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 27 12 DECEMBER 2012 PAGES

PAGES 2790 TO 2911

## HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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# Marikana Commission of Inquiry

	Page 2790		Page 2792
1	[PROCEEDINGS ON 12 DECEMBER 2012]	1	record, the evidence doesn't become stronger because you
2	[10:05] CHAIRPERSON: Good morning. The	2	get the witness to say it twice or thrice or four times.
3	Commission resumes. Mr Mathunjwa, I must remind you, you	3	Ask him questions arising from the points that he made. If
4	are still under oath. Mr Mpofu, have you got any questions	4	he has difficulty in understanding where you are coming
5	to ask the witness?	5	from or what exactly the point's about, he can ask for an
6	MR MPOFU: Indeed I do, Chairperson,	6	explanation and you can then give it to him, but I fear
7	thank you. Mr Mathunjwa, good morning.	7	that it sounds to me as if time will be wasted otherwise.
8	MR MATHUNJWA: Good morning.	8	MR MPOFU: Chairperson, I am also doing
9	MR MPOFU: I know you've been here since	9	it for the benefit of the witness, because of the break.
10	the 27th of November, but hopefully today, we will tell you	10	CHAIRPERSON: But I said to you –
11	to go. I just wanted to, because of the gap that – between	11	MR MPOFU: But I accept your -
12	the last time I was cross-examining you and now, I am going	12	CHAIRPERSON: I am sorry, Mr Mpofu, I
13	to just start by recapping some of the issues that we dealt	13	said to you, ask your question, if the witness requires
14	with and then continue from where we left off. Is that	14	elucidation, because he doesn't under what you're asking
15	okay? You made, I think about seven or eight important	15	him about, then he will say so, and you can then give it to
16	statements. The first one, just to remind you was that in	16	him, but it's not necessary to assume in advance that he's
17	your estimation, that the group was not made up of a	17	an idiot and he won't understand what you are putting to
18	homogenous, much of the same religious or cultural belief.	18	him.
19	Remember that?	19	MR MPOFU: No, Chairperson, with greatest
20	MR MATHUNJWA: Yes, I do.	20	respect, I don't think that remark can be attributed to me
20	MR MPOFU: And we also established that	20	at least. I never assumed anyone was an idiot, let alone
22	in your allegedly –	22	the witness.
22	CHAIRPERSON: Mr Mpofu, I don't want to	22	CHAIRPERSON: I don't think he's an idiot
23 24	be difficult, but I think it's necessary for cross-	23 24	at all, he is obviously a very intelligent and articulate
24 25	examination, remember you are cross-examining the witness,	24 25	man. But anyway, proceed with this evidence on that basis.
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1	Page 2794 just make statements because you are wasting time by just	1	Page 2796 MR MATHUNJWA: He said that it wasn't
2	making statements.	2	cordoned off, carry on with your cross-examination from
3	MR MPOFU: Okay, is it correct that	3	that.
4	according to your evidence there were Nyalas that could	4	MR MPOFU: He said, he has already told
5	fill up a stadium, a football stadium?	5	us.
6	MR MATHUNJWA: Yes, I said all kinds of	6	CHAIRPERSON: In order to make sure it
7	vehicles, - vehicles.	7	was on record, I then asked the question myself, and the
8	MR MPOFU: And then for your second visit	8	question was formed –
9	which is where we left it off whenever it was, five days	9	MR MPOFU: Thank you, Chairperson.
	ago, and I was asking this in relation to evidence that was		CHAIRPERSON: - and I got the answer that
10 11	given by Bishop Seoka, you said that according to you,	10	-
		11	I think you were trying to get.
12	nobody stopped you or told you that you could not go	12	MR MPOFU: Thank you. Okay, I am also
13	because it was a security zone or –	13	going to relate the following issues, also to Bishop
14	CHAIRPERSON: You are saying it again, Mr	14	Seoka's evidence, and the similarities between yours and
15	Mpofu. I have spoken to you, I don't know how many times,	15	his. I know that you are not like Bishop Seoka, an expert
16	I am trying to save time, more time has been wasted in my	16	in negotiations, but did you also find it important to deal
17	trying to save time than anything else. Please ask	17	with the workers at the koppie on a face to face basis and
18	questions.	18	preferably not from a police Nyala?
19	MR MPOFU: Chairperson –	19	MR MATHUNJWA: Yes, that is correct.
20	CHAIRPERSON: That's the way I expect	20	MR MPOFU: And did you also, like Bishop
21	counsel to behave in this Commission. Please ask	21	Seoka, observe that the Provincial Commissioner's demeanour
22	questions, if the witness needs some context, doesn't	22	was that of a rudeness?
23	understand what the question is about, he will ask you, you	23	MR MATHUNJWA: Yes, that is correct,
24	can see that, I've already said he's an intelligent,	24	according to my engagement with him – with her, sorry.
25	articulate man, we can rely on him to look after himself.	25	MR MPOFU: And were you also told like
	Page 2795		Page 2797
1	Page 2795 MR MPOFU: Well, Chairperson, with the	1	Page 2797 Bishop Seoka by the Provincial Commissioner that she was
1 2		1 2	5
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Page 2798 1 Mpofana.	Page 280 1 after they went to the mountain, and further was confirmed
2 CHAIRPERSON: Sorry, how to spell his	2 on the 15th.
3 name?	3 MR MPOFU: Is it also your evidence that
4 MR MPOFU: Marvellous, Marvellous.	4 the reason why the workers assembled at the koppie in
5 CHAIRPERSON: He's Marvellous, yes?	5 particular in the first place, was also related to the
6 MR MPOFU: Ja. And Mpofana, M-P-O-F-A-N-	6 events of the 11th.
7 A.	7 MR MATHUNJWA: That's correct.
8 CHAIRPERSON: Are any of his relatives	8 MR MPOFU: And would I be correct to say
9 here in the auditorium today?	9 that the gist of their dissatisfaction, to put it mildly,
10 MR MPOFU: I think his acquaintances,	10 was the fact that they had been shot at by, according to
11 maybe not directly – because he is one of the people who	11 them by a union, by their own union, so to speak?
12 used to come here quite frequently.	12 MR MATHUNJWA: I will ask you to repeat
	· · · ·
	13 that question.
14 who are present today, I think on behalf of my colleagues	14 MR MPOFU: Is it so that the gist, in
and myself, we wish to express our sympathy to them and to	15 other words, the main content of their dissatisfaction was
16 his family. I understand the circumstances which may well	16 the fact that according to them, they had been shot at on
17 have led to his suicide, and it's obviously a matter for	17 the 11th by a trade union?
18 concern and also for commiseration. Thank you for bringing	18 MR MATHUNJWA: If I will answer that, the
19 it to our attention.	19 reason of being at the mountain was because they were, that
20 MR MPOFU: Thank you very much,	20 was their safe haven because they were shot at by the unior
21 Chairperson, and we will convey those sentiments to the	21 which they belonged to.
22 family as well.	22 [10:25] MR MPOFU: Yes, that's where I am coming
-	
	from, in other words, the significance of the event of the
24 MR MPOFU: Now, before we move off from	11th of August is such that had that event not happened, we
25 the two visits to the mountain, I just wanted to remind, to	25 would not be talking here about koppie 1, koppie 2 and
Page 2799	Page 280
1 refresh my own memory that the three rules of engagement	1 koppie 3 according to the workers, at least, is that
2 were that you would go with the three people from - and you	2 correct?
3 would go with the police and thirdly that there would be	3 MR TIP SC: Mr Chair, I have to object to
4 supervision of the visit by the police. I might not be	4 that. That's a proposition that goes well beyond what has
5 putting it exactly as it is, can you confirm that?	5 already been led from the witness.
6 MR MATHUNJWA: That's correct, that's how	6 MR MPOFU: Okay.
	5
7 we were told.	
8 MR MPOFU: And on the previous visit at	8 -
9 least, not the ones that you did on your own accord, the	9 CHAIRPERSON: I'm sorry, Mr Tip, this is
10 one of the 15th, where representatives of management	10 cross-examination. It's true that there's a close
11 present during that visit?	11 association between the cases put by representatives of the
12 MR MATHUNJWA: Not in the car where I	12 survivors and AMCU and SERI, as I understand it, is
13 was, but surely they were part of the visit.	13 instructing both, but you know in a criminal case, accused
14 MR MPOFU: Part of the visit. So they	14 number 1 and accused number 2 of the same offence, accuse
15 too, like the police must have heard your exchange with the	15 number 2's counsel can cross-examine accused number 1
<ul> <li>a cost, like the police must have head your exchange with the</li> <li>b – or did they hear that, were they in a position to hear</li> </ul>	16 putting – ask all sorts of leading questions to buttress
17 the exchange between you and the workers?	<ul><li>17 his evidence. The authorities say that that is permissible</li></ul>
18 MR MATHUNJWA: Yes, I believe so.	18 although the weight of the answers elicited by that cross-
19 MR MPOFU: Okay, thank you. Now, I want	19 examination are not very great and we're having a spectacle
20 us to move to the events of the 11th of August. Was it	20 of that again today. So I overrule your objection. Mr
21 your evidence that the workers made it clear to you that	21 Mpofu can proceed.
22 the shootings of the 11th were responsible firstly for the	22 MR MPOFU: Thank you, Chairperson -
23 fact that they had armed themselves?	23 MR TIP SC: Mr Chair, sorry, forgive me.
24 MR MATHUNJWA: Yes, such was confirmed	24 MR MPOFU: Okay, sorry, Mr Tip.
25 during the debriefing of the GS and the national organiser	25 MR TIP SC: Just hang on. Mr Chair, I

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	Page 2802		Page 2804
1	hadn't objected to the previous questions. This is a	1	MR MPOFU: Thank you. Now there's also
2	particular objection because what is being canvassed now	2	been evidence or rather, cross-examination which suggested
3	from this witness is that had there not been an incident on	3	that you used the events there opportunistically. Is it
4	the 11th then the entire events in the week thereafter,	4	correct that the reason that you had anything to do with
5	including the shooting on the 16th would not have taken	5	this, that you were involved, was because you had been
6	place.	6	invited by Lonmin?
7	CHAIRPERSON: Now - isn't he entitled to	7	MR MATHUNJWA: Yes, it is not correct
8	ask that question? He may get a favourable answer, he may	8	that I went there for my own selfish interests, but it is
9	not, but this is cross-examination. It doesn't have to be	9	correct to say I was there by invitation at Lonmin by
10	- it's not like re-examination. It doesn't have to be	10	management.
11	related to what he said before. It doesn't have to be	11	MR MPOFU: Then just for clarification as
12	related to questions he was asked in cross-examination. I	12	well, I'm now dealing with the cross-over between the
13	don't see on what basis I can stop him.	13	events of the 15th in the early evening and the 16th.
14	MR TIP SC: Well may I suggest a basis	14	We've already established that you were there and you say
15	and that is that really what the witness is being asked to	15	representatives of the police and management were there and
16	do is to express a view in respect of causation of a	16	so on, but when I read the statements there seems to be
17	conclusive nature in relation to the events as a whole and	17	confusion as to what was expected. Can you just help us,
18	that conclusion is a - with respect, for the commission to	18	was it expected that the workers would return -
19	determine in good time.	19	CHAIRPERSON: Sorry –
20	MR MPOFU: Okay, Chairperson, can I make	20	MR MPOFU: Sorry, I'm sorry.
21	it easier. I'll rephrase the question.	21	CHAIRPERSON: - expected by whom?
22	CHAIRPERSON: I thought the question was	22	Expected by whom? You said was it expected that –
23	posed on the basis is that what the workers told you?	23	MR MPOFU: No, I hear –
24	MR MPOFU: Yes.	24	CHAIRPERSON: - expected by whom?
25	CHAIRPERSON: Again it would be hearsay.	25	MR MPOFU: Yes, Chairperson, to that
	Page 2803		Page 2805
1	What weight it would have is another matter. I didn't	1	extent it's vague. Let me put it this way. Was there any
2	understand you, Mr Mpofu, to be asking the witness to	2	agreement that the workers would return to work at 9
3	express an opinion, conclusive opinion as it were -	3	o'clock the following day?
4	MR MPOFU: Because -	4	MR MATHUNJWA: No.
5	CHAIRPERSON: - the matter in respect of	5	MR MPOFU: Was there agreement instead
6	which he has no expertise and which is one of the matters	6	that you would return to the mountain at 9 o'clock the
7	we have to decide. If you had asked a question or if I had	7	following day?
8	understood the question to be posed that way, I would've	8	MR MATHUNJWA: Yes.
9	upheld the objection.	9	MR MPOFU: Now I want you to help me with
10	MR TIP SC: Thank you.	10	this. Is it correct that in your own estimation you had
11	CHAIRPERSON: But you phrased the	11	budgeted, for lack of a better word, a period of about an
12	question in the way I think you phrased it, or intended to	12	hour between you meeting with management at 8 and returning
13	phrase it, then the objection will be disallowed.	13	to the koppie at about 9? You testified the fact that on
14	MR MPOFU: Thank you. Yes, Chairperson,	14	the day you were late, 20 minutes late or whatever, but was
15	I agree with you, the objection should be disallowed but	15	that your plan?
16	for the sake of progress, I'll – yes, for the sake of	16	MR MATHUNJWA: Yes.
17	progress I'll just ask the question differently. Maybe let	17	MR MPOFU: Now, you've given evidence
18	me put it this way. Evidence will be led in this	18	that to your surprise in the morning management had reneged
19	commission that had it not been for the events of the 11th,	19	on its commitment. I think that's how you put it.
20	the protestors would not have assembled in the koppie in	20	MR MATHUNJWA: Yes, that's correct.
21	the first place or is that in line with what you were told	21	MR MPOFU: Now if it was not for that
22	by the workers?	22	fact of management allegedly reneging from its commitment,
23	MR MATHUNJWA: Based on what they told us	23	what would you have done that morning?
24	that they're at the koppie it was the only place that they	24 25	MR MATHUNJWA: I would've gone back to
25	could run to after they were shot at, yes.	25	the mountain. Not to say that I didn't return back to the
		1	

1	Page 2806 mountain -	1	Page 2808 disarm and so on and on the other hand the workers were
1	MR MPOFU: Ja, no –	2	saying we will not disarm or leave the koppie until
2	·	3	management talks to us?
	MR MATHUNJWA: - you know, ja.		-
4	CHAIRPERSON: Make it simpler than that.	4	
5	If they had given you the information that you sought, that	5	in that – that's the reason the called the following
6	they would – they were prepared to negotiate with the	6	meeting on the 16th at 9 o'clock.
