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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 94 17 MAY 2013 PAGES 9995 TO 10058

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 17 MAY 2013]
 2 [09:51] CHAIRPERSON: The Commission resumes. I
 3 understand that the evidence leaders have received a
 4 communication from Adv Jele. Is that correct, Mr Madlanga?
 5 MR MADLANGA SC: Yes, Mr Chairman, that
 6 they won't be here and that they will not be continuing
 7 with cross-examination of the General. The letter does say
 8 that they reserve the right, they may or may not apply for
 9 the General to be recalled. Thank you, Chairman.
 10 CHAIRPERSON: When we adjourned
 11 yesterday, after we adjourned yesterday Ms Jele and Ms
 12 Hardy came to see me and told me that they'd overlooked
 13 that Adv Jele would not be available this morning, and they
 14 indicated they would not cross-examine this witness
 15 further. What was put to me was that inasmuch as what he
 16 was going to deal with the questions they were going to
 17 ask, which would have taken about five minutes or so,
 18 another witness can deal with it. So they were proposing
 19 to ask that other witness those questions. But of course
 20 that doesn't mean that Mr Semanya will be prevented from
 21 re-examining on the topic that was raised if he considers
 22 it appropriate. Very well, who is going to cross-examine
 23 next?
 24 MS BARNES: With your leave, I will be,
 25 Chair.

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1 CHAIRPERSON: Leave not required, but
 2 granted nevertheless. You are cross-examining on behalf of
 3 AMCU, are you?
 4 MS BARNES: I am cross-examining on
 5 behalf of AMCU.
 6 CHAIRPERSON: Thank you.
 7 CHARL ANNANDALE: s.u.o.
 8 CROSS-EXAMINATION BY MS BARNES: Good
 9 morning, General.
 10 GENERAAL-MAJOOR ANNANDALE: Goeiemore.
 11 MS BARNES: I'd like to start with a
 12 question that you were asked by the Chairperson in your
 13 evidence-in-chief and the answer that you gave. The
 14 question was the following. "How many operations of this
 15 magnitude where people have been armed have you been
 16 involved in?" Do you recall that question from the
 17 Chairperson?
 18 GENERAAL-MAJOOR ANNANDALE: Ek onthou,
 19 Voorsitter.
 20 MS BARNES: And your answer was the
 21 following. "I personally have never been involved in an
 22 operation of this nature where so many are armed, and in my
 23 whole career I have never known of something like this
 24 where so many are armed." Do you recall giving that
 25 evidence?

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1 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 2 Voorsitter.
 3 MS BARNES: Now you haven't been a member
 4 of any POP unit post-1994. Is that correct?
 5 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
 6 ek was nie 'n lid van enige Openbare Orde eenheid in my
 7 totale loopbaan nie.
 8 MS BARNES: And so you obviously don't
 9 regard yourself as an expert in Public Order Policing?
 10 GENERAAL-MAJOOR ANNANDALE: Nee.
 11 MS BARNES: In your evidence in this
 12 Commission you've said that the operation at Marikana was
 13 not strictly a POP operation, but was something broader.
 14 Do you recall that?
 15 GENERAAL-MAJOOR ANNANDALE: Dis korrek,
 16 Voorsitter.
 17 MS BARNES: And you've also in your
 18 evidence referred to it as a hybrid operation because you
 19 said it was not only the POP unit that was present, but
 20 also other units. Is that correct?
 21 GENERAAL-MAJOOR ANNANDALE: Ja, nie net
 22 eenvoudig oor die teenwoordigheid van ander eenhede nie,
 23 maar in terme van die situasie wat hom afgespeel het.
 24 MS BARNES: Sorry, I didn't hear the
 25 interpreter's translation.

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1 MR MAHLANGU: I beg your pardon?
 2 MS BARNES: I didn't hear your
 3 translation. Can you repeat it, please?
 4 MR MAHLANGU: Not only because of the
 5 presence of the other units, but the situation as it was
 6 occurring there.
 7 MS BARNES: But nevertheless the
 8 operation at Marikana remained under POP command. Is that
 9 correct?
 10 GENERAAL-MAJOOR ANNANDALE: In terme van
 11 die uiteendryf aksie was die verantwoordelikheid van
 12 Openbare Orde.
 13 MS BARNES: No, the overall commander was
 14 General Mpembe who was a POP person, and therefore the
 15 overall command of the operation was POP. Is that correct?
 16 GENERAAL-MAJOOR ANNANDALE: Generaal
 17 Mpembe is nie verbonde aan Openbare Orde Polisiëring nie.
 18 MS BARNES: Now in the last 18 years
 19 since the advent of democracy, there have in fact been a
 20 large number of operations, POP operations, that have dealt
 21 successfully with very large numbers of armed people,
 22 people that have been armed with both traditional weapons
 23 and with firearms, and in some cases where the police have
 24 in fact been fired at. Are you not aware of any such
 25 operations?

<p style="text-align: right;">Page 9999</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek myself en die bevelstruktuur by Marikana was nie bewus 3 van 'n soortgelyke operasie wat soveel mense sodanig 4 gewapen was nie. Voorsitter, en daardeur sê ek nie daar 5 was nie ander gevalle wat mense nie gewapen was of selfs 6 vuurwapens gehad het nie. 7 MS BARNES: Well, let me give you two 8 examples, General, of incidents that have happened since 9 '94. To deal with the first example I need to introduce as 10 a new exhibit a document which is entitled "IRIS report 11 number 110973," if that could just be handed out as this 12 stage. 13 CHAIRPERSON: What's it called? IRIS? 14 I-R-I-S? 15 MS BARNES: That's right. 16 CHAIRPERSON: IRIS report number? 17 MS BARNES: 00973. 18 CHAIRPERSON: 00973. That will be 19 exhibit GGG38. 20 MS BARNES: Thank you, Chair. 21 CHAIRPERSON: Before you proceed, I must 22 tell you that we did say, gave a ruling really that in 23 future when documents are going to be relied on, notice 24 should be given of them beforehand and copies should be 25 distributed beforehand so that not only the witness, but</p>	<p style="text-align: right;">Page 10001</p> <p>1 accessed by a non-SAPS member and I don't know how that is 2 possible, but more significant, the information is 3 inaccurate. 4 CHAIRPERSON: Are you objecting to my 5 receiving the document as exhibit – I numbered it, but of 6 course that's provision. If you can persuade me that it 7 shouldn't be received then we'll cancel that. Are you 8 objecting to the – 9 MR SEMENYA SC: The use of the document, 10 Chair. 11 CHAIRPERSON: The use of the document. 12 Ms Barnes, you've heard what Mr Semanya says. I think you 13 should answer the point that he makes. Before you answer, 14 can you tell us what IRIS is? It's an acronym of some kind 15 obviously. 16 MS BARNES: I'm not sure what it stands 17 for, Chair, but it's a police database which records all 18 POP incidents. It's not a secret database. It's a record 19 that POP keeps of every POP incident that happens, how many 20 protesters are there, how many police are present, and so 21 forth. 22 CHAIRPERSON: So the answer is it's a 23 police database. What it's an acronym for you don't know, 24 but that's not really relevant. So what do you say in 25 regard to Mr Semanya's objection to our receiving this</p>
<p style="text-align: right;">Page 10000</p> <p>1 also the members of the Commission can read them, but I 2 don't think you were here when I said that, so for your 3 future reference I repeat what I said in that regard. Do 4 we need to read the whole document? 5 MS BARNES: We do. We do, Chair. 6 CHAIRPERSON: Perhaps if we wait two 7 minutes and read it before you proceed. Just read it 8 silently. 9 MS BARNES: I was planning to read the 10 document into the record. Would that be – 11 CHAIRPERSON: So you were? 12 MS BARNES: Yes. 13 CHAIRPERSON: Oh well, if you read it 14 into the record then we can listen to you reading it. 15 MS BARNES: Yes. 16 MR SEMENYA SC: Chair, can I, before Ms 17 Barnes reads the document in the record, to register an 18 objection. This IRIS document is not identical, the 19 information contained in it is not identical to the 20 official IRIS document in relation to the matters it 21 handles. As a matter of record, this document is very 22 sensitive information which to access requires a registered 23 user to have it. It requires a Persal number, an access 24 code, and passwords to access, and I asked Ms Barnes how 25 did they gain access to it. She tells us that it is</p>	<p style="text-align: right;">Page 10002</p> <p>1 exhibit and your basing the cross-examination upon it? 2 MS BARNES: Well Chair, this information 3 was received, the information contained in this document as 4 well as the document that's going to follow, from Monique 5 Marks, who is an associate professor at the University of 6 KwaZulu Natal, who has done a lot of work in the area of 7 Public Order Policing, has accompanied police officials on 8 a number of operations, and so the summaries of these two 9 incidents are drawn from, obtained from Monique Marks and 10 we will call her in order to confirm these incidents, if 11 necessary, if these incidents are disputed. 12 CHAIRPERSON: This document then, is it a 13 document drawn up by Prof Marks? 14 MS BARNES: It is. 15 CHAIRPERSON: Based on - 16 MS BARNES: Based on the IRIS report. 17 CHAIRPERSON: I see. So this doesn't 18 purport to be the official, an extract from the official 19 IRIS records, as it were, but her summary of an incident 20 which has this classification number with IRIS. Is that – 21 MS BARNES: That's correct, and she can 22 give evidence and confirm that. In relation to these, the 23 second document that I'm going to introduce she in fact 24 witnessed the events that she summarised directly, so she 25 can speak to both these documents and to their</p>

