

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 104 10 JUNE 2013 PAGES 11132 TO 11247



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1 [PROCEEDINGS ON 10 JUNE 2013]
 2 [09:39] CHAIRPERSON: The Commission resumes.
 3 Major-General, you're still under oath.
 4 WILLIAM MPEMBE: s.u.o.
 5 CHAIRPERSON: Mr Ngalwana is proceeding
 6 with his examination-in-chief.
 7 EXAMINATION BY MR NGALWANA (CONTD.):
 8 Thank you, Chairperson, members of the Commission. I'd
 9 like us to start where we left off on Friday, if the
 10 technicians could resume the tape just before that blank
 11 space of Z1, exhibit Z1, please. While we're waiting for
 12 the technicians, General, let me ask you this – in
 13 paragraph 30 of your supplementary statement you say that
 14 on the 17th of August, shortly before the National
 15 Commissioner addressed the media, you made a presentation.
 16 You see that?
 17 GENERAL MPEMBE: That's correct,
 18 Chairperson.
 19 MR NGALWANA: Can you explain briefly,
 20 you said you made a media presentation. Can you explain
 21 briefly, while we're waiting for the technicians to play
 22 the clip – there we are – if I can address myself to the
 23 technicians, could you please take it back to just before
 24 the blank space on that clip? In the meantime, General,
 25 can you explain to the Commission what the nature of the

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1 media presentation was that you gave on the 17th?
 2 GENERAL MPEMBE: Chairperson, it's true
 3 that before the National Commissioner made a media briefing
 4 on the 17th, I did start doing the presentation of the video
 5 that is now playing in the Commission currently. I did
 6 explain what was happening when the video was being played.
 7 The video that is now playing, I started also explaining on
 8 our way to the railway line before we met, how many people
 9 were searched, found with illegal firearms, and they were
 10 also handed back to them.
 11 MR NGALWANA: Can you explain in the clip
 12 that you played, when did you begin, at what stage in the
 13 clip did you start playing it, and at what stage –
 14 CHAIRPERSON: I'm sorry, please forgive
 15 me; I'm not following. You were talking about a media
 16 statement. What happened about that?
 17 MR NGALWANA: No, if you have a look at
 18 paragraph 30 of the supplementary statement –
 19 CHAIRPERSON: Yes, you talked about that,
 20 yes.
 21 MR NGALWANA: The General says he made a
 22 media presentation –
 23 CHAIRPERSON: Yes.
 24 MR NGALWANA: - before the National
 25 Commissioner gave her media address.

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1 CHAIRPERSON: Yes, yes, no –
 2 MR NGALWANA: So I'm asking him what was
 3 the nature of the video presentation that he made.
 4 CHAIRPERSON: That's right, yes. I'm
 5 trying to follow the answer.
 6 MR NGALWANA: And what he's saying is –
 7 CHAIRPERSON: Is this on the 17th?
 8 MR NGALWANA: This is on the 17th.
 9 CHAIRPERSON: Ja, okay.
 10 MR NGALWANA: This is a stock –
 11 CHAIRPERSON: Yes, no, I understand that,
 12 but let's fill the gap properly before we move back to the
 13 13th.
 14 MR NGALWANA: Yes.
 15 CHAIRPERSON: So what exactly happened on
 16 the 17th before the National Commissioner made her
 17 presentation to the media?
 18 MR NGALWANA: As I understand it, that's
 19 what he's trying to address now. General, you talk about a
 20 media presentation and I asked you what was the nature of
 21 the media presentation, and as I understand it you said you
 22 played a clip that is now being shown. Is that correct?
 23 GENERAL MPEMBE: It is correct,
 24 Chairperson. It is the video that is currently being
 25 played in front of the Commission.

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1 MR NGALWANA: And when did it start? In
 2 other words, at what stage did you begin in playing the
 3 clip, and at what stage did it end?
 4 GENERAL MPEMBE: The video started when
 5 we were searching the people, when we were getting to the
 6 railway line, and it would show that some of the people
 7 were taken to the Marikana Police Station for verification
 8 of firearms. After firearms were verified, I was
 9 telephonically informed and I also gave the instruction
 10 that if those firearms are legal, they must be handed over
 11 those, to the lawful owners.
 12 MR NGALWANA: I take it the clip that you
 13 played then continued to, when you were addressing the
 14 protesters, or strikers next to the railway line and they
 15 were engaging with you. At what stage did it then stop,
 16 did you stop the clip?
 17 GENERAL MPEMBE: Chairperson, the clip
 18 stopped at the scene where the police were murdered, but it
 19 has, it will start, it will only show when the people they
 20 move and thereafter there will be no video with that
 21 police, and then it will start again at the scene.
 22 MR NGALWANA: Yes, the clip we're seeing
 23 doesn't show the police being attacked or murdered. Does
 24 the clip that you played to the media show the police being
 25 attacked and killed?

<p style="text-align: right;">Page 11136</p> <p>1 GENERAL MPEMBE: It is not, the one that 2 I showed to the media is the one that was taken by the 3 police. 4 MR NGALWANA: Are you aware of any clip 5 that exists in the police that shows the policemen being 6 murdered? 7 GENERAL MPEMBE: Chairperson, there is a 8 video which later we saw and it was discovered that it was 9 the video from the Lonmin Mine. 10 MR NGALWANA: Are you referring to the 11 CCTV footage from a distance which shows dust and so on? 12 GENERAL MPEMBE: That is correct, 13 Chairperson. 14 MR NGALWANA: But you don't see – or let 15 me phrase it this way. From that video, which is a 16 separate footage, do you see the policemen being attacked 17 and killed? 18 GENERAL MPEMBE: Chairperson, it is not 19 clear, but myself, I could see while I was there, but in 20 the video it's not properly showing it very clearly. 21 CHAIRPERSON: I think we've seen that 22 video and what the witness says, on his take it didn't – 23 perhaps Ms Pillay can trace the exhibit number of the 24 video. It's not necessary for her to give it to us 25 immediately, but at some stage in the morning so we can</p>	<p style="text-align: right;">Page 11138</p> <p>1 where there was a blank and then there were some pictures 2 showing, are you aware whether those were part of this 3 address, or this scene? 4 GENERAL MPEMBE: Chairperson, I'll 5 request that maybe I should look at it again. 6 MR NGALWANA: - to the beginning of the 7 blank part, please. 8 [VIDEO RECORDING PLAYED] 9 MR NGALWANA: Okay, stop the clip, 10 please. It seems clear that this is not part of this 11 scene. Is that correct? 12 GENERAL MPEMBE: Then the part that is 13 blank, I didn't see. It means to me the way in which I saw 14 it, it is not part of the scene. 15 CHAIRPERSON: If you watch the 16 soundtrack, you see when the screen was dark we could hear 17 voices for a while before we saw what looks like somebody's 18 hand or something, but those voices we heard when the 19 screen was dark, were those recorded at the scene at the 20 time you addressed the people, if was that something, was 21 that nothing to do with what we're busy with? 22 GENERAL MPEMBE: Chairperson, those say 23 something different, not the one that is at the scene. 24 MR NGALWANA: Now during that blank 25 period and the scene that immediately appears just before</p>
<p style="text-align: right;">Page 11137</p> <p>1 insert it in the record at the appropriate place, so when 2 we read the record we'll know what video is being talked 3 about. 4 MR NGALWANA: Thank you, Chairperson. 5 Can we then go back to the 13th, Major-General? Could the 6 clip please be played just before the blank spot? 7 [VIDEO RECORDING PLAYED] 8 MR NGALWANA: Yes, now continue playing 9 the clip, please. 10 [VIDEO RECORDING PLAYED] 11 MR NGALWANA: Okay, stop the clip. 12 General, are you aware of what is going on there in that 13 blank clip which also shows some pictures immediately 14 afterwards, just shortly before you appear again? 15 GENERAL MPEMBE: Chairperson, I don't 16 remember what has happened there. Maybe the video 17 operators they can be in a position to explain what has 18 happened there. 19 MR NGALWANA: Now are you aware whether 20 this is part of the scene where you were addressing the 21 strikers next to the railway line, what we now see? If you 22 can continue please briefly with the clip? 23 [VIDEO RECORDING PLAYED] 24 MR NGALWANA: Yes, thank you. Are you 25 aware whether the scene just before you reappear, you know</p>	<p style="text-align: right;">Page 11139</p> <p>1 you reappear, do you know what of significance happened at 2 the scene during that time? In other words, during the 3 blank period. Is there anything you said that has not been 4 captured here, or is there anything that the protesters or 5 strikers said to you that has not been captured, that might 6 perhaps have been blanked out by the dark scene, if you 7 like? 8 GENERAL MPEMBE: Chairperson, unless the 9 video is played again a little bit going forward, there is 10 a part where I came when I was approaching them, then I 11 said [African language]. I don't know whether it's still 12 coming, but that is a part which it may be preceding this 13 one that is coming. 14 MR NGALWANA: Yes, no – 15 MR MAHLANGU: The part I remember – 16 CHAIRPERSON: Let's get the interpreter 17 to interpret the – yes, Mr Mahlangu. 18 MR MAHLANGU: - was when I approached 19 them, I said, "We are the police, we are from the police. 20 The problem we have is with those things that you have in 21 your hands." I don't know if that part is still coming or 22 has – 23 MR NGALWANA: Perhaps we should continue 24 playing this clip; maybe it will jog your memory about 25 whether there is anything that has been left out, because</p>

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1 the excerpt to which you now refer is at the beginning of
 2 this, or almost at the beginning of the clip. Can you
 3 continue playing the clip, please, Mr Operator?
 4 [VIDEO RECORDING PLAYED]
 5 [09:58] MR NGALWANA: Yes, can you stop it there,
 6 please? Then they started engaging with you. Now what I'm
 7 asking, General, is before the address you just made, the
 8 one which was seen now, is there anything – remembering of
 9 course that we've seen this on Friday – is there anything
 10 that has not been recorded here to your memory? Is there
 11 anything that we have not seen on this clip that either you
 12 said or the protesters said or did?
 13 GENERAL MPEMBE: At this stage where I
 14 saw the video being played, it is in a chronological order,
 15 but the first part where I say [African language], it seems
 16 as if it has not yet appears.
 17 MR MAHLANGU: Up to this far –
 18 CHAIRPERSON: Sorry to interpret you. At
 19 the beginning of the first page of exhibit – I'm still not
 20 quite sure what the exhibit number is, but the exhibit that
 21 we referred to on Friday, the transcript which apparently
 22 is incomplete, but at the foot of the first page of that
 23 exhibit, which I think is QQ2 actually, or QQ3 –
 24 MS PILLAY: QQ2, Chair.
 25 CHAIRPERSON: Thank you. At the foot of

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1 QQ2 the following appears, "General Mpembe, Where is that
 2 man who's making noise? We are the police and we are here
 3 because of what is happening. We are not here to arrest
 4 you. However, we do have a problem, a problem concerned
 5 with things that you're carrying. Those things are
 6 illegal." Now that sounds like the passage to which you
 7 referred earlier.
 8 MR NGALWANA: Yes.
 9 CHAIRPERSON: So it is at the very
 10 beginning of the clip, and according to the transcript what
 11 he said in, you know I take it, it was Zulu, was it, that
 12 he was speaking, is translated here at the foot of the
 13 first page. I don't know whether that assists.
 14 MR NGALWANA: Yes, General, the
 15 utterances, your utterances to which you've just referred
 16 and indicated that they may not have been captured, has in
 17 fact been captured earlier on. You acknowledge that?
 18 GENERAL MPEMBE: That's correct,
 19 Chairperson.
 20 MR NGALWANA: Now that we've identified
 21 that that part has been recorded, is there any other part
 22 of what happened or was said on that day either by you or
 23 by the strikers which we have not seen or heard on this
 24 clip?
 25 GENERAL MPEMBE: All of them appeared,

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1 Chairperson.
 2 MR NGALWANA: Right, I don't propose
 3 playing this clip to the end because we've seen much of it
 4 on Friday. Can we then take it now to perhaps this little
 5 part towards the end, or the duration of the General's
 6 address to the protesters, just shortly before they break
 7 the police line, please?
 8 [VIDEO RECORDING PLAYED]
 9 MR NGALWANA: Sorry, if you can take it
 10 slightly back. Okay, you can play it from there, it's
 11 fine.
 12 [VIDEO RECORDING PLAYED]
 13 MR NGALWANA: Right, you can stop there.
 14 Now it's common cause that that's the time you were saying
 15 you want their spears, otherwise you won't let them go.
 16 General, can you then recall what happened shortly before
 17 this scene? Because it appears that the cameraman has now
 18 moved to another area. Is there anything –
 19 MR MPOFU: Chairperson, sorry, this might
 20 not be significant, but I just want to correct Mr
 21 Ngalwana's interpretation of what was said in that previous
 22 clip. It didn't say anything about otherwise they won't
 23 let them go, but the other part that he said was correct.
 24 CHAIRPERSON: I mean all of us in South
 25 Africa knows the word "Umkhonto" means spear, so that we

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1 heard quite clearly.
 2 MR MPOFU: Ja. No, that's not relevant,
 3 Chairperson.
 4 CHAIRPERSON: Mr Mpofo, Adv Tokota says
 5 he thinks we should play it again because he thinks he
 6 heard something like that. So let's play that little bit
 7 again and those of you who can understand that particular
 8 language can listen very carefully and help the rest of us
 9 who can't.
 10 MR MPOFU: Thank you, Chairperson.
 11 [VIDEO RECORDING PLAYED]
 12 MR NGALWANA: Can you stop the clip,
 13 please.
 14 MR MAHLANGU: That was also my
 15 interpretation, Chairperson, they say, "The only thing we
 16 are interested in are your spears and if you don't give the
 17 spears, then I would not let you go, would not allow you to
 18 go."
 19 MR MPOFU: Yes, that's correct,
 20 Chairperson.
 21 MR NGALWANA: Right, General, between the
 22 time you say to them "All I want are your spears, otherwise
 23 I won't let you go," then we see this. Now you were at the
 24 scene; the legal representatives were not, neither were the
 25 Commissioners. Perhaps some of the people in the gallery

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1 were. Can you explain what happened between the time you
2 said "I won't let you go if you don't give me your spears,"
3 and this particular scene?
4 GENERAL MPEMBE: Chairperson, I said
5 [African language].
6 MR MAHLANGU: I said to them, Mr
7 Chairperson, "I will count."
8 GENERAL MPEMBE: And in terms of my
9 supplementary statement I said, I corrected, because I
10 wanted to count to 10 and when I said 1, it's then that
11 they moved. They forced their way through the police line
12 with their weapons, in a crouching position, and continued
13 in their march towards the koppie.
14 CHAIRPERSON: Can I ask a question at
15 this point? As I think you pointed out to Mr Ngalwana, it
16 looks as if the cameraman is now in a different position,
17 so what happened, is this a different camera or was it a
18 pause while the cameraman moved from where he'd been
19 earlier to the point next to this rock?
20 MR NGALWANA: Chairperson, I don't want
21 to speculate; perhaps the cameraman can explain that to us,
22 if he's going to be called as a witness.
23 CHAIRPERSON: Is the cameraman in a
24 different position, or is he just focusing differently?
25 There's something I don't understand, but perhaps it can be

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1 explained.
2 MR NGALWANA: What we know is there were
3 two camera people there, but I hesitate to –
4 CHAIRPERSON: No, that's what I'm
5 interested in, because if it's a different position, this
6 clip is taking from a different position, it either means
7 that there was a gap while the cameraman moved, or the
8 angle was somehow changed, or there were two cameramen and
9 effectively two video clips have been spliced together,
10 with raises other questions. But anyway, but I thought if
11 this could be sorted out for us it could help.
12 MR NGALWANA: Let's see if the General
13 can help us. I've already asked you, General, what in your
14 recollection happened between you saying "I won't let you
15 go until you give me your spears," and this scene. You've
16 explained that. Perhaps for the benefit of the
17 Chairperson, could you explain that again, and then I'll
18 ask you a follow-up question, if necessary? Let me ask the
19 question again. From the time you said "I won't let you go
20 unless you give me your weapons" – I'm paraphrasing – to
21 this scene where we see the protesters marching on in a
22 crouching position, what happened?
23 GENERAL MPEMBE: I cannot really explain
24 what happened, but there was a video that showed me
25 counting and then –

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1 MR NGALWANA: Can you explain what
2 happened, General, please?
3 GENERAL MPEMBE: And the camera person
4 was alone. There was, there were two people. The other
5 one was a camera person, the other one was taking photos.
6 MR NGALWANA: Okay, I'm asking you the
7 same question I asked you previously, which you've
8 answered. For the benefit of the Chairperson I'm now, I've
9 asked you the same question and I asked that you answered
10 in perhaps a similar fashion as you did before, because
11 it's the same question, unless of course there's something
12 that you want to say. The question is this, General; we
13 are talking about a video clip, right. There was a time
14 where you said [African language], "I won't let you go.
15 All I want are the spears." Then the clip shows us this,
16 which is the protesters or strikers marching through past a
17 big rock to their right. What I'm asking you to explain to
18 the Commission very briefly is from the time you said to
19 the marchers, "All I want are your weapons, otherwise I
20 won't let you go," to when they marched through and passed
21 the left-hand side of this rock, can you fill in that gap?
22 What happened?
23 GENERAL MPEMBE: Chairperson, I cannot
24 really explain what happened. Maybe Warrant-Officer Ndlovu
25 and Masinya might give us an explanation.