7	workers, that – and what the arrangements would be for	7	MR MPOFU: And that the reason why you
8	their coming back to work and being inducted and so forth	8	thought there was a breakthrough - was the reason that you
9	so they could go underground again, you would've gone back	9	thought there was a breakthrough the fact that having gone
10	at 9 o'clock, reported to them what the management had	10	to the workers and put the management position as it were,
11	said, what the arrangements for their re-induction were –	11	they said to you, come back. It's late now, come back
12	obviously you couldn't - you didn't do that because you	12	tomorrow morning and we welcome the fact that management is
13	couldn't do that because the management hadn't given you	13	prepared to talk to us, but let's finalise everything at 9
14	the information that you had sought. But I take it that's	14	in the morning. Is that a fair summary?
15	effectively what would've happened.	15	MR MATHUNJWA: Yes, I can confirm that.
16	MR MATHUNJWA: Thank you, that's correct.	16	MR MPOFU: And that this positive
17	CHAIRPERSON: - it appears from what you	17	momentum was the - would it be correct to say then it was
18	told us previously that your opinion was or your impression	18	broken by your discovery in the morning that management and
19	was that that would've brought the whole problem to an end	19	I think this is the word you used, was no longer prepared
20	because that would've been accepted by the workers and the	20	to talk to the workers?
21	<ul> <li>a non-violent conclusion would've been – would've</li> </ul>	21	MR MATHUNJWA: That's correct.
22	resulted from your involvement. Is that – that's basically	22	MR MPOFU: And that information was
23	your evidence, isn't it?	23	conveyed to you by Mr Kwadi?
24	MR MATHUNJWA: That is correct because	24	MR MATHUNJWA: That's correct.
25	they were willing to engage the following day.	25	MR MPOFU: Another theory, for lack of a
			, , , , , , , , , , , , , , , , , , ,
	Page 2807		Page 2809
1	Page 2807 MR MPOFU: Thank you, Chairperson. With	1	Page 2809 better word, that we have said in our opening address we
1 2	-	1 2	5
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	Page 2810		Page 2812
1	MR MPOFU: Yes.	1	only just found a letter now, ja. Okay, -
2	CHAIRPERSON: - when management had	2	CHAIRPERSON: We read it when he gave
3	spoken to representatives with the rock drill operators and	3	evidence in chief anyway, never mind, carry on.
4	put an offer of R700 on the table and his complaint has	4	MR MPOFU: Yes, okay. Okay, sorry, Mr
5	always been, even on his radio – when he was on the radio	5	Mathunjwa, in this letter or rather were you, did you
6	on the 15th, it was that action by management which he said	6	request a meeting which was not acceded to by means of this
7 8	was inappropriate and was the spark that led to all the trouble. That's my –	7 8	letter? MR MATHUNJWA: Yes, this letter also
8 9	MR BURGER SC: No, Chair, my learned	8 9	emanates from previous calls that we had with Mr Barnard,
10	friend, Mr Mpofu, wasn't satisfied with that answer. That	10	which in the simple term we're saying, call the meeting and
11	wasn't the one he was eliciting in his cross-examination.	11	let's work this thing out.
12	He had that answer, but he is coming back to a meeting	12	MR MPOFU: Yes, and is it your evidence
13	which had to be held on the 10th of February – of August	13	that the failure by management to exceed to your request
14	and that's the one I'm not sure of. Does he suggest there	14	for such a meeting was one of the things that you blamed
15	should've been a meeting on the 10th of August and then	15	them for during the Kwala interview at SAFM?
16	between whom and whom, in which structure?	16	MR MATHUNJWA: Yes, in that interview I
17	CHAIRPERSON: Mr Mpofu, you heard what Mr	17	did mention the sequence of events, yes.
18	Burger's attempt at obtaining clarity in regard to your	18	MR MPOFU: And maybe you can then assist
19	question, can you reformulate the question –	19	my learned colleague, in that meeting that you proposed was
20	MR MPOFU: Yes –	20	going to be between whom and whom?
21	CHAIRPERSON: - so that the point he	21	MR MATHUNJWA: With all the stakeholders
22	raises is dealt with.	22	at the workplace.
23	MR MPOFU: Yes, Chairperson. I'll try	23	COMMISSIONER TOKOTA: Sorry, but Mr
24	and do it while we are looking for the letter, I'll do it	24	Mathunjwa, that meeting was in fact called but AMCU was
25	by way of questions. On the 10th – is it correct that on	25	excluded, it flowed from the cross-examination by Mr
	Page 2811		Page 2813
1	the 10th of August you were contacted by Lonmin management	1	Burger.
2	the 10th of August you were contacted by Lonmin management saying that there was some unrest or worker's action	2	Burger. MR MATHUNJWA: Yes, it was mentioned that
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	Page 2814		Page 2816
1	the question to the witness in a way which deals with the	1	MR MAHLANGU: The 5th of what?
2	point raised by my brother, Commissioner Tokota, and it	2	MR MPOFU: Not the 5th, the Friday,
3	saves time and we'll get a clearer focussed answer from the	3	sorry, -
4	witness?	4	MR MAHLANGU: I am making –
5	MR MPOFU: Chairperson, -	5	MR MPOFU: The Friday which is the 10th.
6	CHAIRPERSON: Or would you like me to do	6	MR MAHLANGU: Mr Chairperson, if the
7	it? Mr Mathunjwa, -	7	question could be repeated, I am not very clear.
8	MR MPOFU: I am answering the question	8	MR MPOFU: Ja, it was your evidence when
9	that was put by Mr Tokota.	9	we were last here that, and I think that came from, just a
10	CHAIRPERSON: Okay, I understand you, but	10	minute, -
11	Mr Mathunjwa, you've heard there was a meeting which was	11	CHAIRPERSON: I don't think you have to
12	organised, from which your union was excluded, correct?	12	find it in the transcript at this stage, if it is
13	MR MATHUNJWA: Yes.	13	challenged you can perhaps look.
14	CHAIRPERSON: I take it you didn't know	14	MR MPOFU: It was also your evidence or
14	about it at the time, you only heard about it subsequently,	14	at least the testimony or the statements by, I think Mr
	is that correct?	16	
16 17	MR MATHUNJWA: That's correct.		Mokoena in the Kwala interview that management had called
		17 18	the police assistance since the Friday, the 10th, do you remember that?
18	•		
19	being debated at the moment is whether, if your union had	19	MR MATHUNJWA: Yes, I could remember
20	been present through representatives at that meeting, is it	20	that. MR MPOFU: Now we also know that in terms
21	your view that that would have made a difference to what	21	
22	happened subsequently?	22	of the relationship between the two entities, we also know
23	MR MATHUNJWA: We believe that we could	23	that the joint operation centre was located at Lonmin
24	have contributed positively in that meeting.	24	premises. To what extent did you observe the two parties
25	MR MPOFU: With respect, Chairperson, two	25	working together in that jog?
	Page 2815		Page 2817
1	Page 2815 things, the one is –	1	Page 2817 MR MATHUNJWA: Would you please repeat
1 2	-	1 2	5
	things, the one is –		MR MATHUNJWA: Would you please repeat
2	things, the one is – CHAIRPERSON: I've asked the question,	2	MR MATHUNJWA: Would you please repeat that question please for me?
2 3	things, the one is – CHAIRPERSON: I've asked the question, I've got an answer.	2	MR MATHUNJWA: Would you please repeat that question please for me? CHAIRPERSON: What counsel wants to know
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	Page 2818		Page 2820
1	a Lonmin aircraft?	1	reconnaissance trip by helicopter, in a helicopter which
2	MR BURGER SC: May I invite my learned	2	belonged to Lonmin?
3	friend whether that is his evidence and whether he will	3	MR MATHUNJWA: No, I don't have the
4	lead evidence to that effect before he puts that.	4	knowledge.
5	CHAIRPERSON: Helicopter which belonged	5	CHAIRPERSON: You can stop that question,
6	to a security company, it wasn't a Lonmin helicopter. I	6	Mr Mpofu, we can carry on to the next point.
7	don't know where, - now if that evidence, if it wasn't	7	MR MPOFU: Thank you, Chairperson, I will
8	challenged at the time it was given, if you wish to	, 8	nevertheless find the thing from Mr Burger.
9	challenge that evidence and lead contrary evidence, of	9	MR BURGER: No, my learned friend
7 10	course it will be interesting to hear it but unfortunately	9 10	shouldn't be concerned about me, I am not confused.
10	it wasn't challenged at the time. If the question is asked	10	
		12	<b>5</b>
12	under a misunderstanding of the true facts it would better		I differ. I think there is no confusion –
13	be reformulated.	13	CHAIRPERSON: - the auditorium after we
14	MR MPOFU: Ja, Chairperson, thank you,	14	have adjourned.
15	let me just clarify, I think there is a major confusion. I	15	MR MPOFU: Yes.
16	am not referring to the, Chairperson, remember at the	16	CHAIRPERSON: I don't want to waste the
17	beginning we referred to what you call the Lonmin	17	people's time –
18	helicopter?	18	MR MPOFU: I'll find the passage, that's
19	CHAIRPERSON: I think there was reference	19	all I am saying, Chairperson, and clear the confusion on
20	earlier to that –	20	anybody's part here.
21	MR MPOFU: To the helicopter, yes –	21	CHAIRPERSON: Alright, have you got much
22	CHAIRPERSON: A Lonmin helicopter.	22	more cross-examination for the witness? How long do you
23	MR MPOFU: Yes.	23	think you are likely to be?
24	CHAIRPERSON: It later transpired that it	24	MR MPOFU: Chair, if you can give me the
25	wasn't a Lonmin helicopter –	25	indulgence, I just want to round off but we can take the
1	Page 2819		Page 2821
	MP MPOFIL: It was a Coin	1	
	MR MPOFU: It was a Coin –	1	break, I will one or two questions.
2	CHAIRPERSON: It was the security	1 2 3	break, I will one or two questions. CHAIRPERSON: Alright, I give you three
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1	Page 2822 MR MPOFU: Thank you, Chairperson. Just	1	Page 2824 specific court papers were –
2	in the same vein that I was asking you, my last issue on	2	CHAIRPERSON: Alright, well what you say
3	what I call the collusion, were you aware that, or rather	3	is, you're referring to a statement by Mr Kwadi which is in
4	you know that there was a court interdict that was sought	4	the Lonmin papers.
5	by Lonmin?	5	MR MPOFU: Yes.
6	MR MATHUNJWA: Yes.	6	CHAIRPERSON: You've given the Lonmin
7	MR MPOFU: Were you aware that the	7	reference. If it's not an exhibit yet, then it will be
8	suggestion or the advice to launch that interdict was made	8	given an exhibit.
9	by the police?	9	MR MPOFU: Thank you, Chairperson.
10	CHAIRPERSON: I don't think we've been	10	CHAIRPERSON: Copies, you have copies
11	told that. Are you proposing to lead evidence to establish	11	prepared.
12	that as a fact?	12	MR MPOFU: I will, Chairperson.
13	MR MPOFU: Yes, and there's no objection	13	CHAIRPERSON: And marked, and Ms Pillay
14	so far.	14	will give us the next exhibit designation.
15	MR BURGER SC: Let me oblige my learned	15	MR MPOFU: Thank you very much,
16	friend, I object to the question. If there's no evidence,	16	Chairperson.
17	I don't know –	17	CHAIRPERSON: And then you can read it
18	CHAIRPERSON: Hang on, Mr Semenya, turned	18	out and then Mr Burger and Mr Semenya will hopefully be
19	his machine on first. So we've got then two objections, no	19	satisfied. But if you're going to suggest that the police
20	less than two objections to your question. Let's hear what	20	were involved, unless Mr Kwadi says who the policeman is.
21	counsel have to say and get your reply and then we'll see	21	MR MPOFU: He does.
22	whether you can carry on.	22	CHAIRPERSON: He does?
23	MR MPOFU: Thank you, Chairperson.	23	MR MPOFU: Ja.
24	MR SEMENYA SC: Chair, we object to that	24	CHAIRPERSON: Okay, Ms Pillay?
25	question unless the foundation is laid for it. But	25	MS PILLAY: Chair, it's RR1.
	Page 2823		Page 2825
1	secondly, to leave it at the level of police is not	1	MR MPOFU: RR1.
2	helpful. We'll have to be told which police, what day,	2	MS PILLAY: And if just for purposes of
3	what place that was made.	3	clarity, Chair, we could get a better description of which
4	CHAIRPERSON: I'm not sure as detailed an	4	document Mr Mpofu is referring to.
5	interrogatory as that will be allowed but Mr Burger, you	5	MR MPOFU: Okay, it's the founding
6	also wanted to motivate these issues?	6	affidavit in the application. Let's rather make the whole
7	MR BURGER SC: Well at least to identify	7	application RR1, maybe, in case there are other.
8	the person on my side with whom I can speak to get	8	MR BURGER SC: It's a massive document.
9	instructions, Chair.	9	MR MPOFU: Okay, it's quite big, yes,
10	CHAIRPERSON: Alright. Mr Mpofu, what do	10	just the affidavit. Thank you, Chair, in the application.
11	you say about those -	11	CHAIRPERSON: The founding affidavit in
12 12	MR MPOFU: Chairperson, that person, Mr	12 12	the application for an interdict brought by Lonmin on –
13	Burger will find is Mr Jomo Kwadi and I'll refer for Mr	13 14	MR MPOFU: Under case number J2070.
		14	CHAIRPERSON: Ja okay. The founding
14	Semenya's foundation laying to, and with the help of Ms Billay, hopofully, page 120 of the Loppin documents	1 ⊑	affidavit in the Lonmin interdict application
14 15	Pillay, hopefully, page 139 of the Lonmin documents.	15 16	affidavit in the Lonmin interdict application.
14 15 16	Pillay, hopefully, page 139 of the Lonmin documents. Volume 1. And I might as well just read it out, Chair,	16	MR MPOFU: Yes.
14 15 16 17	Pillay, hopefully, page 139 of the Lonmin documents. Volume 1. And I might as well just read it out, Chair, just to save time.	16 17	MR MPOFU: Yes. CHAIRPERSON: Is that the particularity
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	5		
1	Page 2826 We'll lead that to the witness and then we'll see whether	1	Page 2828 MR MATHUNJWA: No, I was not at the
2	he can answer the question -	2	office by the time it was served. I never read it.
3	MR MPOFU: Mr Mathunjwa, before I read	3	CHAIRPERSON: So you only discovered
4	the passage, although you didn't oppose this application,	4	subsequently that that statement was made by Mr Kwadi in
5	it was served on AMCU, correct, because AMCU was one of the	5	the founding affidavit? It's been read to you now, I
6	respondents?	6	suppose.
7	MR MATHUNJWA: That's correct.	7	MR MATHUNJWA: Now yes.
8	MR MPOFU: Okay, thank you. I'm going to	8	CHAIRPERSON: Alright. Mr Mpofu wants to
9	read paragraph 16, the relevant passage and then I'll ask	9	ask you for your reaction. I'm not quite sure how helpful
10	you the questions. This is what Mr Kwadi says in an	10	it's going to be, but anyway, let's get your reaction to
11	affidavit under oath, "The SAPS has informed me that due to	11	that statement in the way that Mr Mpofu wants to ask you
12	the volatile situation management should not try to address	12	the question. If he can do so in a manner that doesn't
13	the threat to further respondent." The threat to further	13	provoke further objections from some of his learned friend.
