperson, because I would like to have gone through  21 because, even my transcripts, because I did deal with it in  22 detail to say what was suggested, how was it counted and  23 what were the reasons. So I must also go –  24 CHAIRPERSON: No, we know what you said  25 before, but anyway, we're not busy with what you said</p>	<p style="text-align: right;">Page 87</p> <p>1 were tasked with ensuring that the Provincial  2 Commissioner's instruction is properly operationalised by  3 all the JOC commanders and that was how you encapsulated  4 your function as JOC Commander and of course, overall  5 commander. Now I assume that that meant that when the  6 Provincial Commissioner had an instruction to give out it  7 would come down through you. You would be the channel  8 through which that instruction would be communicated if  9 that was your responsibility as JOC Commander. Is that  10 correct?  11 MAJOR-GENERAL MPEMBE: I'm not clear  12 about the question, Chairperson. And may I also make a  13 request that I don't see my glass here, if I ask Captain  14 just to bring the glass for me.  15 CHAIRPERSON: Did you leave your  16 spectacles behind in the police headquarters here at the  17 council offices? Well I'm sure someone will go from the  18 legal team to get your spectacles for you. People rushing  19 forward to help you.  20 MAJOR-GENERAL MPEMBE: Chairperson, I'm  21 just asking the clarity on the question.  22 CHAIRPERSON: What he's done is he's read  23 to you from your statement GGG12, Para 7 and I'll just read  24 it to you again, well can you see on the board above you  25 now or do you need your spectacles for that? The passage</p>
<p style="text-align: right;">Page 86</p> <p>1 before; we're busy with your comments on what Colonel Scott  2 says. But anyway, what do you say to my suggestion that we  3 call a halt now, or unless there are other matters you can  4 deal with now that don't – so we could use the time,  5 available time, which won't involve this aspect.  6 MR CHASKALSON SC: Chairperson, the bulk  7 of the documentation that would be required to canvass the  8 plan issues I think would make it impossible to do that  9 today. There are a couple of discreet other issues that I  10 could address. I'm happy to do that now, or if it would be  11 more convenient to do it on Monday, I have no preference in  12 that respect.  13 CHAIRPERSON: We'll take the tea  14 adjournment now and you can then gather your discreet  15 points and ask the witness about them thereafter.  16 [COMMISSION ADJOURNS COMMISSION RESUMES]  17 [11:58] CHAIRPERSON: The Commission resumes.  18 Lieutenant-General, you're still under oath, sorry I've  19 promoted you inadvertently, forgive me. I'm sure you'll  20 forgive me. Major-General you're still under oath. Mr  21 Chaskalson.  22 MR CHASKALSON SC: Major-General if we  23 can go to a completely different topic now and your  24 statement GGG12, page 3, paragraph 7 sets out what your  25 responsibilities as JOC Commander were. And you say you</p>	<p style="text-align: right;">Page 88</p> <p>1 he's read is it relates to you, Commander of the JOC and  2 says "tasked with ensuring that the Provincial  3 Commissioner's instruction is properly operationalised by  4 all the JOC commanders." That's what he's put to you and  5 he suggests that that means or should mean that all  6 instructions from the Provincial Commissioner should come  7 through you so you could ensure that they are properly  8 operationalised. That's the question if I understand it  9 correctly. Is that right, Mr Chaskalson?  10 MR CHASKALSON SC: That's correct,  11 Chairperson.  12 MAJOR-GENERAL MPEMBE: Not necessarily  13 like that, Chairperson, then my answer will be no.  14 MR CHASKALSON SC: Can you explain why  15 your answer is no? Can you explain in what circumstances  16 instructions would come down through a different channel?  17 MAJOR-GENERAL MPEMBE: Chairperson, if  18 the Provincial Commissioner phoned General Naidoo and  19 tasked General Naidoo, General Naidoo can during the JOCCOM  20 meeting communicate what the Provincial Commissioner said.  21 It can also be done through General Annandale, but with  22 regard to me being the head of the operations and during  23 the operations as I've been appointed that could have  24 happened. I don't know whether my explanation, but this is  25 how I know it could happen.</p>