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1 MR NGALWANA: Where were you standing at
2 this time when these people were marching through?
3 GENERAL MPEMBE: I was still on the side
4 of the road.
5 MR NGALWANA: From where we can see them
6 now, were you behind them or beside them or in front of
7 them?
8 GENERAL MPEMBE: I was beside them, the
9 same place where I was standing when I was addressing them.
10 COMMISSIONER TOKOTA: What Mr Ngalwana
11 wants you to repeat is what you said earlier. I haven't
12 seen you understanding him. Remember you said that after
13 you said that "If you don't give me your spears, I won't
14 let you go," then you started saying that you said you were
15 going to count up to 10 and then when you counted 1, they
16 crossed the police line. That's what he wants you to
17 repeat for the benefit of the Chairperson. Is that not so?
18 Which was not done; it looks like they were busy talking to
19 one another here. They might have not heard you. That's
20 why Mr Ngalwana wanted you to repeat that.
21 MR MPOFU: Chairperson, yes, I just
22 thought maybe to assist and save time, just to assist Mr
23 Ngalwana, if as Commissioner Tokota says, if what he wants
24 out is the whole counting business, that our witnesses
25 have, at least in one of the statements, mentioned that.

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1 So it's common cause that there was that count. So he can
 2 leave it on that, on the issue of the counting, that there
 3 was counting. I'm not sure whether it was to 10 or to 3.
 4 That's another matter.
 5 MR NGALWANA: Yes, thank you,
 6 Commissioner Tokota. General, is what Commissioner Tokota
 7 has just put to you a factually correct account of what
 8 happened between you saying "All I want are you spears,"
 9 and the people moving through the line?
 10 GENERAL MPEMBE: Chairperson, it's true
 11 that after I've said [African language] –
 12 MR MAHLANGU: It's true, Chairperson, I
 13 said to them "I only want the spears. If you don't hand
 14 over those spears, I'm not going to allow you to proceed."
 15 GENERAL MPEMBE: I even said to them
 16 [African language].
 17 MR MAHLANGU: I said to them "I'm going
 18 to count. I'll count up to 10."
 19 GENERAL MPEMBE: And when I said 1, and
 20 they rushed and they crossed the police line. They forced
 21 their way through the police line with their weapons, and
 22 when they have passed, just when they appear, just the one
 23 that we see, they will see a police official, they started
 24 again to crouch.
 25 MR NGALWANA: May I ask the clip to

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1 continue, please?
 2 [VIDEO RECORDING PLAYED]
 3 MR NGALWANA: Okay, stop the clip. Is
 4 that the policeman you were talking about, General, when
 5 you said police official?
 6 [10:18] GENERAL MPEMBE: Chairperson, yes, and
 7 also I spoke about the ululating of these people and the
 8 clicking of their, the weapons, and the movement when they
 9 go out. That clicking and the ululating, it was also
 10 signifying something that one could not understand what was
 11 happening.
 12 MR NGALWANA: In your experience as a
 13 policeman, General, have you experienced a similar clicking
 14 of weapons and ululating before in a crowd management
 15 situation?
 16 GENERAL MPEMBE: No, Chairperson, the
 17 only experience that we, I had, it was during the time of
 18 the violence that was prior 1994 in the Soweto, but people
 19 were not carrying so much of dangerous weapons and
 20 ululating.
 21 MR NGALWANA: Thank you. Can we just
 22 play the clip to the end? I think it's almost reaching the
 23 end now.
 24 [VIDEO RECORDING PLAYED]
 25 MR NGALWANA: Alright, thank you, you can

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1 stop the clip. You can stop it completely, not pause. I'm
 2 moving on. General, at the time these people are now
 3 marching through, they've marched through the, what you
 4 call the police line, what then did you instruct, if
 5 anything, the police members to do? I think the word to
 6 use is "briefing."
 7 GENERAL MPEMBE: With regard to the
 8 earlier briefing, Chairperson, I said to them if they
 9 cross, or they cross the police line, we should allow them
 10 because as I've explained, I didn't want we should
 11 experience confrontation, but we should keep a reasonable
 12 distance between us and them in a line formation at the
 13 back, and then we follow them, and I also testified to say
 14 why we have to do that, just to escort them until to where
 15 they said they wanted to go.
 16 CHAIRPERSON: I'm sorry to be tedious,
 17 but I want to go back to the point I raised earlier. You
 18 say I have in front of me a statement of Warrant-Officer
 19 Masinya, which is exhibit HHH8, page 179, in the second
 20 bundle we were given on Friday. Now in that statement on
 21 the second page, para 6, he says this, "The police followed
 22 them and tried to prevent them" – he said that the police
 23 had now, the miners had now moved off in what he calls a
 24 different direction. He says, "The police followed them
 25 and tried to prevent them from entering the nearby

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1 settlement. On their way I changed direction and drove to
 2 their front in order to have clear vision so as to continue
 3 with recording footage. The video machine we," I take it
 4 'were' is left out. "The video machine we were operating
 5 is an old model and at some stage I observed blank footage.
 6 I stopped it forthwith. However, I continued to record at
 7 a later stage and it was operated efficiently." Now the
 8 problem I've got is this; I want to know whether at some
 9 stage shortly after he talks about counting, whether the
 10 machine, the video camera was turned off and then
 11 subsequently turned on again, and then later on when we saw
 12 the people marching off into the distance, as it were, and
 13 then the very next picture we saw was a picture of the
 14 Nyalas. Again is that the point at which the machine was
 15 turned off and then subsequently turned on again? That's
 16 what I want clarity on. Now obviously we'll ask the
 17 Warrant-Officer when he comes, but it will be helpful to
 18 have as a check what the Major-General says about that. So
 19 now obviously he doesn't know when the machines were turned
 20 on and off, but he does know – I hope – whether there's a
 21 gap in what was recorded, compared with what he remembers
 22 of what happened. So you understand my problem, Major-
 23 General? Are there two gaps effectively in the video clip
 24 we saw – just after the section where you spoke and the
 25 people, after you started counting the people walked away,

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1 and then the next picture we see is a picture taken from
 2 next to a rock, the cameraman obviously to the right of a
 3 rock. Is there a gap there in what was actually recorded,
 4 or is it a continuous picture of what happened – first
 5 part, and then secondly, after some time we see the people
 6 marching off and then the scene changes, as it were, and we
 7 see what looks like an Nyala. Now was there also a gap in
 8 recording at that point? You understand the problem I
 9 have? Can you help me on that?

10 GENERAL MPEMBE: Chairperson, there is a
 11 video that showed my counting. Secondly, there is a video
 12 that showed a policeman wearing a helmet and with having a
 13 shotgun, and according to Warrant-Officer Masinya is that
 14 when they were moving on foot, that's where then it's a
 15 problem of a mechanical problem of the video. Hence he
 16 entered, he climbed into a vehicle; he moved. Chairperson,
 17 that is the explanation that I can give.

18 CHAIRPERSON: - the first part, and then
 19 at the, as we watched the clip we saw people marching off
 20 into the distance, and then all of a sudden we saw a
 21 different scene where there's a Nyala. Was that a point
 22 also at which there was no recording done? In other words
 23 was there a gap in what happened which one doesn't pick up
 24 from the video, because all one sees is people marching and
 25 the next thing one sees a different scene and a Nyala. So

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1 was there a gap there as well? The one gap when there was
 2 a blank spot, so something, there was a mechanical problem
 3 with the camera presumably, and the second spot, was there
 4 a decision not to record or how does it work? I know he's
 5 going to come and give evidence, but I want to have your
 6 evidence to check his evidence against. You understand?
 7 That's why I'm asking you the question.

8 MR NGALWANA: Chairperson, I wonder if
 9 the second sentence, or the paragraph you've just read
 10 doesn't give some explanation about whether this, it seems
 11 to be –

12 CHAIRPERSON: We'll pick it up – sorry to
 13 interrupt you. We'll pick it up with the Warrant-Officer
 14 when he comes, but I was hoping to have some evidence from
 15 the Major-General as to whether he can see one hiatus or
 16 two hiatuses – if that's the plural – when he sees the
 17 video clip, because that will be important material with
 18 which to compare the evidence of Warrant-Officer Masinya.
 19 That's why I asked the question, you see.

20 MR NGALWANA: Perhaps we should play –

21 CHAIRPERSON: It doesn't help to look at
 22 what Warrant-Officer Masinya says. I want to know whether
 23 he can tell us from his own memory that everything on the
 24 clip is there except one hiatus, or whether there are two
 25 hiatuses, because it looks for example from the video as if

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1 that scene with the Nyala takes place immediately after we
 2 see the people marching into the distance. Now that may be
 3 so; alternatively there may just be a change of angle;
 4 alternatively the machine may have been switched off and
 5 then switched on again after some time had elapsed. That's
 6 what I want to know from the witness.

7 MR NGALWANA: Perhaps to jog the Major-
 8 General's memory, we should play the clip shortly before
 9 the Nyalas appear, then he'll perhaps may be able to say
 10 whether there was one or two or three gaps.

11 CHAIRPERSON: That's a good idea.

12 MR NGALWANA: May I ask the technicians
 13 to put the clip in again? Z1.

14 [VIDEO RECORDING PLAYED]

15 MR NGALWANA: Right, thank you,
 16 Technicians. General, from what you've seen now, are you
 17 able to say whether there were any gaps? If there are any
 18 gaps, are you able to define those gaps to the Commission?

19 GENERAL MPEMBE: Chairperson, it's true
 20 there is a gap and that gap is the one that is being
 21 explained by Warrant-Officer Masinya that the camera could
 22 not work from a distance when they were walking. They
 23 climbed into a vehicle and that's why then he was starting
 24 to shoot when he was already in the road.

25 MR NGALWANA: So are you able to say

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1 whether – well, are you able to say what it is that
 2 happened at the time when Warrant-Officer Masinya was not
 3 recording, that which we don't see here, whether because
 4 the camera had been switched off because he was driving
 5 through, or the camera was malfunctioning, or –

6 GENERAL MPEMBE: It is the movement of
 7 the people and also the shooting of the stun grenade.

8 MR NGALWANA: Thank you, General.
 9 Perhaps Warrant-Officer Masinya may hopefully be able to
 10 fill in some gaps there. Thank you to the technicians –

11 CHAIRPERSON: - another question before
 12 you move on. On the clip we saw the strikers marching off
 13 into the distance, as I put it, and then we saw pictures
 14 taken from the road. Now is it possible for you to
 15 estimate how long approximately after the pictures were
 16 taken of the strikers marching off into the distance, was
 17 the stun grenade thrown and the teargas? In other words,
 18 did the – as I understand your evidence, what happened was
 19 there was a stun grenade and there was teargas, and then
 20 the strikers then turned and attacked the police. I'm
 21 interested to know how long after the last picture was
 22 taken of the strikers marching into the distance did that
 23 incident take place, stun grenade, teargas, the turning
 24 around of the strikers, and their attacking the police.
 25 Was it a few seconds after what we see there, or was there

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1 quite a period that elapsed?

2 GENERAL MPEMBE: Chairperson, I'm not

3 good in estimation, but it was not so much long after that

4 period, but as I indicated on the scene I remember it was

5 just after they have passed the dam and whereafter I saw

6 that they were moving in the direction of the informal

7 settlement.

8 MR NGALWANA: Thank you, General.

9 General, let me take you just one small step back. When

10 you were briefing the members on that scene as regards what

11 it is that they should do, was Lieutenant-Colonel Vermaak

12 already at the scene?

13 GENERAL MPEMBE: No, Chairperson.

14 MR NGALWANA: Alright, now the strikers

15 have marched through the police line. Can you just then

16 take the Commission through – you walked, you testified on

17 Friday that you formed a basic line and you walked behind

18 them. Correct?

19 GENERAL MPEMBE: That's correct,

20 Chairperson.

21 MR NGALWANA: The Nyala, or soft-skin

22 vehicles to their right, you explained on Friday that the

23 intention of that – can you just repeat that briefly?

24 GENERAL MPEMBE: Chairperson, I did

25 testify that Lieutenant Baloyi was in a Nyala that was on

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1 the, it was on the – what's, the left-hand side as we were

2 following them. There was also a Nyala where Warrant-

3 Officer Lepaaku was in, just blocking the way to the

4 informal settlement.

5 [10:38] MR NGALWANA: Why would you want to block

6 them going to the informal settlement?

7 GENERAL MPEMBE: I would say that with my

8 earlier briefing, indicating that we, since the strikers

9 according to the briefing that I received, that they were

10 maiming and killing the people that are going at work, and

11 also indicating that they want "Umlungu," that meaning that

12 the employees, an employer of the Lonmin. We tried by all

13 means not to allow them to enter into the informal

14 settlement because we don't know that those that are

15 working, we don't know where they are staying.

16 MR NGALWANA: Now at what stage was the

17 CS gas and stun grenade thrown as you are escorting the

18 people towards the koppie?

19 GENERAL MPEMBE: Chairperson, I did

20 indicate that I saw when the strikers, they were moving

21 towards the informal settlement. It's when the CS and the

22 stun grenade was used.

23 MR NGALWANA: At that moment, are you

24 aware of anyone, including yourself, who may have given an

25 order that stun grenade and CS gas be used at that specific

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1 moment?

2 GENERAL MPEMBE: Chairperson, at that

3 moment I did not give an order and I did not know who gave

4 the order.

5 MR NGALWANA: You testified on Friday I

6 think that one member shot, believing that he had been

7 given an order, I think it's Koen or Kuhn, I'm not sure

8 what his rank is.

9 GENERAL MPEMBE: Chairperson, it's

10 correct, it's Warrant-Officer Kuhn. It was after the

11 incident when I asked him to say why did he use the CS and

12 he said to me, "General, I did hear the order."

13 CHAIRPERSON: Now you say you didn't give

14 an order. Did you hear, did you yourself hear anybody else

15 giving an order?

16 GENERAL MPEMBE: No, Chairperson.

17 MR NGALWANA: Did Warrant-Officer Kuhn

18 tell you from whom he got an order to fire CS gas?

19 GENERAL MPEMBE: No, Chairperson.

20 MR NGALWANA: You did ask him, I take it.

21 Did you ask him?

22 GENERAL MPEMBE: That's correct,

23 Chairperson.

24 MR NGALWANA: Right, so CS gas is fired,

25 stun grenades are fired. What then happened?

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1 MR MPOFU: Sorry, Chairperson – I'm

2 sorry, let the Commissioner ask first.

3 COMMISSIONER HEMRAJ: General Mpeembe, at

4 the time the CS and the stun grenade were used, were all

5 the police still walking in that straight-line formation

6 behind the strikers?

7 GENERAL MPEMBE: That's correct,

8 Chairperson. The, I did also explain that Lieutenant

9 Baloyi was also blocking on the other side and there was

10 another point where he was blocking, and then there was a

11 point where the Nyala of Warrant-Officer Lepaaku that was

12 in.

13 CHAIRPERSON: I get the impression from

14 the way you wave your hands, as you were facing this group

15 who were walking away from you, Baloyi was on your left.

16 Was the other Nyala on the right? That's the way you

17 indicated with your hands, but that may not mean anything.

18 GENERAL MPEMBE: That's correct,

19 Chairperson.

20 COMMISSIONER HEMRAJ: Where was Warrant-

21 Officer Kuhn at the time he fired the CS gas and stun

22 grenade?

23 GENERAL MPEMBE: He was at the back and

24 he used a shotgun.

25 COMMISSIONER HEMRAJ: And you were in

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1 that same line-up as well, General?

2 GENERAL MPEMBE: I was on that line on

3 the extremely right-hand side, and while he was extremely

4 on the left-hand side, and when he, when it was shot, it

5 moved in this direction where the protesters were moving

6 in.

7 COMMISSIONER HEMRAJ: Approximately how

8 many policemen were there in this line?

9 GENERAL MPEMBE: Chairperson, I could not

10 remember very well, because as I have said, others they

11 were in the Nyalas and others were also in the soft,

12 because they were driving this soft-top vehicles.

13 COMMISSIONER HEMRAJ: Approximately?

14 GENERAL MPEMBE: It could be

15 approximately 60 to, 60 something, yes.

16 CHAIRPERSON: I know these things aren't

17 always easy, but can you estimate the distance between Kuhn

18 on the one side and you on the other at that stage? You

19 said there were about 60 policemen between you and Kuhn, as

20 I understand you, but can you give us roughly an estimate

21 of the distance?

22 GENERAL MPEMBE: Chairperson, I'm not

23 good – maybe if I use the buildings to can estimate, but

24 I'm not good in measurements and estimations.

25 CHAIRPERSON: Alright, use the buildings,

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1 as you put it. In courts we always do that, ask a witness

2 to estimate the distance comparing the position between

3 himself in the witness box and the back of the court or

4 the, or something like that, or sometimes we also talk in

5 terms of football fields and cricket pitches and so that's

6 perhaps some way you can give us an estimate that makes

7 sense.

8 GENERAL MPEMBE: Talking from the scene,

9 I was at the dam and I think Warrant-Officer Kuhn might

10 have been, let's say between 20 to 15, I think, metres away

11 from me.