14	respondents were the strikers. "The situation is very	14	MR MPOFU: I'll try, Chair and I promise
15	tense and the SAPS has advised that the applicants should	15	I'll give up if there's an objection.
16	consider obtaining an interdict in an endeavour to	16	CHAIRPERSON: Give up if there's a well-
17	encourage the threat to further respondents to return to	17	founded objection. You won't give up if there's an
18	normal work so that their grievances can be aired and	18	objection –
19	addressed in terms of existing internal procedures such as	19	MR MPOFU: Of course not, Chair.
20	the grievance procedures. Now that the foundation has been	20	CHAIRPERSON: Ask the question, let's not
21	laid, the question is –	21	waste time, ask the question.
22	CHAIRPERSON: That of course doesn't	22	MR MPOFU: Okay, now that you are aware
23	answer Mr Semenya's point. That statement of Mr Kwadi	23	of this, what would be your reaction in relation to the
24	doesn't identify the policeman made the suggestion, but	24	topic we are talking about of the co-operation, let's try a
25	presumably that will come out in the fullness of time. You	25	nice word, between the police and Lonmin?
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	Page 2827		Page 2829
1	Page 2827 can ask a question of the witness based upon that statement	1	Page 2829 CHAIRPERSON: With respect, how does the
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2	can ask a question of the witness based upon that statement you've read to him.	2	CHAIRPERSON: With respect, how does the – I shouldn't say, with respect – but I say it sincerely,
2 3	can ask a question of the witness based upon that statement you've read to him. MR MPOFU: Thank you, Chairperson, thank	2 3	CHAIRPERSON: With respect, how does the – I shouldn't say, with respect – but I say it sincerely, how does the witnesses' reaction to that statement help us?
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1	that I've said to you that at the end of the case we're	1	employer seeks an interdict stopping a strike at the
2	going to be arguing that there was a form, there was toxic	2	suggestion, at least in part, of the police?
3	collusion between the police and Lonmin, you've also given	3	MR BURGER SC: In all fairness, it should
4	a few instances such as the location of the JOC and what	4	be part of that question that it is unlawful strike, as the
5	have you, would you agree that this is an instance or an	5	witness has said, a stoppage which was unlawful.
6	example of such collusion?	6	MR MPOFU: Yes -
7	MR BURGER SC: I object to that question,	7	CHAIRPERSON: Yes, that's correct. You
8	Chair.	8	in fact conceded – add that to my amendment of the question
9	MR MPOFU: I give up. You don't have to	9	- as you conceded in your evidence in chief that because it
10	answer, Mr Mathunjwa.	10	was an unprotected strike, there was no point in opposing
11	CHAIRPERSON: I note the point which	11	and that's why AMCU didn't enter into the list, as it were,
12	counsel is trying to make. Now the allegation is that	12	to defend the application because you accepted,
13	there's this collusion, which is being so described between	13	effectively, that the interdict would have to be granted
14	Lonmin and the police. Now are you able, from your own	14	because the strike was an unprotected one, right? Let's
15	knowledge, to tell us anything which can help us to decide	15	reformulate the question so that there can be no argument
16	whether that allegation which apparently is being made is	16	later. In your experience, as a trade unionist of many
17	correct or not? If you know nothing from your own	17	years, have you ever come across a case where the employer
18	knowledge, well then you must just say so. Because if	18	has sought an interdict stopping an unprotected strike and
19	there's some extra information that you have which is part	19	has done so, partly at least, at the suggestion of the
20	of your own knowledge, then it's appropriate for you to	20	police?
21	tell us.	21	MR MATHUNJWA: No, to my experience, I
22	MR MATHUNJWA: I wonder whether would	22	have never come across such.
23	this be of assistance but I'm subject to your correction.	23	MR MPOFU: Thank you. Can we quickly
24	When I was reading documents of the debriefing of the 15th,	24	move to something else. Thank you very much. Now the, I'm
25	the subject that was discussed between management, NUM and	25	just going to read you something from the statement of
	Page 2831		Page 2833
1	police is totally different than what we were discussing	1	General Mbombo and then invite your comment. It's
2	with Mr Mpembe. In the debriefing of NUM and management,	2	paragraph 19.3. She says, this is about the 16th, "He,
3	you find that they are talking about putting someone within	3	Mathunjwa – incorrectly spelt – indicated that he had been
4	the group to split the group inside but in our debriefing,	4	at Lonmin offices since 7:00 and management is ignoring
5	we don't have that instances where the generals are talking	5	him." That's the first thing. "I prevailed upon him that
6	of how can we try means of dispersing or try to sew the	6	he should keep his promise." Then I'm just going to jump
7	seed of division, for lack of a better word, within the	7	one sentence. And then she says, "At our short meeting I
8	leaders. I don't know whether would that be regarded as -	8	reminded him of his promise" – this is the important part –
9	CHAIRPERSON: We take the point. When	9	"he asked for transport to go to the koppie and if the
10	the generals give evidence, presumably they'll be asked	10	request was acceded to, but he later changed his mind and
11	about that, and when the NUM people give evidence, they'll	11	made use of his vehicle.
12	also be asked about that. It's just a point you put on the	12	[11:46] MR MATHUNJWA: The first question is not
13	table, but you can't make much of it yourself. Something	13	7am, it was about 8:20am.
14	may or may not be made of it later.	14	MR MPOFU: Okay.
15	MR MPOFU: Okay, Mr Mathunjwa, last	15	CHAIRPERSON: The promise had been eight
14	question on this. In your experience as a trade unionist,	16	o'clock, as far as I remember. You actually got there at
16			8:20.
17	is it usual or unusual, in your experience, that an	17	0.20.
	is it usual or unusual, in your experience, that an employer would bring an application under advice of the	17 18	MR MATHUNJWA: That's correct.
17			
17 18	employer would bring an application under advice of the	18	MR MATHUNJWA: That's correct.
17 18 19	employer would bring an application under advice of the police? CHAIRPERSON: I don't know that advice is the right word. Perhaps partly at the suggestion of, might	18 19	MR MATHUNJWA: That's correct. CHAIRPERSON: You promised to come at
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<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	employer would bring an application under advice of the police? CHAIRPERSON: I don't know that advice is the right word. Perhaps partly at the suggestion of, might be a way that we get past Mr Burger. But you've heard my amendment to his question. You're a trade unionist, you've	18 19 20 21 22 23	MR MATHUNJWA: That's correct. CHAIRPERSON: You promised to come at eight, but you had a problem and you got there late. The second question is, did you first ask for a vehicle, a police vehicle and then later change which was made available and did you then change your mind to go in your

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	Page 2834		Page 2836
1	question, we requested the transport and was ever granted,	1	and I am not going to take you through it, I promise, Mr
2	they never changed their mind. I decided to use my private	2	Mathunjwa. The only point I want to make about QQ3 is the
3	vehicle because there was no transport granted by SAPS.	3	fact, and you can take my word for it, the fact that on QQ3
4	MR MPOFU: And finally, Mr Mathunjwa, and	4	the strikers said on ten occasions that they were not
5	I won't go in to the details, for all the reasons that you	5	fighting with anybody and they were not fighting with the
6	have already given to the commission, were you convinced	6	government or the police, and the question is, would that
7	around the time of your second visit to the koppie on the	7	kind of evidence be in accordance with your observance of
8	16th that the police were going to kill the protestors?	8	the workers on the 15th and the 16th which you described as
9	MR MATHUNJWA: Yes, based on the manner	9	calm?
10	in which things happened after our first visit with no	10	MR MATHUNJWA: Let me answer by saying on
11	cooperation from the police, from the management of Lonmin	11	the 13th I was not present but the clip that was presented
12	and subsequent to my effort at the operation area where the	12	by SAPS when the person was talking, he relayed that they
13	Nyalas were, where I requested the intervention of the	13	are not fighting. Coming to, on the 16th, yes, when I
14	person who was in charge of the operation, where he said he	14	arrived there, I mean people were sitting down, they were
15	will call Mr Naidoo, to no avail and then surely to me it	15	calm.
16	was clear that the worse is coming.	16	MR MPOFU: And did they repeat this
17	MR MPOFU: And indeed within some minutes	17	refrain, we are not fighting, we are not fighting?
18	after you left the koppie a gentleman called Jomo called	18	MR MATHUNJWA: Yes, they wanted to see
19	you and said the police are killing the workers. How long	19	their employer and to talk to their employer, so they were
20	after you had the left koppie did you receive that call?	20	not fighting, and again, I mean that is why I keep on
21	MR MATHUNJWA: Let's correct this, Jomo	21	referring to my second visit when they said they won't
22	never phoned me, he received the call while they were in	22	attack any police, they will sit here and let the police
23	the car and he told us that there is someone phoning,	23	come and kill them, but they won't move until the employer
24	telling him that the police are killing the people at the	24	comes.
25	koppie.	25	MR MPOFU: Thanks, Chairperson, no
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	Page 2835		Page 2837
1	Page 2835 CHAIRPERSON: Ja, he made that, but what	1	Page 2837 further questions, and thank you for your indulgence,
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	Page 2838		Page 2840
1	allegations were made it might be relevant in respect of	1	throughout. No disciplinary committee was established by
2	the attitude of NUM to the witness and vice versa. I'll	2	NUM national office nor chaired by the general secretary –
3	allow you to deal with it but very briefly - have a full	3	MR MAHLANGU: He said it was chaired by
4	debate about a disciplinary inquiry that was held or wasn't	4	Paul.
5	held, I think this is over the 20 years ago?	5	MR TIP SC: I beg your pardon, Mokoena.
6	MR TIP SC: Well, that is correct. Mr	6	MR MAHLANGU: Paul Mokoena?
7	Chair, let me just briefly indicate what our attitude is.	7	MR TIP SC: Yes. I'll continue, there
8	We consider this to be essentially irrelevant to the terms	8	was no role played by NUM national office in these
9	of reference. It is, although there has been placed before	9	proceedings at all and in particular no role played by Mr
10	the commission an investigation of what is contended to	10	Gwede Mantashe, that you and Mr Khoza refused to attend the
11	have been an unlawful removal of Mr Mathunjwa from his	11	disciplinary committee hearing that had been convened by
12	position as chair, the difficulty that we have is that this	12	the Highveld region on at least two occasions. In
	has been broadcast, it has been published and we think that	13	consequence the two of you were found guilty in absentia
	it would be fair at the very least for us to put eight or	14	and your memberships of the union were terminated. Letters
	nine brief propositions –	15	confirming the outcome of the disciplinary proceedings were
16	CHAIRPERSON: No, I'll allow you to that,	16	delivered to the two of you personally by the then regional
17	obviously the witness must then get a chance to deal, I	17	president of NUM Highveld region, Mr Piet Matosa. The
	hope with a similar degree of brevity, with the	18	letters were handed to the two of you in the offices of the
19	propositions. The relevance of it seems to me that it	19	Douglas Colliery Resource manager but both of you refused
20	might be used in an argument to suggest that there was some	20	to accept them. Mr Matosa then left the letters together
21	kind of longstanding animosity between NUM and this witness	21	with an instruction from NUM to Douglas Colliery to stop
22	and therefore his organisation. It would be rather far	22	the membership subscriptions from the two of you and those
23	removed from the issues we have to decide, but I wasn't	23	letters were left with the Human Resource manager at the
24	certain that we wouldn't be presented with argument on that	24	colliery. That concludes the propositions, would you care
25	basis, I didn't stop the cross-examination but I'll allow	25	to comment on that, please?
25			
20			
	Page 2839	1	Page 2841
1	Page 2839 you –	1	Page 2841 MR MATHUNJWA: Thank you, what I recall
1 2	you – MR TIP SC: Yes –	2	Page 2841 MR MATHUNJWA: Thank you, what I recall was the disciplinary hearing that was called in the head
1 2 3	Page 2839 you – MR TIP SC: Yes – CHAIRPERSON: - to deal with it in the	2 3	Page 2841 MR MATHUNJWA: Thank you, what I recall was the disciplinary hearing that was called in the head office of NUM at Rissik Street which was supposed to be
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	Page 2842		Page 2844
1	that were played here. I am referring in particular to the	1	to go back to those workers, you have to have the way of
2	clip that was played at the railway or near the railway	2	how to address them in order to gain their trust and to
3	line and the one at the koppie where the people were armed	3	bring hope to them. That's what the best that I could do,
4	with pangas, spears and assegais. From my point of view,	4	in that day, that was the best I could do and I didn't see
5	speaking for myself, it was a terrifying situation, would	5	any clip of any person who availed himself in that mountain
6	you agree with me?	6	to present what I've presented myself, better than what I
7	MR MATHUNJWA: Ja, in any event when	7	could. That was my best ability that I could do in that
8	someone is carrying something that –	8	particular day. And the Commissioner also should also take
9	CHAIRPERSON: It is not just the carrying	9	into account that we were by ourselves. No police were
10	around, but they're swinging them around and clash one	10	willing to escort us into that mountain. We had no
11	against the other, that makes it more scary, doesn't it?	11	armoured vehicle next to us. We had no security
12	[12:06] MR MATHUNJWA: Not in the sense, I mean,	12	whatsoever. We were on our own, our lives were also in
13	if you sing the song as I've explained in the earlier	13	danger inasmuch as one could say. Not that I am running
14	cross-examination, that whenever we sing the song, if you	14	before you, but you will remember that there was a protocol
15	don't have anything in your hand, you'll clap our hands	15	that was laid down to attend the mountain. They said no
16	like as I have explained. So it happened on that day that	16	one should use his private vehicle, you will be escorted by
17	they have those weapons, so they had to clash with the	17	the police because of the assessment by the police, but in
18	rhythm of the song.	18	that particular day, all that protocol was never observed.
19	COMMISSIONER TOKOTO: We have also seen	19	We were on our own.
20	you on the video clip kneeling down, and pleading with the	20	COMMISSIONER TOKOTA: When you knelt down
21	people.	21	there, was it after of that man, that said, "we will finish
22	MR MATHUNJWA: That is correct.	22 23	you here?" MR MATHUNJWA: I might not have a
23 24	COMMISSIONER TOKOTA: But you've also		5
	considered that at least in those clips in none of them, did you say to the people, "lay off your arms, go back to	24 25	recollection on the timing whether it was after or was before.
		20	
25	and you say to the people, hay on your arms, go back to		Delore.