<p style="text-align: right;">Page 89</p> <p>1 CHAIRPERSON: I'm sorry, the problem is,  2 unless I'm misreading this, the problem is if the  3 instruction was given to somebody else by the Provincial  4 Commissioner, to somebody else other than to you and you  5 didn't know about it because it wasn't communicated to you,  6 then you would have difficulty in ensuring that it was  7 properly operationalised. I think that's what underlies  8 the question. Am I right, Mr Chaskalson?  9 MR CHASKALSON SC: Yes, Chairperson.  10 CHAIRPERSON: So do you understand the  11 point?  12 MAJOR-GENERAL MPEMBE: I understand the  13 point, Chairperson, the other thing if maybe that is said  14 in a JOCCOM where I was not present then it could happen.  15 But if it is said in the JOCCOM where I am present it will  16 also be discussed in the JOCCOM.  17 MR CHASKALSON SC: But presumably there  18 would have to be some sort of system so that you, at all  19 times, knew what the Provincial Commissioner's instructions  20 were so that you were in a position to give effect to them  21 even if they are channelled down through different officers  22 within the force.  23 CHAIRPERSON: In the service.  24 MR CHASKALSON SC: The service.  25 MAJOR-GENERAL MPEMBE: Correct,</p>	<p style="text-align: right;">Page 91</p> <p>1 MAJOR-GENERAL MPEMBE: No, not now.  2 MR CHASKALSON SC: When did you first  3 find out about it?  4 MAJOR-GENERAL MPEMBE: It was when I was  5 given the document yesterday by Brigadier Pretorius when  6 actually she was preparing for me the file that is in front  7 of me. So before that I didn't know about it.  8 MR CHASKALSON SC: And possibly if we can  9 call up JJJ177 because I think that's the document to which  10 you're referring. Can we call up JJJ177? So, this is the  11 document – is this the document to which you're referring  12 in the context of that answer?  13 MAJOR-GENERAL MPEMBE: Correct,  14 Chairperson.  15 MR CHASKALSON SC: And before you saw  16 that document yesterday you weren't aware that there had  17 been a proposal put by the Provincial Commissioner in  18 relation to Marikana at this extraordinary session of the  19 National Management Forum?  20 MAJOR-GENERAL MPEMBE: Chairperson, I do  21 not know about it, not even now, but I did not even know,  22 that's my answer.  23 MR CHASKALSON SC: I just need to  24 understand that answer. Had you heard that this had taken  25 place?</p>
<p style="text-align: right;">Page 90</p> <p>1 Chairperson, and it was also done.  2 MR CHASKALSON SC: We know that on the  3 night of the 15th the Provincial Commissioner attended or on  4 the afternoon and evening of the 15th the Provincial  5 Commissioner attended a meeting of the National Management  6 Forum of SAPS. Were you aware that this was taking place?  7 MAJOR-GENERAL MPEMBE: Correct,  8 Chairperson.  9 MR CHASKALSON SC: Had you discussed  10 anything in relation to that meeting with her before she  11 went to that meeting?  12 MAJOR-GENERAL MPEMBE: No, Chairperson.  13 MR CHASKALSON SC: We know also that at  14 an extraordinary session of the National Management Forum  15 after that meeting –  16 CHAIRPERSON: I think it's better to  17 pronounce it extra ordinary.  18 MR CHASKALSON SC: An extraordinary  19 session of the National Management Forum after that meeting  20 a proposal was adopted in relation to Marikana. Are you  21 aware of that?  22 MAJOR-GENERAL MPEMBE: I don't know about  23 it, Chairperson.  24 MR CHASKALSON SC: You say you don't  25 about even now?</p>	<p style="text-align: right;">Page 92</p> <p>1 MAJOR-GENERAL MPEMBE: I heard it when I  2 saw this, that that has taken place.  3 MR CHASKALSON SC: So if I had asked you  4 that question two days ago, if I'd asked you are you aware  5 that there was a meeting of the National – an extraordinary  6 session of the National Management Forum at SAPS on the 15th  7 and that meeting considered and endorsed a proposal by the  8 Provincial Commissioner about Marikana, if that question  9 was put to you two days ago without seeing that document  10 what would your answer have been?  11 MAJOR-GENERAL MPEMBE: It would still be  12 the same answer, but what I do know is that after – while  13 the Provincial Commissioner was still at the National  14 Management Forum she did phone me and say I need to phone  15 the deputies to get also extra resources. But this was  16 never being communicated to me.  17 MR CHASKALSON SC: So she phoned you to  18 say that she needs to call the deputies, who would the  19 deputies be?  20 MAJOR-GENERAL MPEMBE: No, the deputies  21 in other provinces that I should inform them because the  22 NATJOC has already sent a letter to say I need to  23 communicate with them to how I should get more resources.  24 That how should I channel when they should come.  25 MR CHASKALSON SC: So what she reported</p>



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1 to you was that NATJOC had taken some sort of decision and  
 2 you could now approach deputies in other provinces to get  
 3 extra resources.  
 4 MAJOR-GENERAL MPEMBE: Not to get, but to  
 5 channel them when to come in terms of the plan.  
 6 MR CHASKALSON SC: Did you need – at that  
 7 stage were you looking for extra resources in terms of the  
 8 plan?  
 9 MAJOR-GENERAL MPEMBE: Correct,  
 10 Chairperson, and these are the resources that I've already  
 11 said that they were already being mobilised. But I was the  
 12 person to say when will they be necessary, when they will  
 13 be utilised, not necessary, when will they be utilised and  
 14 that's actually what I'm referring to here.  
 15 MR CHASKALSON SC: So you made the  
 16 decision about when new resources could be – when new  
 17 resources were necessary to be used because that was your  
 18 responsibility, is that correct?  
 19 MAJOR-GENERAL MPEMBE: I said no,  
 20 Chairperson, but what I'm saying now is I was supposed to  
 21 tell them when, where to report actually because the  
 22 mobilisation was done already.  
 23 MR CHASKALSON SC: And did you understand  
 24 that mobilisation to have been done earlier in the week or  
 25 just pursuant to what the Provincial Commissioner was