12 CHAIRPERSON: Thank you.

13 MR NGALWANA: General, using this room as

14 a pointer, if you were standing next to that speaker, how

15 far would you say Warrant-Officer would have been from you,

16 using this room as the police line? Now if you were

17 standing next to that speaker, how far would Warrant-

18 Officer Kuhn have been standing, or where would he -

19 GENERAL MPEMBE: I think the speaker

20 there and it could be a very small distance. I don't know

21 whether this is 20, but he could be, he might, he could

22 have been further than this.

23 CHAIRPERSON: You say further than this.

24 You're pointing to the speaker on the other side of the

25 room, are you?

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1 GENERAL MPEMBE: Maybe on the other side

2 of the –

3 CHAIRPERSON: It may have been further

4 than that.

5 GENERAL MPEMBE: Yes.

6 CHAIRPERSON: The one advantage of

7 sitting in a court is one has an orderly who can pace these

8 things out, but perhaps Mr Pretorius would like to help us.

9 It is after all a police witness and you're the attorney

10 for the police, so – 20 police attorney paces. I don't

11 know how much that translates into metres, but it looks

12 like, as you said, somewhere between 15 and 20 metres.

13 MR MPOFU: Chairperson, I'm sure if the

14 witness did it himself, it would be 15 metres because he's

15 tall.

16 CHAIRPERSON: Thank you, Mr Pretorius,

17 next time we need some pacing done by an expert we'll ask

18 you to help us again.

19 MR NGALWANA: I take it, General, you

20 said it's beyond the – I don't know, 20, is it 20 steps or

21 – 20 steps, is that correct?

22 GENERAL MPEMBE: Correct, Chairperson.

23 MR NGALWANA: So the CS gas is fired,

24 stun grenade is used. What then happened, General?

25 GENERAL MPEMBE: Chairperson, I testified

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1 earlier on that then the strikers attacked the police.

2 That's the incident where the police died. Warrant-Officer

3 Lepaaku was also removed from the scene by Lieutenant-

4 Colonel Merafe to the hospital of the mine, and he died at

5 the hospital. Warrant-Officer Monene died on the spot.

6 Lieutenant Baloyi was airlifted to the hospital in

7 Rustenburg, that is Ferncrest. At this point I will also

8 indicate that the members who died and the Warrant-Officer

9 Baloyi, the strikers also took – or I can use the word -

10 robbed them of one R5, two 9mm pistols, one shotgun, one

11 police radio.

12 MR NGALWANA: Yes, there were of course

13 other casualties as well who were not police members. Are

14 you able to tell the Commission how they came to lose their

15 lives?

16 GENERAL MPEMBE: Chairperson, there was

17 one protester that died not very far away from where

18 Warrant-Officer Lepaaku died. That's the only one where I

19 was, that I have knowledge of.

20 MR NGALWANA: You say he died next to

21 Warrant-Officer Lepaaku. Did you see how he died?

22 GENERAL MPEMBE: I didn't see who shot at

23 him, but I would believe that he died probably when the

24 police were defending themselves.

25 MR NGALWANA: Right, then General,

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1 immediately after the scene, the casualties and the
 2 injuries you've just described, what did you then do?
 3 GENERAL MPEMBE: Chairperson, I did
 4 explain that I did handle the situation and there was a
 5 time where I was approached by Lieutenant-Colonel Vermaak
 6 where he informed me that my life is in danger and I said
 7 to him that I will want to wait for Warrant, for Brigadier
 8 Van Zyl and Brigadier Calitz to come and take over the
 9 scene, and immediately when they came I did hand over the
 10 scene to them.
 11 MR NGALWANA: Did you perform any
 12 debriefing after that event?
 13 GENERAL MPEMBE: Chairperson, I just want
 14 to understand the question; the debriefing on the scene or
 15 at the JOC?
 16 MR NGALWANA: Did you perform any form of
 17 debriefing after the scene, whether it was at the scene or
 18 elsewhere?
 19 GENERAL MPEMBE: Chairperson, the
 20 debriefing was done by the members to their commanders and
 21 also it was also done when the reports were given during
 22 the JOCOM meeting.
 23 MR NGALWANA: Are you able to tell the
 24 Commission what the nature of the debriefing was, when you
 25 say there was a debriefing between the members and their

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1 commanders, and then if you can take the Commission through
 2 what other forms, if any, of debriefings were done,
 3 General?
 4 GENERAL MPEMBE: Chairperson, the
 5 debriefing that was done, it was to say what actually
 6 happened. It was then also discovered that the members
 7 that, who died, they lost firearms, they lost ammunitions
 8 and the other properties, and after that debriefing I also
 9 called upon EHW to do a psychological debriefing to the
 10 members that experienced the trauma. I also received the
 11 psychological debriefing.
 12 [10:58] MR NGALWANA: What were the results of
 13 the psychological debriefing and how was it - or let me ask
 14 one question at a time. Do you know what the result of
 15 that psychological debriefing was?
 16 GENERAL MPEMBE: Chairperson, what I know
 17 is that there was no any other psychologist, social worker
 18 or a pastor that came to me to say these are the members
 19 that they have maybe this type of a trauma. Secondly, in
 20 terms of myself is also the same but we are still
 21 undergoing, even currently undergoing the counselling.
 22 MR MPOFU: Ja, sorry Chairperson, I
 23 forgot what I wanted to say earlier, before Commissioner
 24 Hemraj asked her question, was at that point there was a
 25 question which was asked which was kind of mutually

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1 destructive, so I wanted to know which was which. Mr
 2 Ngalwana said it was in regard to Warrant Officer Koen and
 3 Mr Ngalwana said you did not ask him who issued the
 4 instruction, did you ask him. And then the witness said
 5 that is correct. So I'm not sure whether it's the one or
 6 the other because if he was answering to the earlier
 7 question then that is correct would mean something else.
 8 If it's the second one, that is correct will mean the exact
 9 opposite.
 10 MR NGALWANA: General, did you ask
 11 warrant officer Koen who had given him an order to use CS
 12 gas.
 13 GENERAL MPEMBE: After the incident, I
 14 did testify earlier on that I did ask him and he said that
 15 he heard an order.
 16 CHAIRPERSON: Did he say whose voice he
 17 heard or did he indicate in any way who gave the order that
 18 he heard? Whether he knew who gave the order -
 19 GENERAL MPEMBE: Chairperson, he did not
 20 tell me whom did he hear and what voice is that but at this
 21 point in time, since the Chairperson is asking me that whom
 22 did he hear. Later on at Potchefstroom, which I am still
 23 going to testify, I was sitting with Lieutenant-Colonel
 24 Merafi and I was also sitting with Captain Tupe and
 25 Lieutenant-Colonel Vermaak saw us sitting and communicating

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1 together and he said "Generaal jy mag nou hierdie outjies
 2 trust nie, u sal moet versigtig wees met hulle."
 3 CHAIRPERSON: What he said in Afrikaans
 4 was "you mustn't trust these chaps, you must be careful
 5 with them." Is that right?
 6 GENERAL MPEMBE: I just want to point out
 7 in short, Chairperson, to say there at Potchefstroom while
 8 Colonel Vermaak saw me sitting with them it was where
 9 Captain Tupe said that he heard it's me who gave the order.
 10 MR NGALWANA: That he heard it was you,
 11 Sir.
 12 GENERAL MPEMBE: Yes. No, he said that
 13 he heard as if it's me who gave the order. That was not
 14 said by Koen himself, it was Tupe.
 15 CHAIRPERSON: On a note of semi-confusion
 16 we'll take the tea adjournment.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [11:34] CHAIRPERSON: The Commission resumes.
 19 Major-General, you're still under oath.
 20 WILLIAM MPEMBE: s.u.o.
 21 CHAIRPERSON: Mr Ngalwana, some more
 22 questions for the witness, I assume?
 23 EXAMINATION BY MR NGALWANA (CONTD.):
 24 Thank you, Chairperson. General, before we broke for tea
 25 you were explaining what - is it Warrant-Officer or Captain

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1 Thupe may have said to you at Potchefstroom. What exactly
 2 is it that – well, let's start with Warrant-Officer Kuhn,
 3 what did he say to you as regards the giving or non-giving
 4 of the order to fire CS gas on the 13th?
 5 GENERAL MPEMBE: Chairperson, he, earlier
 6 on I said at Potchefstroom we gathered all those members
 7 that took part on the 13th, and during that discussion,
 8 that's when then Warrant-Officer Kuhn was asked in the
 9 presence of all the members there, and then he said he
 10 heard an order but he could not know who gave the order or
 11 whose voice was that. It is in that meeting where also
 12 Captain Thupe said, "General, I heard you giving the
 13 order." I said to Captain Thupe, "I did not give the
 14 order. If I could have given the order I could have given
 15 the order through the radio and that everybody could have
 16 heard me." That's when then Captain Thupe kept quiet, and
 17 that was the end of the matter.
 18 MR NGALWANA: Now in the police line, do
 19 you recall how near or how far Captain Thupe was standing
 20 next to you as you were escorting the marchers?
 21 GENERAL MPEMBE: Chairperson, I did not
 22 see him, but what I remember very well is that he was not
 23 next to me during the time when we were moving.
 24 MR NGALWANA: And on the 13th, as you're
 25 standing in the basic line, escorting the strikers, do you,

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1 can you explain to the Commission what the noise levels
 2 were?
 3 GENERAL MPEMBE: Chairperson, the noise
 4 was high, made by the chopper that Colonel Vermaak was,
 5 because by that time we were monitored by the chopper where
 6 Colonel Vermaak was, and there was also a noise regarding
 7 by, made by the strikers, as well as the vehicles.
 8 MR NGALWANA: Now before we distracted
 9 ourselves, we were dealing with possible debriefing after
 10 the event. You talked about psychological debriefing. You
 11 remember that?
 12 GENERAL MPEMBE: That's correct,
 13 Chairperson.
 14 MR NGALWANA: By whom was the debriefing
 15 done? In other words, was it done by professional people,
 16 psychologists, or shrinks, or was it done by normal
 17 policemen?
 18 GENERAL MPEMBE: Chairperson, it's done
 19 by, it was the provincial personnel from, by psychologist,
 20 social workers, and also there were pastors that were led
 21 by Colonel Setsedi.
 22 MR NGALWANA: But it was done by people
 23 who are trained in this vocation?
 24 GENERAL MPEMBE: That's correct,
 25 Chairperson.

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1 MR NGALWANA: And did these people then
 2 come back and report to say for example that, or to point
 3 at whomever among their members who were there on the 13th
 4 and participated in the interception, that they should be
 5 booked off-duty?
 6 GENERAL MPEMBE: No, Chairperson.
 7 MR NGALWANA: Then, General, we move to
 8 the evening of that day, the 13th, Monday. What happened in
 9 the evening, as far as you can recall?
 10 GENERAL MPEMBE: That's correct,
 11 Chairperson.
 12 MR NGALWANA: What happened?
 13 GENERAL MPEMBE: I need to state that
 14 there was the arrival of Major-General Annandale and I also
 15 briefed Major-General Annandale, and after that the photos
 16 of the strikers whom I was addressing on the video – now
 17 I'm just saying the photos of the strikers that I was
 18 addressing them, they were developed and immediately when I
 19 got those photos I went to the mine management and in the
 20 mine management I was normally speaking to Mr Kwadi and I
 21 said, "I have now the photos of the mine, of the strikers.
 22 Is it possible that the mine can help me to identify them?"
 23 They said on the 13th it was a little bit late, it was
 24 between 18 to 19 at that time when I went to them. They
 25 said, "General, the people who are now working at the HRM,

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1 they have reported on duty, but we are going to help you on
 2 the following day."
 3 MR NGALWANA: Just for clarity, when you
 4 say 18 and 19, you mean 6 and 7PM?
 5 GENERAL MPEMBE: Yes, in the – so in the,
 6 yes.
 7 MR NGALWANA: Right, is there anything
 8 else you wish to add about what happened that evening,
 9 General, before we –
 10 GENERAL MPEMBE: That's correct,
 11 Chairperson.
 12 MR NGALWANA: So there's nothing else you
 13 wish to add, for the evening?
 14 GENERAL MPEMBE: There is still that, I
 15 still have ones to add.
 16 MR NGALWANA: Yes, go ahead.
 17 GENERAL MPEMBE: After I spoke with them
 18 then there was a time where National Commissioner arrived
 19 on the 13th and the National Commissioner was briefed by
 20 myself and also Brigadier Calitz, and the National
 21 Commissioner was accompanied by Lieutenant-General Petros,
 22 Provincial Commissioner of Gauteng. I did brief the
 23 National Commissioner of what has happened since I have
 24 arrived in Marikana on the 13th until such time that I also
 25 show the mine management the photos. She also indicated

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1 that she will also like to talk to the mine management. We
 2 accompanied her to the mine management, it was during that
 3 evening of the 13th. She also addressed the mine management
 4 and in her address I remember she spoke about that they
 5 should assist us in terms of the identification of the
 6 people in the photos, of the strikers in the photos, and
 7 then she also spoke in terms of the matter being resolved,
 8 the mine should also assist in resolving the conflict.
 9 After that meeting there was a time where the National
 10 Commissioner, General Petros also said that we need to
 11 identify the people and in, I remember General Petros also
 12 offering the members from Operational Coordination from
 13 Gauteng to assist us to, both in terms of gathering the
 14 intelligence. At that time he sent Brigadier Fikter.
 15 During that evening - it was almost in the morning. During
 16 that evening then I tasked Brigadier Calitz to update the
 17 plan. Brigadier Calitz tasked Lieutenant-Colonel Merafe
 18 and at that time there was, I saw also Lieutenant-Colonel
 19 Scott –
 20 MR NGALWANA: I take it, it was still on
 21 the 13th, evening?
 22 GENERAL MPEMBE: Yes, it was still on the
 23 13th, evening, and I just want also to indicate that
 24 Lieutenant-Colonel Merafe and Lieutenant-Colonel Scott,
 25 they were tasked to compile the operational plan and update

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1 it, taking into account the incidences that have happened,
 2 and Colonel Merafe as a unit commander of Rustenburg will
 3 also make sure that the experiences, the incidences that
 4 happened at that time, will also be reflected in the plan.
 5 MR NGALWANA: You say Colonel Merafe is a
 6 unit commander; of what unit, General?
 7 GENERAL MPEMBE: Chairperson, Colonel
 8 Merafe is a unit commander of Public Order Policing in
 9 Rustenburg.
 10 MR NGALWANA: Okay, General, can I just
 11 take you back from the evening now to still during the day.
 12 This is the last aspect we're going to deal with as regards
 13 the events of the 13th of August 2012. If I can ask the
 14 technicians to have exhibit Z2, I think it is, on the
 15 screen. I would like you, General, to orientate all of us
 16 as we are watching this clip. At this stage are you able
 17 to say where the police line is, of if you can indicate
 18 when it emerges? Is that a taxi, or one of the police
 19 vehicles?
 20 GENERAL MPEMBE: It is one of the police
 21 Combi.
 22 MR NGALWANA: And the Nyala, I think
 23 we've seen a couple of Nyalas going past. What role are
 24 those Nyalas playing, and that soft-skin vehicle we've just
 25 seen?

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1 GENERAL MPEMBE: It was that time that
 2 they were going to move on, they were moving on the gravel
 3 road, the one that we used when we go to the railway line.
 4 MR NGALWANA: Please pause the clip. You
 5 say they were moving. Are you referring – to whom are you
 6 referring?
 7 GENERAL MPEMBE: I'm referring to the
 8 Nyalas and the vehicles, soft-skin vehicles.
 9 [11:54] MR NGALWANA: Can you see the dam from
 10 here, General?
 11 GENERAL MPEMBE: I don't see it clearly.
 12 MR NGALWANA: Are you able to indicate in
 13 what area the dam would be, if it's in that clip at all?
 14 Maybe if the clip can run.
 15 GENERAL MPEMBE: I just want to indicate,
 16 these that were - the police line is behind those, I can
 17 see there are police coming behind there.
 18 MR NGALWANA: Which side is the informal
 19 settlement to which you referred? Which side of that
 20 gravel where those vehicles are moving?
 21 GENERAL MPEMBE: It could have been on
 22 the right-hand side, but just when you turn, when you turn
 23 on the gravel road, that goes up.
 24 MR NGALWANA: Is that CS smoke on that
 25 side? What is that? Can you pause there? We see two

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1 more.
 2 GENERAL MPEMBE: That is CS smoke and I
 3 think it was also followed by the stun grenade because I
 4 see when it hits twice, because –
 5 MR NGALWANA: Where were you at this
 6 stage, General?
 7 GENERAL MPEMBE: I was at the back of the
 8 strikers, still coming with the police.
 9 MR NGALWANA: We see a Nyala standing
 10 over there. Can you see that Nyala?
 11 GENERAL MPEMBE: That's correct,
 12 Chairperson.
 13 MR NGALWANA: The one on the far side, on
 14 the right-hand side of the screen. Can you see that?
 15 GENERAL MPEMBE: That's correct,
 16 Chairperson.
 17 MR NGALWANA: Are you able to tell the
 18 Commission what role it plays there?
 19 GENERAL MPEMBE: It is that Nyala which I
 20 said it was just standing where the strikers would have
 21 gone into the informal settlement.
 22 MR NGALWANA: Okay, can we run the clip?
 23 Are you able to explain what is now going on, General?
 24 GENERAL MPEMBE: It was when the strikers
 25 attacked the police and some of the police retreated.