25			Page 2845
1	Page 2843	1	
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1	Page 2846 their position?	1	Page 2848 and you explained the strategy by saying that they must
2	MR MATHUNJWA: One could think that, but	2	endeavour to get a certificate from the CCMA so there will
2 3	what I was saying on that day, it's something that I've	2	be protected strike. Now implicit in that, was they had to
		4	go back to work first and they couldn't go back to work,
4	never studied, it's something that I've never prepared.		
5	All what I was saying there, was the heat of the moment,	5	waving their pangas and assegais and so forth.
6	that was my level best, that I was trying to say, guys, if	6	MR MATHUNJWA: That's correct.
7	you retreat as a lamb it's not that is all lost, this can	7	CHAIRPERSON: So by urging them to go for
8	be still, your grievances can be addressed in an amicable	8	a protected strike, you were in effect telling them to stop
9	way. So by leaving the mountain, to me is to say, leave	9	the unprotected strike, go back to work, and allow the
10	armament, leave violence if there's any violence and return	10	ordinary bargaining processes, and the procedures laid out
11	back to normality and take your issues within the legal	11	in the Labour Relations Act, to be invoked. Is that right?
12	labour framework.	12	MR MATHUNJWA: That is correct.
13	COMMISSIONER HEMRAJ: You see, Mr	13	CHAIRPERSON: So my understanding of your
14	Mathunjwa, you are repeatedly being asked if your mandate	14	evidence on that point is correct?
15	was to say to them, "put down the weapons and go back to	15	MR MATHUNJWA: Correct.
16	work," why it is that you didn't explicitly say that?	16	CHAIRPERSON: Mr Bruinders, re-
17	MR MATHUNJWA: If you remember from the	17	examination?
18	15th, Ma'am, I did mention the very same thing, and	18	RE-EXAMINATION BY MR BRUINDERS SC: I do.
19	subsequent to that, there was an understanding between the	19	When you met with the NUM management and the SAPS on the
20	parties, that you'll come the following day, and let's take	20	15th, where exactly at Lonmin, did you meet?
21	this matter further, and see to how you return back to	21	MR MATHUNJWA: We were at the place
22	work. And then subsequent to that, you return back to the	22	called LPD offices in one of the board rooms there.
23	same workers which is not my constituency, which is not	23	MR BRUINDERS SC: And when you later saw
24	majority members of AMCU, the situation has changed	24	the NUM and management, where was that?
25	altogether. And also I've been called there to intervene,	25	MR MATHUNJWA: At the place called JOC, I
			······································
	Page 2847		Page 2849
1	Page 2847 so in all fairness that was may intervention. That was the	1	Page 2849 think it's Joint Operations Centre.
1 2		1 2	-
	so in all fairness that was may intervention. That was the	1 2 3	think it's Joint Operations Centre.
2	so in all fairness that was may intervention. That was the best that I could do on the day.		think it's Joint Operations Centre. MR BRUINDERS SC: On the 16th, you say
2 3	so in all fairness that was may intervention. That was the best that I could do on the day. COMMISSIONER HEMRAJ: Yes, I understand,	3	think it's Joint Operations Centre. MR BRUINDERS SC: On the 16th, you say you saw NUM officials or office-bearers at Lonmin.
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1	Page 2850 MS PILLAY: Alternatively OO19 because OO	1	Page 2852 CHAIRPERSON: You see –
2	was AMCUs.	2	MR BRUINDERS SC: - and what we've done
3	CHAIRPERSON: OO19, how are we going to	3	is, I can explain –
4	describe it?	4	CHAIRPERSON: - the information I sought
5	MR BRUINDERS SC: It's a list of the rock	5	from him is relevant, I think, in relation to the answer
6	drill operators who were on strike at Lonmin during that	6	that you hope to elicit from the witness because it relates
7	period. Before I ask you, Mr Mathunjwa, about the document		back to certain evidence he gave about what the general
8	itself, could I ask you this, when you went to the koppie	8	said as to how the people on the koppie –
9	on, particularly on 16 August, which was during the day and	9	MR BRUINDERS SC: But what he's done –
10	you saw the strikers, was it your impression that AMCU,	10	CHAIRPERSON: - could be divided up. But
11	that the majority or the minority of these people belonged	11	anyway, perhaps you can give that information, it's a bit
12	to AMCU.	12	unorthodox to ask a question of counsel in re-examination
13	[12:26] MR MATHUNJWA: It will be difficult to	13	from the bench as it were before the witness answers but it
14	say because, I mean, they were intertwined, they were	14	may actually help us to get a focused answer more quickly
15	sitting – there was no gap between – the lefties were AMCU	15	than otherwise.
16	and the right were NUM.	16	MR BRUINDERS SC: That exercise has been
17	MR BRUINDERS SC: So when you went there,	17	done and perhaps I can explain it this way. You'll see
18	you could not tell whether the majority or the minority of	18	that there are two columns for the union on the right-hand
19	the people on the koppie were members of AMCU?	19	side. The one on the far right-hand side is the one that
20	MR MATHUNJWA: Yes, that is correct.	20	is least favourable to AMCU, in other words there are more
21	Unless if maybe one to call one person, he stood up saying	21	AMCU members in the far right-hand than the penultimate
22	as we are here, and especially the person who was, I mean	22	right-hand column. We've excluded people on leave and
23	who was telling us that there is no difference between the	23	we've excluded people whom times are given because
24	two, what's its name, we are workers, jointly as we are.	24	presumably - we don't understand what that means but that
25	MR BRUINDERS SC: Now what you have in	25	presumably means somebody went to work at that time.
1	Page 2851 front of you, and I'd just ask you to have a quick look at	1	Page 2853 CHAIRPERSON: I don't know how you can be
2	it, is a list of the rock drill operators -	2	strike if you're on leave.
3	CHAIRPERSON: Can I ask you a question	3	MR BRUINDERS SC: No, we've excluded
4	about that, Mr Bruinders, before he carries on? There	4	that.
5	appears to be 131 pages, starting at page 515 to page 645	5	
		5	CHAIRPERSON: You know, they were – that
6	and each page, as far as I can see, has got 30 names on it.	6	will be explained to us in due course presumably. I take
7	So that gives us 3 930 by my arithmetic. One of them is	6 7	will be explained to us in due course presumably. I take it you can show your support for the strikers by joining
7 8	So that gives us 3 930 by my arithmetic. One of them is described as – two of them, on the first page are described	6 7 8	will be explained to us in due course presumably. I take it you can show your support for the strikers by joining with them on the koppie, but you're not technically
7 8 9	So that gives us 3 930 by my arithmetic. One of them is described as – two of them, on the first page are described as being on annual leave. I'm not quite sure how you can	6 7 8 9	will be explained to us in due course presumably. I take it you can show your support for the strikers by joining with them on the koppie, but you're not technically yourself on leave if you're on – I mean not technically on
7 8 9 10	So that gives us 3 930 by my arithmetic. One of them is described as – two of them, on the first page are described as being on annual leave. I'm not quite sure how you can be on strike when you're on annual leave but that's	6 7 8 9 10	will be explained to us in due course presumably. I take it you can show your support for the strikers by joining with them on the koppie, but you're not technically yourself on leave if you're on – I mean not technically on strike if you're on leave.
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## Marikana Commission of Inquiry

		1	
	Page 2854		Page 2856
1	calculation, the non-unionised members would be 12% of that	1	the management have committed into an A process and then
2	number, that 3 611, AMCU 35% and the NUM 52%. I hope that	2	the following day it was no longer that way and now the
3	helps the commission.	3	area which I was in, it was not AMCU constituency, it was
4	CHAIRPERSON: Now you can – now the	4	not members of AMCU per se and also I was called in, in
5	witness has heard it, you can now put the question to him	5	that situation to intervene so that's the best that I could
6	or the aspect in respect of which you ask him to comment.	6	do, the manner in which I've explained myself to the
7	MR BRUINDERS SC: Mr Mathunjwa, you've	7	situation.
8	earlier said that your own impression was that you could	8	MR BRUINDERS SC: Why did you not, on
9	not tell what AMCU membership was on the koppie. Do you	9	that first occasion on the 16th when you spoke to them, say
10	remember that?	10	put down your weapons, go back to work?
11	MR MATHUNJWA: Yes.	11	MR MATHUNJWA: By kneeling I was
12	MR BRUINDERS SC: The employer has given	12	explaining the very same thing that guys, let's leave
13	us a list of the rock drill operators who were employed at	13	koppie.
14	Lonmin at the time. Do you understand that's the list in	14	MR BRUINDERS SC: Now in the transcript
15	front of you?	15	which is 009 at page 13, the part where it appears that you
16	MR MATHUNJWA: Yes.	16	might've been kneeling, you say this – "We are requesting
17	MR BRUINDERS SC: I have given the	17	you, brothers, sisters, men, I am kneeling down. Coming to
18	commission what the numbers are in that list, you've heard	18	you as nothing, I say let us stop this blood that NUM
19	that.	19	allowed this employer to let flow. We do not want
20	MR MATHUNJWA: Yes.	20	bloodshed but we want your problems to be solved and get
21	MR BRUINDERS SC: Is there anything you	21	your salaries, Comrade. You should benefit from this
22	can add to what I have told the commission?	22	platinum." Is that what you said when you were kneeling?
23	MR MATHUNJWA: Except that it reflects	23	MR MATHUNJWA: It could be one of them, I
24	that AMCU was the minority at the koppie at the time.	24	mean, those because it was a long story, that one who was
25	MR BRUINDERS SC: Can I return to	25	talking there. But all was going to the one direction to
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1	Page 2855	1	Page 2857
1	something that seems to have vexed quite a few people here.	1	plead with the workers that let them leave the koppie.
2	something that seems to have vexed quite a few people here. Now you've told the chair of the commission that your call	2	plead with the workers that let them leave the koppie. MR BRUINDERS SC: What did you hope for
2 3	something that seems to have vexed quite a few people here. Now you've told the chair of the commission that your call to the employees on the koppie to the rock drill operators	2 3	plead with the workers that let them leave the koppie. MR BRUINDERS SC: What did you hope for after you made that first call to the workers at the
2 3 4	something that seems to have vexed quite a few people here. Now you've told the chair of the commission that your call to the employees on the koppie to the rock drill operators to return was implicit rather than explicit. You remember	2 3 4	plead with the workers that let them leave the koppie. MR BRUINDERS SC: What did you hope for after you made that first call to the workers at the koppie?
2 3 4 5	something that seems to have vexed quite a few people here. Now you've told the chair of the commission that your call to the employees on the koppie to the rock drill operators to return was implicit rather than explicit. You remember that?	2 3 4 5	plead with the workers that let them leave the koppie. MR BRUINDERS SC: What did you hope for after you made that first call to the workers at the koppie? MR MATHUNJWA: That the workers will
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	1	
Page 2858		Page 2860
1 MR MATHUNJWA: Yes. 2 CHAIRPERSON: And you obviously didn't	1	questions.
<ul><li>2 CHAIRPERSON: And you obviously didn't</li><li>3 know the numbers but you certainly knew that a number of</li></ul>	2	CHAIRPERSON: Mr Mathunjwa, thank you very much, you're excused. You may stay if you like, but
4 them weren't AMCU members. Is that right?	4	you don't have to.
5 MR MATHUNJWA: Correct, yes.	4 5	MR MATHUNJWA: Thank you very much, I
6 CHAIRPERSON: You went out of your way to		hope at the end of the day the commissioner will have the
7 gain their trust –	6	truth and will live by the truth, thank you.
8 MR MATHUNJWA: Yes, to give them hope		[NO FURTHER QUESTIONS - WITNESS EXCUSED]
<ul><li>9 that their problem can be resolved in another way.</li></ul>	8 9	-
10 CHAIRPERSON: Now do you – did you fear	10	CHAIRPERSON: I am only objective. MR BRUINDERS SC: Chair, if you're
11 that if you put it to them directly, lay down your arms, go	11	anticipating that we might call a second witness then you
12 back to work, you would lose their trust? Is that why -	12	would be wrong, not at the moment, Chair.
13 either you lose their trust or not gain their trust and is	13	CHAIRPERSON: Therefore if I adjourn
14 that why you put the appeal to them in the implicit way	14	until two o'clock will my expectations be better founded?
15 that you and I have discussed?	14	MR BRUINDERS SC: Not even then, Chair.
16 [12:46] MR MATHUNJWA: Yes, I mean when you mean		CHAIRPERSON: Mr Semenya, there was talk
17 the trust, meaning that they will know that there are	17	of you producing a witness who will tell us about public
18 issues that can be dealt with in the better way. So I	17	order policing, is that going to happen?
19 concur, I am putting myself in their shoes, hence this	19	MR SEMENYA SC: That's going to happen,
20 side, the management, what it has done, they renege, they	20	Chair.
<ul><li>21 change altogether what we committed the previous night.</li></ul>	20	CHAIRPERSON: At two o'clock?
22 CHAIRPERSON: Mr Bruinders, I am sorry I	22	MR SEMENYA SC: At two o'clock.
23 intervened, but that may help.	23	CHAIRPERSON: Unless you want to start
24 MR BRUINDERS SC: It certainly did. How	24	now?
25 did you fear the strikers might respond if you said to them	25	MR SEMENYA SC: We think it might be
Page 2859		Page 2861
1 simply, put down your weapons, go back to work?	1	useful just to have some discussion with the evidence
2 MR MATHUNJWA: Can you repeat that	2	leaders.
3 question, please?	3	CHAIRPERSON: Very well, the commission
4 MR BRUINDERS SC: How did you fear the	4	will adjourn until two o'clock.
5 strikers might respond if you simply said to them, put down	5	[COMMISSION ADJOURNS COMMISSION RESUMES]
6 your weapons, go back to work?	6	[14:06] CHAIRPERSON: The Commission resumes. Mr
7 MR MATHUNJWA: You must also remember	7	Semenya, do you have anything to tell us?
8 that I was one foot behind now, I mean my steps were no	8	MR SEMENYA SC: Thank you, Chair. We beg
9 longer accurate because management had took something tha		leave to call Brig Mkhwanazi and my learned colleague, Mr
10 I communicated to them, so at the end of the day I might be	10	Ngalwana, will lead the witness.
LIL Infolled by company also. So in that situation so I had		
11 labelled by something else. So in that situation, so I had	11	CHAIRPERSON: What your full names,
12 no platform, much ground, firm ground that I can stand on	12	Brigadier?
<ul><li>no platform, much ground, firm ground that I can stand on</li><li>and pursue the manner in which, that was the wisdom that</li></ul>	12 13	Brigadier? BRIG MKHWANAZI: Zepsania.