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1 reporting to you from the National Management Forum?  
 2 MAJOR-GENERAL MPEMBE: It is the one that  
 3 was already done by what I was informed by Brigadier  
 4 Calitz.  
 5 MR CHASKALSON SC: And that was already  
 6 on the Monday or the Tuesday you were saying?  
 7 MAJOR-GENERAL MPEMBE: Monday,  
 8 Chairperson, but Brigadier Calitz when he phoned me  
 9 actually he started that mobilising as far as Saturday and  
 10 Sunday is concerned.  
 11 MR CHASKALSON SC: So what then was the  
 12 relevance of the call from the Provincial Commissioner on  
 13 the Wednesday night? What did she tell you that you  
 14 didn't know already?  
 15 MAJOR-GENERAL MPEMBE: Chairperson, it  
 16 was to say where will the people report because the other  
 17 deputies need to somebody, a contact person when those  
 18 resources are coming they need to know to whom are they  
 19 reporting on the other side. That is the purpose which I  
 20 am trying to explain.  
 21 MR CHASKALSON SC: So the only purpose of  
 22 her call was to tell you that you needed to announce  
 23 yourselves to the other provincial deputies to say I'm the  
 24 contact person, when people report they must report to me?  
 25 MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.  
 2 MR CHASKALSON SC: And she didn't mention  
 3 to you that there had been a proposal adopted to disarm the  
 4 protesting masses at that meeting?  
 5 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 6 MR CHASKALSON SC: And prior to yesterday  
 7 were you not aware that there had been this proposal  
 8 adopted?  
 9 MAJOR-GENERAL MPEMBE: I've already said  
 10 correct, Chairperson.  
 11 MR MATHIBEDI SC: Sorry, Mr Chairman, the  
 12 word used is endorsed, not –  
 13 CHAIRPERSON: Would you explain to me the  
 14 difference between adopted and endorsed? I think you need  
 15 to turn your microphone on. I know the minutes says after  
 16 deliberations the meeting endorsed the proposal. Counsel  
 17 has paraphrased that by saying adopted. Now what I'm  
 18 asking you is – and you're objecting to the paraphrase  
 19 which you say is inaccurate. Now what's the difference  
 20 between the two?  
 21 MR MATHIBEDI SC: My understanding is  
 22 that for something to be adopted, it should be put up for a  
 23 decision.  
 24 CHAIRPERSON: Endorsed?  
 25 MR MATHIBEDI SC: It's something that is

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1 there, it's merely being, you know, endorsed.  
 2 CHAIRPERSON: Oh I see, Endorsed means  
 3 endorsed.  
 4 MR MATHIBEDI SC: Endorsed –  
 5 CHAIRPERSON: All right, all right well  
 6 perhaps to solve the problem Mr Chaskalson I take it you  
 7 would happily adopt the suggestion that sorry – I wasn't  
 8 trying to be funny. You would happily accept the  
 9 suggestion that the wording of the resolution should be  
 10 strictly adhered to.  
 11 MR CHASKALSON SC: I'll go so far as to  
 12 endorse that suggestion, Mr Chairperson. Now Major-General  
 13 the call that you received from the Provincial Commissioner  
 14 appears to have been made by her at 10:27:58. We've  
 15 produced a list of cell phone records of calls made to and  
 16 from your phone on the 15th and 16th of August.  
 17 CHAIRPERSON: That is exhibit HHH65, 65  
 18 is calls to and from the witness and 64, we may as well  
 19 deal with both at the same time I suppose. HHH64 is a  
 20 selection of calls by senior SAPS officers on the night of  
 21 the 15th. So let's accept both of them as exhibits at this  
 22 stage to save time when the other one's referred to. So  
 23 exhibit HHH64 is Selection of calls by senior SAPS officers  
 24 on night of 15 August and exhibit HHH65 is Selection of  
 25 calls to and from Major-General Mpeembe on 15 and 16 August.

<p style="text-align: right;">Page 97</p> <p>1 MR CHASKALSON SC: And Major-General 2 you'll see that there's a call that was made at 22:27:58 on 3 the 15th for almost five minutes, four minutes and 57 4 seconds from the Provincial Commissioner to yourself. Is 5 that the call to which you were referring when you 6 described this instruction that you needed to contact your 7 counterparts in the provinces as deputy commissioners. 8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson, but it also included my feedback to her of 10 what has transpired in the meeting with the unions. 11 MR CHASKALSON SC: So you gave that 12 feedback to her in the same call you say? 13 MAJOR-GENERAL MPEMBE: Correct, 14 Chairperson. 15 MR CHASKALSON SC: You see what's curious 16 about that is that the regular session of the National 17 Management Forum finished at 9:15 according to what we've 18 been informed from the actual minutes. So this call was 19 made an hour and 15 minutes after the regular meeting 20 finished, did you understand the Provincial Commissioner to 21 still be at the National Management Forum? 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 23 MR CHASKALSON SC: You understood that 24 she was still there an hour and 15 minutes later. 25 MAJOR-GENERAL MPEMBE: That was my</p>	<p style="text-align: right;">Page 99</p> <p>1 for us to work out what the length of the discussion was. 2 MAJOR-GENERAL MPEMBE: Correct, 3 Chairperson. 4 CHAIRPERSON: Thank you. 5 MR CHASKALSON SC: Was Major-General 6 Naidoo present throughout those discussions with the union 7 members? 8 MAJOR-GENERAL MPEMBE: Of the feedback, 9 correct, Chairperson. 10 MR CHASKALSON SC: You see if we go to 11 HHH64 we see that in fact about half an hour before your 12 call Major-General Naidoo had already called Lieutenant- 13 General Mbombo, that's 21:55 at the top of HHH64. Now did 14 Major-General Naidoo make any call to Lieutenant-General 15 Mbombo in your presence while you were meeting with the 16 unions? 17 [12:18] MAJOR-GENERAL MPEMBE: No, Chairperson, 18 because I was not even aware that he made a call. 19 MR CHASKALSON SC: So I think we can 20 safely say that your meeting with the unions would then 21 have finished before 21:55, which is when he called the 22 Provincial Commissioner, and you'll see that the Provincial 23 Commissioner called him back at 10 past 10, that's the next 24 call. She then called Captain Adriaao at quarter past 10. 25 Major-General Naidoo then called Major-General Annandale at</p>
<p style="text-align: right;">Page 98</p> <p>1 knowledge at the time that she's phoning me while she's 2 still in Pretoria attending Management Forum. 3 MR CHASKALSON SC: If we go to the next 4 list of cell phone records – 5 CHAIRPERSON: Before you do that can I 6 interpose and ask a question? What time did you have the 7 meeting with the union presidents, the Wednesday evening? 8 MAJOR-GENERAL MPEMBE: It was late the 9 evening of the 15th. 10 CHAIRPERSON: What time approximately? 11 MAJOR-GENERAL MPEMBE: I said it was 12 almost late from 8:00 and it ended up very late on that 13 night. 14 CHAIRPERSON: How long did it take? 15 MAJOR-GENERAL MPEMBE: Because I dealt 16 with different unions, I'm not quite sure how long did I 17 take per union. But it could have taken at least one to 18 two hours but at about like that because I had to deal with 19 two unions separately. 20 CHAIRPERSON: Is the whole discussion 21 with each union dealt with in the transcripts that you've 22 seen? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 CHAIRPERSON: So it should be fairly easy</p>	<p style="text-align: right;">Page 100</p> <p>1 14 minutes past 10, and then the Provincial Commissioner 2 called Major-General Naidoo back at 25 past 10. There are 3 then a series of calls between, SMSs between Major-General 4 Annandale and Brigadier Tsiloane before we get a call from 5 Major-General Naidoo to Captain Adriaao at 27 minutes past 6 10, and it's only at that point that you are called by the 7 Provincial Commissioner at 22:27:58. Now when you spoke to 8 the Provincial Commissioner, did she indicate to you in any 9 way that she had received a report from Major-General 10 Naidoo about those negotiations? 11 MAJOR-GENERAL MPEMBE: No, Chairperson. 12 MR CHASKALSON SC: And she made no 13 mention to you of the proposal that had been endorsed at 14 the National Management Forum? 15 MAJOR-GENERAL MPEMBE: I just wanted to 16 get the question clear. 17 MR CHASKALSON SC: Well, it goes back to 18 the document that was up on screen, JJJ177, a proposal to 19 disarm the strikers that was endorsed. 20 MAJOR-GENERAL MPEMBE: She did not speak 21 to me about it. 22 MR CHASKALSON SC: Now were you present 23 at the 6AM JOCCOM on the 16th, the next day? 24 CHAIRPERSON: [Microphone off, inaudible] 25 MR CHASKALSON SC: I am moving away from</p>