<p style="text-align: right;">Page 10003</p> <p>1 authenticity, the authenticity of the facts.</p> <p>2 MR SEMENYA SC: Chair -</p> <p>3 CHAIRPERSON: Yes, Mr Semenya?</p> <p>4 MR SEMENYA SC: Well, from the response</p> <p>5 we can deduce two things. One, that Ms Barnes says this is</p> <p>6 not an IRIS document; secondly, the –</p> <p>7 CHAIRPERSON: This is apparently a</p> <p>8 statement, as I understand her, this is a statement by Prof</p> <p>9 Marks.</p> <p>10 MR SEMENYA SC: But the second point we</p> <p>11 can make is that it is not an extract of an IRIS document</p> <p>12 either –</p> <p>13 CHAIRPERSON: No, that's correct.</p> <p>14 MR SEMENYA SC: Then we must make the</p> <p>15 objection that unless we are told that Monique Marks can</p> <p>16 speak to the veracity of the information contained in that</p> <p>17 document, it can't be used.</p> <p>18 COMMISSIONER HEMRAJ: And that would</p> <p>19 probably require a statement from Monique Marks as well</p> <p>20 about the background of this whole incident.</p> <p>21 CHAIRPERSON: Yes, of course that point,</p> <p>22 this is anticipatory, but the point you make may well apply</p> <p>23 to this document, but from what Ms Barnes says it doesn't</p> <p>24 relate to the next one where Prof Marks is going to testify</p> <p>25 as to something that she knows about from her own</p>	<p style="text-align: right;">Page 10005</p> <p>1 Incident Registration and Information System. So that at</p> <p>2 least we now know. So this document that you put in, or</p> <p>3 sought to put in, relates to a particular incident which is</p> <p>4 duly recorded on that system, but you still have the</p> <p>5 objections to deal with.</p> <p>6 MS BARNES: Yes, Chair, in relation to</p> <p>7 the first document, the document that has the IRIS report</p> <p>8 number at the top, Monique Marks can testify as to how she</p> <p>9 obtained this information and produced the summary. In</p> <p>10 relation to the second document she was actually an</p> <p>11 eyewitness in respect of the operation. It was in fact</p> <p>12 more than one. It was a series of operations described in</p> <p>13 the second document, and there she was in fact an</p> <p>14 eyewitness. I think that's as far as I can take it, Chair.</p> <p>15 COMMISSIONER HEMRAJ: Ms Barnes, surely</p> <p>16 you would need an affidavit from Ms Marks –</p> <p>17 CHAIRPERSON: Professor.</p> <p>18 COMMISSIONER HEMRAJ: Prof Marks, if you</p> <p>19 were going to follow this route?</p> <p>20 MS BARNES: Well, the idea would be that</p> <p>21 she would come to the Commission and she would give</p> <p>22 evidence.</p> <p>23 CHAIRPERSON: No, that's not the point</p> <p>24 we're putting. In order to, we hope, to expedite matters</p> <p>25 we laid down a procedure that evidence that's going to be</p>
<p style="text-align: right;">Page 10004</p> <p>1 knowledge, and the problem would be, in the case of the</p> <p>2 second one would be that of course we haven't got a</p> <p>3 statement yet, affidavit, you know, according to the</p> <p>4 procedural rules we laid down in the Commission, but I'm</p> <p>5 not sure that that would necessarily be fatal. But anyway,</p> <p>6 Ms Barnes, you've heard what Mr Semenya says.</p> <p>7 MS BARNES: Yes, Chair, the intention was</p> <p>8 never to call Monique Marks as an expert in relation to, or</p> <p>9 to give her opinion on the Marikana operation generally,</p> <p>10 but simply to confirm –</p> <p>11 CHAIRPERSON: As I understand it's not an</p> <p>12 expert –</p> <p>13 MS BARNES: - these incidents.</p> <p>14 CHAIRPERSON: Sorry to interrupt you.</p> <p>15 It's not an expert statement because an expert statement</p> <p>16 contains opinions. If she is merely giving a statement as</p> <p>17 to what she knows herself, facts that she's aware of</p> <p>18 herself, then it wouldn't be an expert statement, but it</p> <p>19 still would be a statement which in terms of the rules</p> <p>20 we've laid down should have been filed beforehand so people</p> <p>21 could prepare and that kind of thing. So, but you don't</p> <p>22 have to address me on the question of whether it's an</p> <p>23 expert statement; I accept it isn't. But the further</p> <p>24 problems arise. Those who are as curious as I was about</p> <p>25 what I-R-I-S stands for, I'm informed it stands for</p>	<p style="text-align: right;">Page 10006</p> <p>1 led should be dealt with in affidavits. Notice should be</p> <p>2 given of the intention to lead the witness, and the</p> <p>3 affidavit should be filed beforehand so that when cross-</p> <p>4 examination proceeds, the cross-examiner can say witness</p> <p>5 number so-and-so. whose statements have been filed, says</p> <p>6 this; what do you say about that. Now that procedure has</p> <p>7 obviously not been followed here. That's the point that's</p> <p>8 being raised. I understand your point, she can come and</p> <p>9 give evidence, but strictly speaking in terms of our rules</p> <p>10 that we've introduced in order to try to shorten</p> <p>11 proceedings, there is this difficulty.</p> <p>12 MS BARNES: Chair, I understand that.</p> <p>13 The difficulty, they only came into our – we were only</p> <p>14 [inaudible] this information quite recently and that's why</p> <p>15 this has happened, but I cannot see the prejudice, Chair,</p> <p>16 to the parties if this summary is – I can tell the</p> <p>17 Commission that Prof Marks will come and confirm the</p> <p>18 contents of the summary under oath.</p> <p>19 [10:10] MR SEMENYA SC: Chair, in respect of the</p> <p>20 second document –</p> <p>21 CHAIRPERSON: - second document and then</p> <p>22 I'll ask Mr Madlanga to give us –</p> <p>23 MR SEMENYA SC: If I may, Chair –</p> <p>24 CHAIRPERSON: Yes, certainly.</p> <p>25 MR SEMENYA SC: Regarding the second</p>

<p style="text-align: right;">Page 10007</p> <p>1 document, it is impossible that these could be facts known 2 to Prof Marks, even talking about approximately 50 murders. 3 There's no way she could have personal knowledge of these 4 facts. So it's not even a statement of factual account by 5 an individual, if you look at the content of the document. 6 CHAIRPERSON: - do this, Ms Barnes. This 7 incident which is dealt with in the document appears, 8 according to the document, took place on 4th of March 1996 9 during the daytime in, what I take it is the Durban CBD. 10 So some at least of the facts would almost be in the public 11 domain. I'm not sure whether all the details in this 12 document are in the public domain. This matter might have 13 been covered in newspaper reports, even television news 14 broadcasts, but then there are matters, however, which 15 follow from paragraph 6 and 7 I think, which presumably 16 aren't in the public domain. But anyway, let's hear what 17 Mr Madlanga says, and then you can respond to it all. Mr 18 Madlanga? 19 CHAIRPERSON: Chair, may I – 20 CHAIRPERSON: Sorry, Mr Semenya, sorry, 21 you're still busy. I beg your pardon. 22 MR SEMENYA SC: Sorry, Chair. Even the 23 date of the incident is wrong, so we would be very 24 interested to know, because according to official records 25 it was the 4th of May when that incident happened.</p>	<p style="text-align: right;">Page 10009</p> <p>1 relevant, at a later stage, because I don't want to hamper 2 you in the presentation of your case, but let me ask the 3 Major-General this. Major-General, the material that Ms 4 Barnes wishes to cross-examine you about relates to an 5 incident which according to Mr Semenya took place in the 6 CBD in Durban on the 4th of May 1996. Would you know 7 anything about that incident yourself? Because if you 8 don't then you can't deal with it anyway. 9 MAJOR-GENERAL ANNANDALE: Chairperson, 10 prior to this report, no Sir. 11 MS BARNES: Perhaps, Chair, then we could 12 see if the General knows anything about the incident 13 described in the second summary, which I don't think has 14 yet been handed out. 15 CHAIRPERSON: Well, don't hand anything 16 out yet, but just give him the date and the place of the 17 incident and if he doesn't know anything about that either 18 then you'll have to reserve your, what one can perhaps call 19 your fire for later witnesses, and perhaps before you do 20 that you could have her affidavit filed in accordance with 21 the rules so that the kind of procedural problems that we 22 have discussed will be avoided. But tell him, give him the 23 date and place of the second incident and let's see whether 24 he can help us about that. 25 MS BARNES: The second incident is in</p>
<p style="text-align: right;">Page 10008</p> <p>1 CHAIRPERSON: Mr Madlanga? 2 MR MADLANGA SC: Mr Chairman, 3 Commissioners, you would have noticed that when the debate 4 commenced I was not here, so to an extent I'm blindsided as 5 it were. Let me just address one aspect, the question of 6 compliance with the rules on deadlines, or regarding 7 deadlines. As I understand it, Ms Barnes says that the 8 information only came to their notice fairly recently. I 9 understand the thrust of what she is saying to in essence 10 be seeking condonation. Much as one would like to see 11 strict compliance with the rules of the Commission, those 12 are by no means hard and fast to the extent that there 13 would be no condonation. So to that extent I would say 14 based on the explanation that she gives, that perhaps 15 condonation should be granted. But I do not seek to 16 address the issues that Mr Semenya is raising as to the 17 merits and demerits of why the document should or should 18 not be admitted, aside of the question of compliance with 19 the rules. Thank you, Commissioners. 20 CHAIRPERSON: Perhaps I can short circuit 21 this at this stage. It seems to me that this material, if 22 there's substance in it, is the kind of material which you 23 would wish to put before the Commission, and whether there 24 are procedural things that should be done, they could be 25 done and the material could be put before the Commission if</p>	<p style="text-align: right;">Page 10010</p> <p>1 fact a series of incidents. It's described by Prof Marks 2 as the Glebelands Hostel Operations. The Glebelands Hostel 3 is situated in KwaZulu Natal and POP, Public Order 4 Policing, together with a number of other units were 5 stationed there for an extended period of time in order to 6 deal with faction fighting. Do you know anything about 7 that, General? 8 CHAIRPERSON: You haven't given us the 9 dates, the period over which it happened. 10 MS BARNES: The period, I apologise, it 11 was in fact from 1998 to 2001 that these operations went 12 on. 13 CHAIRPERSON: Do you know anything about 14 that, about those incidents and the lessons, if any, that 15 were learned therefrom? 16 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 17 ek het die naam Glebelands Hostel die eerste keer gesien in 18 terme van 'n dokument wat versprei was oor dokumente wat ek 19 ondervra sal word. Ek is nie bewus van sodanige insidente 20 nie. Ek weet ook nie hoeveel insidente dit was oor die 21 vier jaar nie. 22 CHAIRPERSON: Ms Barnes, it does seem as 23 if this isn't the witness to whom these questions could be 24 asked, but that doesn't mean that if there's evidential 25 material here which will help us to come to conclusions in</p>

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1 dealing with our Terms of Reference, that you will be
2 prevented from presenting that evidence at the appropriate
3 time and asking questions of witnesses who can give
4 meaningful answers.