<ul> <li>no platform, much ground, firm ground that I can stand on</li> <li>and pursue the manner in which, that was the wisdom that</li> <li>prevail to me by that time.</li> </ul>	12 13 14	Brigadier? BRIG MKHWANAZI: Zepsania. CHAIRPERSON: Will you spell it for me
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<ul> <li>no platform, much ground, firm ground that I can stand on</li> <li>and pursue the manner in which, that was the wisdom that</li> <li>prevail to me by that time.</li> <li>MR BRUINDERS SC: What do you think might</li> <li>have happened if you simply said to them, lay down your</li> <li>weapons, go back to work?</li> </ul>	12 13 14 15 16 17	Brigadier? BRIG MKHWANAZI: Zepsania. CHAIRPERSON: Will you spell it for me please? BRIG MKHWANAZI: Z-E-P-S-A-N-I-A. CHAIRPERSON: Zepsania, and how do you
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# Marikana Commission of Inquiry

	Page 2862		Page 2864
1	CHAIRPERSON: Alright. Would you stand,	1	joined the South African Police Service in 1986. By then
2	please, Brigadier? Are you prepared to swear or do you	2	it was a stationed called CR Swart Square in Durban. It
3	wish to affirm?	3	was 86, 25 of August. I stayed as a Student Constable
4	ZEPSANIA MKHWANAZI: Let me swear.	4	until 1987, I went to do basic training in Pretoria, here
5	CHAIRPERSON: Swear. You raise your	5	in – sorry, in Hammanskraal. When I finished my training –
6	right hand. Do you swear the evidence you will give before	6	MR NGALWANA: What does the basic – what
7	this Commission, will be the truth, the whole truth and	7	did the basic training involve?
8	nothing but the truth? Please say, "so help me, God. I	8	BRIG MKHWANAZI: Basic training was
9	swear, so help me, God."	9	including the legislation, was including the riot
10	BRIG MKHWANAZI: So help me, God.	10	situation, how to handle riot situation. We were some of
11	CHAIRPERSON: Please be seated. Yes, Mr	11	us taken to Maluskop while we were still in training to go
12	Ngalwana.	12	and do riot course –
13	EXAMINATION BY MR NGALWANA: Thank you,	13	MR NGALWANA: Sorry, if you could give
14	Chairperson. Brigadier, you joined the Police Force in	14	the interpreter an opportunity to interpret.
15	1986. Could you take the Commission –	15	BRIG MKHWANAZI: Then after we finished
16	CHAIRPERSON: Have we not got a summary	16	up our training, I was deployed to Alexandra to form a riot
17	of his evidence?	17	unit. I proceeded with Alexandra, working in Alexandra,
18	MR NGALWANA: I believe you do have a	18	doing crowd – I mean, doing riot control at that stage,
19	statement, Chairperson. Perhaps if you don't have it in	19	until it was changed to internal stability.
20	your possession, I can have it distributed among the three	20	BRIG MKHWANAZI: From what period to what
21 22	of you. CHAIRPERSON: Yes, I don't remember	21 22	period, from what year to which year are you now with the
22	getting one. I certainly haven't read it, but if you have	22	riot police in Alexandra? BRIG MKHWANAZI: I was in Alexandra since
23 24	copies for us, it would be helpful, and then with the	23 24	1987, January – I mean July the 3rd until 2004, whereby I
24	assistance of Ms Pillay, we will give it an exhibit number.	24 25	had to leave, after getting the post in head office in
20	dististance of this findy, we will give it an exhibit number.	20	nde to leave, after getting the post in nead office in
	Page 2863		
	1 ugc 2003		Page 2865
1	MS PILLAY: Chair, it will be SS1.	1	Page 2865 Pretoria.
1 2		1 2	0
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1	BRIG MKHWANAZI: It was Public Order	1	CHAIRPERSON: - not as described there.
2	Policing, even though the names were changing most of the	2	BRIG MKHWANAZI: Okay. Thank you, Sir.
3	time, but it was Public Order Policing.	3	Maybe if I may indicate what we are presenting, with your
4	MR NGALWANA: You say you also performed	4	permission, that under the Constitution of the Republic we
5	training duties, is that the training of Public Order	5	were actually focusing on section 205 paragraph 3 which
6	Policing or as you term it at that time, the Riot Unit?	6	actually gives the mandate what SAPS members should
7	BRIG MKHWANAZI: It is correct, the	7	actually do when performing their duties. Under South
8	training I was providing, it was for Public Order Policing,	8	African Police Act we were actually focusing especially
9	hence in Public Order Policing we got in service training	9	under section 13, which is section 13(a) and (b) which
10	trainers who provide training in Public Order Policing	10	actually talk about the use of force, the minimum force all
11	members on continuous basis just to keep them in shape, if	11	that is contained in that position, that's what we go
12	anything happened, they can be able to deal with crowd	12	through into it, most of the time. Regulation of
13	management situations.	13	gathering, we actually here take the whole Act, we don't
14	MR NGALWANA: Now the training to which	14	choose because we have to make sure that members under
15	you refer, remember we are now dealing with the period from	15	Public Order Policing understand how to deal with the
16	1987 to 2004, does the curriculum that appears in paragraph	16	situation especially during the unrest. Then the standing
17	5 of your statement bear any resemblance to the training	17	order, general 262, we are looking to the levels, mostly to
18	you gave at that time?	18	the levels to say what levels and how the job has to be
19	BRIG MKHWANAZI: It is correct, it's the	19	done, who do what, at what time, and when members of Public
20	one for Public Order Policing.	20	Order Policing must be actually be actively involved in
21	MR NGALWANA: Now, could you place for	21	what type of a situation is what we teach the members in
22	the record, what's contained in paragraph 5, just get out	22	this position. 5.2 Platoon commander training, that is
23	your statement. Do you have a copy of your statement,	23	PCT. This is a module that is presented to members,
24	Brigadier?	24	especially like the senior members, the captains upward,
25	BRIG MKHWANAZI: That is correct, I've	25	that are in charge of the platoon, that is the platoon
	Page 2867		Page 2869
1	got it.	1	commanders, we actually teach them, and the main thing here
2	got it. MR NGALWANA: Can you go to paragraph 5?	2	commanders, we actually teach them, and the main thing here is to say how they have to draft the tactical plan if they
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	D 0070		D 0070
1	Page 2870 helmet, gasmask and filter, body armour, domfa, shield,	1	Page 2872 5.3. It's similar to that.
2	shotgun, double bore rubber rounds, pepper spray, teargas	2	MR NGALWANA: Brigadier, when you were
3	CS, CS rifle grenade, 40 millimetre CS rounds, stun	3	setting out the legal framework under module 1 for the
4	grenade, pyrotechnics, we have smoke grenade flares and 40	4	training of POPs or as you then called them the riot unit,
5	millimetre grenade launcher.	5	you referred to a section 2053 of the constitution, could
6	[14:26] MR NGALWANA: I see there's no mention of	6	you just elaborate briefly about what that section entails
7	an R5 or pistol in that list. Is there any reason for	7	as regards the duties of the police?
8	that?	8	BRIG MKHWANAZI: Yes. It's actually
9	BRIG MKHWANAZI: Yes, that's correct,	9	speak to the mandate what we're supposed to do as police
10	Advocate. The reason is that the R5, the 9 millimetre is	10	official, especially where it clearly indicates that our
11	actually been given during basic training. Members already	11	task is to investigate crime, is to uphold the constitution
12	are equipped. They know about it unless maybe if they go	12	of the republic, is to combat crime prevention. It
13	for advance training on that position.	13	actually sets clearly how we should actually do our work.
14	MR NGALWANA: What is the primary weapon	14	And the last one will be to maintain public order as well.
15	for a POPS person?	15	MR NGALWANA: Is it fair to say that what
16	BRIG MKHWANAZI: In Public Order	16	POPs police – what the POPs do or does depending on whether
17	Policing, members are actually equipped mostly with a	17	one looks at as a collective noun or not, is it fair to say
18	shotgun, hence it actually demand more that we actually	18	that what they do is informed by the principles of the
19	take action with our less lethal technique if we do	19	constitution?
20	something. Shotgun is the main firearm or rifle that is	20	BRIG MKHWANAZI: That's correct. It is
21	being utilised.	21	informed, Sir.
22	MR NGALWANA: Now when you say shotgun,	22	MR NGALWANA: Now regarding the
23	what does the shotgun fire?	23	Regulation of Gatherings Act, is there –
24	BRIG MKHWANAZI: Yes, a shotgun which is	24	CHAIRPERSON: The Regulation of
25	muzzler, we are using, it actually can take different types	25	Gatherings Act.
1	Page 2871	1	Page 2873
1	of ammunitions but what we are using now, we are using	1	MR NGALWANA: Thank you, Chairperson, I
2	of ammunitions but what we are using now, we are using rubber as the most ammunition we are using.	2	MR NGALWANA: Thank you, Chairperson, I thought that's what I said. Evidently I'm wrong.
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		1	
	Page 2874		Page 2876
1	with the people who participate in the march, just to make	1	well which is the division, all the members inside support
2	sure that there mustn't be any confrontation with the	2	and all that, I was actually taking care of their training
3	police or with the people who are actually within that area	3	needs at that time.
4	where they're going to march. Dialogue must be in place,	4 5	MR NGALWANA: Just to be clear,
5	we emphasise that and emphasise as well tolerance as well	5	Brigadier, you've mentioned 3. It's unit – specialised
6	to say members must actually demonstrate or indicate	6	unit. It's the STF – special task force, the NIU, national
7	tolerance in most of the time because a lot of things can	7	intervention unit and POP, public order policing.
8	happen during the march itself, but members must be –	8	BRIG MKHWANAZI: Public order policing
9	tolerance be able to deal with the situation properly. And	9	air wing, air wing was part of that as well.
10	as well we emphasise Section 9 of the Gathering Act, the	10	MR NGALWANA: Now from 2005 going
11	use of force or the powers of the police to say when and	11	forward, where do you – where were you then placed?
12	what time actually members can intervene if there is a	12	BRIG MKHWANAZI: I was at the same place,
13	situation and what procedures need to be followed as well	13	division visible policing doing the same task collecting
14	if it come to that position as well, that use of force has	14	the training needs or extracting the needs of those
15	to be actually be used if the situation goes wrong.	15	particular units and submit them to division SRD whereby
16	MR NGALWANA: Right. Now we've covered	16 17	they will be in a position to make sure that they actually
17	the period 86 to 2004, so far. From 2004 where did you	17	facilitate the issues of budget as well as the
18 19	then go within the ranks of the SAPS?	18	implementation of the plans in each financial year. I will
	BRIG MKHWANAZI: Yes, Sir. 2004, December, I was appointed to be a crowd management training	19 20	just do that part. After it's done that they will actually
20 21	manager in head office and my task there was to look to all	20	indicate what is approved and what is not approved. MR NGALWANA: Until when did you perform
22	training presented in the province – in different	21	those functions? We know that recently you've –
22	provinces, nationally, and to ensure that everything is	22	BRIG MKHWANAZI: Yes, it's until 2012,
23	done properly. That was my job to do at that time, sitting	23 24	February this year.
25	in head office.	24 25	MR NGALWANA: What position do you now
20		20	
	Page 2875		Page 2877
1	MR NGALWANA: Until what period? What	1	hold in SAPS?
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1	I can make an example, especial with Ellis Park incident	1	sit and say, yes, this could have been done or it could
2	that took place, we actually made recommendation which	2	have been done this way, definitely it will be a complete
3	assisted by the commission as well, it's a recommendation	3	speculation. No matter how much information is given to
4	whereby we came up with the writing of the operational	4	me, you know it is always better to see yourself to be
5	commander training which is the OCT. It came up from that	5	involved with planning, to be part of the operation and if
6	position to say let's have this kind of a program that	6	you're not part of it, really it would be total speculation
7	actually assist in how the operational plan must be	7	irrespective of how much information I have. I have
8	compiled when actually we do our duties.	8	experience as deferred, but it won't be correct for me to
9	MR NGALWANA: Have those recommendations	9	speculate especially if I was not there.
10	been implemented?	10	COMMISSIONER HEMRAJ: Brigadier, you say
11	BRIG MKHWANAZI: Yes, they will – they do	11	that about the actual operations, what about the planning
12	get implemented.	12	of it, would you not be able to comment on the planning of
13	MR NGALWANA: Right. Brigadier, you know	13	the operations, whether the plans on the contingencies were
14	that we are here to deal with the events of the 16th -	14	appropriate?
15	Thursday the 16th of August 2012 and the events leading up	15	BRIG MKHWANAZI: That's correct, with the
16	to that date. Let me ask you this, are you in a position	16	planning as well, Chairperson, is that you need to receive
17	to give first hand account of the events of the 12th – I	17	information, you need to plan based on what's going to
18	beg your pardon, of the 16th of August 2012 and the events	18	happen and for me to comment with a plan that has been
19	leading up to that date?	19	actually down and has been executed, it will be totally
20	BRIG MKHWANAZI: Chairperson, it will be	20	unfair, Chairperson.
21	a speculation. I won't be in a position to give anything	21	CHAIRPERSON: I don't understand that
22	because I was not involved on that day.	22	answer, Brigadier. One of the things that you do is you
23	MR NGALWANA: Did you play any role, any	23	give instruction as part of the operation commander
24	role at all, in the planning of or for the operation?	24	training that you do, in writing operational plans for
24 25	BRIG MKHWANAZI: No.	24 25	platoon commanders, is that correct?
20	BRIG MIKHWANAZI. NO.	25	platoon commanders, is that correct?
	Page 2870		Page 2881
1	Page 2879 [14:46] MR NGALWANA: Did you play any role	1	Page 2881 BRIG MKHWANAZI: That's correct, Sir.
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	Page 2882		Page 2884
1	persons who drafted the plan?	1	BRIG MKHWANAZI: That's correct, Sir, I
2	BRIG MKHWANAZI: Ja –	2	believe after the commission will be able to have a proper
3	CHAIRPERSON: You would, wouldn't you?	3	indication and how to move forward.
4	You see the thing is –	4	CHAIRPERSON: Further than that, I would
5	BRIG MKHWANAZI: Mr Chairperson, I hear	5	suggest it would be compulsory, a compulsory subject of
6	your point very well to say if there is a plan and I look	6	study for all future people taking your training, would I
7	to the plan, can I be in a position to say out of ten how	7	be right?
8	many points I am giving to that particular plan.	8	BRIG MKHWANAZI: That's correct.
9	CHAIRPERSON: Yes, you see the further	9	CHAIRPERSON: Yes.
10	point is, we also presumably will be told what went wrong	10	MR NGALWANA: Yes, thank you. Brigadier,
11	in this case. I take it the plan wasn't to kill 34 people,	11	let's see if you can at least to some extent be of some
12	the plan wasn't to kill anybody, that must be so. They had	12	assistance to the commission. Given your extensive
13	the media, the international media there, that would have	13	experience in POPS and the training of POPS, if you were
14	been, they clearly didn't intend killing anybody, they	14	given a set of facts that says you have a group of between
15	intended disarming and disbursing the people peacefully, I	15	a thousand and, I think it is three and a half or four
16	take it that's a given. Now it didn't happen like that, 34	16	thousand people planted on a hill, many of whom armed with
17	people were killed, hundreds of bullets were fired in eight	17	pangas, assegais, spears an R5 rifle possibly, a pistol, is
18	seconds, 34 people died. Now something went wrong. The	18	such a crowd a crowd of the sort with which POPS is trained
19	question is, was the contingency of the plan failing	19	to deal?