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1 MR NGALWANA: Is that the – can you
2 pause? Sorry, can you go back a couple of seconds? There.
3 What you see in the top right-hand side, what is that,
4 General?
5 GENERAL MPEMBE: The informal settlement
6 house.
7 MR NGALWANA: Can you run the clip,
8 please?
9 GENERAL MPEMBE: I just want to make sure
10 whether it is –
11 MR NGALWANA: These people who are
12 running here in the middle of the screen, are those
13 policemen or other people?
14 GENERAL MPEMBE: These are the police
15 officers that they are now running also, but because the
16 other, there were other police officers that retreated.
17 MR NGALWANA: What is now going on,
18 General? Are those policemen?
19 GENERAL MPEMBE: I just want to see
20 clearly, because it doesn't – I don't see well.
21 MR NGALWANA: Those people there.
22 GENERAL MPEMBE: That's correct,
23 Chairperson, they look – they are police officers.
24 MR NGALWANA: In your recollection, are
25 you able to say what it is that they were doing? Perhaps

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1 you can tell us where you were in relation to them, and
2 that will determine whether you can recall what it is that
3 they were doing.
4 GENERAL MPEMBE: I just want to indicate
5 that at this time, that's when then that the police were
6 attacked and I was amongst those police officials that they
7 were already at the scene at that time.
8 MR NGALWANA: Alright, is there anything
9 else you wish to add in relation to this clip, General,
10 regards what had happened?
11 GENERAL MPEMBE: No, Chairperson.
12 MR NGALWANA: Right, we now move to the
13 14th, Tuesday. Is there anything you wish to add about the
14 13th before we move on?
15 GENERAL MPEMBE: Chairperson, I need to
16 state that despite what happened on the 13th, on the 14th in
17 the morning before I can say that when I saw that we have
18 been strengthened by the arrival of Major-General
19 Annandale, I have of a view that we shall have to still
20 continue with the negotiations to let the problem be solved
21 through non-tactical methods.
22 MR NGALWANA: Was there a JOC meeting on
23 the evening of the 13th?
24 GENERAL MPEMBE: Yes, Chairperson, there
25 was a JOC meeting on the 14th.

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1 MR NGALWANA: The evening of the 13th, was
2 there a JOCOM meeting?
3 GENERAL MPEMBE: On the evening of the
4 13th we only task Lieutenant-Colonel Merafe and Colonel
5 Scott, and then also to say that they should compile, but
6 we stayed until in the morning after we have been briefing
7 and getting the taskings from the National Commissioner,
8 the Provincial Commissioner, as well as the taskings from
9 Lieutenant-General Petros.
10 MR NGALWANA: Are you saying, General,
11 there was or there was no JOCOM meeting on the evening of
12 the 13th?
13 GENERAL MPEMBE: I said that the, we did
14 not hold a JOCOM where full members were, but what we did
15 is that we called the members - the commanders, not the
16 members, the commanders, and we gave them the taskings and
17 then we – that's what, the time where we were, also have a
18 briefing what is it, where we were receiving instructions
19 from Lieutenant-General Petros, as well as the Provincial
20 Commissioner and the National Commissioner, but now on the
21 morning of the 14th there was a JOCOM meeting.
22 MR NGALWANA: Was there a formal decision
23 taken on the evening of the 13th as regards what was going
24 to be done by the police in order to resolve the situation
25 the following day?

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1 GENERAL MPEMBE: That's correct,
2 Chairperson. I need to state that at that time we also
3 considered that we should continue with the negotiations.
4 Realising that the, some of the mineworkers, the strikers,
5 have been identified, we thought that we also have to
6 engage the labour unions and the mine management.
7 MR NGALWANA: May I take you to FF3,
8 General? That would be in your bundle A5, the documents
9 bundle volume A, under the third slide. The pagination
10 page is 24, and the other legal teams who don't have the
11 paginated page will know what SS3 looks like. The very
12 first page, SS3, General, in volume A, slide –
13 GENERAL MPEMBE: Yes.
14 MR NGALWANA: Have you found it?
15 GENERAL MPEMBE: Yes, I find it. I just
16 want the page.
17 MR NGALWANA: Ja, the first page, the
18 very first page. I think we don't need to waste time on
19 this. Subject to any objections, I think it's common cause
20 that you were on leave on the 10th.
21 GENERAL MPEMBE: That's correct,
22 Chairperson.
23 MR NGALWANA: And so you wouldn't have
24 been party in the preparation of the plan, the contingency
25 plan that's dated 2012-08-10. Is that factually correct?

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1 GENERAL MPEMBE: That's correct,
2 Chairperson.

3 MR NGALWANA: May I ask you to turn to
4 page – the paginated page at the bottom, 37 of that same
5 exhibit SS3. It will be headed, "Operation Platinum,
6 Lonmin Mine : Marikana, 14 August 2012." Can you see that?

7 GENERAL MPEMBE: That's correct,
8 Chairperson.

9 MR NGALWANA: You testified earlier about
10 Lieutenant-Colonel Merafe and Lieutenant-Colonel Scott
11 having been tasked to prepare a plan. Is this the plan you
12 were talking about?

13 GENERAL MPEMBE: That's correct,
14 Chairperson.

15 MR NGALWANA: Now you will have seen that
16 the first plan, the plan of 2012-08-10 is in a different
17 format from the plan that we now see on page 37, the
18 Operation Platinum plan. You see that?

19 GENERAL MPEMBE: That's correct,
20 Chairperson.

21 MR NGALWANA: Now this Operation Platinum
22 plan seems to be in the form of slides, for lack of a
23 better description. Are you able to explain to the
24 Commission why it was done in this form, or should we ask
25 Lieutenant-Colonel Scott that, and Lieutenant-Colonel

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1 Merafe?

2 GENERAL MPEMBE: Chairperson, I can state
3 that Lieutenant-Colonel Scott presented this plan in the
4 form of slides in the JOCOM of the 14th, which I chaired.

5 MR NGALWANA: Are you able to tell the
6 Commission why it was prepared in this format rather than
7 in the same format as the first plan, the contingency plan?

8 GENERAL MPEMBE: I need to state that
9 from page 29 and all the other slides in terms of different
10 dates are part and parcel of one plan. The main reason why
11 it is in the slide format, in any big operations like that
12 one, or even in the World Cup, as I've indicated earlier on
13 Colonel Scott and Lieutenant-Colonel Merafe, they were the
14 coordinators of the plans. You do have such people that
15 will always take the information from the operational
16 people, check modus operandi of the destabilisers, and
17 their main work, it is to compile and update the plan.

18 MR NGALWANA: When was this plan, General
19 – I'm looking at page 37, or the plan beginning page 37
20 going forward, when was this plan put together?

21 [12:14] GENERAL MPEMBE: I need to state that
22 Lieutenant-Colonel Merafe and Lieutenant-Colonel Scott,
23 also with the taskings that they were given to do the
24 reconnaissance and what they did it throughout the night
25 until in the morning.

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1 MR NGALWANA: When you say throughout the
2 night and morning, are you referring to throughout the
3 night of Monday the 13th and morning of the 14th, or
4 throughout the night of Tuesday the 14th?

5 GENERAL MPEMBE: From the 13th to the
6 14th, Chairperson.

7 MR NGALWANA: And when did this plan –
8 you say Lieutenant-Colonel Merafe and Lieutenant-Colonel
9 Scott presented it at the JOCOM. At what time – I'm not
10 referring – was it in the morning or in the evening of the
11 14th that the plan was presented at the JOCOM?

12 GENERAL MPEMBE: Chairperson, it was the
13 morning of the 14th.

14 MR NGALWANA: Now you said you chaired
15 that JOCOM meeting. Is that correct?

16 GENERAL MPEMBE: That's correct,
17 Chairperson.

18 MR NGALWANA: We don't have the minutes
19 of the JOCOM meeting of the morning of the 14th. Do you
20 know whether any minutes were taken?

21 GENERAL MPEMBE: Chairperson, I remember
22 Brigadier Seboloke was in charge at that time in terms of
23 ensuring that the minutes are being taken, before Brigadier
24 Pretorius take over.

25 MR NGALWANA: Do you know whether or not

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1 Brigadier Seboloke took minutes of the JOCOM meeting of the
2 morning of the 14th?

3 GENERAL MPEMBE: Brigadier Seboloke said
4 to me that the minutes were taken, but he could not provide
5 them, provide me with the minutes.

6 MR NGALWANA: Now General, it's been
7 suggested that this plan beginning the 14th of August is a
8 so-called Scott's plan. In other words, that this was
9 prepared by Lieutenant-Colonel Scott, and the people at the
10 JOCOM, senior officers simply accepted it without question.
11 I don't want us to waste time on this. I mean I can ask
12 you, do you confirm or deny that?

13 GENERAL MPEMBE: Chairperson, it's not
14 true that it Lieutenant-Colonel Scott's plan. It is a
15 police plan.

16 MR NGALWANA: You address this aspect in
17 paragraph 15 of your supplementary statement. You say, and
18 I start reading from about the third or fourth sentence, or
19 third sentence, you say – can I take you to page 6 of your
20 statement, paragraph 15.

21 GENERAL MPEMBE: Yes, Chairperson.

22 MR NGALWANA: You say, "There were
23 numerous contributions from experienced officers at the
24 JOCOM."

25 GENERAL MPEMBE: That's correct,

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1 Chairperson.

2 MR NGALWANA: You continue to say – this

3 is the last part I'm going to read, "I shall give examples

4 of his contributions during my oral evidence." You then go

5 on to dismiss that this is the so-called Scott's plan. Now

6 can you give a few examples, General, of the contributions

7 that other senior members at the JOCOM gave to the plan?

8 GENERAL MPEMBE: Chairperson, firstly I

9 would like to refer the Commission to my statement that is

10 known as 56-page statement, and it will be GGG12A,

11 paragraph 23, page 8 –

12 MR NGALWANA: Sorry, what paragraph

13 again, General?

14 GENERAL MPEMBE: Paragraph 23, page 8.

15 Chairperson, I'll continue to say that at the JOCOM

16 briefing in the morning of the Tuesday, 14th, an operational

17 strategy was considered in terms of which the protesters

18 will be prevented from gathering at the koppie armed. All

19 those who approached the koppie were to be searched and

20 disarmed, and those already at the koppie will be encircled

21 and disarmed. This was to have a filtering line option,

22 and this was proposed by Lieutenant-Colonel Merafe, as well

23 as Lieutenant-Colonel Scott. When it was discussed in that

24 meeting, during the process of assessment of the plan, the

25 plan has to be assessed through the mission. It has to be

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1 assessed with the menace. Menace means the threat, the

2 threats. Not the minutes. Menace, it's –

3 CHAIRPERSON: Menace, not minutes.

4 MR NGALWANA: For the record, as the

5 Chairperson says, it's menace, M-E-N-A-C-E.

6 MR MAHLANGU: Menace, yes.

7 GENERAL MPEMBE: It has to be assessed

8 according to the milieu, that is environment, and the

9 means, that is equipment and whatever we have at that, at

10 the moment. In checking those four Ms, it was also said

11 the topography of the place would give us a problem with

12 regard to the filtering line. Taking into account what has

13 happened on Monday, it would mean that the police officials

14 that will have to man this filtering line will be a group

15 of people. Checking in terms of how the modus operandi of

16 the protesters, it will be possible that the protesters in

17 the manner that they will come, they might isolate a group

18 of police officials and we experience what we have

19 experienced on Monday, considering that there was a

20 confrontation and we lost also some of the members during

21 that confrontation. Chairperson, at that time the space is

22 too wide and it could give a very big way that the

23 protesters might simply go and congregate to another place.

24 MR NGALWANA: Let me just orientate

25 myself and perhaps others who may be in a similar position.

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1 You are now dealing with the suggestion that the people who

2 were already on the koppie should be encircled and

3 disarmed. Is that where you are? I take it what you are

4 explaining is why that plan was rejected?

5 GENERAL MPEMBE: I'm still – Chairperson,

6 it's correct, I'm still talking only on the filtering line

7 at the moment. I will also come and talk in terms of the

8 reasons why we couldn't consider dispersing and disarming

9 those 50 members that were already being seen at the

10 koppie. Still addressing the issue of the filtering line,

11 the JOCOM felt that it is, the koppie, it is an ideal place

12 because it is out of the community, or the informal

13 settlement, and whereby it might have a problem, the

14 consequences of getting people injured or properties

15 damaged. Chairperson, I'm still addressing the issue of a

16 Scott's plan to indicate that there were discussions, there

17 were those that were proposing and there were those that

18 were dissenting in terms of the proposals.

19 MR NGALWANA: General, I don't want to

20 rush you. It's not in the interest of the police to rush

21 your evidence, but are you able to give the answer in this

22 format; bullet point, very briefly, you say for example –

23 well, let me not give an example – a particular suggestion

24 was made, it was rejected for this reason, in brief terms,

25 if at all you can.

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1 GENERAL MPEMBE: That's correct,

2 Chairperson. As I've indicated firstly it's a filtering

3 line which the reason that I gave, that's how it was

4 rejected. Now I address the problem of those that were

5 seen at the koppie, why they could not be dispersed, and

6 those that are still armed could not be encircled and

7 disarmed. I remember very well I was one of those people

8 to say, "Colleagues, we have adopted a strategy that we say

9 we are negotiating," and by that time, Chairperson, I

10 already indicated to the mine management through them that

11 I would like to see the unions' representatives. I

12 indicated that to Mr Kwadi, and –

13 COMMISSIONER HEMRAJ: I'm sorry to

14 interrupt you, but the idea of a filtering line, was that

15 suggested by Colonel Scott?

16 GENERAL MPEMBE: It came with Colonel

17 Scott and Lieutenant-Colonel Merafe, those that were

18 compiling the plan, and Chairperson, going back to say why

19 we could not disperse and arrest the others, we would say

20 while we are still going to negotiate and we also want to

21 negotiate with the protesters, the police will be seen not

22 negotiating in good faith. There was also a proposal,

23 Chairperson, that was said that can we consider starting

24 with a cordon and search to disarm those members – to

25 disarm the protesters, not members.

<p style="text-align: right;">Page 11188</p> <p>1 With regard to the cordon and search, I will take 2 the Commission back to Friday when I was briefed by 3 Brigadier Calitz. There was an illegal gathering which 4 took place of the RDOs and the police station was informed 5 of Marikana and those that held that meeting there, they 6 were not identified as leaders or anyone who is a convenor. 7 The Commissioner will remember that it is a well-known that 8 there was a march which took place that the members went to 9 the Lonmin Mine during that Friday, and the leadership 10 element, or the convenors or anyone could not also be 11 identified. I personally spoke with those that I incepted 12 at the railway mine. I could not know whom am I talking 13 to, whether he's a convenor or who is he. 14 [12:33] Chairperson, in the light of this we could not 15 continue to have a cordon and search in the sense that if 16 we want to go and do a cordon and search, whom are we going 17 to arrest, which law are we going to apply, because it is 18 precise that in terms of section 3 of the Regulation of 19 Gatherings Act there must be, you must know who is a 20 convenor. 21 Secondly, it is that it was a well-known fact 22 that they were now well-armed, and we don't know where 23 they're staying. They were in possession of police radios; 24 they can hear when the police are talking. That might also 25 give high risk in terms of the police being attacked if</p>	<p style="text-align: right;">Page 11190</p> <p>1 a mission, he who plans must execute, so it could not be 2 possible that somebody sits at a little corner and make a 3 plan for those that will have to execute it. Chairperson, 4 this has happened in many operations, in the World Cup, in 5 everywhere, where I presided as an overall commander, 6 you'll always have that person who does continuously put 7 his eye on the air. It's called an OPS section, but we 8 call them the coordinators. It does happen. In this case 9 it just happened that it could have been Colonel, 10 Lieutenant-Colonel Scott. 11 COMMISSIONER HEMRAJ: General, do I 12 understand that the plan that appears on page 37 is the one 13 that was finally adopted on the 14th? That was after 14 discussion at the JOCOM meeting. 15 GENERAL MPEMBE: That's correct, 16 Chairperson. 17 COMMISSIONER HEMRAJ: So what must have 18 been presented at the meeting by Colonel Scott and Colonel 19 Merafe must have been different to this because there were 20 other proposals that were then debated before this was 21 adopted? 22 GENERAL MPEMBE: What I spoke about, it 23 was those proposals that were made and how they were 24 discounted and they were not included in the plan. 25 COMMISSIONER HEMRAJ: This plan on page</p>
<p style="text-align: right;">Page 11189</p> <p>1 cordon and search has to be done. 2 Chairperson, strategically an operation of such 3 kind, when you hold it during the day, surely you'll be 4 seen, there will be no successes in terms of arrests, and 5 in terms of confiscation of weapons, and if done during the 6 night, it would pose a serious threat to the police and 7 even to the protesters themselves. In the light of these 8 reasons, Chairperson, it was rejected that the cordon and 9 search would not be the first stage and it was put as a 10 last stage in terms of a plan. The JOCOM unanimously 11 agreed to adopt a strategy of sector policing, saturating 12 the areas, high visibility, getting the members orientated, 13 studying the people, checking, starting with the 14 negotiation of the, with the protesters, and as an overall 15 commander lead the negotiation with the union leadership 16 and the management. 17 Chairperson, the mission was accepted, which it 18 does appear in my statement GGG12, page 9, paragraph 24, 19 and the operational strategy was also accepted in terms of 20 the same statement, page 9, paragraph 25. Chairperson, I 21 tried to indicate that the plan was not accepted just as it 22 is, and it is on these reasons that I do believe that that 23 could not be called a Scott's plan; it's a police plan. 24 Chairperson, I need also to indicate that in 25 terms of crowd management, particularly when you work with</p>	<p style="text-align: right;">Page 11191</p> <p>1 37, was that presented at the meeting that you chaired on 2 the morning of the 14th, as it is? 3 GENERAL MPEMBE: That's correct, 4 Chairperson, but there were also other proposals, like that 5 one I spoke about of the filtering line, cordon and search, 6 and others, but also that was done in terms of checking the 7 proposal for the strategy, because first of all you need to 8 have the mission and the strategy, then the plan. 9 COMMISSIONER HEMRAJ: And those were just 10 oral presentations in the meeting? 11 GENERAL MPEMBE: That's correct, 12 Chairperson. 13 MR NGALWANA: Yes, General, I take it - 14 CHAIRPERSON: Sorry, just before we move 15 on, do we have the minutes of that meeting? There was 16 reference to the fact that someone was responsible for 17 compiling them. Are they available at all? I don't think 18 they're exhibits yet, but - 19 MR NGALWANA: No - 20 CHAIRPERSON: What happened to them? 21 MR NGALWANA: I've asked him, Chair. He 22 - well, let's ask him again. General, that meeting of the 23 morning of the 14th which you said you chaired, are you 24 aware whether any minutes for that meeting were taken? 25 GENERAL MPEMBE: Chairperson, I remember</p>

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1 Brigadier Seboloke was supposed to take the minutes, but
2 when I go to him and I said I want the minutes, there is
3 this issue of saying he handed them to Brigadier Pretorius,
4 but Brigadier Pretorius said that I couldn't get the
5 minutes, but I remember also I did make some notes because
6 I was chairing the meeting –

7 CHAIRPERSON: I understand, but the
8 original minutes that were handed over to Brigadier
9 Pretorius, you've never seen them. Is that right?