5 MS BARNES: Yes, thank you, Chair. But
6 General, I –

7 CHAIRPERSON: Sorry, before we carry on,
8 I take it I must delete the reference to exhibit GGG38 and
9 we reserve that designation for some other document at some
10 later stage.

11 MS BARNES: That would be in order,
12 Chair. General, I'm sure I can ask you though about the
13 IRIS database. We as the attorneys, or specifically the
14 attorneys for AMCU and also the attorneys for the families
15 have made a request many weeks ago for a number of IRIS
16 records in relation to POP operations. Would those
17 requests go through your office?

18 CHAIRPERSON: Ms Barnes, let's get on
19 record what exactly this system is so that your questions
20 then become more meaningful in the context. So are you
21 aware of a registration system which has the acronym IRIS,
22 which stands (so I'm informed) for Incident Registration
23 and Information System? Are you aware of that registration
24 and information system?

25 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

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1 ek is bewus daarvan. Dit is Insident Registrasie Inligting
2 Stelsel, 'n stelsel wat gebruik word om Openbare Orde
3 insidente elektronies op rekord te plaas.

4 MS BARNES: And requests for specific
5 IRIS records, would those requests go through your office?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 in my kantoor het ek 'n offisier wat toegang tot die
8 sisteem het, maar die afdeling wat die sisteem bedryf is
9 nie in my kantoor nie.

10 MS BARNES: Would you agree with me,
11 General, that those records would not be secret? If we
12 requested those records they would be made available to us.
13 Is that correct?

14 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
15 nee ek weet nie. Ekself het nie toegang tot die sisteem
16 nie. Wat ek weet is jy moet pertinent geregistreer word op
17 die sisteem nadat jy opgelei is. So ek weet nie wat is die
18 sekerheidsklassifikasie en ek weet ook daar is prosedures
19 in terme van om enige dokumentasie te bekom deur die
20 polisie. So ek kan regtig nie onvoorwaardelik antwoord
21 nie.

22 CHAIRPERSON: He also said, as I
23 understand, he also said he doesn't know what level of
24 security clearance one has to have to gain access. I think
25 that's what he said. Is that right?

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1 MR MAHLANGU: I'm sorry, I omitted that,
2 yes.

3 GENERAAL-MAJOOR ANNANDALE: As ek net
4 verder kan meld, Voorsitter, dat – en ek weet nie hoe het u
5 die navraag gedoen nie, maar daar sal of moet 'n IRIS
6 nommer wees of daar sal 'n pertinente datum en besonderhede
7 moet wees want ons registreer sekerlik so in die omgewing
8 van 10 tot 12 000 IRIS verslae per jaar.

9 CHAIRPERSON: With a date, or a date, so
10 if for example Ms Barnes's clients want information about
11 this incident of, apparently on the 4th of May 1996 in the
12 CBD in Durban, that information would be enough to, subject
13 to the security aspects that we don't know the answer to,
14 that information will be enough to assist those who are in
15 charge of IRIS to identify the particular incident. Is
16 that correct?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
18 ja, dit sal maklik wees, maar my bekommernis is as u nou
19 wys van 'n tydperk '98 tot 2001, kan dit dan potensieel, as
20 ons nie spesifieke datums het nie kan dit potensieel 30 000
21 – ja, 30 000 verslae wees.

22 MS BARNES: General, I can assure you
23 that our requests are very specific. Would you be able to
24 find out for us and let us know on Monday whether the
25 documentation that we seek is in fact secret –

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1 CHAIRPERSON: Ms Barnes, I think you
2 could possibly get that information from Mr Semanya. I
3 don't know if we should lay on the witness the duty to get
4 the information, but can I ask you a question. There was a
5 book published by the Institute of Race Relations some
6 years ago, written by Anthea Jeffery, dealing with the
7 various incidents in what were described as the killing
8 fields of KwaZulu Natal. Do you know whether that book
9 deals with the, amongst other things, with the incidents to
10 which you refer? Because there's quite a lot of material
11 in that book, as far as I can recall, about a whole series
12 of incidents, but I don't know whether it's relevant at all
13 to the point you're now dealing with, but if it is, it
14 might be of assistance.

15 MS BARNES: Yes, thank you, Chair. We
16 will look into that. We just like to find out from the
17 witness whether he can tell us who it is that would be
18 responsible for attending to our request for the IRIS
19 documentation.

20 CHAIRPERSON: I don't want to stop you
21 asking the witness a question, but isn't that something you
22 can address to Mr Semanya during the teatime? I understand
23 you want the information, you want to know to whom you must
24 apply, but I don't know if this is the witness's function
25 to give you that information. Mr Semanya will be able to,

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1 I'm sure. Is that right?

2 MR SEMENYA SC: Chair -

3 MS BARNES: Chair, the difficulty is that

4 we've written these letters, we've made these requests

5 weeks ago and we do not get answers, and I'm told this

6 morning by Mr Semenya that IRIS is now a secret database.

7 MR SEMENYA SC: No, no, Chair -

8 MS BARNES: So I believe, with respect,

9 that I'm entitled to ask this witness. These documents we

10 believe are very important for the Commission to arrive at

11 the truth in this matter. They are extremely relevant and

12 I believe that I'm entitled to ask the witness whether the

13 database is secret and who is responsible for answering our

14 request.

15 CHAIRPERSON: Ms Barnes, I don't want to

16 interrupt you unduly, with the witness has said he's not

17 directly concerned, he just has one of his officers who has

18 access to it. It's obviously run by somebody else. Let's

19 find out first under which of your colleagues in the "top

20 bestuur," the sort of top management of the SAPS does this

21 particular register fall? Or is that a question I must

22 also ask Mr Semenya to give me the information?

23 MAJOR-GENERAL ANNANDALE: Chairperson, as

24 far as I know all our police systems, and we have more than

25 a hundred different systems, it's, the custodian would be

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1 Technology Management Services, a division. In terms of

2 the operational functioning of the system I'm not 100%

3 sure, but it might be with a Brigadier Khumalo in a section

4 that is Operations, but I'm not 100% sure on that.

5 CHAIRPERSON: Mr Semenya will be able to

6 get the information, I'm sure. Is that right, Mr Semenya?

7 MR SEMENYA SC: Indeed I will, Chair.

8 Just for the record though, I did not say to Ms Barnes that

9 the information is secret. I think I would understand

10 constitutionally what that would connote, and even before

11 the Commission I just said access to this information is

12 through this method. I never purported to say they're

13 secret.

14 CHAIRPERSON: Yes, thank you. I don't

15 know that we have to enquire into that in any detail. The

16 fact of the matter is it's information, certainly some

17 information can be obtained by Ms Barnes's clients if they

18 follow the correct channels, and you will enlighten her as

19 to what those channels are so that the information, insofar

20 as it helps us in the Commission, will be able to be put

21 before us.

22 [10:30] MR SEMENYA SC: Indeed, Chair.

23 CHAIRPERSON: Does that deal with your

24 problem, Ms Barnes?

25 MS BARNES: Thank you, Chair. General,

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1 if you could please go to exhibit SS3. These pages are

2 unfortunately not numbered, but if you could go to the

3 document that is entitled Operation Platinum, the 14th of

4 August 2012, and if you could go to the second page of that

5 document.

6 MAJOR-GENERAL ANNANDALE: If I can just

7 confirm, is that the heading "Background" -

8 MS BARNES: That's correct.

9 MAJOR-GENERAL ANNANDALE: And underneath

10 there's one "Geographical Orientation."

11 MS BARNES: That's correct. I'd like you

12 to look at the slide entitled "Background." You see it

13 says, "Rival mineworker unions NUM and AMCU." It then

14 says, "Recent aggressive history, Saturday the 11th of

15 August 2012, Union clash, two dead." You see that?

16 MAJOR-GENERAL ANNANDALE: I do.

17 MS BARNES: So is it correct then that on

18 the 14th of August 2012 the SAPS believed that two people

19 had been killed in the altercation outside the NUM office

20 on Saturday the 11th of August?

21 GENERAAL-MAJOOR ANNANDALE: Dit was die

22 aanvanklike informasie het ons so geglo, dis reg.

23 MS BARNES: Where did you get the

24 information from?

25 GENERAAL-MAJOOR ANNANDALE: Ek dink dit

Page 10018

1 was gedeeltelik deur mnr Sinclair oorgedra van Lonmin. Ons

2 het die aanvanklike oorsig het ons die Maandagaand gekry

3 deur die toelighting vanaf hulle.

4 MS BARNES: If you carry on in that

5 document, your plan for the 15th of August 2012, it starts

6 Operation Platinum with that date, and then similarly on

7 the second page there's a slide entitled "Background" where

8 you are still, you have the same information in that slide.

9 Do you see that?

10 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

11 Voorsitter.

12 MS BARNES: You know of course that this

13 information was false, that it was not the case that two

14 people had been killed on Saturday, the 11th of August?

15 GENERAAL-MAJOOR ANNANDALE: Dis korrek,

16 slegs twee persone gewond.

17 MS BARNES: If you could go now to

18 exhibit L, to slide 6, do you have that in front of you?

19 GENERAAL-MAJOOR ANNANDALE: Ek het dit,

20 Voorsitter.

21 MS BARNES: You'll see it says, "Friday,

22 the 10th of August 2012, protesters wounded two persons

23 during clash of rival unions." You see that?

24 GENERAAL-MAJOOR ANNANDALE: Ek sien dit.

25 MS BARNES: Now where did you get that

Page 10019

1 information from?

2 GENERAAL-MAJOOR ANNANDALE: Ek het nie

3 die informasie bekom nie.

4 MS BARNES: Do you know where the SAPS

5 got that information from?

6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

7 nee, dit blyk dat dit moes gereflekteer word onder

8 Saterdag, die 11de Augustus.

9 MS BARNES: No, General, that's not

10 correct. There were in fact two people wounded on Friday,

11 the 10th of August, but that statement is still incorrect in

12 certain other respects, and I'll explain to you how that is

13 so now. If you could go to exhibit XX2, to page 80 thereof

14 –

15 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

16 my bladsye onder XX2 is nie almal genommer nie, slegs

17 bladsye wat verwysend is na 'n voorvalleboek wat bygehou

18 was deur Lonmin. As ek net kan weet onder watter dokument?

19 MS BARNES: General, I think you might

20 find a paginated number in the top left-hand corner of the

21 page.