<p style="text-align: right;">Page 101</p> <p>1 the phone calls, Mr Chairperson.  2 CHAIRPERSON: On the Wednesday evening,  3 how many times did you phone General Mbombo?  4 MAJOR-GENERAL MPEMBE: I phoned her, I  5 think when she phoned me I phoned her also back, I think  6 there was one aspect that she wanted to know and –  7 CHAIRPERSON: What time was that? Was it  8 after you had told her about what Mr Mathunjwa had told  9 you?  10 MAJOR-GENERAL MPEMBE: Correct,  11 Chairperson, but it was after our communication –  12 CHAIRPERSON: No, no, I understand that,  13 but earlier than that did you speak to her at all, before  14 your discussion with Mr Mathunjwa?  15 MAJOR-GENERAL MPEMBE: The last time that  16 I spoke to her, Chairperson, it was when I reported to her  17 that I am going, I finally got the unions.  18 CHAIRPERSON: Yes, and when would that  19 have been?  20 MAJOR-GENERAL MPEMBE: I think that could  21 have been maybe during the day, but I –  22 CHAIRPERSON: During the day? During the  23 day.  24 MAJOR-GENERAL MPEMBE: Yes, and -  25 CHAIRPERSON: Was this before the</p>	<p style="text-align: right;">Page 103</p> <p>1 MAJOR-GENERAL MPEMBE: Correct,  2 Chairperson.  3 CHAIRPERSON: And according to your  4 statement GGG12, in paragraph 36 you say, "The leadership  5 of both unions was conveyed to the koppie at about 16:00."  6 So clearly that means that the conversation that you have  7 told us about that you had earlier with the Provincial  8 Commissioner took place before 16:00, 4PM. Is that right?  9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  10 CHAIRPERSON: Right, so now you had  11 another conversation with her some hours after that, which  12 lasted for 6 minutes and 17 seconds, at 18:50 and, so it's  13 just after 10 to 7. Now what was that about? You hadn't  14 mentioned that. What was that about?  15 MAJOR-GENERAL MPEMBE: That could have  16 been when I was giving her progress of the situations that  17 were taking place.  18 CHAIRPERSON: What did you tell her at  19 that time?  20 MAJOR-GENERAL MPEMBE: Chairperson, I was  21 also telling her about what has transpired when the  22 presidents were addressing the crowd, and also telling her  23 that I was still going to hold the debriefing with each  24 president.  25 CHAIRPERSON: Had you already heard via</p>
<p style="text-align: right;">Page 102</p> <p>1 presidents went to the koppie?  2 MAJOR-GENERAL MPEMBE: Correct,  3 Chairperson.  4 CHAIRPERSON: You see, if that's so,  5 there's something I want to ask you about. If you look at  6 HHH65, you had a conversation for about 6 minutes 17  7 seconds at 18:50 on the 15th with General Mbombo. That  8 couldn't have been the discussion you talked about earlier,  9 before they went to the koppie. So what was it about?  10 MAJOR-GENERAL MPEMBE: Chairperson, there  11 was a time when I said she didn't know that finally I got  12 now, that I was going to have a meeting –  13 CHAIRPERSON: I understand that, but here  14 you had a conversation, you said you spoke to her – sorry,  15 let's take it step by step. You said you had a  16 conversation with her earlier in the day before the  17 presidents had gone to the koppie, when you told her that  18 you'd succeeded in doing what you'd set out to do, that's  19 namely to get the presidents to come to Marikana and  20 address the strikers. Is that right?  21 MAJOR-GENERAL MPEMBE: Correct,  22 Chairperson.  23 CHAIRPERSON: And you said that  24 conversation took place before the presidents went to the  25 koppie. That's correct, isn't it?</p>	<p style="text-align: right;">Page 104</p> <p>1 members of the service who were at the koppie, who were  2 present when Mr Mathunjwa spoke to the strikers, had you  3 already heard what had been said, namely that there was a  4 possibility that they would lay down their arms at 9  5 o'clock the next day?  6 MAJOR-GENERAL MPEMBE: That I heard,  7 Chairperson, during the debriefing.  8 CHAIRPERSON: I see. According to the  9 occurrence book FFF25 there's a note that, entry 228, that  10 at 18:45 there was a situation report, "Papa1 reported that  11 they concluded they will meet tomorrow 9 o'clock and  12 they'll get feedback from management and what they said  13 today." So that's what you heard at 18:45 if you were in  14 the JOC and heard what was reported by Papa1. Is that  15 right?  16 MAJOR-GENERAL MPEMBE: I would just have  17 to check, Chairperson, because I was not on the JOC always,  18 but there was a time where I had that debriefing with -  19 CHAIRPERSON: Yes, yes, I understand  20 that, but you see, the point is that occurring to the  21 occurrence book Mr Mathunjwa left the koppie at about  22 18:45, just before 18:45, and there was a report from the  23 Nyala which had taken him there, to the JOC at 18:45.  24 There's a brief little summary of what was said, which I've  25 read you. I take it the people in the Nyala would have</p>