10 GENERAL MPEMBE: Chairperson?

11 CHAIRPERSON: The original minutes which
12 were handed over to Brigadier Pretorius, according to what
13 you've told us, the hearsay you received, have you ever
14 seen those minutes?

15 GENERAL MPEMBE: No, I didn't see them,
16 Chairperson, but they were, they are ultimately not be
17 found.

18 CHAIRPERSON: What happened to them?
19 Were they destroyed? Do you know whether they were
20 destroyed? What happened to them? Were they lost or
21 mislaid?

22 GENERAL MPEMBE: I don't know,
23 Chairperson, what has happened to the minutes, but I
24 remember they were taken.

25 CHAIRPERSON: Yes, there were minutes at

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1 some stage, and they either still exist or someone has lost
2 them or destroyed them. Is that the position?

3 MR NGALWANA: Can I ask the General, with
4 your permission, General, did you see – is it Lieutenant-
5 Colonel Seboloke, or Brigadier Seboloke, did you see him
6 take minutes during that meeting?

7 GENERAL MPEMBE: I did not see him taking
8 minutes, but actually what they were doing, it was another
9 person that falls under Brigadier Seboloke that was
10 supposed to take minutes. It is just like when Brigadier
11 Pretorius takes over, somebody will take the minutes.

12 MR NGALWANA: Did you see that other
13 person taking minutes? Did you see anyone take minutes of
14 the meeting of the 14th in the morning?

15 GENERAL MPEMBE: Chairperson, I did not
16 see, but I was always under the impression that Brigadier
17 Seboloke is ensuring that minutes are being taken.

18 CHAIRPERSON: You also told us Brigadier
19 Seboloke told you that he handed over the minutes to
20 Brigadier Pretorius, if I understood you correctly. Is
21 that right?

22 GENERAL MPEMBE: Correct, Chairperson.

23 CHAIRPERSON: So according to Brigadier
24 Seboloke there were minutes taken, never mind by whom,
25 there were minutes taken and actually handed over to

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1 Brigadier Pretorius. When she came along, she was in
2 charge – when she arrived on the scene she was in charge of
3 the record-keeping at the JOC. Is that right? The JOCOM.

4 GENERAL MPEMBE: Chairperson, Brigadier
5 Pretorius took over from Wednesday, the 15th –

6 CHAIRPERSON: Yes, and that she was then
7 responsible for the record-keeping of the JOCOM. Is that
8 right?

9 GENERAL MPEMBE: Correct, Chairperson.

10 CHAIRPERSON: So it was sensible to hand
11 her the minutes that had been taken the previous day, on
12 the Tuesday, and that's what you were told happened. Is
13 that correct?

14 GENERAL MPEMBE: That's correct,
15 Chairperson.

16 CHAIRPERSON: And now they can't be
17 found. Is that right? Is that correct, now they can't be
18 found?

19 GENERAL MPEMBE: Yes, Chairperson, they
20 couldn't give them to me.

21 CHAIRPERSON: I see.

22 MR NGALWANA: Chair, I'm not sure it's
23 that simple. The witness says he never saw anyone take
24 minutes. Then we have hearsay of a – is it Mr, I don't
25 know – Seboloke saying he gave minutes over to someone

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1 else. Perhaps the best way this can be resolved is either
2 to take a sworn statement from Seboloke, or to have him
3 called here and testify on that precise issue. I would
4 suggest that perhaps –

5 CHAIRPERSON: When Brigadier Pretorius
6 comes we can ask her if it's correct she was handed over
7 minutes and, if so, what she did with them. But anyway, it
8 seems as if we've taken this point as far as it can be
9 taken with the present witness. Is that correct?

10 MR NGALWANA: Yes, Chair. General, just
11 following up from what Commissioner Hemraj asked you, the
12 plan that we have in front of us, beginning at page 37 –
13 have you found it? Have you found the plan, General?

14 GENERAL MPEMBE: That's correct,
15 Chairperson.

16 MR NGALWANA: Is that plan the plan that
17 was prepared before contributions by other members at the
18 JOCOM, or is it a plan that is inclusive of contributions
19 by other members in the JOCOM?

20 GENERAL MPEMBE: It is inclusive with the
21 discussions in the JOCOM.

22 MR NGALWANA: And that goes for the rest
23 of the plan for the – we have the 14th, we have the 15th, we
24 have the 16th. Is that correct?

25 GENERAL MPEMBE: That's correct,

<p style="text-align: right;">Page 11196</p> <p>1 Chairperson.</p> <p>2 MR NGALWANA: We'll come back to the</p> <p>3 plan, General, but is there anything else that happened on</p> <p>4 Tuesday the 14th which is of significance, apart from the</p> <p>5 JOCOM meeting and the discussion of the plan of the 14th?</p> <p>6 GENERAL MPEMBE: Chairperson, I need to</p> <p>7 state that - before I can go to that one - that the main</p> <p>8 reason why Colonel Scott was also chosen, it was because of</p> <p>9 his vast knowledge of the IT, the experience that he has</p> <p>10 had, and that's why he was included in terms of being a</p> <p>11 coordinator, but what happened on the 14th is that I also</p> <p>12 have a meeting with the management.</p> <p>13 MR NGALWANA: Is there anything else on</p> <p>14 the 14th that you'd like to highlight that happened?</p> <p>15 GENERAL MPEMBE: I just want to highlight</p> <p>16 that I met the management and I gave them some of the - I</p> <p>17 gave them the photos and on Monday, on Tuesday some of the</p> <p>18 people were identified by the management. I need to</p> <p>19 indicate that the management did assist me to identify some</p> <p>20 of the strikers, and the others said that they will also</p> <p>21 continue to assist me to identify them from the photos, and</p> <p>22 the management ultimately did assist me to identify them,</p> <p>23 but on the 14th they were not all identified. The majority</p> <p>24 of them were identified at the earlier stage, but realising</p> <p>25 that there were some of the strikers that were identified,</p>	<p style="text-align: right;">Page 11198</p> <p>1 convey? Did you - one of them I think you've told us now</p> <p>2 you understand to be Mr Noki. Did you show that video clip</p> <p>3 to the Lonmin people on the Tuesday in the course of this</p> <p>4 meeting that you've just been describing?</p> <p>5 GENERAL MPEMBE: That's correct,</p> <p>6 Chairperson, those were the videos that I showed to them.</p> <p>7 CHAIRPERSON: Were they able to identify</p> <p>8 the two people who had stood up and spoken by the railway</p> <p>9 line?</p> <p>10 GENERAL MPEMBE: Chairperson, as I</p> <p>11 indicated, they did not at that time on Tuesday identify</p> <p>12 them. They said they will continue assisting me to</p> <p>13 identify them, but those they were not identified at that</p> <p>14 time.</p> <p>15 CHAIRPERSON: Did they identify them</p> <p>16 subsequently?</p> <p>17 GENERAL MPEMBE: Chairperson, those in</p> <p>18 particular they were not identified at that time, but there</p> <p>19 were others that were identified that were both belonging</p> <p>20 to the NUM as well as AMCU.</p> <p>21 CHAIRPERSON: Yes, but the two people to</p> <p>22 whom I referred, you say they weren't identified on the</p> <p>23 14th. My question was, were they subsequently identified?</p> <p>24 GENERAL MPEMBE: Chairperson, I indicated</p> <p>25 earlier on that we were referring to Mr Noki previously as</p>
<p style="text-align: right;">Page 11197</p> <p>1 and I said to management "But when, on Monday when we were</p> <p>2 here, you said that the people were faceless, you didn't</p> <p>3 know them," and then I said, "Now that we see some of them</p> <p>4 and you are still going to assist me to identify them, may</p> <p>5 you please assist me to call the unions that we should talk</p> <p>6 to them so that they can go and talk to the strikers?"</p> <p>7 Chairperson, I need to indicate that the</p> <p>8 management was always willing through Mr Kwadi to assist me</p> <p>9 and they also heeded my request of calling the unions. In</p> <p>10 my understanding Mr Kwadi, he was working with the unions</p> <p>11 in the labour relations department.</p> <p>12 [12:53] I need also to indicate that the management</p> <p>13 showed me the sensitivity in terms of saying, "Please don't</p> <p>14 tell anybody that we are the ones that we are assisting you</p> <p>15 in terms of identification of these people." Realising</p> <p>16 what was happening in terms of the intimidation and also</p> <p>17 the fear to be killed, I acceded to the request.</p> <p>18 MR NGALWANA: Right, thank you, General.</p> <p>19 Can we now move to Wednesday, the 15th -</p> <p>20 CHAIRPERSON: Before we move on, did you</p> <p>21 show them the video clip that had been taken the previous</p> <p>22 day by the railway line, which revealed two of the strikers</p> <p>23 in particular standing up, speaking, in fact making</p> <p>24 speeches, responding to you, giving signals to the people</p> <p>25 to sit down, or whatever the signals were intended to</p>	<p style="text-align: right;">Page 11199</p> <p>1 a man with a green jacket, and he was identified after the</p> <p>2 event of the 16th by the mine management, but until then we</p> <p>3 did not know who is the, who is whom, whether it's Mr Noki,</p> <p>4 but as I indicated, when I saw the identification it was</p> <p>5 not those that were giving instructions, but others, and</p> <p>6 that's the list, then I said based on this list, call for</p> <p>7 me the unions, but we were always referring to Mr Noki as a</p> <p>8 man with a green jacket, and also for negotiations it was</p> <p>9 referred as the five brave men, when I was informed by the</p> <p>10 - what, the negotiators.</p> <p>11 CHAIRPERSON: Now Mr Ngalwana, when it is</p> <p>12 convenient for you, we can take the lunch adjournment, but</p> <p>13 if you want to ask something, deal with some other points</p> <p>14 shortly before we take the lunch adjournment, you're free</p> <p>15 to do so.</p> <p>16 MR NGALWANA: No, Chair, I'm moving to</p> <p>17 the 15th. Perhaps this might be a convenient time.</p> <p>18 CHAIRPERSON: We'll take the lunch</p> <p>19 adjournment and resume as soon after 2 o'clock as we can.</p> <p>20 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>21 [14:09] CHAIRPERSON: The Commission resumes.</p> <p>22 Major-General, you're still under oath. Mr Ngalwana,</p> <p>23 you've still got questions.</p> <p>24 ZONDASI WILLIAM MPEMBE: (s.u.o.)</p> <p>25 CROSS-EXAMINATION BY MR NGALWANA (CONTD):</p>

<p style="text-align: right;">Page 11200</p> <p>1 Thank you, Chair. General, we are now going to move to 2 Wednesday the 15th and the events that happened then. Is 3 there anything you wish to say in regard to the 14th before 4 we move on? 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 6 There is a question the Chairperson asked whether I did 7 show the video to the mine management. My understanding 8 was that I did show them the photos but not the video, I 9 just want to make that one clear. I did not play the video 10 to the mine management, only the photos. 11 CHAIRPERSON: The photos that you showed, 12 did they include photos of the discussion, if you can call 13 it that, that you had by the railway line on the Monday 14 afternoon with the strikers? 15 MAJOR-GENERAL MPEMBE: That's correct, 16 Chairperson. The way in which they were, others sitting 17 down, others standing and talking and so on, those are the 18 photos that I showed to them. 19 MR NGALWANA: Then General, to the 15th we 20 go then. On that day there were at least, and I think it's 21 common cause by now, there were at least two meetings that 22 occurred, one in the afternoon of the 15th and another in 23 the evening of the 15th, is that correct? 24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson.</p>	<p style="text-align: right;">Page 11202</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, the 2 delegation of the police was led by myself, Adv Moolman and 3 we were also accompanied by a warrant officer who works 4 with Adv Moolman. 5 CHAIRPERSON: Now I see in your statement 6 you, exhibit GGG12 in para 33 you say the meeting was round 7 about 2PM. Is that a mis – are you now correcting that? 8 MAJOR-GENERAL MPEMBE: Chairperson, it is 9 this one. I still stand by it. That's why I'm saying at 10 about, at about 14:00 and so on but it was in the afternoon 11 of that day. I need to just – 12 CHAIRPERSON: GGG12 was, I see, is dated 13 November so things were fairly fresh in your mind at that 14 stage, I take it. 15 MAJOR-GENERAL MPEMBE: Chairperson, may I 16 – pardon Chairperson, may I, I didn't hear properly? 17 CHAIRPERSON: The copy of GGG12 I've got, 18 on the last page it's actually unsigned. No, I beg your 19 pardon, it's signed but it's not attested but it does say 20 signed and sworn to at blank on this blank day of November. 21 So I don't know when in November you signed it but you 22 presumably signed it in November, is that right? 23 MAJOR-GENERAL MPEMBE: Chairperson, there 24 is a signed one. 25 CHAIRPERSON: Yes, no, the one I've got</p>
<p style="text-align: right;">Page 11201</p> <p>1 MR NGALWANA: Can you tell the Commission 2 how the first meeting came about, the meeting at – I think 3 it starts, well, let me not tell you the time. The first 4 meeting, the transcripts of which is OO4, exhibit OO4 and 5 we'll go to that in a moment, how did that meeting come 6 about? 7 MAJOR-GENERAL MPEMBE: Chairperson, I did 8 ask the mine management through Mr Jomo Kwadi, that he 9 should arrange the meeting with the unions after I have 10 shown them the photos and Mr Kwadi did arrange the meeting 11 with the unions and also the mine management was present. 12 MR NGALWANA: Chairperson and members of 13 the Commission, we now move to OO4. We're going to spend 14 quite some time on that. 15 CHAIRPERSON: It's against the tab 7 in 16 the first file. Which page do you want us to look at? 17 MR NGALWANA: The very first page, we 18 start there. Page 192 of the pagination. General, who was 19 present at that meeting and what – well, what time was that 20 meeting, what time of the day was it held? 21 MAJOR-GENERAL MPEMBE: Chairperson, the 22 meeting was in the afternoon of the 15th. It was at about 23 15:00 to 16:00 on the 15th, of that day. 24 MR NGALWANA: On behalf of the police who 25 was present at that meeting?</p>	<p style="text-align: right;">Page 11203</p> <p>1 is signed but it's not attested, it's not attested, it's 2 not sworn to but it doesn't matter, the point is it says 3 signed and sworn to at blank on this blank day of November 4 2012. So I take it that we can assume that this document 5 exhibit GGG12 was compiled and finalised in November, is 6 that right? 7 MAJOR-GENERAL MPEMBE: That's correct, 8 yes. 9 CHAIRPERSON: So when things were fresh 10 in your memory? Your memory was better then about things 11 in the statement, I take it, than they would be now. 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 13 MR NGALWANA: If it's of any assistance, 14 Chairperson will see, I'm sure would have seen that 15 paragraph 33 of that statement says "at around 14:00." 16 Admittedly – 17 CHAIRPERSON: *14:09/07-39 said around 18 15:00 so I just thought that inasmuch as there's a 19 difference, we'd try to find out which was correct. So 20 he's told us the November statement is to be preferred. 21 MR NGALWANA: Right. You said on behalf, 22 General, on behalf of the police it was yourself, Adv 23 Moolman and a warrant officer who assists Adv Moolman. Do 24 you know perhaps the name of that warrant officer? 25 MAJOR-GENERAL MPEMBE: I do not remember</p>