22 MAJOR-GENERAL ANNANDALE: I only have

23 numbers on the top right-hand corner, small numbers.

24 COMMISSIONER HEMRAJ: - perhaps identify

25 it by the date of the incident, that might assist.

Page 10020

1 MS BARNES: Yes, it's the Marikana

2 CAS69/08/2012. It's a docket. Is your page 81 numbered?

3 Do you have it?

4 CHAIRPERSON: If you look at that exhibit

5 XX2 you'll see that it's got 94 pages. Your pages may not

6 be numbered. This is 14 from the end. There are 94

7 altogether, so if you look back 15 pages, you'll find it.

8 MAJOR-GENERAL ANNANDALE: I have a page

9 8-0 and a page 8-1.

10 MS BARNES: Thank you. Now this is a

11 docket, as I've indicated. You see that?

12 MAJOR-GENERAL ANNANDALE: Yes.

13 MS BARNES: And this specific document is

14 a statement by Mr Mtengwane who is one of the people that

15 was shot in Friday, the 10th of August 2012, and this is

16 part of the attempted murder docket in relation to that

17 shooting. Do you see that?

18 MAJOR-GENERAL ANNANDALE: What I see is

19 Marikana CAS69. I do not know what is the specific charge

20 if I just look at this. If I go to the crime docket, it

21 says Marikana 69, person shot, attempted murder times two,

22 yes.

23 MS BARNES: Now this is the statement by

24 Mr Mtengwane, and I'm just going to read two paragraphs to

25 you. If you could start at the third paragraph on page 80,

Page 10021

1 he says, "On Friday, the 10th of August 2012, at about 6:15,

2 I was walking towards Nkaneng, passing Wonderkop stadium,

3 when one of the Lonmin Security Twin-Cab opened fire at me.

4 The cab is yellow with light on top."

5 MAJOR-GENERAL ANNANDALE: It's actually

6 indicated 18:15, so it would be PM, and then he indicated

7 "opened fire at us," not at "me."

8 MS BARNES: Yes, that does seem to be

9 "us," thank you, General. The next paragraph reads as

10 follows, "On the bakkie there were white men and I looked

11 back to see what is happening, but I was shot on my left

12 thigh and fell down, injuring my forehead. The other guy I

13 was walking with was also shot."

14 MAJOR-GENERAL ANNANDALE: I note that,

15 Chairperson.

16 MS BARNES: And then if you go on to page

17 81, the next page, this is a statement by Mr Dlomo, who is

18 the other person that was shot on that day, and I'd like to

19 refer you to the fourth paragraph on that page. It reads

20 as follows, "I only heard plus-minus five shots, shooting

21 from the crowd of people who were there, all from the

22 Lonmin Security, and I found myself on the ground and I

23 found myself in the hospital, and I was shot on the head by

24 unknown person." Do you see that?

25 MAJOR-GENERAL ANNANDALE: I do,

Page 10022

1 Chairperson.

2 MS BARNES: So the one person is alleging

3 that they were shot by Lonmin Security; the other person

4 says that he doesn't know whether he was shot by Lonmin

5 Security or by somebody else. Is that correct?

6 MAJOR-GENERAL ANNANDALE: That's correct.

7 MS BARNES: So those statements in that

8 docket do not accord with what is stated on slide 6 of the

9 police presentation, exhibit L. Isn't that correct?

10 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

11 as dit die pertinente verwysing is in "slide" 6, dan is dit

12 nie in lyn dat daar 'n konflik tussen twee unies was nie,

13 dis korrek.

14 MS BARNES: It's also not clear from the,

15 at least both of those statements, that those people were

16 wounded by protesters, is it?

17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,

18 weereens as dit verwysend is na die twee verklarings wat

19 voorgehou is, dan is dit nie deur protesteerders aldus die

20 weergawe van die twee verklaarders nie.

21 MS BARNES: Now during the week, that

22 week, the week of the 9th to the 16th of August 2012, were

23 you aware that at least one Lonmin employee – or perhaps

24 let's just call him a civilian, claimed to have been shot

25 by Lonmin Security? Were you aware of that?

<p style="text-align: right;">Page 10023</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek was bewus van Lonmin Sekuriteit wat rubber gebruik het 3 pertinent in 'n aantal voorvalle. 4 MR VAN AS: Sorry, Mr Chairman, my name 5 is Michael Van As and I'm appearing on behalf of Lonmin. 6 We'd appreciate it if my learned friend Ms Barnes would 7 give us details. She talks about one Lonmin Security 8 shooting people; if she could perhaps just give details to 9 General who is referring – 10 CHAIRPERSON: She's referring, as I 11 understood it, to what's said in the statement which is at 12 page 80 of exhibit XX2. So in the context – if I'm wrong 13 she'll correct me. Am I right? 14 MS BARNES: Yes, Chair, and just to be 15 clear I want to make sure that – 16 CHAIRPERSON: And in that statement, in 17 that affidavit – I think it's an affidavit made by the 18 complainant who was shot, he alleges that he was shot by 19 Lonmin Security. The person in the next one, page 81, says 20 he was shot either by people from the crowd or Lonmin 21 Security; he's not sure which. So that, so I think to be 22 fair, in the context she's given enough information for you 23 to identify it, but if there's more information you require 24 to enable you to identify it, please say so and I'm sure 25 she'll be happy to oblige.</p>	<p style="text-align: right;">Page 10025</p> <p>1 ammunition by Lonmin Security during that week? 2 GENERAAL-MAJOOR ANNANDALE: Nee, 3 Voorsitter. 4 MS BARNES: If you could go now to your 5 statement, please, exhibit GGG1, to paragraph 6. Are you 6 at paragraph 6? 7 MAJOR-GENERAL ANNANDALE: I am indeed. 8 MS BARNES: And there you say, "During 9 the briefing of the National Commissioner it was mentioned 10 that the employees of Lonmin Mine allegedly belonging to 11 AMCU, a competitor to NUM, started striking on Thursday, 12 the 9th of August 2012, with regard to a wage dispute." You 13 see that? 14 MAJOR-GENERAL ANNANDALE: I do, 15 Chairperson. 16 MS BARNES: And this is a reference to 17 the briefing meeting with Lonmin on the evening of Monday, 18 the 13th of August 2012. Is that correct? 19 GENERAAL-MAJOOR ANNANDALE: Dit is 20 korrek. 21 MS BARNES: During that meeting Lonmin 22 told you that this was an AMCU strike. Is that correct? 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 24 ek sien my vorige paragraaf verwys ek na die toeligtig wat 25 gedoen was aan die Nasionale Kommissaris en dit was tydens</p>
<p style="text-align: right;">Page 10024</p> <p>1 MR VAN AS: If it's the same person, then 2 I'm satisfied, Mr Commissioner. 3 CHAIRMAN: - person is it, Ms Barnes? 4 MS BARNES: Yes, it is, and just to be 5 absolutely clear, paragraph 2 of the statement says, "I'm 6 an adult male with ID number," and he gives it, "28 years 7 old, living at Nkaneng and employed at Saffy Shaft." So he 8 is indeed a Lonmin employee and his full details are set 9 out there. 10 CHAIRPERSON: I think your problem is you 11 don't appear to have exhibit XX2 – 12 MR VAN AS: I do have it in front of me. 13 CHAIRPERSON: You have it in front of you 14 now? 15 MR VAN AS: I've got it in front of me, 16 Mr Commissioner. 17 CHAIRPERSON: You say it's fine? 18 MR VAN AS: Completely. 19 CHAIRPERSON: Alright, okay. So you can 20 then follow the cross-examination. 21 MR VAN AS: Yes, thank you, Mr 22 Commissioner. 23 MS BARNES: So to go back to your 24 previous answer then, General, you weren't aware then that 25 a Lonmin employee claimed to have been shot by live</p>	<p style="text-align: right;">Page 10026</p> <p>1 hierdie – daar was ook 'n "briefing" deur Lonmin gewees, 2 maar dit is tydens hierdie toeligtig aan die Nasionale 3 Kommissaris. 4 [10:50] MS BARNES: Yes, but to be clear, 5 paragraph 6, you're referring to the briefing by Lonmin. 6 You got the information relating to it being an AMCU strike 7 from Lonmin. Is that right? 8 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 9 maar in 5 verwys ek na beide. Ek verwys na die aanvanklike 10 toeligtig en dan verwys ek na die "briefing from Lonmin" 11 en dan het ek afgesluit om te sê "The National Commissioner 12 was briefed on the deployment." So ek verwys in die vorige 13 paragraaf na al die kollektiewe toeligtigs. 14 CHAIRPERSON: I think Ms Barnes's point 15 is that the statement you make in para 6 that it was 16 mentioned that the employees of Lonmin belonging to AMCU 17 had started striking and that in the next paragraph there's 18 a suggestion also – that's what you say. That obviously 19 was part of the briefing which the National Commissioner 20 got from Lonmin because the briefing she got from the 21 police members themselves apparently related to the 22 deployment, and what is dealt with in 6 wasn't a briefing 23 in relation to the deployment, but it was the history and 24 reasons for the strike, which was from Lonmin. I think 25 that's her point, and I take it you'd agree with that?</p>