20	foreseeable and was the plan appropriate to deal with	20	BRIG MKHWANAZI: The public order
21	something of the nature that went wrong, going wrong, you	21	policing is trained to deal with issues of public violence
22	see, that's the sort of issue that we're concerned with.	22	or crowd management situations, however when it goes to the
23	Now I take it that's a matter within your field of	23	level whereby we talk about people armed with R5, with the
24	expertise.	24	type of weapon being mentioned, it always becomes a
25	BRIG MKHWANAZI: Chairperson, as I have	25	challenge because in their position they are actually
	Dago 2002		Page 2005
1	Page 2883 indicated from the beginning that for me it can be a very	1	Page 2885 carrying shotguns, that actually load rubber in most cases.
1 2	6	1 2	-
	indicated from the beginning that for me it can be a very		carrying shotguns, that actually load rubber in most cases.
2	indicated from the beginning that for me it can be a very difficult position to say, because this is the plan which	2 3	carrying shotguns, that actually load rubber in most cases. For them to be able to deal with situation where there is
2 3	indicated from the beginning that for me it can be a very difficult position to say, because this is the plan which was actually compiled for the purpose of execution, to say	2 3	carrying shotguns, that actually load rubber in most cases. For them to be able to deal with situation where there is R5 it means somehow they will have to do some transition to
2 3 4	indicated from the beginning that for me it can be a very difficult position to say, because this is the plan which was actually compiled for the purpose of execution, to say what went wrong, why the plan never succeeded. It is going	2 3 4	carrying shotguns, that actually load rubber in most cases. For them to be able to deal with situation where there is R5 it means somehow they will have to do some transition to change to the type of a firearm that will actually be
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		1	
1	Page 2886 MR NGALWANA: Is their training adequate	1	Page 2888 MR NGALWANA: Now if the POPS commander
2	to deal with people who are armed with pangas, assegais,	2	of course having disseminated the news as well to his
3	R5, pistol and spears?	3	charges, if he/she were to be informed of the crowd sitting
4	BRIG MKHWANAZI: No, no.	4	on a hill that killed a couple of policemen, would that
5	MR NGALWANA: Can I take you back,	5	make any difference to their approach? In other words
6	Brigadier, to your statement, paragraph 5.2? Perhaps it	6	between an otherwise peaceful crowd and a crowd about whom
7	might be useful to put things in perspective. Could you	7	he is told had killed a number of police and surveillance
8	take the commission through, very briefly but without	8	on days previously?
9	issuing detail, if you can do that, crowd dynamics? What	9	BRIG MKHWANAZI: As you indicate that a
10	does that entail exactly, module 2?	10	person has been killed, however I would say from my side
11	BRIG MKHWANAZI: Yes, if we talk about	11	that it will, actually what will give a good indication is
12	crowd dynamics we are actually referring to the crowd	12	to say what the operational commander on the day will
12		13	
13	perspective. In actual fact how the crowd view this police or how do we view the crowds, because if we deal with the	14	actually conduct his/her assessment regarding the situation, with that assessment he/she will be in a
		14	
15	crowds we talk about a crowd that's going to be marching in	16	position to say how to handle that particular situation. [15:06] MR NGALWANA: Conflict resolution,
16	a certain area and there are people living in that certain	10	
17 18	area, and how people look to these crowds, how do they take this crowd. We've got a crowd that march which is	17	5.2.1.2, what does that entail? BRIG MKHWANAZI: Under Conflict
19	-	19	
20	traditional, which are cultural and these are the type of crowd to say how do we handle them, and we got the type of	20	Resolution, if you remember, Chair, I started saying we need to ensure that we engage in dialogue. If we engage in
20		20	
21	crowds or type of people, if they look to the crowd they	21	dialogue it's to say how do we deal with the situation before us? You will have a situation between the two
22	will sometime say the crowd is dangerous. They will	22	
	sometimes say the crowd is barbaric, they will say maybe		people most of the time and in that situation is that the
24 25	sometimes the crowd is not trusted, so these are the dynamics we need to look at.	24 25	police must come between and ensure the two parties start talking and solve the problem that is before the two people
25	uynamics we need to look at.	25	
	Page 2887		Page 2889
1	Page 2887 That means members must understand this type of a	1	Page 2889 to ensure that there is some sort of understanding between
1 2	5	1	
	That means members must understand this type of a		to ensure that there is some sort of understanding between
2	That means members must understand this type of a situation that if we deal with a crowd we must know we will	2	to ensure that there is some sort of understanding between the two and so in such a way that they can be able to go
2 3	That means members must understand this type of a situation that if we deal with a crowd we must know we will have a crowd that is cultural, that is traditional, that	2 3	to ensure that there is some sort of understanding between the two and so in such a way that they can be able to go forward and have everything resolved properly.
2 3 4	That means members must understand this type of a situation that if we deal with a crowd we must know we will have a crowd that is cultural, that is traditional, that actually people can perceive it as dangerous, as barbaric,	2 3 4	to ensure that there is some sort of understanding between the two and so in such a way that they can be able to go forward and have everything resolved properly. MR NGALWANA: I think constitutional
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	2		2
1	Page 2890 force be informed by the crowd dynamics?	1	Page 2892 spears, pangas and assegais charge at you as the POP
2	BRIG MKHWANAZI: That's correct as well.	2	member, is that a justification or not for using deadly
3	It will actually, as I've said, is more factors that can	3	force?
4	influence during the operation itself.	4	BRIG MKHWANAZI: Ja, Chairperson, as you
4 5	MR NGALWANA: Talk to the Commission if	4 5	
			have said that they charge towards you, the only thing is, I'm not sure if they charge towards you is because they are
6	you can, if you may, please, about deadly force.	6	
7	BRIG MKHWANAZI: Yes, if we look to	7	shooting at you or they are fighting with you, what is the
8	deadly force, it's where we are actually teaching people	8	position, if maybe we can have clarity on that?
9	especially we look first to three main words that is	9	MR NGALWANA: That's what I mean.
10	jeopardy, ability as well as opportunity.	10	BRIG MKHWANAZI: They are shooting at
11	MR NGALWANA: Sorry, what was the first	11	you? Your question is, is it justifiable to use –
12	one?	12	MR NGALWANA: To use deadly force.
13	BRIG MKHWANAZI: First one, jeopardy,	13	BRIG MKHWANAZI: To use –
14	jeopardy, yes, jeopardy, yes. When we talk about that, we	14	CHAIRPERSON: That's really a legal
15	are looking to say if you act where you're actually	15	question, isn't it? But viewed from the expertise of
16	protecting the next man or your buddy or what was the	16	public order policing, I'll allow him to answer, but I
17	position? Jeopardy is to say was there a chance that the	17	point out that strictly speaking it's a legal question, but
18	person could have maybe injured or killed the other person	18	I suppose the legal answer would be informed by the kind of
19	working with you? Yes we look to the ability as well as	19	consideration to which he will refer, so I'll allow him to
20	the opportunity, taking into consideration necessity, self	20	carry on. Answer the question.
21	or private defence, whereby maybe you can use 9 millimetre	21	MR NGALWANA: Thank you, Chairperson.
22	R5 shotgun or R1, but at the same time making sure that it	22	MR BURGER SC: Chair, can I just get for,
23	must be proportionate to the threat, it must be reasonable	23	Chair, may I just ask, I'm not following the debate. We
24	to the circumstances and it must be seized as soon as the	24	hear a lot of evidence on the training of public order
25	objective has been accomplished. That's what actually we	25	police and that I understand. Does my learned friend
	5		
1	Page 2891	1	Page 2893
1	teach people around that position.	1	intend to apply that to the facts of that case so that we
2	teach people around that position. COMMISSIONER HEMRAJ: I'm sorry, we	2	intend to apply that to the facts of that case so that we understand why the Brigadier is giving evidence? Or is he
2 3	teach people around that position. COMMISSIONER HEMRAJ: I'm sorry, we didn't get all that down. You said proportionate to the	2 3	intend to apply that to the facts of that case so that we understand why the Brigadier is giving evidence? Or is he putting hypothetical to the witness which doesn't assist me
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Page 286         Page 286           2         been opened. Mr. Mpofu, dont worry about that anymore.         1         hose concerned with that. I dont understand the           3         MK MPOTU.         Woll that's cackly the point         3         goes further, otherwise the windle cacello wasts time.           4         Trim making. Chair, that makes, the mark is an expert on that field. So It haven to a the windle cacello wasts time.         3         and this manuch as we windly it's a matter for expert evidence           6         results at the ont ophetic plut to a way with the         a order windle cacello wasts the mark is an expert on that field. So It haven to a sub to a that with the           1         results at the complete plut to any to mark is an expert on that field. So It haven to a sub to a theorem.         1           1         results and places. Built the to any to a wast muthe         1         inmake any to a wast muthe           1         results of the transchards are waster on that field. So It haven to a sub to a sub to a the ones your examp to that it for watters have that a chance         1           1         results of the resonance wave in the tabe to any to a sub the resonance more waster on that field.         1         inmake any to a waster on the field to a sub any to any to a waster on the field to a sub any to a sub any to a waster on the field to a sub any to any to a waster on the with the adjour ment to a cardies it the mark mark that a chance any to any the sub to any to any to a sub the with the adjour ment to any ba sub any to any			r	
2         been opened. Mr MoGu, don't worry about that anymore. MR MPOFU:         2         relevance. Is he telling us about the training unless it apos further, otherwist the whole exercise wastes time.           3         Tm making. Charl, that makes, it makes if even more projuction if as the chair correctly points out the overs of the 16th. Thank you.         3         and there with exart was done was reasonable in the circumstances. Catary it is a matter for expert evidence a correctly, bas an unless it a problem with that. But the point put to you by my           6         CHAIRPERSON:         Yes, a point being put to me by my colleague. Commissioner Henraris is that youre to facts of this case. Really the complete picture should be the facts of this case. Really the maintain on these discumstances. On the other hand we have an expert on the transmittan was due to an expert on the consider is the reasonable complete pictures. Dist a decide wather accessnoble complete pictures to the consider is the reasonable complete pictures to the days advant.         1         Image termination on these termination on these discumstances. On the other hand we have an expert to and other questions that my be asked by there are put to the consider is the reasonable compose would be. So that's whi the days advant.           1         forther thank we put to consider is the days of the things we have to the consider is the we beat meen the mid. But maywy, you're hear the consider is the web the the advancent that.         1         1 <td< td=""><td></td><td>-</td><td></td><td>-</td></td<>		-		-
3         MR MPGPL:         Well that's cacacity the point         3         as gost further, otherwise the whole cacacits wates time.           4         Immaking, Chair, that makes, it makes it even more projuncial in that the char concerty points out the point as the charin correctly points out the point as the charin correctly points out the point as the charin correctly points out the point put to yout by my poileague, Commissioner Hemraj is that youre to putting hypothetical, corn though they are based on the put my colleague, Commissioner Hemraj is that youre to putting hypothetical corn though they are based on the putting hypothetical corn though they are based on the putting hypothetical corn though they are based on the putting hypothetical corn though they are based on the putting hypothetical corn though they are based on the advances to putting hypothetical corn though they are based on the advances to putting hypothetical corn they are have an export on that may be asked in they, and I suspect.         1           11         fasts of this case. Really the complete picture should be the advance to for the bind are anne to the advance to the public offer policing. One of the hind we have an export on that may be asked in a chance to a public offer policing. One of the hind we have an export on that may be asked to that.         1 <td></td> <td></td> <td>1</td> <td></td>			1	
4       I'm smaking, Chair, that makes, it makes it even more       4       I'm samuch as we vill be called upon to decide at some stage         5       projudicial fas the Chair correctly points out the       5       at the and whether what was done was reasonable in the         6       requiring high leads in a way with the       5       at the and whether what was done was reasonable in the         7       events of the 16th. Thank you.       7       and this man is an expect on that field. So I haven't got         10       puting hypothetical, even though they are based on the       7       and this man is an expect on that field. So I haven't got         12       puting hypothetical, even though they are based on the       1       in was exed to consider is that we must the         13       because that might lead to a miskeding answer in the       1       in unait to the witness either. And if they, and it wayed,         14       forcardinations on these       1       in unaits on the distort and we have an expert on         15       public order policing. One of the things we have to       1       in and other questions that may be asked by others are put to         17       appropriate to have evidence from an expert to enable with       1       min stark the without beaset         18       decide what a reasonable response would be. So thats with       1       min Min MAGALWANA:         19			2	
5         projudical if as the Chair correctly points out the         5         at the end whether what was done was reasonable in the           6         hypothetical example actually deals in a way with the         and this man is an early its a matter for expert widence           8         CHAIRFERSON:         Yes, a point being put to         and this man is an early its a matter for expert widence           9         putting hypothetical, even though they are based on the         and this man is an early and the final. So I haven't got           11         facts of this case. Really the complete picture should be         the witness earlier. And if they, and I suspect.           12         putting tropleting. Use take tilt bits and pieces. But,         to some questions may be asked in the witness hasn't had a chance           13         bacause that might lead to a mislanding answer in the         14         incurnationace, on the other hand we have an expert on           14         dicclus what a reasonable response. So its         16         addition thay be asked by others are put to           14         dicclus what a reasonable response would be. So that's with         16         and the question for now.           12         provide the ask of advassers that have ben starded by         16         Ant work with west or ask the witness before we take the adjournment           13         decide what a reasonable response. So its         14         Ant question for now.	3	5	3	-
6         hypothetical example actually deals in a way with the events of the 16h. Thank you.         6         circumstances, clearly it's a matter for expert evidence a problem with that. But the point put to you by my           0         met by my colleague, commissioner Henraj is that youre putting hypothetical, even hough they are based on the 16 for this case. Really the complete picture should be 17 upty you can just take little bits and picces. But, 18 because that might lead to misleading answer in the 16 consider is the reasonableness of the response. So its 17 appropriate to have evidence from an expert to enable us to 18 decide what a reasonable response. So its 19 appropriate to have evidence from an expert to enable us to 19 coursel are accounding response. Wolld be, 50 that's whit 20 coursel are accounding response wolld be. So that's whit 21 coursel are accounding response wolld be. So that's whit 22 debate. I propose to allow you to continue but try to 23 focus if and keep it in the channels that we've been 24 claiming about.         18 MR NGALWANA: Well thank you,         18 MR NGALWANA: If that is the adjournment 24 the example ack white?           7         Frapezson. Twe been trying to do that to propare. 24 OKMIMSSIONER HEMRAI: M Mgalwana, can 34 any ability given the time I've had to propare. 35 diving about.         1 adjournment now. 35 diving about. 36 diving about. 37 diving about. 38 diving about. 39 diving the wave for that of which I'm 30 diving about. 30 for any ability given the time I've had to propare. 30 OKMIMSSIONER HEMRAI: M Mgalwana, can 30 diving about. 30 diving about. 31 do diving the as solution that was 30 given for training, POPS training. Perhaps we can ask how 30 diving avare. What has you you to completely fair to him, if 30 have are of that. 30 diving avare what has is withow to be preprex. 30 OKMIMSSIONER HEMRAI: But y	4	5	4	