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1 the name but I can find the name, Chairperson.
 2 MR NGALWANA: Who else was represented?
 3 Was NUM represented?
 4 MAJOR-GENERAL MPEMBE: Chairperson, NUM
 5 was represented by the president, Mr Senzeni Zokwana, and
 6 he had a delegation of about, he had a delegation of a
 7 number of people with him.
 8 MR NGALWANA: For the record, NUM of
 9 course is the National Union of Mineworkers. Was AMCU
 10 represented?
 11 MAJOR-GENERAL MPEMBE: That's correct,
 12 Chairperson. AMCU was represented. It was also led by the
 13 president, Mr Vusi Mathunjwa, and he also had a delegation
 14 of, if I may just estimate it was about 10, both of them.
 15 It might be more than that.
 16 MR NGALWANA: When you say both of them I
 17 take it you mean both NUM and AMCU were each probably
 18 represented by about, a delegation of about 10 people, is
 19 that correct?
 20 MAJOR-GENERAL MPEMBE: That's correct,
 21 Chairperson.
 22 MR NGALWANA: Was Lonmin represented?
 23 MAJOR-GENERAL MPEMBE: Chairperson, yes,
 24 Lonmin was represented. I remember that Lonmin was
 25 represented by Mr Barnard Mokwena and also Mr Kgotle and Mr

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1 Kwadi who acted as the facilitator in that meeting.
 2 MR NGALWANA: So then if we go to the
 3 very first line, the very first word of OO4 where it says
 4 "Facilitator" and it's saying that's Mr Kwadi –
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NGALWANA: Well, I'm asking this
 8 question in a seemingly leading manner because when you
 9 gave the delegation of the Lonmin people you said Kwadi was
 10 the facilitator, if I understood you correctly.
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 MR NGALWANA: I heard a demurring murmur
 14 to my far left. Now what was the purpose –
 15 CHAIRPERSON: Just – who was nodding?
 16 Was this Ms Barnes?
 17 MR BURGER SC: No, I thought the
 18 facilitator was Mr Mokwena, reading from the script. Those
 19 are the instructions and I wanted to correct my learned
 20 friend but he seems to be confident that it wasn't Mr Kwadi
 21 so I'm happy to accept it was one of the others.
 22 MR NGALWANA: I'll move on, Chairperson.
 23 CHAIRPERSON: If the identity of these
 24 persons becomes important we can spend time on it but in
 25 the meanwhile it doesn't seem to be, so let's just move on,

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1 shall we?
 2 MR NGALWANA: Of course, inasmuch as I
 3 wasn't at the meeting, I go by what the witness tells me.
 4 Mr – excuse me, General – General, what was the purpose of
 5 this meeting? You called it, for what purpose did you call
 6 this meeting?
 7 MAJOR-GENERAL MPEMBE: The purpose of the
 8 meeting is to get the union leadership, the mine, to
 9 resolve the problem of the strike and in that meeting after
 10 I was introduced to the delegation I made it clear that we,
 11 the police, are not representing either the mine or the
 12 union and I cannot give them instructions but what I was
 13 saying, that their inter-relation is important in terms of
 14 on the same day how are they going to resolve the problem.
 15 Secondly, the problem in terms of saying, when I put it
 16 very clear to them it was to say they need also to go to
 17 the mountain, to the koppie, and to say this is how we are
 18 going to resolve the problem.
 19 MR NGALWANA: Yes, I think it does become
 20 clear once one reads the transcript. I take it you have
 21 read this transcript since that meeting, General?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 MR NGALWANA: Is it an accurate
 25 reflection or a fair reflection of what was discussed at

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1 that meeting?
 2 MAJOR-GENERAL MPEMBE: No, Chairperson.
 3 There are some of the statements that I said which do not
 4 reflect in some of these minutes, some of these
 5 transcripts.
 6 MR NGALWANA: Yes, I think we will come
 7 to that in a moment. Can you please put your finger
 8 mentally on that point, we'll come to it. General, was a
 9 minute of that meeting taken?
 10 MAJOR-GENERAL MPEMBE: No, Chairperson.
 11 MR NGALWANA: But then we have this
 12 transcript, do you know how this transcript came about?
 13 MAJOR-GENERAL MPEMBE: Chairperson, I was
 14 surprised when I see the transcript when the Commission has
 15 already been on. In that meeting at the beginning of the
 16 meeting I requested that we should take the minutes and we
 17 should also circulate the attendance list. It was
 18 vehemently refused.
 19 MR NGALWANA: When you say it was
 20 vehemently refused, by whom?
 21 MAJOR-GENERAL MPEMBE: It was first
 22 refused by AMCU and the mine management and the NUM, they
 23 just kept quiet but I took it that they also agreed with
 24 what AMCU was suggesting but because I needed them, I
 25 continued.

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1 MR NGALWANA: Do you know of the
2 whereabouts of the audio version of this transcript?
3 MAJOR-GENERAL MPEMBE: No. No,
4 Chairperson.
5 MR NGALWANA: Now may I take you to page
6 2 of that transcript, General, it's the paginated 193. In
7 the third line, and that's you addressing the meeting,
8 you're saying, "It was said that we do not know who are
9 doing this." What do you mean by this when you say "we do
10 not know who is doing this?"
11 MAJOR-GENERAL MPEMBE: I was referring to
12 those who are taking part in the strike.
13 MR NGALWANA: Now, you're saying it was
14 said that, "we do not know who are doing this." What were
15 the people in the strike doing to which you were referring
16 here?
17 MAJOR-GENERAL MPEMBE: Chairperson, since
18 the strike took place on Saturday, there were people that
19 were shot at. On Sunday there were security members of the
20 Lonmin management that were killed and one burnt. On
21 Monday morning and as I've said also here, when I hear on
22 the radio there were other members, what is it, the
23 mineworkers that were getting on duty that another one was
24 killed and another one was injured. So that is what, when
25 I was referring, when I was saying who are doing this.

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1 [14:29] MR NGALWANA: Who was it who was saying
2 that – when you say "it was said that," who is the person
3 or people who were saying "we do not know the people who
4 are doing this?"
5 MAJOR-GENERAL MPEMBE: Chairperson, I was
6 referring to the meeting that was held between the mine
7 management and the Provincial Commissioner on the Monday of
8 the 13th.
9 MR NGALWANA: But who was saying, "we do
10 not know who are doing this?" Was it either of the unions,
11 General?
12 MAJOR-GENERAL MPEMBE: Chairperson, it
13 was said during the mine management and I was just checking
14 here –
15 MR NGALWANA: You don't have to give us
16 the name, I just want to know the identity of the party
17 that said, "we do not know who is doing this." If you
18 don't remember the name of the person, that's fine. Just
19 give us the name of – you've told us who was represented
20 there. Was it Lonmin, was it NUM, was it the police, was
21 it AMCU who said, "we do not know who are doing this?"
22 MAJOR-GENERAL MPEMBE: I was –
23 CHAIRPERSON: Look, I take it we can
24 actually cut this short. At para 4 of your statement GGG12
25 you talk about a meeting at 10 o'clock in the morning on

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1 Monday the 13th where you had a meeting with various people
2 from Lonmin and they, and Mr Mokwena referring to
3 protesters, is what you say in para 4, stated, "They were
4 faceless, the company doesn't know them." And then there
5 were discussions later on the Monday night where you showed
6 them photographs and they said that their personnel people
7 had gone home and they couldn't identify them and that's
8 dealt with in para 21 where you say that you showed them
9 the photographs that had been taken earlier that day and Mr
10 Kwadi said each shaft keeps its own records and the
11 relevant human resources personnel had left for the day,
12 they couldn't assist and that's why you then met them
13 subsequently on the 14th, that's Tuesday, at 5:30 – that's
14 paragraph 30. And there you showed them, they came back
15 and they identified a number of people in the photographs
16 that you'd provided and you then challenged them and said,
17 how could they say they were unknown and faceless? So
18 that's the background to this.
19 MAJOR-GENERAL MPEMBE: That's correct,
20 Chairperson.
21 MR NGALWANA: So in one word, what's your
22 answer, General? Who said we do not know these people, one
23 word?
24 MAJOR-GENERAL MPEMBE: Lonmin management.
25 MR NGALWANA: Not close enough to one,

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1 thank you, General. May I then take you, just for clarity,
2 I'm not sure if I can amend this from the bar, as it were.
3 On line 15, well, start at line 14 of that same page, you
4 say "We are policing in a democracy where negation its
5 weapons" –
6 CHAIRPERSON: I take it that's obviously
7 a misprint for negotiation.
8 MAJOR-GENERAL MPEMBE: Correct,
9 Chairperson.
10 CHAIRPERSON: Ja.
11 MR NGALWANA: You then in line 17 going
12 forward, the sentence beginning "The operation has
13 reached," can you see that?
14 MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson.
16 MR NGALWANA: You said, "The operation
17 has reached to a sensitive stage, that we might be, we
18 might go and lose more lives. We cannot lose more lives
19 but the people out there they are not safe. I have been
20 told while I was listening to the radio, we might be, we
21 might have two to three bodies. I do not know, we still
22 have to confirm." The question I want to ask you is, did
23 you have any internal police intelligence that more lives
24 might be lost?
25 MAJOR-GENERAL MPEMBE: Chairperson, as an

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1 overall commander I was always having a police radio
 2 wherever I go and if I entered a meeting I will open it
 3 very little. On the radio that day it was said that there
 4 is a person who died, who was taken to the hospital of the
 5 mine and he died and there was also another one that was
 6 injured. That's the one that I was referring to.
 7 MR NGALWANA: Were these, well the one,
 8 the casualty and the other the injury, had these happened
 9 on that day, the 15th, or on an earlier date?
 10 MAJOR-GENERAL MPEMBE: Chairperson, I was
 11 referring that this has happened on the early morning of
 12 Monday the 13th but the report on the radio, it was that one
 13 to say these are the people that have been injured and the
 14 other one has been killed but my understanding from that
 15 radio, it has happened in the early of Monday morning.
 16 MR NGALWANA: Chairperson and members of
 17 the Commission, we have a statement with regard to the
 18 person who was injured in the morning of the 13th. As I
 19 understand it, he is part of the exhibit L people but he is
 20 allocated to the wrong date. In other words, it says that
 21 he was stabbed on the 14th whereas in fact he has been
 22 stabbed in the early hours of the 13th when he was going to
 23 work. It's not a statement that forms part of the record
 24 that we have given. We shall hand it up in the course,
 25 maybe in the course of tomorrow. But when I said - it's in

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1 the milieu, if I may use that word, of the Mr X statement.
 2 So it's going to be another Mr Y or Mr Z.
 3 CHAIRPERSON: If you look at the
 4 occurrence book, which is exhibit FFF25, at page 160 of the
 5 bundle that you've given us you'll see an entry number 21
 6 at 06:20, this is on the morning of Monday the 13th, which
 7 refers to the body of an African male approximately 30
 8 years of age who was found at Eastern Plats next to the
 9 railway, firearm rounds on his back. They allege that he
 10 might have passed away. Well, is that the entry that you –
 11 is that the report you're referring to?
 12 MAJOR-GENERAL MPEMBE: That's correct,
 13 Chairperson.
 14 MR NGALWANA: Chairperson, you'll recall
 15 the witness having referred to two. The one was a
 16 casualty. I think this is an entry for the casualty. The
 17 statement to which I refer deals with the one who was
 18 injured and left for dead.
 19 CHAIRPERSON: There's a reference also –
 20 sorry, have I got my thing on? There's a reference also at
 21 page 161 to note number, entry number 44. This is at 2:50
 22 in the afternoon, 14:50 in the afternoon. "Security report
 23 about a person who died, a body at old sewage next to
 24 Andrew Saffy Hospital." So there's a dead person and the
 25 injured is the one with the five shotgun wounds in his

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1 back, he's presumably the injured person.
 2 MR NGALWANA: No, Chairperson.
 3 CHAIRPERSON: Is that right?
 4 MR NGALWANA: No, that's not correct,
 5 Chair, with respect. This incident – I would rather let
 6 the statement speak for itself, Chair.
 7 CHAIRPERSON: Alright. Anyway you'll
 8 favour us with a copy of that tomorrow, so let's move on.
 9 MR NGALWANA: Yes, Chair. Of OO, page 3
 10 of exhibit OO4 which is 194 of the paginated record, the
 11 facilitator, line 14, says, "I think the request is
 12 directed at" – well, let's start with line 10. You are
 13 speaking. You say, "We need to be seen as the protectors
 14 and get the perpetrators to court. That is my request.
 15 Thank you." Do you see that, General?
 16 MAJOR-GENERAL MPEMBE: I see it,
 17 Chairperson.
 18 MR NGALWANA: To which the facilitator,
 19 whom you say is Mr Kwadi, it's a Lonmin representative,
 20 says "I think the request is directed at AMCU as well as
 21 NUM. I suppose that is in order, that we get a response of
 22 what the General was saying from both trade unions." Do
 23 you see that? Is it factually correct that you were
 24 addressing yourself to AMCU and NUM only?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson.

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1 I was also talking to the mine.
 2 MR NGALWANA: Did you in any way correct
 3 that impression that Mr Kwadi or the facilitator held?
 4 MAJOR-GENERAL MPEMBE: That's correct,
 5 Chairperson. I also did indicate that is one of the
 6 omissions that I didn't see here, that the omission that I
 7 referred earlier, that there are some of the corrections
 8 that I made which I don't see.
 9 MR NGALWANA: Now, where would you have
 10 said what you're now saying you said to Lonmin, on that
 11 page?
 12 MAJOR-GENERAL MPEMBE: Chairperson, I did
 13 indicate to Mr Kwadi to say that I also include, it does
 14 also include the mine because hence I called all of them.
 15 CHAIRPERSON: In effect you said that at
 16 line 5 and following of the same page. "I'm not here on
 17 behalf of management, I'm not here on behalf of the
 18 unions." So you made it clear that you were there not for
 19 one side or the other but, as a member of the police
 20 service, concerned to bring about safety and security and
 21 stability at the mine. You did say that in not so many
 22 words, didn't you?
 23 MAJOR-GENERAL MPEMBE: It's correct,
 24 Chairperson.
 25 MR NGALWANA: What did you expect of

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1 Lonmin to do?

2 MAJOR-GENERAL MPEMBE: Chairperson, I did

3 expect that Lonmin on that day might indicate that when can

4 they start resolving the problem because the relevant

5 structures that they were referring to, they were there in

6 that meeting and I did not want to take part to say that

7 they should do it but the indication which I have said that

8 the operation has arrived at a sensitive stage, I wanted to

9 make them to understand that for them to get involved and

10 with the unions, it's a matter of urgency.

11 MR NGALWANA: Did you ask, General, the

12 Lonmin representatives at that meeting to go to the koppie

13 and address those people sitting there?

14 MAJOR-GENERAL MPEMBE: That's correct,

15 Chairperson.

16 MR NGALWANA: We see their response

17 later. Perhaps let me ask you now, what was their

18 response?

19 MAJOR-GENERAL MPEMBE: Chairperson, I'll

20 refer the honourable Chairperson and the members of the

21 Commission to page 27 of the same exhibit, page 27 to page

22 28.

23 CHAIRPERSON: 219 of the file.

24 MAJOR-GENERAL MPEMBE: That's correct,

25 Chairperson.

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1 MR NGALWANA: What line, Chair, General?

2 MAJOR-GENERAL MPEMBE: It will be between

3 line – there's the one that is line, I could say it's line

4 17, Mr Mokwena.

5 MR NGALWANA: Where Mr Mokwena says, "Our

6 position, General, is as Lonmin management our position is

7 as follows. We are willing to engage our employees within

8 the structures that are known in a very safe environment

9 where there are no weapons, not on the mountain. So we are

10 willing to meet our employees through their structures,

11 through their leaders, to discuss on any issue. Not when

12 they're armed, not when they are actually outside the

13 Lonmin property." Is that some of the part you're

14 referring to?

15 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

16 also including the following paragraph. I take it that is

17 also the answer to that.

18 MR NGALWANA: Yes, he then continues to

19 say, "So when the workers are back, disarmed, tomorrow,

20 tonight, through their leaders we will meet them. That is

21 our position. We are not against meeting, discussing

22 issues with their employees through their right structures,

23 we are prepared to do that." Right, so that's the Lonmin

24 position. Can I take you back to page 4 of OO4, paginated

25 page 195 of that bundle? In line 13, I think it's Mr

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1 Zokwana – or let me ask you this. The NUM president, I

2 think it's common cause, the NUM president is Mr Zokwana,

3 is that correct??

4 [14:48] MAJOR-GENERAL MPEMBE: That's correct,

5 Chairperson.

6 MR NGALWANA: He says at line 13 of page

7 4, paginated page 195, "Our members being grabbed along,

8 shop stewards are being grabbed to that mountain and being

9 killed," do you see that? You saw that?

10 MAJOR-GENERAL MPEMBE: Yes, I can see it,

11 Chairperson.

12 MR NGALWANA: Did you ask him, did you

13 ask Mr Zokwana to identify these members of NUM that he

14 says were grabbed to the mountain, presumably against their

15 will?

16 MAJOR-GENERAL MPEMBE: That's correct,

17 Chairperson. I even said that my office is open for 24,

18 that if there is anyone who can give me the information to

19 resolve the problem. I even said that for me to resolve

20 this problem, because it's a big elephant, I had to eat it

21 bit by bit.

22 MR NGALWANA: You mentioned omissions in

23 some parts of the transcript. On that page – I think let's

24 do it in that fashion – on this page, General, thus far in

25 the conversation is there any glaring omission that you can

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1 see? In other words, is there anything that either you

2 said or any of the parties at that meeting said that is not

3 recorded on this page?

4 MAJOR-GENERAL MPEMBE: No, Chairperson, I

5 don't.