<p style="text-align: right;">Page 10027</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Dis reg, 2 Voorsitter. 3 MS BARNES: If you could go back, 4 General, please, to exhibit SS3, to the same slide that we 5 were at just a few minutes ago, the background slide – 6 MAJOR-GENERAL ANNANDALE: I do have the 7 slide. 8 MS BARNES: And just below the point that 9 we dealt with earlier regarding the incorrect information 10 as to the deaths on the Saturday, it says, "Sunday, the 12th 11 of August, AMCU and security clash," and then "Monday, the 12 13th of August, AMCU and SAPS clash; two police officials 13 dead, one critically wounded, three AMCU dead, five 14 wounded." You see that? 15 GENERAAL-MAJOOR ANNANDALE: Dis reg, ek 16 sien dit, Voorsitter. 17 MS BARNES: So as far as the police were 18 concerned this was an AMCU strike. This is what you'd been 19 told by Lonmin. Is that correct? 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 dit is hoe ons dit aanvanklik gehad het dat dit meestal 22 AMCU lede is. Voorsitter, en dan die voorval op die 13de, 23 dit was na aanleiding van terugvoer dat die lede wie 24 gesterf het, AMCU lede is. 25 MS BARNES: Where did you get that</p>	<p style="text-align: right;">Page 10029</p> <p>1 on Monday, the 13th of August. We know that one of the 2 things – well, the evidence that has been led is that one 3 of the things Lonmin said was that they were not aware of 4 the identity of the strikers. They said that they were 5 faceless people and indeed they said that they weren't even 6 certain that they were employees of Lonmin. Is that 7 correct? 8 GENERAAL-MAJOOR ANNANDALE: Korrek. 9 Pertinent soos oorgedra en gereflekteer deur Generaal 10 Mpembe. 11 MS BARNES: And we know that on the 12 Wednesday, Wednesday, the 15th of August 2012, General 13 Mpembe had a meeting with the two unions, AMCU and NUM. 14 Other than that meeting, there was no meeting held by SAPS 15 with either of the unions during that week. Is that 16 correct? 17 CHAIRPERSON: I take it you mean with the 18 two unions together. 19 MS BARNES: Yes – 20 CHAIRPERSON: Because there was at least 21 one meeting before he arrived, with the NUM leaders on 22 Sunday. So you mean meeting with the two unions together. 23 Apart from the Wednesday one there was no other. That's 24 the question? 25 MS BARNES: Yes, that's correct, Chair.</p>
<p style="text-align: right;">Page 10028</p> <p>1 information from? 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 waarskynlik deur Generaal Mpembe. Ek is nie seker nie. Ek 4 weet nie of dit dalk deur mnr Sinclair was of later deur 5 mnr Botes nie. Ek is nie seker nie. 6 MS BARNES: If you could go to exhibit L, 7 to slide 8, here it is stated, "Information showed that the 8 unrest was based on the rivalry between NUM and AMCU." Is 9 that correct? 10 GENERAAL-MAJOOR ANNANDALE: Dis korrek. 11 MS BARNES: And as far as you were 12 concerned, a major cause of the strike and the unrest was 13 the rivalry between AMCU and NUM? 14 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 15 dis een van die pertinente redes. 16 MS BARNES: And where did you receive 17 this information from? 18 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 19 dit kan 'n kombinasie wees van informasie deur ons Misdaad 20 Intelligensie, dit kon kom vanaf Lonmin, informasie wat tot 21 beskikking was, die mense van Noordwes, pertinent Generaal 22 Mpembe en Brigadier Calitz, wie al van voorheen voor my 23 aankoms al betrokke was. 24 MS BARNES: And we know that, we've 25 already referred to the briefing that you had with Lonmin</p>	<p style="text-align: right;">Page 10030</p> <p>1 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 2 ek is net bewus van die 2 uur, 14:00 vergadering op die 3 15de, en dan die aand s'n wat ons afsonderlik met eers NUM 4 en toe AMCU vergader het. 5 CHAIRPERSON: Ms Barnes, when it's 6 convenient we can take the adjournment, but you'll tell me 7 when it's convenient for you. 8 MS BARNES: Yes, if I could just get 9 clarity on that answer, please. If you could repeat the 10 answer, please General. 11 MAJOR-GENERAL ANNANDALE: Chairperson, I 12 said that I'm aware of the 14:00 meeting on the 15th, the 13 Wednesday, that General Mpembe attended with NUM and AMCU, 14 as well as Lonmin, and then the meeting later that same 15 evening where there was a separate meeting between SAPS, 16 Lonmin, and NUM, and then SAPS, Lonmin, and AMCU. 17 MS BARNES: Thank you, this would be a 18 convenient time, Chair. 19 CHAIRPERSON: We'll take the tea 20 adjournment at this stage. 21 [COMMISSION ADJOURNS COMMISSION RESUMES] 22 [11:34] CHAIRPERSON: The Commission resumes. 23 Generaal-Majoor, u is nog steeds onder eed. 24 CHARL ANNANDALE: s.o.e. 25 CHAIRPERSON: Ms Barnes, you have some</p>

<p style="text-align: right;">Page 10031</p> <p>1 more questions, I understand.</p> <p>2 MS BARNES: Thank you, Chair.</p> <p>3 MR TIP SC: Chair –</p> <p>4 CHAIRPERSON: Yes, Mr Tip.</p> <p>5 MR TIP SC: Before Ms Barnes continues,</p> <p>6 may I offer a small correction in respect of one matter</p> <p>7 that came up shortly before the adjournment, which</p> <p>8 concerned the position on the 12th of August, and that is</p> <p>9 that Mr Zokwana came out to the mine on that occasion. He</p> <p>10 met with Lonmin senior management, not with the South</p> <p>11 African Police Service officers at all.</p> <p>12 CHAIRPERSON: I made the statement.</p> <p>13 You're correct, I was wrong. He telephoned someone –</p> <p>14 MR TIP SC: Yes, in the department.</p> <p>15 CHAIRPERSON: But he didn't actually meet</p> <p>16 the police.</p> <p>17 MR TIP SC: That is correct.</p> <p>18 CHAIRPERSON: I was wrong. Thank you for</p> <p>19 correcting me.</p> <p>20 MR TIP SC: If I may just add the</p> <p>21 sequence, then it will be entirely clear. After the</p> <p>22 meeting with Lonmin, Mr Zokwana thought that more needed to</p> <p>23 be done. He telephoned the Provincial Commissioner's</p> <p>24 office. He didn't speak to her, but felt that he had</p> <p>25 received no real satisfaction. He then spoke to the</p>	<p style="text-align: right;">Page 10033</p> <p>1 few errors on this page. It's first applicant and then</p> <p>2 below that it says third applicant, but it should really be</p> <p>3 second, and then you'll see that the respondents are NUM as</p> <p>4 first respondents, AMCU as, again it's described as third</p> <p>5 but it should be second, and then you'll see that the third</p> <p>6 to further respondents are the people whose names are</p> <p>7 listed in annexure A. You see that?</p> <p>8 GENERAAL-MAJOOR ANNANDALE: I do,</p> <p>9 Chairperson.</p> <p>10 MS BARNES: If you could go then to</p> <p>11 paragraph 8 of the founding affidavit, this says, as I just</p> <p>12 said that the third to further respondents are listed in</p> <p>13 annexure A, it says they're all employees of the</p> <p>14 applicants, 3 000 employees. It says, "The third to</p> <p>15 further respondents are participating in an unprotected</p> <p>16 strike in breach of the provisions of section 64 of the</p> <p>17 LRA," and it then goes on to say, "The third to further</p> <p>18 respondents are making unreasonable demands, which</p> <p>19 primarily centre upon a demand for a basic wage increase to</p> <p>20 R12 500." Do you see that?</p> <p>21 MAJOR-GENERAL ANNANDALE: I do,</p> <p>22 Chairperson.</p> <p>23 MS BARNES: And then on page 139,</p> <p>24 paginated page 139, paragraph 19 Lonmin says, "The</p> <p>25 industrial action in this matter involves all of the</p>
<p style="text-align: right;">Page 10032</p> <p>1 Minister. Thank you, Chair.</p> <p>2 CHAIRPERSON: That was his evidence. I</p> <p>3 had incorrectly remembered it, but thank you for correcting</p> <p>4 me. On that note, can we proceed, Ms Barnes?</p> <p>5 CROSS-EXAMINATION BY MS BARNES (CONTD.):</p> <p>6 Yes. Thank you, Chair. If I could just put it to you,</p> <p>7 General, that the correct position then appears to be – if</p> <p>8 you could just confirm this for us, as far as you're aware</p> <p>9 – that the SAPS, other than the meeting that General Mpembe</p> <p>10 had on the Wednesday afternoon with the two unions, the</p> <p>11 SAPS had no meetings either with the two unions jointly or</p> <p>12 with them separately during the week of the 9th to the 16th?</p> <p>13 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>14 ek is nie bewus van enige ander vergaderings dan die twee</p> <p>15 wat ek vermeld het nie.</p> <p>16 MS BARNES: If you could go now, please,</p> <p>17 General, to exhibit RR1. This is a founding affidavit in</p> <p>18 support of an application for an interdict brought by</p> <p>19 Lonmin on the 10th of August 2012.</p> <p>20 GENERAAL-MAJOOR ANNANDALE: Ek het die</p> <p>21 dokument, Voorsitter.</p> <p>22 MS BARNES: You'll see on the third page,</p> <p>23 it's paginated page 134, you'll see that the parties are</p> <p>24 the particular Lonmin Mines that are described as first</p> <p>25 applicant and second applicant. In fact there are quite a</p>	<p style="text-align: right;">Page 10034</p> <p>1 applicants, rock drill operators who are key to the</p> <p>2 production process." You see that?</p> <p>3 MAJOR-GENERAL ANNANDALE: I do,</p> <p>4 Chairperson.</p> <p>5 MS BARNES: So what Lonmin is saying on</p> <p>6 Friday, the 10th of August, in its founding affidavit is</p> <p>7 that it knows who is on strike. The people on strike are</p> <p>8 all its rock drill operators and it in fact sets out their</p> <p>9 names in an annexure. Agreed?</p> <p>10 GENERAAL-MAJOOR ANNANDALE: Ek lees ja,</p> <p>11 dan die persone wat vermeld word in 'n aanhangsel is dan</p> <p>12 die betrokke "rock drill operators."</p> <p>13 MS BARNES: That's correct. In paragraph</p> <p>14 19 Lonmin says they're the rock drill operators, and in</p> <p>15 paragraph 8 it says those are the people that are on an</p> <p>16 unprotected strike.</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Ek neem</p> <p>18 kennis.</p> <p>19 MS BARNES: And do you agree with me that</p> <p>20 Lonmin would have been aware of the union membership of its</p> <p>21 employees?</p> <p>22 GENERAAL-MAJOOR ANNANDALE: Ek aanvaar</p> <p>23 dit is die geval.</p> <p>24 MS BARNES: What happened was that when</p> <p>25 this Commission commenced, the attorneys for AMCU asked</p>