7       events of the 16th. Thank you.       7       and this man is an expert on that field. So I haven't got         8       CHARRERSON: Yes, a point being put to       7       and this man is an expert on that field. So I haven't got         10       putting hypothetical, even though they are based on the       0       colleague, Commissioner Hermaj, is that we must be         11       tacts of this case. Really the complete picture should be       10       unfair to the witness either. And if they, and I suspect,         12       put, you can'i just take liftle bits and pieces. But,       13       inces. It might be fair if the witness incorrectly, but I suspect         13       because that might lead to a misleading answer in the       13       lines. It might be fair if the witness incorrectly, but I suspect         14       torsed exhibit L to give him a chance to do that before       15       questions of this kind such as the ones you're asking him.         16       consider is the reasonable response. So its       16       mat other questions that may be asked by others are put to other         19       park that questions for now.       Chairperson. I we been trying to do that to the almost       MR NGALWANA: Well thank you.       CHAIRPERSON:       Are there other questions         2       they and youry and you you the adjournment       2       adjournment now.       2       adjournment now.         2	5	prejudicial if as the Chair correctly points out the	5	
8         CHAIRPERSON:         Yes, a point being put to putting typothetical, even themogit how are based on the interact of this case. Really the complete picture should be put, you cart just take little bits and pieces. But, is because that might lead to misleading answer in the consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider is the reasonableness of the response. So its is consider a trassonable response would be. So that's why is consider and some in mink. But anyway, you've heard the is consider and keep it in the channes that we've been is deate. I propose to allow you to continue but try to is consider and keep it in the channes that we've been is down.         18         MR NGALWANA: Well thank you,         20         CHAIRPERSON: Are there other questions in adjournment now.           2         Forairperson. I've been trying to do that to the almost is anything to do with to SAP presentation.         14 <t< td=""><td>6</td><td>hypothetical example actually deals in a way with the</td><td>6</td><td>circumstances, clearly it's a matter for expert evidence</td></t<>	6	hypothetical example actually deals in a way with the	6	circumstances, clearly it's a matter for expert evidence
9         me by my colleague, Commissioner Henraj Is that youre         9         colleague, Commissioner Henraj, Is that we musth? be           10         putting hypothetical, even though they are based on the         1         Inable to the witness escincer. And if they, and i suspect,           11         facts of this kine asset. Really the complete pitcine should be         1         Inable anding the augicine incorrectly, but 1 suspect,           12         because that might lead to a misleading answer in the         1         Inable for an expert to anable us to           16         consider is the reasonableness of the response. So it's         1         and other questions that may be asked by others are put to           17         him. I don't know how your cashing hem,         and other questions that may be asked by others are put to           18         docide what a reasonable response. So it's         1         him. I don't know how your cashing hem,           20         roll and strike witness before we task the adjournment to         2         the they our ask the mathematical           21         task and keep it in the channels that work.         21         that you can ask the witness before we task the adjournment to           22         torad other witness other mark you.         2         the witness your go tast in the way the           23         torad wat work.         31         adjournment now.         2	7	events of the 16th. Thank you.	7	and this man is an expert on that field. So I haven't got
10       putting hypothetical, even though they are based on the       10       unfair to the witness either. And if they, and I suspect,         11       facts of this case. Reality the complete picture should be       11       I may be reading the auspices incorrety, but I suspect,         12       put, you carling to a misleading answer in the       11       I may be reading the auspices incorrety, but I suspect,         14       circumstances. On the other hard we have an expert to enable to       13       lines. It might be fair if the witness hash thad a chance         15       public ord phe thing, we have to       14       lor readsmith to give him a chance to do that before         16       consider is the reasonable response would be. So that's with       14       and other questions that may be asked to others are put to         17       appropriate to have evidence from an expert to enable us to       14       MR NGALWANA:       Chairperson, perhaps let's         18       max for the question being asked and answered,       park that question for now.       20       CHAIRPERSON:       Are there other questions         12       torus it and keep II in the chanels that we ve been       21       that you can ask the witness before we takk the adjournment         23       tocus it and keep II in the chanels that we ve been       23       tocus at schib witness and the max the         24       that you can ask the witn	8	CHAIRPERSON: Yes, a point being put to	8	a problem with that. But the point put to you by my
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12       put, you cant just take little bits and pleces. But,       12       some questions may be asked in cross-examination on these         13       because that might lead to a misleading answer in the       13       lines. It might be fair if the witness hart had a chance         14       circumstances. On the other hand we have an export on       14       to read achibit L og uok lina chance to di that before         15       public order policing. One of the things we have to       15       questions of this kind such as the ones youre asking him,         16       consider is the reasonable response. So it's       16       and other questions that may be asked by others are put to         17       him. L down know you you respond to that.       16       and other questions that may be asked by others are put to         16       provided the sort of caveables that have been stated by       16       and other question for now.         20       consel are borne in mind. But anyway, you've beend       16       at he do of the days evidence, and give him a chance to         21       taking about.       17       Nm. NGALWANA:       Well thank you,       16       at other of the Commission are inclined, we can take the         22       best of my ability given the time tve had to prepare.       COMMISSIONER HEMRA1:       M N NgALWANA:       17       adjournment ow.         2       best of my ability given sh	10	putting hypothetical, even though they are based on the	10	unfair to the witness either. And if they, and I suspect,
13       because that might lead to a misleading answer in the       13       lines. It might be fair if the witness hasn't had a chance if         14       circumstances. On the other hand we have an export on       14       to read exhibit L to give him a chance to do that before         15       public order policing. On of the things we have to       15       questions of this kind such as the ones youre asking him,         16       consider is the reasonableness of the response. So its       16       and other questions that may be asked by others are put to         17       parportiate to have evidence from an expert to enable us to       17       him. I don't know how you respond to that.         18       decide what a reasonable response would be. So that's value       18       MR NGALWANA:       Chairperson, perhaps let's         19       irm not averse to the question being asked and answered,       19       park that question for now.       20         21       cousus if and keep it in the channels that we've been       23       look at exhibit L in the manwhile?         23       taking about.       25       MR NGALWANA:       MR NGALWANA:       MR It is the way the         25       chairperson. I've been trying to do that to the almost       adjournment now.       2       chairperson. I'ne been trying at all' to particip as the statement, for marcial. I don't want to waste time.       If the withess bout or musa'n that. <td>11</td> <td>facts of this case. Really the complete picture should be</td> <td>11</td> <td>I may be reading the auspices incorrectly, but I suspect</td>	11	facts of this case. Really the complete picture should be	11	I may be reading the auspices incorrectly, but I suspect
14       circumstances. On the other hand we have an expert on         15       public order policing. One of the things we have to         16       consider is the reasonable consorts. So it's         17       appropriate to have evidence from an expert to enable us to         18       decide what a reasonable response would be. So that's why         19       I'm not averse to the question being asked and answered,         20       provided the sort of caveats that have been stated by         21       counsel are borne in mind. But anyway, yourve heard the         22       debate. I propose to allow you to continue but try to         23       focus it and keep it in the channels that we've been         24       talking about.         25       MR NGALWANA:         26       Chairperson. I've been trying to do that to the adito the prepare.         20       COMMISSIONER HEMRAL:       Mr Ngalwana, can I         3       anything at all? Is he privy to any         6       that information as he testifies at the moment?         3       MR NGALWANA:       No that of which I'm         4       ware of that.         11       contingencies or anything at all? Is he privy to any       of that information as he testifies at the moment?         3       MR NGALWANA:       No that so conseltery fine	12	put, you can't just take little bits and pieces. But,	12	some questions may be asked in cross-examination on these
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17       appropriate to have evidence from an expert to enable us to       17       him. I don't know how you respond to that.         18       decide what a reasonable response would be. So that's why       18       MR NGALWANA:       Chairperson, perhaps let's         19       I'm not averse to the question being asked and answered,       19       park that question for now.       20       Chairperson. I'we been stated by       21       that you can ask the witness before we take the adjournment         20       focus it and keep it in the channels that we've been       23       look at exhibit I. in the meanwhile?         21       talking about.       24       that you can ask the witness before we take the adjournment         22       talking about.       21       in the channels that we've been       23       look at exhibit I. in the meanwhile?         24       talking about.       24       MR NGALWANA:       Well thank you,       25       Chairperson. I'we been trying to do that to the almost         25       best of my ability given the time I've had to prepare.       3       COMMISSIONER HEMRAJ:       Mr NgALwana, can I         4       just ask you something, has this witness been provided with       7       material. I don't know it he SAPS presentation or the plan or       14       adjournment now.       2       CHAIRPERSON:       Unless you've ot that. <td< td=""><td>15</td><td>public order policing. One of the things we have to</td><td>15</td><td>questions of this kind such as the ones you're asking him,</td></td<>	15	public order policing. One of the things we have to	15	questions of this kind such as the ones you're asking him,
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19       I'm not averse to the question being asked and answered,       19       park that question for now.         20       provided the sort of caveats that have been stated by       20       CHAIRPERSON:       Are there other questions         21       counsel are borne in mind. But anyway, you've heard the       20       CHAIRPERSON:       Are there other questions         22       counsel are borne in mind. But anyway, you've heard the       21       that you can ask the witness before we take the adjournment         23       focus it and keep it in the channels that we've been       21       at the end of the day's evidence, and give him a chance to         24       taiking about.       21       at the end of the day's evidence, and give him a chance to         25       MR NGALWANA:       Well thank you,       25       Chairperson of the Commission are inclined, we can take the         26       Chairperson. I've been trying to do that to the almost       5       CountissIONER HEMRAJ:       Mr Ngalwana, can i         3       countingencies or anything to do with the SAPS presentation or the plan or       6       material that you want to cover which doesn't involve that,         5       awcre. What he is privy to is the presentation that was       9       distracted, Chairperson, three are a lot of murmurs on my         19       giving you some advice-cum/instruction. Now if you would       take advica	18	decide what a reasonable response would be. So that's why	18	MR NGALWANA: Chairperson, perhaps let's
21       counsel are borne in mind. But anyway, you've heard the       21       that you can ask the witness before we take the adjournment         22       debate. I propose to allow you to continue but try to       23       focus it and keep it in the channels that we've been         23       focus it and keep it in the channels that we've been       24       the end of the days evidence, and give him a chance to         23       toking about.       24       MR NGALWANA: If that is the way the         25       MR NGALWANA: Well thank you,       25       Chairperson. I've been trying to do that to the almost         2       best of my ability given the time I've had to prepare.       2       CHAIRPERSON: Unless you've got other         3       adjournment now.       2       CHAIRPERSON: Unless you've got other         4       just ask you something, has this witness been provided with       4       material that you want to cover which doesn't involve that,         5       we can use the time between now and the adjournment       0       distracted, Chairperson, there are a lot of murmurs on my         10       given for training, POPS training. Perhaps we can ask him.       1       CHAIRPERSON: Your learned leader is         11       I don't know if he has looked at the police presentation,       1       CHAIRPERSON: Your learned leader is         12       irm not aware of that.       10 </td <td>19</td> <td>I'm not averse to the question being asked and answered,</td> <td>19</td> <td>park that question for now.</td>	19	I'm not averse to the question being asked and answered,	19	park that question for now.
22       debate. I propose to allow you to continue but try to       22       at the end of the day's evidence, and give him a chance to         23       focus it and keep it in the channels that we've been       23       look at exhibit L in the meanwhile?         24       talking about.       MR NGALWANA: Well thank you.       24       MR NGALWANA: If that is the way the         25       MR NGALWANA: Well thank you.       25       Chairperson of the Commission are inclined, we can take the         26       Colow at exhibit L in the meanwhile?       24         27       MR NGALWANA: Well thank you.       26         28       Colow at exhibit L in the meanwhile?       24         29       Chairperson. I've been trying to do that to the almost       26         20       best of my ability given the time I've had to prepare.       3         3       COMMISSIONER HEMRAJ: Mr Ngalwana, can I       4       adjournment now.         4       just ask you something, has this witness been provided with       4       material I don't want to waste time. If there's other         4       instraining, POPS training. Perhaps we can ask him.       7       MR NGALWANA: Yes, I do, it's just issues         8       MR NGALWANA:       No, that's not what I'm       10       left hand side.         11       COMMISSIONER HEMRAJ:       But just	20	provided the sort of caveats that have been stated by	20	CHAIRPERSON: Are there other questions
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	Page 2898		Page 2900
1	discuss or talk about foot technique it's where we are	1	it up to you, the legality situation, appropriateness,
2	referring to say how members must actually engage or	2	because they are dealt with separately in the various
3	intervene on foot, not using vehicles.	3	policies.