<p style="text-align: right;">Page 105</p> <p>1 heard, not just Mr Mathunjwa, but would have heard what was 2 exchanged between Mr Mathunjwa and the strikers' 3 representatives. Is that right? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 CHAIRPERSON: And we see that five 7 minutes later you phone General Mbombo, a conversation you 8 didn't remember a few minutes ago. Can you remember now 9 that your memory has been jogged what you told General 10 Mbombo in that conversation, which lasted 6 minutes and 17 11 seconds? 12 MAJOR-GENERAL MPEMBE: Chairperson, the 13 conversation that I know I gave it to her properly, it was 14 after the debriefing, that what Mr Mathunjwa told me 15 through the debriefing, but that the strikers were going to 16 lay down their weapons, I heard it from Mr Mathunjwa, not 17 from the JOC, and thereafter we conveyed it to – 18 CHAIRPERSON: Well you see, the next 19 telephone conversation that you had with her, according to 20 HHH65 was at 27 minutes past 10, in fact nearly 28 minutes 21 past 10. It's a conversation that took 4 minutes 57 22 seconds. That's the one that Mr Chaskalson questioned you 23 about, where she phoned you. You didn't have any 24 conversations with her, as far as I can see, between 18:50 25 and 22:27 when she phoned you, and what we, I think it</p>	<p style="text-align: right;">Page 107</p> <p>1 CHAIRPERSON: Yes, I understand that, but 2 the point that I am putting to you is it appears from 3 exhibit HHH65 that the conversations you had with her over 4 the relevant time were at 18:21 when you had a conversation 5 with her for 1 minute 12 seconds, and at 18:50 when you had 6 a conversation with her for 6 minutes 17 seconds, and the 7 next conversation you had with her was at 22:27:58 when you 8 had a conversation with her for 4 minutes 57 seconds. But 9 it does appear, and I may be wrong on this, but it does 10 appear as if the National Management Forum meeting at which 11 her proposal was endorsed had already taken place, and 12 according to her statement, when she spoke to the National 13 Commissioner she'd already been told that she'd heard from 14 you that it appeared there was a – the wording differs from 15 time to time, but that there was at least a distinct 16 possibility, if not something more than that, that the 17 strikers would lay down their arms at 9 o'clock the next 18 day. So I'm trying to find in this selection of calls here 19 on HHH65 when that call where you communicated that to her 20 took place, and if we can knock out the one at 22:27 as 21 being too late, then the only one we have is the one at 22 18:50. Now there may be an answer to the point, there may 23 be something missing, etcetera, but it's my duty to put it 24 to you so you can help me to understand something that I'm 25 having difficulty with. So are you able to help me?</p>
<p style="text-align: right;">Page 106</p> <p>1 seems clear is that that meeting of the National Management 2 Forum, which endorsed Lieutenant-General Mbombo's proposal, 3 must already have taken place, and when the proposal was 4 endorsed according – she doesn't quite say this in her 5 statement because she doesn't mention the National 6 Management Forum meeting, but she does say that, well she 7 does mention she was there, but she doesn't mention any 8 endorsement of any proposal, but what she does say is that 9 she had told the National Commissioner what you had said 10 about what Mr Mathunjwa had said, but that was, it would 11 appear, overwhelmingly clear that that must have happened 12 before half past 10, before, even before 28 minutes past 13 10. So it does look – I must put this to you not because 14 I'm making any finding or already have made up my mind, but 15 I'm just putting what prima facie appears to me to be the 16 case so I have the benefit of your comment on it. It does 17 appear as if the only opportunity you would have had to 18 have conveyed what Mr Mathunjwa, not what Mr Mathunjwa told 19 you, but what you were told from the Nyala at about quarter 20 to 7, was the conversation you had with her for 6 minutes 21 17 seconds at 10 to 7. Now what do you say about that? 22 MAJOR-GENERAL MPEMBE: Chairperson, as 23 I've said when I gave her full-blown feedback about the 24 debrief with Mr Mathunjwa, it was after the debriefing 25 meeting that I had with Mr Mathunjwa.</p>	<p style="text-align: right;">Page 108</p> <p>1 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 2 the – I just want to check when did I finish the debriefing 3 with the unions, and that – 4 MR CHASKALSON SC: Major-General, I might 5 be able to help you in that regard because if you go down 6 in the occurrence book to entry 130/247, it says that at 7 21:40 you inspected the off-duty SAPS members on the 8 operation who reported off-duty free from injuries. Can we 9 just call up the occurrence book, which is FFF25? And if 10 we go down to 21:40, and there you see there's an OB entry 11 saying that at 21:40, which would have been 20 to 10, you 12 had inspected "Duty-off SAPS members on operation reported 13 off-duty free from injuries and inspected by General 14 Mpeembe." Do you recall that inspection? 15 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 16 I just wanted to check that inspection time, maybe if I can 17 check GGG4, that inspection happened actually after the, my 18 debriefing with the unions. 19 MR CHASKALSON SC: That was the point 20 that I was indicating. 21 MAJOR-GENERAL MPEMBE: Yes, that's right. 22 MR CHASKALSON SC: So we can say that you 23 must have finished with the unions some time before 21:40. 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>