<p style="text-align: right;">Page 10035</p> <p>1 Lonmin to indicate what the union membership was of the 2 list of 3 000 people that we've just referred to, as at the 3 10th of August 2012. Do you follow? 4 MAJOR-GENERAL ANNANDALE: I do, 5 Chairperson. 6 MS BARNES: Lonmin provided that 7 information and that information is contained in another 8 exhibit, which is OO19. Do you have that in front of you? 9 MAJOR-GENERAL ANNANDALE: 100, and it 10 seems like about 20 pages, plus. 11 MS BARNES: Sorry, I didn't get that. 12 MAJOR-GENERAL ANNANDALE: I said 120 plus 13 pages. 14 MS BARNES: Ja, so that's the annexure A 15 that was attached, it's been reproduced, the annexure A 16 that was attached to the founding affidavit, and the 17 membership of the employees is now indicated. Do you see 18 that? 19 MAJOR-GENERAL ANNANDALE: I do, 20 Chairperson. 21 MS BARNES: We've done the calculation 22 and Mr Mathunjwa led evidence about it in his testimony. 23 The overall membership on the basis of this document is 35% 24 AMCU and 55% NUM. Is that right? 25 MR TIP SC: Chair, before the witness</p>	<p style="text-align: right;">Page 10037</p> <p>1 upon which any subsequent answer can be properly founded. 2 MS BARNES: Chair, I only referred to the 3 union membership. I don't seek to rely on the document to 4 indicate who was actually participating in the strike or 5 not. Obviously one cannot know that with absolute 6 certainty at this stage, but I simply seek to rely on it to 7 establish what the union membership was at that date, and 8 that information has been provided by Lonmin at our 9 request. 10 CHAIRPERSON: Do you need the 11 percentages? Because if you study the affidavit you're 12 looking at, you will see that in para 6 of the affidavit 13 it's said that some of the third to further respondents are 14 members of the first respondent – that's NUM – and in 7 it 15 says, "The majority of the third to further respondents are 16 members of the second respondent," that's AMCU, and then in 17 30 it is said that the applicants require the first and 18 second respondents' members to act in accordance with their 19 contractual obligations, etcetera. So Lonmin's case from 20 the very beginning was some of them are AMCU, some are NUM; 21 our application is aimed against members of both unions. 22 Your point, as I understand it, is that some of the 23 information in exhibit L doesn't seem to reflect that 24 properly and seems still to be influenced by the 25 information that Lonmin originally gave to the police. Do</p>
<p style="text-align: right;">Page 10036</p> <p>1 responds to that, this is a matter that has been debated on 2 two occasions previously, this particular calculation, and 3 it has become manifest that it cannot be relied on as an 4 accurate guide of percentages in respect of the union 5 memberships. 6 CHAIRPERSON: Yes, I understand that. 7 I'm not sure if Ms Barnes is interested so much in the 8 percentages – 9 MR TIP SC: But she's just read them out, 10 Chair. 11 CHAIRPERSON: No, no, I'm aware. 12 Alright, please carry on. Let me not interrupt you. Carry 13 on. 14 MR TIP SC: The point is that this is an 15 annexure that is attached to an urgent application for an 16 interdict, and it sets out its employment profile. You 17 will recall that Mr Gegeleza, who testified here, was a 18 rock drill operator whose name appears on the schedule. He 19 was a NUM member and appears as such. He testified that he 20 most certainly wasn't part of any industrial action, and Mr 21 Setelele gave evidence that a good many people when 22 confronted with a strike situation do not participate in 23 the strike, but they also for various reasons do not attend 24 work. So this must be put, with respect, to the General on 25 a fair basis and not to suggest that those are percentages</p>	<p style="text-align: right;">Page 10038</p> <p>1 I understand you correctly? 2 MS BARNES: Yes, Chair, but with respect, 3 what Lonmin says at paragraph 7, "The majority of the third 4 to further respondents are AMCU members," that is not 5 correct based on annexure OO19. 6 CHAIRPERSON: - numbers again? 7 MS BARNES: 35% AMCU and 55% NUM, but 8 even if one leaves those percentages, if one sits and 9 counts the union membership figures that Lonmin has given 10 to us, it is not majority AMCU and therefore the statement 11 in paragraph 7 is incorrect, and that's what I want to put 12 to this witness. 13 CHAIRPERSON: Okay, I will allow you to 14 continue, but I would ask you to bear this in mind, that 15 this witness wasn't concerned with that aspect of the 16 matter. That was something, you may remember, that General 17 Mpembe dealt with when he spoke to Lonmin, but insofar as 18 you wish to put it to this witness, I take it it's for a 19 fairly limited purpose. Am I right? 20 MS BARNES: Yes, that's correct, Chair. 21 CHAIRPERSON: Okay, well just put it for 22 that purpose and then let's carry on. 23 MS BARNES: So General, if you accept 24 what I've told you about exhibit OO19 and you accept that 25 if you count the numbers there, that the majority of the</p>

<p style="text-align: right;">Page 10039</p> <p>1 employees listed on that document are in fact NUM members, 2 then you will agree with me that the statement in paragraph 3 7 of the founding affidavit is incorrect? 4 CHAIRPERSON: Ms Barnes, I mean it's not 5 for him to say whether it's incorrect or not. The facts 6 are before us; it's for us to decide. He's not the 7 commissioner, he doesn't have to make findings in that 8 regard, and whatever he says is something that we won't pay 9 much attention to because it's not a matter that falls 10 within his area or competence or experience. So you've 11 made your point. I suggest you move on. The Lonmin 12 counsel, do you want to say something? 13 MR VAN AS: I think you've put it rather 14 eloquently, Mr Chairman. 15 CHAIRPERSON: I don't know about the 16 eloquence, but I did put the point as I – 17 MR VAN AS: With respect, you're quite 18 correct. I don't follow why the General's being cross- 19 examined on these issues. 20 CHAIRPERSON: If Mr Burger were here Mr 21 Burger would put with considerably more eloquence than I 22 have at my command, the point that I tried to convey to 23 you, but I'm not stopping you from making the point, but I 24 don't think this is the person to whom you should make the 25 point. You've put the basic facts before us. Perhaps we</p>	<p style="text-align: right;">Page 10041</p> <p>1 don't know if the amount they demanded, and then there was 2 an increase, so I don't have particulars of the 3 discussions." Is that correct? 4 GENERAAL-MAJOOR ANNANDALE: Dit is 5 korrek, Voorsitter. 6 MS BARNES: So I take it then you are not 7 aware, and you were not made aware of who Lonmin met with 8 as far as rock drill operators were concerned, and what the 9 particulars of the discussions were. Is that correct? 10 GENERAAL-MAJOOR ANNANDALE: Dit is 11 korrek, Voorsitter. 12 MS BARNES: So would it be correct then 13 that you were never informed that Lonmin had in fact met 14 with five rock drill operators outside the bargaining 15 structures on four separate occasions in order to discuss 16 their demand for a higher wage, and it then ultimately, 17 Lonmin then ultimately offered them an allowance of R700 18 per month? Were you given any of that information during 19 the week of the 9th to the 16th of August? 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter 21 nee, ek was nie bewus van sodanige besonderhede nie. 22 MS BARNES: Okay, now in your evidence- 23 in-chief, General, you've essentially given the Commission 24 four reasons why you say that the SAPS had to go into the 25 tactical phase – I'll call it the tactical phase – on the</p>
<p style="text-align: right;">Page 10040</p> <p>1 can move on, without unduly hampering you when you're 2 presenting your case – 3 MS BARNES: I have made my point, and I'm 4 happy to move on, Chair. General, in your cross- 5 examination by Adv Budlender on the 25th of April 2012, 6 there was an exchange between you, during which Adv 7 Budlender asked you certain questions about meetings that 8 Lonmin had had with RDOs. I'd like to refer you to that 9 portion of your evidence. 10 COMMISSIONER HEMRAJ: What page is it on, 11 Ms Barnes? 12 MS BARNES: It is on page 8544 of the 13 transcript, and it's day 80. It's at line 7 of that page. 14 I have an English version in front of me, but essentially 15 Adv Budlender is asking you whether you were aware that 16 before these events Lonmin management met with the 17 representatives of rock drill operators on a number of 18 occasions, and then you say, "I'm aware of meetings," and 19 Adv Budlender then says, "Are you aware that the purpose of 20 those meetings was to discuss the amount which the rock 21 drill operators are paid and a possible increase in that 22 amount?" and you then say, "Chair," and you must just tell 23 me if this is correct, because I have an English 24 translation, "Chair, I was aware that there was an 25 agreement that they would receive a certain amount. I</p>	<p style="text-align: right;">Page 10042</p> <p>1 16th of August 2012. Is that right? 2 [11:53] GENERAAL-MAJOOR ANNANDALE: Voorsitter, 3 ek het redes aangedui – ek weet nie of dit vier was en of 4 dit lateraan aangevul is met nog redes nie, maar ek het 5 redes gegee. 6 MS BARNES: Perhaps it would help if I 7 told you what they were. You've given the following four 8 reasons in your evidence, firstly, that negotiations had 9 deadlocked; secondly, that the police had been threatened; 10 thirdly, that the mood of the strikers had changed; and 11 fourthly you've said that not even the president of AMCU 12 could persuade his members to lay down their arms. Those 13 are the reasons I found in your evidence. Do you agree 14 that that's correct? 15 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 16 ja, pertinent die vier redes. Ek dink ek het later ook in 17 my getuienis het ek verwys na die media wat self, wat die 18 heelyd voor tussen die stakers was, wat self gesê het dat 19 hulle voel bedreig en dan ook vermeld dat die polisie 20 video-operateurs was ook pertinent bedreig. Voorsitter, en 21 ek het ook verwys na die verhoogde risiko in terme van sou 22 hierdie sodanige groepe so gewapen in so 'n groep inbeweeg 23 in die nedersettings in. 24 MS BARNES: We'll deal with all of that. 25 I'd like to start with the four reasons that I indicated.</p>