6 MR NGALWANA: Now on page, on the same

7 page, beginning line 21 right to the end it's still Mr

8 Zokwana who says, "I think that people who are better

9 placed are those who put people in that mountain, to go and

10 tell them to come down." Do you see that?

11 MAJOR-GENERAL MPEMBE: Yes, I can see,

12 Chairperson.

13 MR NGALWANA: Can you give the Commission

14 the context of what it is that he was talking about?

15 MAJOR-GENERAL MPEMBE: Chairperson, Mr

16 Senzeni Zokwana was referring to the AMCU.

17 MR NGALWANA: What about AMCU?

18 MAJOR-GENERAL MPEMBE: He was saying that

19 it's AMCU that is better placed and who took the people to

20 the mountain.

21 MR NGALWANA: Yes, I think we see that on

22 the next page, page 5 at the bottom, paginated page 196

23 where he says, "I think AMCU is better placed to go to the

24 mountain and tell them to come down and I agree with you,"

25 and so he goes on. On page 7, General, paginated page 198

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1 of that same document, the first line, you are the one who
 2 is now addressing the meeting. You're saying, "But it's my
 3 job as a police officer to find out who did these things."
 4 You continue to say, "What I'm saying is this, now that I
 5 have identified and I said when I started here the same
 6 management told me that 'We do not know who we are dealing
 7 with because we have unions that we are talking to, we are
 8 not talking to anybody' and they were refusing to talk to
 9 anyone." Are you able to put this in a proper perspective
 10 for the Commission?
 11 MAJOR-GENERAL MPEMBE: Chairperson, at
 12 this stage I was referring to the management.
 13 MR NGALWANA: Alright, is that all you're
 14 prepared to say about that passage?
 15 MAJOR-GENERAL MPEMBE: Chairperson, on
 16 the 13th when I was intercepting the group, I was with Mr
 17 Henry Blou and when I requested Mr Henry Blou to say let
 18 the management help me with an interpreter, Mr Henry Blou
 19 informed me that someone who is a senior at Lonmin said
 20 that we are not prepared to negotiate with those people but
 21 we are prepared to negotiate with the lawful structures.
 22 MR NGALWANA: Thank you. Then on page 8,
 23 General, in line 19 you say, "I am here to ensure safety
 24 and security and I need your help. If I did not know to
 25 whom these members are belonging, I could have not come to

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1 you. I could not have gone to the management. I came
 2 because of the identification issue." Do you see that?
 3 When you say I came because of the identification issue,
 4 firstly, to whom are you addressing yourself?
 5 MAJOR-GENERAL MPEMBE: Chairperson, I was
 6 talking to both NUM and AMCU.
 7 MR NGALWANA: To help you identify what?
 8 MAJOR-GENERAL MPEMBE: Chairperson, I was
 9 requesting them to help me to identify the people who have
 10 taken the leadership and when I'm talking about the
 11 leadership, I'm talking about those that spoke to me when I
 12 was intercepting the group and I was also referring to say
 13 where are they staying.
 14 MR NGALWANA: On that day did they assist
 15 you with that information?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 17 did not get any help on that day.
 18 MR NGALWANA: On page 12, General,
 19 paginated page 203 line 15, the NUM president Mr Zokwana
 20 says, "Even if NUM were to consider any form of any
 21 meeting, we won't be with AMCU together, we won't. That is
 22 the stand we take as a union. We are going to consult on
 23 our own but meeting with AMCU on matters is not possible."
 24 He continues over the page and he says, "What I am saying
 25 to you now is that the NUM may be, we will go to the

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1 mountain and engage anybody. What you have said I will
 2 need to ponder on but as NUM we cannot go to any forum
 3 together with AMCU because we have done that, go with them
 4 and negotiate at Impala and when the deal is made, they
 5 refuse to go and report with us because they are playing a
 6 game of winning the minds of the people, as if they are the
 7 ones who bring benefits. We can't go there." What
 8 impression did this give you of Mr Zokwana's attitude in
 9 relation to working with AMCU, General, with a view to
 10 resolving the impasse?
 11 MAJOR-GENERAL MPEMBE: Chairperson, the
 12 impression that I had is that we are not going to go to the
 13 mountain with AMCU because if we go there with AMCU and the
 14 matter is resolved, that will be communicated as if it's
 15 the AMCU initiative and winning and that will win the minds
 16 of the people.
 17 CHAIRPERSON: Sorry – this looks like a
 18 suitable time for us to take the tea adjournment, Mr
 19 Ngalwana.
 20 MR NGALWANA: Time flies.
 21 CHAIRPERSON: Yes. We'll take the tea
 22 adjournment at this stage.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:22] CHAIRPERSON: The Commission resumes.
 25 Major-General, you're still under oath. Mr Ngalwana,

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1 you've still got questions for the witness?
 2 ZONDASI WILLIAM MPEMBE: (s.u.o.)
 3 CROSS-EXAMINATION BY MR NGALWANA (CONTD):
 4 Just a few, thank you, Chair. General, may I take you to
 5 page 21 of OO4 which is the same exhibit that we were
 6 discussing before the tea break, and take you specifically
 7 to line 16. There's a new sentence there beginning, "If
 8 you didn't entertain" – do you see that?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson, I can see it.
 11 MR NGALWANA: "If you didn't entertain
 12 those delegations of RDOs, I don't think we will be sitting
 13 here talking the loss of life." Now, that's Mr Mathunjwa
 14 and we know this because he starts addressing the meeting
 15 at page 13 of that exhibit, at paginated page number 204.
 16 To whom was he addressing himself, General?
 17 MAJOR-GENERAL MPEMBE: Chairperson, he
 18 was addressing the Lonmin management delegation present in
 19 that meeting.
 20 MR NGALWANA: Now he's referring to a
 21 delegation of RDOs that he says Lonmin entertained. Are
 22 you – well, let's put it this way, at that time in that
 23 meeting in the morning or the afternoon of the 15th of
 24 August 2012, were you aware of any such entertainment or
 25 engagement?

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1 MAJOR-GENERAL MPEMBE: Chairperson, it
 2 transpired in that meeting, during this meeting and it was
 3 the first time that I heard that and when Mr Mathunjwa was
 4 saying that to the mine management to say there was a time
 5 where the mine did approach the RDOs without the unions.
 6 It was the first time to do that, but Lonmin mine
 7 management did not deny the fact that they once spoke or
 8 talked to the RDOs without the unions.
 9 MR NGALWANA: Mr Mathunjwa says he
 10 doesn't think that there would be, a meeting would have
 11 been sitting there talking about loss of life had that
 12 delegation of RDOs not been directly engaged by Lonmin. Do
 13 you share that sentiment or did you share that sentiment?
 14 MAJOR-GENERAL MPEMBE: Chairperson, at
 15 that time I was shocked because all the time when the
 16 management, I was speaking to them and I indicated also in
 17 the same exhibit the response of Mr Mokwena, that they will
 18 entertain whatever the RDOs have but with the relevant
 19 structures. So to me, I was surprised to see that there
 20 was one stage where they did speak to the RDOs without the
 21 same structures that they are referring to.
 22 MR NGALWANA: Did you agree with Mr
 23 Mathunjwa when he said had it not been for the direct
 24 engagement with RDOs they wouldn't be discussing loss of
 25 life?

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1 MR BURGER SC: I object to that question.
 2 It's quite irrelevant what this witness thinks of that
 3 proposition, Chair.
 4 CHAIRPERSON: Yes, what's your reply to –
 5 what is the relevance of this witness's opinion as to
 6 whether the fact that Lonmin negotiated independently with
 7 the RDOs led to their being there and led to the loss of
 8 life? That's the point.
 9 MR NGALWANA: It's not a life and death
 10 question, Chair. I'm not going to persist in it. Not that
 11 I agree with the objection, but I won't persist with it.
 12 CHAIRPERSON: Well, you can move on to
 13 the next question. The objection is upheld.
 14 MR NGALWANA: May I take you to page 27
 15 of that same exhibit, paginated page 218? Mr Mokwena, do
 16 you know what position Mr Mokwena holds at Lonmin?
 17 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 18 MR NGALWANA: Well, what is it?
 19 MAJOR-GENERAL MPEMBE: I was informed
 20 that he is vice-president of human capital but I'm not
 21 quite sure with the job description itself.
 22 MR NGALWANA: It seems like a fairly
 23 senior position. Now, we've read that paragraph. I just
 24 want to ask you one question. I suppose for purposes of
 25 this question I need to read it again. He says at line 17,

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1 "Our position is, as Lonmin management our position is as
 2 follows. We are willing to engage our employees within the
 3 structures that are known in a very safe environment where
 4 there are no weapons." And he continues over the page. I
 5 won't read the whole excerpt. The question I wish to ask
 6 you, General, is, did Lonmin at any stage meet with
 7 employees through their structures?
 8 CHAIRPERSON: Does the witness know the
 9 answer to that question?
 10 MR NGALWANA: That's why I'm asking the
 11 question, Chair.
 12 MR BURGER SC: Perhaps my learned friend
 13 can tell us what period he refers to.
 14 CHAIRPERSON: The question is very broad
 15 and vague.
 16 MR NGALWANA: General, did Lonmin at any
 17 stage between the 15th of August 2012 and the 18th of August
 18 2012 meet with the employees through their relevant
 19 structures?
 20 CHAIRPERSON: You should explain to the
 21 witness what you mean by their relevant structures so that
 22 he can answer the question in an appropriate manner.
 23 MR NGALWANA: When Mr Mokwena – let's
 24 take a step back, General. Thank you, Chair. When Mr
 25 Mokwena said they are willing to engage employees within

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1 the structures that are known, what did you understand him
 2 to mean by that?
 3 MAJOR-GENERAL MPEMBE: Chairperson, my
 4 understanding was that he was referring to the unions, AMCU
 5 and NUM.
 6 MR NGALWANA: Now with a view to
 7 resolving the wage dispute, between the 15th, the afternoon
 8 of the 15th of August 2012 and the 18th of August 2012, did
 9 Lonmin meet with the unions?
 10 MR BURGER SC: No, there was no wage
 11 dispute in that period so the premise of the question is,
 12 with respect, wrong.
 13 CHAIRPERSON: Perhaps you should
 14 reformulate the question by talking about the remuneration
 15 dispute.
 16 MR NGALWANA: Thank you, Chair. Between
 17 the afternoon of the 15th of August 2012 and the 18th of
 18 August 2012, to your knowledge did Lonmin meet with the
 19 trade unions with a view to discussing the remuneration of
 20 RDOs and other workers?
 21 CHAIRPERSON: Mr Ngalwana, I don't
 22 understand how this question can help us. We know from
 23 other evidence that the situation was far more complicated
 24 than that. The first point was that there was a two year
 25 wage agreement which, about which the local NUM people had

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1 taken up a certain attitude. We also know that there were,
 2 among the RDOs were a fair number of people who weren't
 3 members of any union. We also know that NUM had the wage
 4 negotiation rights and AMCU didn't. It's also been
 5 suggested and NUM has still got to come back to us on this,
 6 but suggested that NUM's stance had been, we're not
 7 prepared to negotiate separately for the RDOs, we're only
 8 prepared to agree to wage increases across the board,
 9 across the whole work force, in which case if that was
 10 their attitude they couldn't take up the cudgels for the
 11 RDOs separately. So there were all sorts of complicated
 12 issues which arose, so I'm not quite sure how the witness's
 13 answer to this question can help us.

14 MR NGALWANA: Chairperson, the only
 15 aspect I wish to test with the witness, and he can say he
 16 knows or he doesn't know, is Lonmin says we're only
 17 prepared to negotiate through structures that are known.
 18 All I'm checking –

19 CHAIRPERSON: Sorry, if you go on to page
 20 – anyway, is it not common cause that there were no such
 21 discussions during the period? I don't think it's
 22 suggested – NUM doesn't, Lonmin don't put their hands up
 23 and say we don't know what the problem is, we did have
 24 these discussions with NUM and AMCU at the time. It's a
 25 non-issue, so what's the point of asking the witness about

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1 it? I don't see how that helps.

2 MR NGALWANA: Chairperson, with respect,
 3 had we allowed the witness to answer the question, yes or
 4 no, we would have been farther than where we are now.

5 CHAIRPERSON: I don't know if we would be
 6 because if his answer is irrelevant then we wouldn't be any
 7 further than where we are now. We've just wasted some
 8 time. If you'd explain the relevance of this witness's
 9 knowledge about something which is virtually common cause
 10 before us, namely that there weren't such discussions, then
 11 I'll allow you to ask the question but once I start
 12 allowing people to ask questions that are irrelevant
 13 because it will save time to do so, then of course we'll be
 14 going down a slippery slope which is something that I don't
 15 want –

16 MR NGALWANA: Thank you. I thank the
 17 Chair for indicating that it is common cause that no such
 18 meeting has ever happened, so I'll move on, on that basis.
 19 General, very quickly because I would like us to finish
 20 with the 15th today, can I take you to the debriefing
 21 transcript which is the next exhibit.

22 CHAIRPERSON: It's tab number 8.
 23 MR NGALWANA: Tab number 8. I think it's
 24 GGG4 or something. It's GGG4.
 25 CHAIRPERSON: That is correct.

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1 MR NGALWANA: Do you have GGG4 before
 2 you? Thank you, Chair.

3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.

5 MR NGALWANA: Who was represented? Was
 6 Lonmin represented?

7 MAJOR-GENERAL MPEMBE: Chairperson, I
 8 need to state that the unions did go to the mountain and
 9 also the Lonmin management, Mr Kwadi, and myself, we did go
 10 to the koppie in that afternoon of that day.

11 CHAIRPERSON: Just to cut it short, it
 12 appears from page 224 that Mr Kwadi was there. He was the
 13 representative of Lonmin. Mr Zokwana was there, he was the
 14 president of NUM. Mr Mathunjwa was there but they met
 15 separately, they weren't prepared to meet together. So
 16 NUM, there was first a discussion with the NUM
 17 representatives and thereafter a separate discussion with
 18 the AMCU representatives, is that correct?? That's what
 19 appears from the document.

20 MAJOR-GENERAL MPEMBE: It's correct,
 21 Chairperson.

22 CHAIRPERSON: So don't waste further time
 23 on it.

24 MR NGALWANA: But at this stage of your
 25 evidence, General, I take it you're dealing with the

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1 intervening period between the afternoon meeting and the
 2 evening meeting, correct?

3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.

5 MR NGALWANA: You say you did go to the
 6 koppie. Just take us through very briefly.

7 MAJOR-GENERAL MPEMBE: AMCU and, AMCU
 8 delegation and NUM delegation were escorted to go to the
 9 koppie in a separate vehicle by the police and also that
 10 when they came back they did also give feedback and that's
 11 the debriefing that we are referring to.

12 MR NGALWANA: And so I take it this GGG4
 13 is a report back of what has happened at the koppie when
 14 they were addressing the people on the koppie, is that
 15 correct?

16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.

18 MR NGALWANA: Can I take you to what's
 19 written as page 1 in the middle of the top, middle top of
 20 the page of that exhibit? It's paginated page 224. Now, I
 21 don't know if there's any significance of this. In line 1,
 22 2, 3, 4 there's something that says, "This continues to
 23 about" then it's got 34:57. Do you know what that
 24 signifies, the 34:57?