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1 MR CHASKALSON SC: Do you recall how  
 2 long, where you met with the unions and where you did your  
 3 inspection?  
 4 MAJOR-GENERAL MPEMBE: I met with the  
 5 unions not very far from the JOC, and moving from the JOC,  
 6 moving from where I met with the unions, I came to the JOC.  
 7 MR CHASKALSON SC: So how long do you  
 8 think it would have taken you from the point at which you  
 9 ended your meeting with the unions to the point at which  
 10 you did your inspection?  
 11 MAJOR-GENERAL MPEMBE: Chairperson,  
 12 walking, it couldn't take me long time. It couldn't take,  
 13 definitely couldn't take me long time where I had the  
 14 meeting with the unions to the JOC.  
 15 MR CHASKALSON SC: So we can say that  
 16 your meeting with the unions finished some time around half  
 17 past 9, one way or another, if 10 minutes later you were  
 18 doing your inspection?  
 19 MAJOR-GENERAL MPEMBE: Correct,  
 20 Chairperson, but it will also be confirmed by the GGG4.  
 21 MR CHASKALSON SC: Yes, I'm not sure  
 22 there's a time on GGG4. That's our problem.  
 23 COMMISSIONER HEMRAJ: In GGG12 in  
 24 paragraph 37 you say you returned to the Lonmin's offices  
 25 for a debriefing of the unions' address to the protesters

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1 at the koppie at 21:00. That's in GGG12, paragraph 37.  
 2 CHAIRPERSON: You see my problem? I'm  
 3 trying to find a telephone conversation that you had with  
 4 the Provincial Commissioner, but anyway, if you can't help  
 5 me, you can't help me. Mr Chaskalson, carry on.  
 6 MR CHASKALSON SC: Major-General, to  
 7 leave the cell phone conversations at this point, were you  
 8 at the JOC at 6 o'clock in the morning at the JOCCOM  
 9 meeting on the 16th?  
 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson.  
 11 MR CHASKALSON SC: Now we've recently  
 12 been given – or it's not recent anymore, we were given some  
 13 handwritten notes that were taken by Adv Moolman of that  
 14 meeting. Have you seen those notes? JJJ168.  
 15 MAJOR-GENERAL MPEMBE: I was provided  
 16 with a number of handwritten notes. The one of Adv Moolman  
 17 I'm not precisely sure of which of those.  
 18 [12:38] MR CHASKALSON SC: Well, if we call up  
 19 JJJ168, down a page. These were informed on notes that  
 20 Advocate Moolman took of the 6 o'clock JOCCOM.  
 21 MAJOR-GENERAL MPEMBE: Yes, I do have  
 22 them in front of me, Chairperson.  
 23 MR CHASKALSON SC: Now if we get past  
 24 radio technical and field mechanics not here to follow up,  
 25 the first note of consequence says D-Day. Do you recall

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1 anyone saying D-Day at the start of that meeting?  
 2 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 3 at 6 o'clock in the morning?  
 4 MR CHASKALSON SC: Indeed these are notes  
 5 taken at 6 o'clock, the 6 o'clock in the morning meeting.  
 6 MAJOR-GENERAL MPEMBE: I just wanted the  
 7 clarity of the question, you say indeed in that meeting.  
 8 MR CHASKALSON SC: Yes, near the start of  
 9 the meeting saying something about D-Day.  
 10 CHAIRPERSON: You see the exhibit which  
 11 is on the screen and you were, I take it, provided with a  
 12 copy or referred to copy, have you got your copy in front  
 13 of you?  
 14 MAJOR-GENERAL MPEMBE: Correct,  
 15 Chairperson, I do have it front of me.  
 16 CHAIRPERSON: Do you see it's written  
 17 there "D-Day, terms and conditions, not to continue.  
 18 Constitutional rights, the boundaries, ten killed, two  
 19 SAPS, firearms missing. Given the opportunity to lay down  
 20 weapons, mine gave opportunity to work. Unions – I'm not  
 21 quite sure what that word means, but faulted or failed,  
 22 sorry. Lay down and return, denounce violence. Will re-  
 23 attend today, weapons to be left at koppie. Reality, the  
 24 position to act in case weapons not left. Specific  
 25 policing acts to take place, not limited to both hostels.