4	MR NGALWANA: Are you able to give a	4	BRIG MKHWANAZI: Yes, Sir, that's
5	practical example of how that happens?	5	correct, with legality it's where we ensure that we check
6	BRIG MKHWANAZI: Yes, for an example, if	6	if whatever we are doing is within the legal frame of work,
7	you have to come to a situation, you will have to maybe, to	7	or legal framework, and with the situation appropriateness
8	deploy members, they will come out of the vehicle, they	8	we actual look to the situation, how the situation is, bit
9	will form up and there will be instruction given what	9	ensuring that when we teach members, is that if they
10	they're supposed to do if they intervene and they will do	10	intervene, they must not create problems, they must make
11	that in a foot formation, in a sort of formation whereby	11	sure they solve the problem instead of creating the bigger
12	they will stick together and they will intervene to the	12	problem. Actually, they mustn't be the cause of a
13	situation.	13	situation, whereby we will have an outcome that is not
14	MR NGALWANA: And platoon and section	14	acceptable. Optimisation, we are talking about the
15	formation?	15	resources we need to deal with the situation. What do we
16	BRIG MKHWANAZI: Platoon and section	16	need to make sure that we can be in a position to deal with
17	formation, it's nearly similar to the first one but here it	17	the situation, talk about the equipment we have. What
18	can be either with vehicles or on foot as well, but staying	18	equipment do we need to deal with that type of the
19	together as a platoon.	19	situation under optimisation. Proportionality, it's where
20	MR NGALWANA: How many members would be	20	we look to the point that when we take our actions, we
21	in a platoon and how many in a section?	21	should just make sure that it's proportionate, in actual
22	BRIG MKHWANAZI: We've got 32 members in	22	fact it must be, we must strike the balance between the
23	a platoon and 8 members in a section.	23	two. You cannot come with a different solution whereby the
24	MR NGALWANA: Vehicle formation?	24	situation, it doesn't need that. We need just to make sure
25	BRIG MKHWANAZI: Vehicle formation, it's	25	that you balance the two in most of the time, if you do
	D 0000		Dama 2001
1	Page 2899 here, here you will actually have to intervene using	1	Page 2901 whatever intervention you come up with.
1	here, here you will actually have to intervene using	1	whatever intervention you come up with.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	here, here you will actually have to intervene using vehicles but there are some sort of formations we are utilising depending to the terrain how it look like. Actually members can just intervene using vehicles, not coming out of a vehicle. MR NGALWANA: I take it the number of vehicles will be informed by the situation that is unfolding? BRIG MKHWANAZI: That's correct. [15:26] MR NGALWANA: And the type of vehicle. BRIG MKHWANAZI: That's correct as well. MR NGALWANA: Indoor techniques, what does that entail? BRIG MKHWANAZI: Yes, in the techniques normally we are teaching members, especially if they have to deal with a situation in a closed door whereby they have to get somebody out from that position, and normally if I may make an example, in prison, it is where maybe prisoners refusing to go inside the cells, then members must be able to know how to go in and deal with that of situation inside the doors, indoors. MR NGALWANA: Now 5.4.1.5 is rather a pregnant one, it deals with a couple of issues. Would you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	whatever intervention you come up with. MR NGALWANA: Yes, I think you've taken the Commission through that. You said proportionate to the threats, reasonable to the circumstances, that it must cease where – BRIG MKHWANAZI: Yes, yes. MR NGALWANA: - the goal has been achieved. Does that talk to the proportionality aspect? BRIG MKHWANAZI: It talks to proportionality. MR NGALWANA: At 5.5.1, can you give the Commission the theoretical, if you like, or a real life example, of how an operational plan, how you teach people to write an operational plan, the platoon commanders. BRIG MKHWANAZI: Yes, if we talk about platoon commanders, it's where we look to a tactical plan. A tactical plan actually is a small plan that talks to a bigger plan. In actual fact, a captain or platoon commander or a Lieutenant-Colonel, who is in charge of the platoon, will receive instruction and he has to reduce that instruction into a smaller plan that says how the platoon will actually execute the task. You've got 32 members, these 32 members, there are four sections, and how do you

		1	
1	Page 2902	1	Page 2904
1	who will be on the left and all those things must be	1	got other questions to ask the witness before we adjourn.
2	actually be put together by the platoon commander as quick	2	MR MPOFU: Oh, yes, no, no, I assume he
3	as possible to be able to deal with the situation. And the	3	had.
4	operational commander training, which is the OCT it	4	CHAIRPERSON: He has decided to hold over
5	addresses the whole situation, it's where actually we need	5	the standing order until tomorrow, but there may be
6	to talk about the holistic plan, that will actually run the	6	something else he wants to deal with, let's find out first,
7	operation as a whole, where we talk about the situation,	7	before you interpose your small matter.
8	the mission, the operational concept, we talk about the	8	MR NGALWANA: No, Chairperson.
9	execution and the administration part at the end to say,	9	MR MPOFU: Thank you, Chairperson.
10	how are we going to deal with that type of an operation?	10	CHAIRPERSON: You are asking, moving for
11	MR NGALWANA: Now, Chairperson, with	11	an adjournment until tomorrow?
12	regard to the next question I wish to ask, I am not sure if	12	MR NGALWANA: As the Chairperson pleases.
13	standing order 262 has an exhibit, and whether that has	13	CHAIRPERSON: - my pleasure is irrelevant
14	been distributed.	14	in these matters. You are asking for it, on the basis that
15	CHAIRPERSON: Those questions have to be	15	you can't carry on with your examination-in-chief –
16	addressed to Adv Pillay, they mustn't be addressed to me.	16	MR NGALWANA: Yes, Chairperson.
17	MR NGALWANA: Well, I seek to do so	17	CHAIRPERSON: - until certain other
18	through the Chairperson to Adv Pillay.	18	things happen, right. So we can find out what Mr Mpofu's
19	MS PILLAY: Chair, the standing order	19	small matter is.
20	hasn't been entered as an exhibit as yet.	20	MR MPOFU: Well, Chairperson, it may turn
21	CHAIRPERSON: Do you have copies for us?	21	out not to be that small. Chairperson, this is a matter
22	MR NGALWANA: No, Chairperson.	22	that I want to raise with all humility, and please don't
23	CHAIRPERSON: Then why do you ask the	23	shoot the messenger. If Chairperson will give me just a
24 25	question? MR NGALWANA: Because I imagine that the	24 25	couple of minutes, it's regarding the – and also because I
20	MR NGALWANA: Because I imagine that the	20	am not going to be here tomorrow, so I have been instructed
	Page 2903		Page 2905
1	evidence leaders have them, because we -	1	to raise it now. It is regarding the issue of next week,
2	MS PILLAY: We have the document, Chair,	2	Chairperson. I have spoken to some of my colleagues,
3	but we weren't aware that SAPS use it as an exhibit, so we	3	admittedly not all of them, and I can - them this morning,
4	don't have copies on us at the moment.	4	and had 100% support at least of those that I spoke to, and
5	CHAIRPERSON: Well, clearly copies can be	5	I did not carefully avoid in others that I thought might
6	prepared overnight, and it will presumably be - what will	6	not support it. It was just a coincidence. But
7	the exhibit number be?	7	Chairperson, having said that, I am raising from the point
8	MS PILLAY: SS2.	8	of view of the people we represent. The proposal, and I
9	CHAIRPERSON: SS2, are you able to ask	9	offered to discuss it with Mr Madlanga who is not here, the
10	questions now, without the copy before us, or would you	10	proposal that next week evidence should be led in-chief
11	prefer those questions to stand over until tomorrow morning	11	only for people to be cross-examined next year is, as I
12	when you have copies which will be before us as exhibit	12	understand it, the kind of via media that was proposed. We
13	SS2.	13	would like to appeal very sincerely to the Chairperson and
14	MR NGALWANA: As the Chairperson pleases.	14	the Commissioners, that the – to put it bluntly, that the
15	CHAIRPERSON: No, no, not as I please, I	15	sittings of next week should not take place along those
16	am asking you.	16	lines, or at all, and that is because, Chairperson with the
17	MR NGALWANA: Yes, I am a creature of	17	greatest respect, particularly with the kinds of people
18	habit, Chairperson, it's difficult to deal with it	18	that we represent, we are quite reticent to have them
19	otherwise, yes, I think the Chairperson' suggestion is	19	examined-in-chief, and then wait for a month or so before
20	quite sound. It's best to deal with it tomorrow.	20	the cross-examination, even though of course, one can
21	CHAIRPERSON: Yes, Mr Mpofu?	21	relook at the transcript and so on and so on. But the
22	MR MPOFU: Chairperson, just before we	22	reality is that if you have four or five witnesses who have
23	leave, if I may just interpose a small issue.	23	been backed up with evidence-in-chief all queuing up for
24	CHAIRPERSON: Before we get to a you	24 25	cross-examination in January, let's say, the reality is
	small issue, I am not sure whether your learned friend has	25	that the witness number 5 or number 6 might end up being
- A.	RCHIVE FOR JUSTICE	1	

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	Page 2906		Page 2908
1	cross-examined some time in February, and although ${\rm I}$ am	1	evidence again in-chief only next week, so that we could
2	quite aware that the Chairperson and all of us are pressed	2	deal with that, we could get his evidence rolling and he
3	for time, this appeal is simply to say that I am sure all	3	can be cross-examined when the matter resumes. If it plays
4	the parties would co-operate as much as possible to make up	4	out that way, we will have enough evidence, I would think
5	the lost time somehow when we get back, rather than having	5	for the bulk of the balance of the hearing without
6	this arrangement which is – might be prejudicial at – I	6	troubling Mr Mpofu and his clients to appear, very un-keen
7	won't put it higher than that, to some of the witnesses,	7	to be troubled right now.
8	and my appeal, I know the Chairperson's feelings on this,	8	CHAIRPERSON: To be fair, I must say I
9	is that one of the ways I will protect myself is that to	9	can understand where Mr Mpofu is coming from, the kind of
10	appeal to the Chairperson to consider this matter overnight	10	witnesses that he's calling are the sort of witnesses that
11	and so that when the Chairperson reacts then I won't be	11	will be giving evidence on factual matters, their
12	here, and also that - but in more seriousness Chairperson,	12	credibility is likely to be attacked I would suspect. I
13	we really would like to make that appeal for that reason,	13	would think they're probably fairly unsophisticated people
14	but also simply because the - if the seniors are not going	14	and if I was appearing for them, I wouldn't be happy for
15	to be here, which is clear from my unscientific poll, then	15	them to give evidence-in-chief and then have to stand over
16	also that raises other issues about those people being led	16	for a month. So I can sympathise with that point. The
17	in the absence of the leaders of the team. I will say no	17	same consideration don't apply to the other witness or
18	more, Chairperson, and I would like them, the Commission	18	potential witness you mentioned. We've only got two days
19	can now adjourn if I take a risk. Sorry, Chairperson.	19	left this week, and normally we adjourn at 3 on Friday, so,
20	CHAIRPERSON: I have the difficulty of	20	it's not a full two days anyway, although we try to have a
21	course, that at the very first meeting of this Commission,	21	shortened lunch time to allow for that. And then the week
22	it was indicated that we would not sit in certain days for	22	after that is also only four days. So it sounds to me as
23	various reasons, but we would sit until the 21st and that	23	if the suggestion you make may well be correct that we will
24	was agreed to by everybody. There wasn't a single	24	in fact without troubling Mr Mpofu's clients, we may well
25	dissention. Now we are being asked to take away four days,	25	be able to use up this time. Otherwise, we've got to make
1	Page 2907 which will amount to something of the order of 20 hours.	1	Page 2909 20 hours up at some stage in the future. That's not so
2	When we are going to make them up, I don't know. But Mr	2	easy to do. But I don't know whether any other counsel
3	Budlender, do you have any comments to make?	3	want to say anything at this stage, but it seems to me that
4	MR BUDLENDER: Chairperson -	4	regard being had to the imponderables, which you've
5	CHAIRPERSON: I will call on the other	5	mentioned, it would be difficult for us to make a decision
6	counsel as well, if necessary.	6	on the matter overnight and come back tomorrow with a
7	MR BUDLENDER: - it might be helpful if I	7	definite answer because there's so many things that we
8	gave some indication of how from our side we see the rest	8	don't know, how long the Brigadier will be in the box, we
9	of the time, the rest of the hearing proceeding from today.	9	don't know how long the NUM witness will be, they may well,
10	It's clear, the Brigadier has given evidence which goes	10	I am not sure that what has happened in the past is
11	well beyond the statement with which we were provided.	11	necessarily an accurate indication of the future, but
12	am not making a complain about it, what I am saying is that	12	certainly it may well indicate that those two alone may
13	he's clearly likely to be cross-examined for a substantial	13	take us to the end of next week, and certainly if a high
14	period whereas initially it looked as though his evidence	14	placed policeman is available to give evidence-in-chief, it
15	was largely formal, that's clearly not the case. So my	15	would obviously cover a substantial period of time. That's
16	anticipation is that the Brigadier will be with us, I would	16	not the kind of witness who will have a problem of standing
1	guess for the rest of this week. We then have – and	17	over for a month, as Mr Mpofu's witnesses would. So I
17	guess for the rest of this week. We then have and		
17 18	possibly even beyond. We then also have the evidence to be	18	would have thought it's too early to make the decision that
	-	18 19	Mr Mpofu wants made, but I don't know whether any of the
18	possibly even beyond. We then also have the evidence to be		
18 19	possibly even beyond. We then also have the evidence to be given by Mr Xilitjane of the NUM. It has been arranged	19	Mr Mpofu wants made, but I don't know whether any of the
18 19 20	possibly even beyond. We then also have the evidence to be given by Mr Xilitjane of the NUM. It has been arranged that his evidence will be in-chief only, at this stage,	19 20	Mr Mpofu wants made, but I don't know whether any of the other counsel that are sitting in the front row on my left,
18 19 20 21	possibly even beyond. We then also have the evidence to be given by Mr Xilitjane of the NUM. It has been arranged that his evidence will be in-chief only, at this stage, that also take us further into next week, and so the – and	19 20 21	Mr Mpofu wants made, but I don't know whether any of the other counsel that are sitting in the front row on my left, or even those sitting further back, wish to say anything.
18 19 20 21 22	possibly even beyond. We then also have the evidence to be given by Mr Xilitjane of the NUM. It has been arranged that his evidence will be in-chief only, at this stage, that also take us further into next week, and so the – and then there may be two or three days, optimistically, there	19 20 21 22	Mr Mpofu wants made, but I don't know whether any of the other counsel that are sitting in the front row on my left, or even those sitting further back, wish to say anything. MR BUDLENDER: Chair, may I just say one
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	possibly even beyond. We then also have the evidence to be given by Mr Xilitjane of the NUM. It has been arranged that his evidence will be in-chief only, at this stage, that also take us further into next week, and so the – and then there may be two or three days, optimistically, there will be two or three days left next week. I've had a brief	19 20 21 22 23	Mr Mpofu wants made, but I don't know whether any of the other counsel that are sitting in the front row on my left, or even those sitting further back, wish to say anything. MR BUDLENDER: Chair, may I just say one other thing, that I, what I said is I need to qualify

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1	witness, he in fairness to him, has not had an opportunity
2	to check on the availability of the person we've discussed.
3	He's been very helpful and said he will try to ensure that
4	he is available, but he is not able to answer that question
5	yet.
6	CHAIRPERSON: And of course it provides
7	the further reason for no decision to be made on this
8	aspect, until there's feedback on that point.
9	MR SEMENYA SC: Chair, we have circulated
10	the statement of the witness, we have precognised the
11	witness but about his availability there has not been any
12	contact made.
13	CHAIRPERSON: We will hold over further
14	discussion of this matter. Unfortunately, in the absence
15	of Mr Mpofu who will I am sure forgive us in the
16	circumstances. Mr Tip, do you want to say anything?
17	MR TIP SC: Mr Chair, we have kept
18	ourselves available to the 21st on the basis that those
19	were the days. If we have a situation where witnesses were
20	being clamped up, who were the kinds of witnesses who
21	should be held over for cross-examination, we share the
22	concern that Mr Mpofu has identified. It appears to us,
23	just on the basis of the past few hours, that Brig
24	Mkhwanazi is a substantial witness and more substantial
25	than had been anticipated. I think the evidence in chief
	Page 2911
1	is likely to be quite extensive. Our NUM witness is
2	is likely to be quite extensive. Our NUM witness is available, we anticipate that his evidence in chief will
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