25 MAJOR-GENERAL MPEMBE: Chairperson, I

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1 don't have the same. Maybe if I can get the page.
 2 MR NGALWANA: Look at the bottom. I
 3 don't know, the pagination is 224 written in black koki.
 4 It's page 1 of GGG4, the debriefing.
 5 MAJOR-GENERAL MPEMBE: Yes, correct
 6 Chairperson.
 7 MR NGALWANA: If you look four lines down
 8 it's written in block letters and underlined, do you see
 9 that part?
 10 CHAIRPERSON: Are you referring to the
 11 passage –
 12 MR NGALWANA: Top of the page.
 13 CHAIRPERSON: This continues to about
 14 34:57? That obviously must be a reference to a reading on
 15 the tape.
 16 COMMISSIONER HEMRAJ: General, if you –
 17 CHAIRPERSON: Because it can't be a time.
 18 MAJOR-GENERAL MPEMBE: Okay.
 19 MR NGALWANA: It's not a significant
 20 issue, I just wanted to know whether you know what it
 21 signifies or not, General?
 22 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 23 don't know what does it signify.
 24 CHAIRPERSON: He says in his statement he
 25 wasn't aware of the fact that proceedings were being

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1 recorded. Again he asked for it to be minuted, that was
 2 refused, so he obviously doesn't know anything about the
 3 tape either.
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR NGALWANA: On page 2, paginated page
 7 225 towards the end of the page there's a line about 26, I
 8 think, beginning 25 or 24. You are addressing the meeting.
 9 You say, "We are sitting with a situation that we want to
 10 avert the bloodshed and I even indicated we still have to
 11 strategise how do we, how do we avert that bloodshed." Now
 12 by "bloodshed" General, what was – sorry, I haven't
 13 finished the question – what did you mean by bloodshed?
 14 What were you referring to?
 15 [15:41] MAJOR-GENERAL MPEMBE: Chairperson, I was
 16 referring to the situation that started actually from
 17 Sunday, Monday, until also at that time, that's the
 18 bloodshed that I was referring to.
 19 MR NGALWANA: Page 3, paginated page 226,
 20 line about 4 or 5 or 6, you say, "But the issue of whether
 21 they hand in firearms or they hand in – because we can just
 22 want to assure you, the intelligence is there hiding out in
 23 their blankets. It is going to be bloodshed. We still
 24 have to resolve that. We still have to resolve that and we
 25 are no more prepared, we are already – we have already lost

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1 two police officers. We are no more prepared and we are
 2 not going to lose another police officer." You continue
 3 lower down about 14, line 14 you say, "I know that you also
 4 come up and say but why are, why police are not intervening
 5 but they cannot intervene in the situation that we see,
 6 that is going to go, to cause more harm than good." Now
 7 what I want to ask you is this, you refer to a situation in
 8 which the police cannot intervene. Can you elaborate,
 9 explain to the Commission what situation was going to
 10 present difficulties to the police in intervening?
 11 MAJOR-GENERAL MPEMBE: I was referring to
 12 the fact that we will have to get the alternative method to
 13 resolve the problem.
 14 MR NGALWANA: Are you able to elaborate,
 15 General?
 16 MAJOR-GENERAL MPEMBE: At this time it
 17 was the fact that we wanted the unions, as they are the
 18 leaders, to have persuaded their members to lay down their
 19 weapons voluntarily.
 20 MR NGALWANA: Now there are numerous
 21 other instances in that exhibit in which you refer to
 22 bloodshed and from that an inference is drawn that you were
 23 opposed to disarming people on the koppie. Can I ask you
 24 what was the situation on the 15th that made it difficult
 25 for the police to intervene, as you point out here, which

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1 was no longer there on the 16th when the police did
 2 intervene? I'll rephrase that question perhaps, if it's
 3 not clear.
 4 MR MADLANGA SC: Chair, I just wanted to
 5 object but the question is being rephrased. The witness
 6 has –
 7 MR NGALWANA: General – okay.
 8 CHAIRPERSON: The question is being
 9 rephrased. Wait for the rephrased question, if you'll got
 10 an objection then you can raise it.
 11 MR NGALWANA: General, on page 3 about
 12 the middle of the page you say, "I know that you also come
 13 up and say, but why police are not intervening but they
 14 cannot intervene in the situation that we see, that is
 15 going to cause more harm than good." Do you see that? Do
 16 you remember saying that? Evidently you point to a
 17 situation because, as a result of which you cannot
 18 intervene as the police. Am I misreading you?
 19 MAJOR-GENERAL MPEMBE: Chairperson, at
 20 that time I agree, but on the 15th still on this meeting the
 21 situation has changed, did change.
 22 MR NGALWANA: What was the situation on
 23 the 15th, General, that you couldn't intervene?
 24 MAJOR-GENERAL MPEMBE: Chairperson, if I
 25 indicate it's that Mr Mathunjwa did indicate that the

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1 people on the following day will lay down their weapons
 2 voluntarily.
 3 MR NGALWANA: Let me put it clearer,
 4 General. What did you mean by, "We cannot intervene in the
 5 situation?"
 6 MAJOR-GENERAL MPEMBE: On the 15th I was
 7 saying that we cannot go there to the mountain on the 15th
 8 to disperse the people. That is what I was referring to.
 9 MR NGALWANA: And the reason for that
 10 view?
 11 MAJOR-GENERAL MPEMBE: The reason for
 12 that view is the one that I've indicated, that the
 13 intelligence said that there are some of the other people
 14 which they do have firearms and also dangerous weapons.
 15 MR NGALWANA: And on the 16th the police
 16 did intervene, that's common cause.
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.
 19 MR NGALWANA: What had changed on the
 20 16th?
 21 MAJOR-GENERAL MPEMBE: Chairperson, on
 22 the 16th I did also mention in my supplementary statement,
 23 firstly there was a time where we were having a belief that
 24 people are going to lay down their weapons.
 25 MR NGALWANA: And we do come to a part

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1 later on where you play devil's advocate, which I think
 2 relates to this. Perhaps let me take you there, General.
 3 I'll come back and do this chronologically. On page 13 of
 4 that exhibit, paginated 236 – have you found it, General?
 5 MAJOR-GENERAL MPEMBE: Correct,
 6 Chairperson.
 7 MR NGALWANA: You'll see on about line 22
 8 where you say, "Right, I'm just going to play devil's
 9 advocate" and in that whole paragraph which ends on the
 10 next page, effectively what you're asking is, on page 14
 11 line about 7, 6 and 7, "If they do not hand over tomorrow,
 12 what next?" As I read it, that's the devil's advocate
 13 you're playing because there have been indications that Mr
 14 Mathunjwa, if you like, is confident of what is going to
 15 happen tomorrow. Now you say because of what Mr Mathunjwa
 16 had said at the meeting, the situation had changed on the
 17 16th than what had been the position on the 15th. I would
 18 just like you to explain to the Commission just briefly
 19 what the difference was between the position on the 15th and
 20 the position on the 16th.
 21 MAJOR-GENERAL MPEMBE: Chairperson, on
 22 the same page Mr Mathunjwa's answer said, "Yes, I think it
 23 is quite normal to answer that question because all our
 24 desire is a positive adherence to our call that everyone,
 25 when you say denounce violence, leave whatever that will be

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1 injuring people. So I do not have a specific answer what
 2 next will happen because I believe that tomorrow will be a
 3 day of joy for everyone." Chairperson, he went on to say,
 4 "So I have not point in that direction of negativity of
 5 saying" –
 6 MR NGALWANA: I think he's looking for a
 7 translation, Mr Mahlangu –
 8 MAJOR-GENERAL MPEMBE: Yes. "So I have
 9 no point in that direction of negativity of saying no,
 10 people will say no to violence or whatever. And again when
 11 they say weapons, what do we mean? Yes, pangas and what
 12 exactly?" And then –
 13 MR NGALWANA: Okay. General, there's
 14 been some debate about whether Mr Mathunjwa made an
 15 undertaking or not. Let's just go through these. Can I
 16 take you to –
 17 CHAIRPERSON: He's still busy with the
 18 question of what he said on the Wednesday night compared
 19 with the following day or have you left that point?
 20 MR NGALWANA: I think we'll leave it for
 21 now, Chair, I may come back to it.
 22 CHAIRPERSON: Are you coming back to
 23 that, alright.
 24 MR NGALWANA: May I take you to page 11,
 25 General, paginated 234? It's Mr Mathunjwa now speaking.

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1 Around line 6 I'm taking you to, it's not the beginning of
 2 the sentence, he says, "they said they want us tomorrow at
 3 9 o'clock when there is sun and that in order to engage on
 4 how to return back to work based on what we tabled to them,
 5 so our impression is, that is they are willing to go back
 6 to work and we must come at 9 o'clock." Do you see that?
 7 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 8 I can see it.
 9 MR NGALWANA: I take it he's now giving a
 10 report back of what happened at the mountain as he was
 11 addressing those people, at the koppie.
 12 MAJOR-GENERAL MPEMBE: That's correct,
 13 Chairperson.
 14 MR NGALWANA: He continues. He says,
 15 "Overall impression, they did welcome us and they are
 16 prepared that by tomorrow surely there will be a way
 17 forward, by all these things will be over. That is our
 18 impression and our interpretation – not even
 19 interpretation, that is what they said." Do you see that?
 20 What did you understand him to mean by that?
 21 MAJOR-GENERAL MPEMBE: My understanding
 22 was that the strikers are willing to voluntarily hand over
 23 their weapons and disperse.
 24 MR NGALWANA: Then on the next page, page
 25 12, we come to the second indicator of what Mathunjwa was

<p style="text-align: right;">Page 11240</p> <p>1 about. Line 10, in line 10 he says, "So that is our 2 belief, that this thing will be over by tomorrow but they 3 made it clear that they do not want NUM there. They do not 4 want NUM, they do not want NUM" and inaudible and so on. 5 Do you see that? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson, I can see it. 8 MR NGALWANA: You then ask him the 9 question and you say, "Are you saying tomorrow they will 10 hand in their weapons, they will disperse?" To which he 11 responds "Yes" and then goes on to – 12 CHAIRPERSON: I think it says "Yes, I 13 mean if your" – and then the rest of it is inaudible. 14 MR NGALWANA: What did you understand him 15 to mean by that? 16 MAJOR-GENERAL MPEMBE: Chairperson, my 17 question was very clear in terms of is he saying that 18 tomorrow they will hand in their weapons and they will 19 disperse and my understanding was, yes. 20 MR NGALWANA: The third point - is there 21 anything you wish to add, General? 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 23 It was that I was continuously checking on him to say that 24 are these people really going to hand over their weapons 25 voluntarily tomorrow and even if after I've asked him the</p>	<p style="text-align: right;">Page 11242</p> <p>1 Mr Mathunjwa to be saying there in response to the question 2 put by the policeman, Major-General Annandale? 3 [16:01] MAJOR-GENERAL MPEMBE: Chairperson, again 4 my understanding was that we were already talking about a 5 plan of when the voluntariness of handing in of the 6 firearms takes place, what is that that we are going to do. 7 MR NGALWANA: Chair and Commissioners, I 8 am eager to finish the 15th today. I should be another 9 eight to 10 minutes, if you'll indulge me. Tomorrow I 10 would like to start on something new. 11 CHAIRPERSON: We can sit till quarter 12 past 4. 13 MR NGALWANA: Thank you, Chair. We've 14 dealt with the issue, you then played devil's advocate. 15 You ask him, if they don't hand over, that's the fourth 16 indicator of what Mr Mathunjwa was saying about the handing 17 down of weapons the following day – you then say, "If they 18 don't hand over tomorrow then what next?" Then he says, 19 "Yes, I think it is quite normal to answer" - I'm looking 20 now at page 14, General, paginated page 237 from line about 21 12 Mr Mathunjwa answers your devil's advocate question. He 22 says, "Yes, I think it is quite normal to answer that 23 question because all our desire is a positive adherence to 24 our call that everyone, when you say denounce violence, 25 leave whatever that will be injuring people. So I do not</p>
<p style="text-align: right;">Page 11241</p> <p>1 devil's advocate, to say look, I want to be a devil's 2 advocate and I continued and he gave me really the answer 3 always on the positive. He even pointed out that there is 4 no point where you have, we have to think about negativity. 5 MR NGALWANA: The third point, General, 6 page 13 round about the seventh line, there's a policeman 7 who speaks there. Do you recall who that was? 8 MAJOR-GENERAL MPEMBE: Chairperson, I 9 remember it was Major-General Annandale. 10 MR NGALWANA: He says in the middle of 11 that, about 1, 2, 3, 4, 5, 6 – about line 7 after 12 "inaudible" he says, "Then also we absolutely welcome the 13 fact that you're saying that you are denouncing the 14 violence and that that will mean those people will hand in 15 their firearms so that we can then sit with yourselves and 16 leadership, we can then have a practical plan in terms of 17 that so that people will be in a position to then, in that 18 demarcated area, and put down the pangas and the spears and 19 whatever. I just thought I will" – then it becomes 20 inaudible. To which Mr Mathunjwa then responds and says, 21 "I mean from tomorrow when we engage them, maybe some, the 22 way forward may be we will be saying wherever, just leave 23 whatever and then police come and collect it. Maybe 24 sometimes if I come and bring it to you there will be that 25 sort of" and then it phases off. What did you understand</p>	<p style="text-align: right;">Page 11243</p> <p>1 have a specific answer what next will happen because I 2 believe that tomorrow will be a day of joy for everyone, so 3 I have not point in that direction of negativity of saying 4 no, people will say no to violence to whatever and so on." 5 What I wish to ask you is, as a fourth pointer, what did 6 you understand Mr Mathunjwa here to be saying in clear 7 terms? 8 MAJOR-GENERAL MPEMBE: Chairperson, he 9 made me to believe that tomorrow there will be the 10 voluntariness of handing over of weapons and the people 11 dispersed. 12 CHAIRPERSON: Before we proceed, I did 13 say we'll carry on till quarter past 4 but I'm reminded of 14 the fact that we've only got one interpreter at the moment. 15 Mr Mahlangu, can you carry on till quarter past 4? 16 MR MAHLANGU: Yes, yes, Mr Chairperson. 17 CHAIRPERSON: You can? 18 MR MAHLANGU: I will. 19 CHAIRPERSON: The other day I remember 20 when we were in Rustenburg you, it became very difficult 21 for you to carry on, so if you have a problem please let me 22 know. 23 MR MAHLANGU: No, I will, Chair, thank 24 you. Thank you, Chair. 25 MR NGALWANA: In fact may I very quickly,</p>

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1 General, take you to Mr Mathunjwa's statement - we're going
 2 to come back to Mr Mathunjwa's statement later – and refer
 3 you to paragraph 54 of that statement. It's NN, exhibit
 4 NNI in the statements bundle.
 5 COMMISSIONER HEMRAJ: Mr Ngalwana, you're
 6 not putting any more of the transcript then to the witness?
 7 MR NGALWANA: Yes, no, I am. It's just
 8 that this part of the statement is relevant here. Mr
 9 Mathunjwa, paragraph 54.
 10 MAJOR-GENERAL MPEMBE: I've got it,
 11 Chairperson.
 12 MR NGALWANA: Found it? We are still
 13 dealing with the indicators about what Mr Mathunjwa's state
 14 of mind was and what he conveyed to the people at the
 15 meeting in that meeting of the 15th in the evening. He says
 16 in paragraph 54, "We reported to Lonmin management and to
 17 the SAPS jointly regarding our discussion with the workers.
 18 Present on behalf of SAPS" – then he says who was there.
 19 Then he says, "We said that the workers had been receptive
 20 to the proposal that they return to work and that we would
 21 see them again in the morning to discuss the matter
 22 further." Do you see that? Did that – well, on his own
 23 evidence would that give you an impression that the
 24 following day you'll still be dealing with people who are
 25 armed sitting at the koppie?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson.
 2 MR NGALWANA: Then on page 17 of 009 –
 3 no, it's GGG4, paginated 240, Mr Mathunjwa again. Have you
 4 found it, General?
 5 MS BARNES: Sorry, what page of the
 6 exhibit?
 7 MR NGALWANA: Page 17.
 8 CHAIRPERSON: 686 in the police
 9 numbering.
 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 11 I found it.
 12 MR NGALWANA: About line 7, Mr Mathunjwa
 13 says, "We will advise them the easiest way, wherever you
 14 are, just leave anything there and move away and then from
 15 there I think things will work better, but do not think
 16 that if those weapons," if those weapon – let me read it as
 17 it's written – "do not think that if those weapon are not
 18 brought back you will escape the wrath of the justice.
 19 They will be pursuing the individual until such time. This
 20 is a challenge that everyone should use for the betterment
 21 of everyone." Do you see that? From that, General, what
 22 did you understand Mr Mathunjwa in clear terms to mean?
 23 MAJOR-GENERAL MPEMBE: It is clear,
 24 Chairperson, that he will also inform them or tell them
 25 that if, even though they have left their weapon

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1 voluntarily there, the police will still also through the
 2 investigations and follow them and those that have
 3 committed crimes, they will be arrested.
 4 MR NGALWANA: To emphasise the point he
 5 then continues a couple of lines down, about line 17 or
 6 something. He says, "I mean what I am saying today." Do
 7 you see that? "I mean what I am saying today. It will not
 8 change tomorrow. That is Joseph Mathunjwa. I do not play
 9 politics, I am not a politician, I am an ex-worker, I am
 10 just a union representative. I respect the lives of
 11 people. I believe" – then he believes in Jesus and so on.
 12 Now invoking the name of He who was crucified on Calvary
 13 2000 years ago to buttress what it is that he was saying
 14 about people laying down arms the following day, what did
 15 you understand Mr Mathunjwa to be saying there?
 16 MAJOR-GENERAL MPEMBE: Chairperson, my
 17 understanding was that he was actually even ensuring in the
 18 name of Jesus that tomorrow the people will hand in their
 19 weapons.
 20 CHAIRPERSON: That's not what he said.
 21 He referred to the crucifixion and he goes on to talk about
 22 he's not supporting violence and he says, "I believe that
 23 the one that was crucified on Calvary 2000 years ago, that
 24 blood was enough." So he's clearly saying I'm opposed to
 25 bloodshed, blood was shed for remission of sins and the

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1 salvation of mankind and so forth at Calvary at the
 2 crucifixion and that blood was enough, we don't need any
 3 more bloodshed, that's what he's saying in this passage.
 4 He's not just invoking the name of Jesus to buttress the
 5 other statements that he made. That's -
 6 MR NGALWANA: General, in the context of
 7 everything Mr Mathunjwa has said –
 8 CHAIRPERSON: - I asked.
 9 MAJOR-GENERAL MPEMBE: Chairperson, what
 10 I was saying is that he was making me to believe that the
 11 bloodshed will be averted and Jesus Christ was crucified,
 12 that was enough, but in my understanding –
 13 MR NGALWANA: Can the interpreter allow
 14 the – may I make a request, Chair? Can the interpreter
 15 allow the witness to complete his answer and then do a
 16 translation because it's quite disturbing to be cutting in
 17 between.
 18 MR MAHLANGU: I'm sorry that is the
 19 position.
 20 CHAIRPERSON: [Inaudible] high standards
 21 that they set themselves, but perhaps this is a time for us
 22 to stop. I'm afraid you haven't finished the 15 now but
 23 you'll have to resume tomorrow at 09:30. We now adjourn
 24 till tomorrow morning at 9:30.
 25 [COMMISSION ADJOURNED]

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