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1 Phase 2 today, further deployments while unions talk at 9  
 2 o'clock. SAPS to phase 2 - present POP and TRT front  
 3 line, is that word cordon is it, intensified and out to  
 4 bigger areas. Any person with weapon will be, I take it  
 5 that means apprehended and arrested. Info. Must  
 6 constantly provide info spotters. That's what it says.  
 7 Then POP, I'm not quite sure what that word is, Mr  
 8 Chaskalson can you help me? POP looks like cap, it can't  
 9 be, it doesn't make sense, something info and  
 10 communications presumably. Negotiators will talk them  
 11 through, we cannot entertain people with weapons and then  
 12 cluster 170 cells, individual detention facilities spread  
 13 over, it looks like five stations. Six trucks, one  
 14 Klerksdorp truck confirmed plus potentially more to join."  
 15 Now that's what it says and that's what Mr Chaskalson is  
 16 asking you about. In the light of what I've read to you is  
 17 it now clear to you what the phrase D-Day means?  
 18 MAJOR-GENERAL MPEMBE: Chairperson, at 6  
 19 o'clock that word D-Day was not said and some of the  
 20 information here it was not said at that time, at that 6  
 21 o'clock time.  
 22 CHAIRPERSON: We are told these are the  
 23 notes that Captain Moolman took at that meeting, so you  
 24 were saying she wrote things down that weren't said.  
 25 MR CHASKALSON SC: Is it possible that it

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1 may have been said but you may just not have heard it being  
2 said?

3 MAJOR-GENERAL MPEMBE: Chairperson, I did  
4 not hear them being said there and I was always in that  
5 meeting.

6 MR CHASKALSON SC: Maybe we can go to  
7 another note. If we go down maybe two pages to the fifth  
8 page of the PDF file and there Advocate Moolman recorded  
9 "Brigadier's Scott's briefing important. NB. To follow to  
10 the letter. NB. To start with force continuum they must  
11 see it stopping here and now, SAPS not retreating.  
12 Agreement. Everything to be done on command, today things  
13 will be changed." Do you recall any of that?

14 MAJOR-GENERAL MPEMBE: No, Chairperson,  
15 what I do recall is that there should be a show of force,  
16 we should have given Mr Mathunjwa the chance and later they  
17 will be informed in terms of any other action that will  
18 have to be taken.

19 MR CHASKALSON SC: So you don't recall  
20 what the notes taken on the day record.

21 MAJOR-GENERAL MPEMBE: No, I don't, yes,  
22 Chairperson.

23 MR CHASKALSON SC: Can I take you to the  
24 next note because it refers to you? It says "General  
25 Mpembe; coming 9:00, tired. 12 to 14:00 start moving and

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1 then underneath small groups stop and search." Do you  
2 recall mentioning that someone was coming at 9:00?

3 MAJOR-GENERAL MPEMBE: I don't know what  
4 she was writing but what I do remember is that there should  
5 have been stop and searches, but tired, I don't know  
6 whether it's referring to me or to whom was she referring.

7 MR CHASKALSON SC: What about coming 9  
8 o'clock, that on its face seems to be something that you  
9 said at the meeting. Do you recall that somebody would be  
10 coming at 9 o'clock?

11 MAJOR-GENERAL MPEMBE: I don't really  
12 recall, I think it has taken a long time, I think she must  
13 be in a better position, but I remember I was there in the  
14 meeting.

15 MR CHASKALSON SC: And what about 12 to  
16 14:00 start moving, does that ring a bell for you, did you  
17 say anything along those lines?

18 MAJOR-GENERAL MPEMBE: There was a time  
19 where we were speaking about deployment that when should  
20 they have taken place, when they should have already been  
21 deployed. That could be the time that we were referring  
22 to.

23 MR CHASKALSON SC: But we know that the  
24 phase 2 deployment in fact rolled out and it's described in  
25 this meeting, it rolled out around 9:30, the phase

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1 deployment. So when you were talking about a deployment at  
2 12 to 14:00 or if you were talking about a deployment at 12  
3 to 14:00 that couldn't have been phase 2, that would have  
4 had to have been phase 3. Do you accept that?

5 MAJOR-GENERAL MPEMBE: No, Chairperson,  
6 what I was referring to is that by that time – what I'm  
7 saying is that by time the deployment should have been  
8 taking place. But I don't know what you say about phase 2  
9 deployment, maybe that one I should be abreast with.

10 MR CHASKALSON SC: Colonel, you know the  
11 plan had a number of –

12 CHAIRPERSON: General.

13 MR CHASKALSON SC: Major-General, I must  
14 apologise. The plan had a number of phases. There was  
15 phase 1 which was the negotiation phase. There was phase 2  
16 which was a show of force and a pre-positioning for phase 3  
17 and phase 3 was the tactical phase. You're aware of all of  
18 that?

19 MAJOR-GENERAL MPEMBE: Correct,  
20 Chairperson, but at this time it was the time when we were  
21 speaking about all the deployments because if these notes  
22 are being taken on the 16th because I was already going to  
23 go with the Provincial Commissioner to the press  
24 conference.

25 MR CHASKALSON SC: When were you going to

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1 go to the Provincial Commissioner's press conference?