<p style="text-align: right;">Page 10043</p> <p>1 Just before we do that, I'd like to just examine your 2 evidence on what Lonmin's position was with regard to the 3 strikers' demand. If I could refer you to page 8222 of the 4 transcript, it's day 77 and it's line 15 on that page, I'm 5 going to read to you my English translation. "I said that 6 the total aim would be that we will negotiate in terms of 7 finding a solution, a peaceful one at that, and that the 8 people should be convinced to lay down their weapons, that 9 they should not negotiate on labour issues, that they 10 should try to convince this grouping to go back to their 11 work stations because Lonmin indicated that once these 12 people are back in their work stations, constructive 13 negotiation can start through the existing channels that 14 are in place." Is that correct? 15 MAJOR-GENERAL ANNANDALE: That is 16 correct, Chairperson. 17 MS BARNES: And then on the 25th of April 18 at page 8487, I'd like to refer you to that portion as 19 well, day 80, and it appears at line 8. 20 MAJOR-GENERAL ANNANDALE: I do have that 21 specific page and line. 22 MS BARNES: Okay, you said the following, 23 you say, "The police negotiators were continuously carrying 24 over messages from Lonmin and we got these mostly from 25 Kgotle and Kwadi, but also feedback from Dirk Botes from</p>	<p style="text-align: right;">Page 10045</p> <p>1 negotiations? 2 GENERAAL-MAJOOR ANNANDALE: Voorsitter 3 ja, maar hulle het ook pertinent gesê dat dit nie sal oor 4 loon onderhandelings gaan nie. Hulle het ook gesê dat dit 5 deur die bestaande struktuur moet plaasvind, of dan 6 pertinente die griewe prosedure. 7 MS BARNES: So they weren't happy to 8 negotiate about wages because of the two-year wage 9 agreement. Is that what they said? 10 GENERAAL-MAJOOR ANNANDALE: Dis korrek, 11 Voorsitter. 12 MS BARNES: But they were prepared to 13 engage with the strikers over their grievance, provided 14 that they came back to work and provided that this was done 15 through the proper channels. Is that correct? 16 GENERAAL-MAJOOR ANNANDALE: Korrek, soos 17 ek dit verstaan het, dis reg, Voorsitter. 18 MS BARNES: And that's the message that 19 the South African Police Service communicated to the 20 strikers, that if you go back to work this grievance of 21 yours will be engaged with, but it must be done through the 22 proper channels. Is that correct? 23 GENERAAL-MAJOOR ANNANDALE: Voorsitter 24 ja, Kolonel McIntosh sal uiteraard kan dit baie meer, in 25 meer besonderhede gee, maar dit was so die kern van dit,</p>
<p style="text-align: right;">Page 10044</p> <p>1 Lonmin, who indicated that Lonmin was totally prepared for 2 a negotiation, but that SAPS negotiations could not take 3 place with people who had weapons. They asked for this 4 message to be conveyed that there were structures in place 5 for negotiations and that people should return back to 6 work; it would make the process easier. But they also said 7 that if there was a delegation which was available, then 8 this would facilitate the negotiations." Is that correct? 9 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 10 dit klink vir my taamlik korrek vertaal. 11 CHAIRPERSON: "Taamlik" is fairly, I take 12 it, fairly correctly. As far as I could see it's correctly 13 translated. I'm not as conversant with the nuances of 14 Afrikaans as the Major-General is. 15 MR MAHLANGU: Thanks. 16 MS BARNES: Now General, I'd like to ask 17 you about the last line of that passage. Does that refer 18 to a delegation being drawn from the strikers? Is that 19 what that refers to? 20 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 21 dit was 'n pertinente delegasie uit die stakers, dis reg. 22 MS BARNES: So in other words is what you 23 are saying here, that you were told by Lonmin that if there 24 was a delegation that could be drawn out of the group of 25 strikers, then that would facilitate the process of</p>	<p style="text-align: right;">Page 10046</p> <p>1 wapens neerlê, terugkeer werkstasies toe, dan is daar 2 prosedures in plek. 3 MS BARNES: Of course. 4 CHAIRPERSON: And then he added, it 5 amounted to this, put down the weapons - lay down the 6 weapons, go back to work, then the appropriate structures 7 or procedures will be in place. 8 MR MAHLANGU: Those were the additional 9 things. 10 MS BARNES: Yes, thank you, General. I 11 just wanted to get your understanding of the basic message, 12 not the detail. Now that was also what was communicated, 13 the same basic message was communicated to the strikers by 14 Mr Mathunjwa. Is that correct? 15 GENERAAL-MAJOOR ANNANDALE: Sover ek 16 verneem was dit deel van sy boodskap, dis reg. 17 MS BARNES: And with regard to on the 15th 18 of August now, and approaching, the civilians essentially 19 approaching the koppie, SAPS was concerned, or regarded 20 itself as responsible for the safety of civilians 21 approaching the koppie, specifically on the 15th. Is that 22 right? 23 GENERAAL-MAJOOR ANNANDALE: Verwysend na 24 die presidente en hulle delegasies? 25 MS BARNES: Yes, that's right. It seems</p>

<p style="text-align: right;">Page 10047</p> <p>1 now I'm answering the questions. Yes, that's right.</p> <p>2 GENERAAL-MAJOOR ANNANDALE: Dis korrek.</p> <p>3 MS BARNES: And this is why the SAPS</p> <p>4 insisted that those union leaders be escorted by police and</p> <p>5 that they speak from within a Nyala when they address the</p> <p>6 striking crowd on the 15th. Correct?</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>8 dis korrek, ja. Dit was op aandrang van die polisie wat</p> <p>9 ons die delegasies gevra het om te gaan praat en pertinent</p> <p>10 NUM was baie ongemaklik gewees met die veiligheidsaspek.</p> <p>11 So dit was op ons aandrang.</p> <p>12 MS BARNES: It would have been</p> <p>13 irresponsible of the SAPS not to have taken these security</p> <p>14 measures. Correct?</p> <p>15 GENERAAL-MAJOOR ANNANDALE: Voorsitter</p> <p>16 ja, ons was versigtig gewees dat sou ons op ons aandrang</p> <p>17 mense so amper wil ek sê verplig en oortuig om te gaan en</p> <p>18 daar sal 'n insident wees, dan ja, sou dit</p> <p>19 onverantwoordelik wees as ons hulle sou blootstel.</p> <p>20 MS BARNES: And that is why Mr Mathunjwa,</p> <p>21 despite pleading to be allowed to address the strikers from</p> <p>22 outside the Nyala, was not allowed to. Correct?</p> <p>23 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>24 dit was die protokol wat ooreengekom is oor voordat hulle</p> <p>25 vertrek het.</p>	<p style="text-align: right;">Page 10049</p> <p>1 Mathunjwa.</p> <p>2 CHAIRPERSON: The phrase in the SMS was</p> <p>3 "SAPS is available at exactly the same spot as we had our</p> <p>4 earlier discussions."</p> <p>5 MAJOR-GENERAL ANNANDALE: Thank you,</p> <p>6 Chair.</p> <p>7 MS BARNES: So that place, is that the</p> <p>8 place that you were standing with the Provincial</p> <p>9 Commissioner and General Mpembe in the late morning of the</p> <p>10 16th of August when Mr Mathunjwa first arrived?</p> <p>11 GENERAAL-MAJOOR ANNANDALE: Dit is die</p> <p>12 betrokke plek wat ons vroeër vergader het.</p> <p>13 MS BARNES: Now Mr Mathunjwa arrives and</p> <p>14 there's then a conversation between him and the Provincial</p> <p>15 Commissioner during which you are present. You refer to</p> <p>16 that conversation in paragraph 20 of your statement. Is</p> <p>17 that right?</p> <p>18 GENERAAL-MAJOOR ANNANDALE: Korrek,</p> <p>19 Voorsitter.</p> <p>20 MS BARNES: And in that conversation Mr</p> <p>21 Mathunjwa tells the Provincial Commissioner that he'd been</p> <p>22 at the Lonmin offices since early that morning and he says</p> <p>23 but Lonmin has reneged on its promise to engage the workers</p> <p>24 on their grievance. Is that right?</p> <p>25 GENERAAL-MAJOOR ANNANDALE: Dis korrek,</p>
<p style="text-align: right;">Page 10048</p> <p>1 MS BARNES: Let's move now to the morning</p> <p>2 of the 16th of August. It's the late morning and you are in</p> <p>3 the vicinity of the JOC, and in fact I'm going to ask you</p> <p>4 to tell me exactly where you were, but you were with the</p> <p>5 Provincial Commissioner and also with Generals Mpembe and</p> <p>6 Naidoo, and Mr Mathunjwa arrived.</p> <p>7 GENERAAL-MAJOOR ANNANDALE: Dit is amper</p> <p>8 korrek, maar nie heeltemal nie, Voorsitter. Generaal-</p> <p>9 Majoor Naidoo was nie teenwoordig gewees nie.</p> <p>10 MS BARNES: Was it just General Mpembe,</p> <p>11 the Provincial Commissioner, and yourself?</p> <p>12 GENERAAL-MAJOOR ANNANDALE: Dit is</p> <p>13 korrek, Voorsitter.</p> <p>14 MS BARNES: And where exactly were you</p> <p>15 when Mr Mathunjwa arrived? Were you in the JOC? Were you</p> <p>16 outside the JOC?</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>18 ons was buitekant die JOC fasiliteit.</p> <p>19 MS BARNES: And is that the place that</p> <p>20 you were referring to in your SMS to Mr Mathunjwa as the</p> <p>21 place where you normally met?</p> <p>22 GENERAAL-MAJOOR ANNANDALE: Voorsitter,</p> <p>23 ek weet nie of ek "normally," die woord "normally" gebruik</p> <p>24 het of "previously" nie, maar ek het verwys na waar ons</p> <p>25 vroeër vergader het, pertinent ons polisie en mnr</p>	<p style="text-align: right;">Page 10050</p> <p>1 Voorsitter.</p> <p>2 MS BARNES: So now we've earlier</p> <p>3 established that the police have told the strikers that if</p> <p>4 they go back to work Lonmin will engage with their</p> <p>5 grievance. You're now told by Mr Mathunjwa that Lonmin is</p> <p>6 no longer prepared to do that. Is that correct?</p> <p>7 MAJOR-GENERAL ANNANDALE: Chairperson,</p> <p>8 yes he, in my statement I also referred, he responded by</p> <p>9 saying that he has been at the Lonmin management offices</p> <p>10 from early morning and that the Lonmin management do not</p> <p>11 want to commit to the continued negotiations, and that is</p> <p>12 the reason for him not addressing the group.</p> <p>13 MS BARNES: But you understood him to be</p> <p>14 saying that if the workers went back to work, Lonmin had</p> <p>15 reneged. They were now saying they would no longer engage</p> <p>16 with the strikers' grievance. Is that correct?</p> <p>17 GENERAAL-MAJOOR ANNANDALE: Weet jy, dit</p> <p>18 kan sekerlik so geïnterpreteer word; as hulle bereid is om</p> <p>19 verder te onderhandel nie dan kan dit sekerlik so</p> <p>20 geïnterpreteer word.</p> <p>21 [12:13] MS BARNES: Well, Mr Mathunjwa in his</p> <p>22 evidence said the following. He said, "I advised the</p> <p>23 Provincial Commissioner that management had reneged on its</p> <p>24 promise to engage with the workers in relation to their</p> <p>25 grievance." That was his evidence, and that hasn't been</p>