2 MAJOR-GENERAL MPEMBE: I already  
3 testified that the Provincial Commissioner conference I was  
4 with her.

5 MR CHASKALSON SC: That took place  
6 approximately at half past nine.

7 MAJOR-GENERAL MPEMBE: Correct, and what  
8 I was saying here it was that I was talking about times  
9 then I was going to leave the meeting.

10 MR CHASKALSON SC: You see if we go back  
11 up a page that page deals with the timing for phase 2. At  
12 the top it says Phase 2 pre-positioning show of force and  
13 then at the bottom of the page, if we go down to the bottom  
14 of the page after its dealt with all of the resources that  
15 are available for phase 2. It says "Parade 8:30.  
16 Brigadier Calitz, Colonel Gaffley, Colonel Makhubela's  
17 grouping. So phase 2 it seems had already been addressed  
18 and that's consistent with what we know happened later  
19 which was following a parade that happened sometime shortly  
20 after 8:30. Phase 2 deployment was in effect by 9:30. So  
21 if you were speaking about 12 to 14:00 start moving then it  
22 seems to me you wouldn't have been speaking about phase 2  
23 because phase 2 was going to happen a long time before 12  
24 o'clock. What's your response to that?

25 MAJOR-GENERAL MPEMBE: Chairperson, in my

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1 mind what I was speaking I was just referring in terms of  
 2 the deployment and knowing very well that that will be left  
 3 with the commanders because I was going to go to the media  
 4 press. It might well be then I was speaking about phase 2.  
 5 MR CHASKALSON SC: But the phase 2  
 6 deployment had already been addressed in the meeting and  
 7 the phase 2 deployment we know took place – it was already  
 8 in place by 9:30. It would be odd for you to have been  
 9 talking about phase 2 in that context. Would you not  
 10 accept that?  
 11 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 12 because I know that there could have been a time where Mr  
 13 Mathunjwa could have addressed the people and I didn't know  
 14 at what time they were going to finish so I could not be  
 15 talking either of any of the phases because there were so  
 16 many activities that could have taken place.  
 17 CHAIRPERSON: You said a minute ago that  
 18 you were going to go to the media. I think you used the  
 19 word press, I don't know if I heard correctly, but I take  
 20 it you knew already at that stage you were going to a media  
 21 conference to be addressed by the Provincial Commissioner,  
 22 is that correct?  
 23 MAJOR-GENERAL MPEMBE: Correct,  
 24 Chairperson.  
 25 CHAIRPERSON: Did you know why the

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1 conference had been called? Did you know why she was  
 2 there, what she was going to say at the conference?  
 3 MAJOR-GENERAL MPEMBE: No, Chairperson.  
 4 CHAIRPERSON: I see.  
 5 MR CHASKALSON SC: Did you know that she  
 6 was coming at approximately 9 o'clock for that press  
 7 conference?  
 8 MAJOR-GENERAL MPEMBE: I knew that there  
 9 was a press conference at one stage when she arrived we  
 10 will have to accompany her to that, but I couldn't know  
 11 even to say at what time. But I knew that I must be with  
 12 her to the press conference.  
 13 MR CHASKALSON SC: Is it possible that  
 14 that reference to coming 9 o'clock which appears to have  
 15 been attributed to you, might have been something that you  
 16 said in relation to the Provincial Commissioner, that the  
 17 Provincial Commissioner was going to come at 9 o'clock?  
 18 MAJOR-GENERAL MPEMBE: No, Chairperson,  
 19 because I did not know at what time she was coming, when  
 20 she was going to come.  
 21 COMMISSIONER HEMRAJ: Mr Chaskalson, has  
 22 Advocate Moolman been approached to assist with the  
 23 deciphering of some of these notes or is it contemplated  
 24 that she will be at some stage? It might assist for us as  
 25 well to understand what some of those words actually mean,

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1 those that were written in short form.  
 2 MR CHASKALSON SC: We had started that  
 3 exercise, it hasn't yielded a great deal more than what we  
 4 had deciphered already, but I think what we ought to do is  
 5 to obtain from Captain Moolman an attempted transcription  
 6 of the notes at the very least.  
 7 COMMISSIONER HEMRAJ: That would assist,  
 8 thank you.  
 9 MR CHASKALSON SC: Before we leave the 6  
 10 o'clock JOCCOM I just want to touch on another issue and Mr  
 11 Chairperson, I'm leaving these notes, so if there's  
 12 anything in relation to the notes from the 6 o'clock JOCCOM  
 13 I'm –  
 14 CHAIRPERSON: In fact we can wait for a  
 15 transcription if we can get one from the amanuensis who  
 16 wrote them. Is it possible that we could get it, or ask  
 17 anyway Colonel Moolman to produce it by Monday so we don't  
 18 waste time subsequently. Perhaps Mr Mathibedi's good  
 19 offices that could – that the necessary request could be  
 20 addressed to Colonel Moolman. Thank you very much. Mr  
 21 Chaskalson, it's now by my watch by the screen clock it's  
 22 12:52. I was proposing to adjourn at 1 o'clock. If you're  
 23 moving onto a topic that you can't dispose of in eight  
 24 minutes perhaps we can adjourn now or is there some short  
 25 point you want to make?

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1 MR CHASKALSON SC: Chairperson, having  
 2 made wild promises earlier in the day I would be I cannot  
 3 suggest that I'm going to finish in eight minutes. So I  
 4 would accept –  
 5 CHAIRPERSON: In the circumstances, in  
 6 the absence of a wild promise we will adjourn now until 9  
 7 o'clock on Monday morning.  
 8 [COMMISSION ADJOURNED]  
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