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1 challenged. You accept that that's what he told the
2 Provincial Commissioner?
3 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
4 as hy so getuig het, ek kan nie onthou dat hy die
5 pertinente woorde so gebruik het nie. Soos ek dit
6 geparafraseer het, dis hoe ek dit kan onthou.
7 MS BARNES: But surely, General, this
8 should have been of great concern to you, the news that you
9 were now hearing from Mr Mathunjwa, because the South
10 African Police Service had told the strikers that if they
11 went back to work they would be engaged with. They
12 wouldn't simply be ignored. They would be engaged with,
13 and now you are being told by Mr Mathunjwa that Lonmin is
14 no longer prepared to do that. Shouldn't that have been of
15 great concern to you?
16 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
17 dit was nie die fokus van die Provinsiale Kommissaris nie.
18 Die fokus van die Provinsiale Kommissaris was gewees sy,
19 amper wil ek sê ooreenkoms, die aanduiding wat hy gegee het
20 die vorige aand dat hy sal teruggaan en dat hy sou 9 uur
21 die oggend daar wees om dan verder met die lede te oortuig
22 om hulle wapens neer te lê.
23 MS BARNES: General, I'm not asking you
24 about what the Provincial Commissioner said to Mr
25 Mathunjwa. What I'm saying to you is that you as SAPS had

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1 given the message to the strikers that if they went back to
2 work, they would be engaged with. Now Mr Mathunjwa is
3 telling you that Lonmin will no longer engage with them if
4 they go back to work. Shouldn't that have been of great
5 concern to you?
6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 in retrospek; op daardie stadium was dit nie ons fokus
8 gewees nie, so ons het, dit was nie vir ons 'n pertinente
9 bekommernis nie.
10 MS BARNES: At the end of the
11 conversation between Mr Mathunjwa and the Provincial
12 Commissioner, Mr Mathunjwa said he was going to go to the
13 koppie and give the workers this news. Is that correct?
14 GENERAAL-MAJOOR ANNANDALE: Dit is
15 korrek, Voorsitter.
16 MS BARNES: Did you not think that this
17 news would have upset the strikers?
18 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
19 ons het, en die Provinsiale Kommissaris het in gesprek
20 getree met mnr Mathunjwa daaroor.
21 MS BARNES: Because the facts, General,
22 are that these striking workers have been told for some
23 days by both the police and Mr Mathunjwa that if they go
24 back to work they will be engaged with. Now Mr Mathunjwa
25 is going to tell people that are on your version already

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1 belligerent, that that is no longer the case. Were you not
2 concerned that that would inflame the situation?
3 GENERAAL-MAJOOR ANNANDALE: Dit is dan
4 juis hoekom die Provinsiale Kommissaris met hom in gesprek
5 getree het, wat vir hom gesê het herinner hom aan sy
6 verantwoordelikheid as 'n leier.
7 MS BARNES: General, shouldn't you as a
8 SAPS general in those circumstances have contacted Lonmin
9 urgently and said look, a commitment has been given that if
10 these people go back to work you will engage with them; we
11 as SAPS have given that commitment on your behalf, you
12 cannot now renege on that commitment, let's get this
13 process back on track? Isn't that what you should have
14 done?
15 GENERAAL-MAJOOR ANNANDALE: Voorsitter
16 nee, ek het as persoon het nie in onderhandelings betrokke
17 geraak met, tussen unies en Lonmin nie; dit was Generaal
18 Mpmembe en hy het aldus sodanige skakeling gedoen.
19 MS BARNES: And now not only, General, do
20 you let Mr Mathunjwa go to this crowd of –
21 CHAIRPERSON: Before you move on to the
22 next point, I can understand you weren't the liaison, as it
23 were, between the police and Lonmin, but in view of the
24 points put to you by Ms Barnes, in retrospect were you not
25 – what would you say about the proposition that in

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1 retrospect one should realise, or could realise that the
2 appropriate thing to do will be to have asked General
3 Mpmembe then to go back to Lonmin to say to them what Ms
4 Barnes has suggested should have been said? How would you
5 react to such a proposition?
6 GENERAAL-MAJOOR ANNANDALE: Voorsitter,
7 in retrospek verseker, die polisie moes 'n verdere poging
8 aangewend het om dan pertinent met Lonmin te skakel oor
9 hierdie aspek. Daar is geen twyfel daaroor nie.
10 COMMISSIONER HEMRAJ: At the time was
11 there any discussion about whether Lonmin should be
12 approached again?
13 GENERAAL-MAJOOR ANNANDALE: Voorsitter
14 nee, ons het nie, maar ek weet Generaal Mbombo, sy het nie
15 direk gepraat met mnr Mathunjwa op sy eie selfoon nie. Sy
16 het via, ek dink dit was mnr Mokwena gepraat voordat mnr
17 Mathunjwa gekom het, maar ons het nie verdere gesprek gehad
18 in terme van dit nie, nee.
19 MS BARNES: Do you agree with me at least
20 in retrospect, General, that what ought to have happened
21 was an attempt ought to have been made to stop Mr Mathunjwa
22 from going to deliver this very bad news to a group of
23 belligerent strikers, without at least first making an
24 attempt to contact Lonmin –
25 CHAIRPERSON: I understood him to say

<p style="text-align: right;">Page 10055</p> <p>1 that. I understood him to make that concession, in 2 retrospect, with hindsight, I think that's what he said. 3 Did I understand you correctly, Major-General? 4 GENERAAL-MAJOOR ANNANDALE: Voorsitter, 5 dis reg, maar ons was ook besig om te reël vir vervoer vir 6 mnr Mathunjwa, en daar is 'n voorvalleboek inskrywing 7 gemaak op die 16de, voorvalleboek 1004 om 11:55. 8 Voorsitter, dit was nadat mnr Mathunjwa gevra het om 9 vervoer te word en ons het gesê ons het nie nou voertuie 10 beskikbaar nie, en mnr Mathunjwa het verwys na dieselfde 11 Mercedes Benz Vito bussies waarin hulle vervoer was die 12 vorige dag, wat net buitekant die JOC area geparkeer was, 13 en daar was gemeld dat die lede ontplooi is, so die lede is 14 nie beskikbaar nie, en ek het vir Kolonel Scott dink ek en 15 toe via hom met Brigadier Tsiloane gepraat en gevra dat hy 16 reël, en die voorvalleboek inskrywing is die terugvoer wat 17 gegee was, en ek haal dit aan, "Situation report, Brigadier 18 Tsiloane reported that the president of AMCU just left the 19 base on his own to visit the group at the koppie, and he 20 left the rest of the group of AMCU behind, and the Lonmin 21 branded Combi with other members of AMCU drove to the 22 koppie and Captain Seleke of Mobile Operations escorted 23 them." 24 CHAIRPERSON: Ms Barnes, I've been asked 25 to adjourn at 12:30. You're obviously not going to finish</p>	<p style="text-align: right;">Page 10057</p> <p>1 been this renegeing and that obviously would have made it 2 very difficult for him to have carried out his commitment 3 to try to persuade the strikers to lay down their arms. So 4 there's that part of the question, and then when you've 5 dealt with that, Ms Barnes will repeat the other half and 6 then carry on. 7 GENERAAL-MAJOOR ANNANDALE: Voorsitter 8 ja, maar in die gesprek wat tussen Generaal Mbombo en mnr 9 Mathunjwa, nadat hy aangedui het hy gaan dit oordra aan die 10 werkers, het hy gesê hy ken sy verantwoordelikhede as 'n 11 leier. Voorsitter, maar in retrospek ja, jis, daar is baie 12 goed wat ons kon gedoen het en sekerlik kon die polisie die 13 tussenganger gewees het om te sê Mathunjwa bly hier, ons 14 gaan nou met Lonmin skakel, kom ons drie partye kom 15 bymekaar en ons bespreek dit. Voorsitter, in my interaksie 16 met mnr Mathunjwa, die, dit was basies gewees die, voordat 17 hulle vertrek het koppie toe die aand van die 15de, nadat 18 hulle teruggekom het, en dan ook die oggend is – hy het 19 oorgekom as 'n baie verantwoordelike persoon, en ten spyte 20 daarvan dat hy nie baie gelukkig was, soos hy gesê het die 21 manier wat die Provinsiale Kommissaris met hom gepraat het 22 nie, was daar nie emosionele uitbarstings van hom nie en 23 ja, ons moes dit gedoen het, maar op daardie stadium het ek 24 geglo dat hy as 'n leier sal hy gaan en hy sal die korrekte 25 ding gaan doen.</p>
<p style="text-align: right;">Page 10056</p> <p>1 your cross-examination before 1 o'clock anyway, I wouldn't 2 have thought, so I'm just mentioning that to you because 3 you might want to bear that in mind from now until the time 4 we adjourn - 5 MS BARNES: Yes, that's a good plan, 6 Chair. 7 CHAIRPERSON: - with the framing of your 8 questions. 9 MS BARNES: General, before we get to the 10 issue of the transport, I want to put to you – because this 11 is what we're going to argue – that two things should have 12 happened; there should have been an urgent attempt to get 13 hold of Lonmin to find out what their position was and why 14 they appeared to be renegeing, but secondly, Mr Mathunjwa 15 should not have been permitted to go to the koppie to 16 deliver bad news to strikers who you said were belligerent. 17 There are two points there, not just the one. I'd like to 18 give you an opportunity to comment, if you wish. 19 CHAIRPERSON: Let's concentrate on the 20 second point first, if you'll forgive me, Ms Barnes. In 21 retrospect, again I say that, in retrospect is there not 22 something to be said for the proposition that Mr Mathunjwa, 23 in the light of what he told you and the Provincial 24 Commissioner, was effectively going to try to carry out 25 mission impossible because he effectively said that there'd</p>	<p style="text-align: right;">Page 10058</p> <p>1 CHAIRPERSON: Would it be appropriate for 2 us to adjourn on that note? 3 MS BARNES: It would be, Chair. 4 CHAIRPERSON: And to continue on Monday 5 morning at 10 o'clock with this point with which you're now 6 busy. The Commission will now adjourn until 10 o'clock on 7 Monday. 8 [COMMISSION ADJOURNED] 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>

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