

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

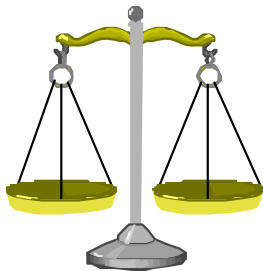
MARIKANA

BEFORE TRIBUNAL

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

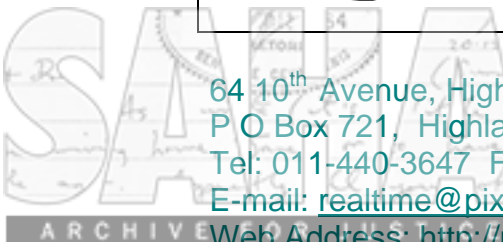
HELD ON

DAY 107 14 JUNE 2013 PAGES 11483 TO 11535



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



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1 [PROCEEDINGS ON 14 JUNE 2013]
 2 [09:55] CHAIRPERSON: The Commission resumes.
 3 Before I remind the Major-General that he's under oath, I
 4 want to welcome, there are some visitors who are with us
 5 this morning who are from the Truth and Reconciliation
 6 Commission of the Republic of the Ivory Coast, who are on a
 7 tour of South Africa to see what they can learn from our
 8 experience in the area of truth and reconciliation and so
 9 forth. I want to extend a welcome particularly to "Metre
 10 Marie Frans Gofre Quamcar," who is the lady in the middle
 11 there – stand up – who is the president of the commission
 12 and who has led the interrogations. I hope all the
 13 members, all those involved in the Commission will be on
 14 their best behaviour today so that our visitors will go
 15 back to the Ivory Coast with a favourable impression on the
 16 way we work. I explained to them that this is a judicial
 17 commission, so we more or less follow the procedures of in
 18 a trial in the High Court. They are very interested, I
 19 understand, in seeing how we work, and as I've said, I hope
 20 that their visit will be fruitful one. They will be
 21 leaving us at one point in the morning to go to Freedom
 22 Park for the reinterment of the remains of some MK members.
 23 They'll then come back and have tea. There is, I
 24 understand, a birthday celebration this morning and they've
 25 been invited to attend that, and at the end of this

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1 morning's session they're going to ask us some questions
 2 based upon what they see what they have observed of the
 3 conduct of the rest of you, including me. Major-General,
 4 you're still under oath.
 5 WILLIAM MPEMBE: s.u.o.
 6 CHAIRPERSON: Mr Ngalwana, you're going
 7 to continue with the examination-in-chief.
 8 EXAMINATION BY MR NGALWANA (CONTD.):
 9 General, you'll recall that we're still on the 16th in the
 10 afternoon. What measures did the plan have to avoid
 11 casualties and/or injuries?
 12 MAJOR-GENERAL MPEMBE: I started as an
 13 overall commander to lead the negotiations. We got the
 14 hostage negotiators to negotiate with the protesters. I
 15 also talked to the protesters themselves. Our first
 16 defensive measure was to put the barbed wire to separate
 17 the police and the public. In my presentation yesterday I
 18 did indicate that there were six Nyalas, that they had to
 19 place the barbed wire and those Nyalas could just stand
 20 there when the dispersion has to take place. That could
 21 create a safe area between protesters, police, and the
 22 public. The operational commander has to warn the
 23 protesters and give them a reasonable time, and this
 24 instruction would have been interpreted in the Fanagalo,
 25 hence we had an interpreter.

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1 To encourage the dispersal process the
 2 operational commander was also supposed to position the
 3 Public Order Policing in the following manner; firstly, to
 4 put the Nyalas and members of the POP with teargas, stun
 5 grenade. Behind the Nyalas there could have been water
 6 cannons because those are the soft target vehicles for any
 7 other weapon that, and then the armoured vehicles could
 8 have been in front even of the water cannons. The last
 9 line of Public Order Policing would have had the rubber
 10 bullet for force continuum. Before any other matter that
 11 could have served as a show of force.
 12 The operational commander at his own discretion,
 13 when he realises that the dispersion is not taking place
 14 and he will be in the process encouraging the dispersion to
 15 take place, he will now give the protesters a second
 16 warning. In encouraging the protesters, some of the people
 17 would disperse voluntarily.
 18 MR NGALWANA: What would the operational
 19 commander be saying in this warning, General?
 20 MAJOR-GENERAL MPEMBE: The operational
 21 commander will also formulate his own words, but the words
 22 that I envisage as an overall commander was that he will
 23 firstly say to the protesters, "The gathering that you are,
 24 that is taking place, is illegal. You have been informed
 25 several times, Monday, Tuesday, Wednesday, and today, that

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1 the gathering is illegal. You have also been informed that
 2 if you want to have such a gathering you are supposed to
 3 serve a notice, and in serving that notice then the police,
 4 the responsible officers and authorised officers will sit
 5 down and plan the gathering and the marching."
 6 MR NGALWANA: Okay, thank you, General.
 7 Is there any other additional measure – remember the
 8 question is what measure did the plan provide for avoiding
 9 casualties and/or injuries.
 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 11 In the process of encouraging the dispersal, I've already
 12 said that he will give a second warning and reasonable time
 13 and he will order the TRT, NIU, STF, to take position 100
 14 metres away from the dispersal process of POP. That would
 15 have added value on a show of force to anybody who is there
 16 to say "Wow, we cannot do any other thing, us is just to
 17 disperse in a voluntary manner."
 18 MR NGALWANA: Thank you, General. What
 19 then transpired? You see you testified yesterday about you
 20 remaining at the JOC until the time you went to Major-
 21 General Annandale and asked for an available chopper so
 22 that you could take to the skies. Could you take the
 23 Commission through, after you've got into the chopper, what
 24 you then did, where you flew?
 25 MAJOR-GENERAL MPEMBE: Chairperson,

<p style="text-align: right;">Page 11487</p> <p>1 myself and Brigadier Tsiloane, we were in a Coin Security 2 chopper. We alighted a Coin Security chopper and we flew. 3 MR NGALWANA: What was the purpose for 4 you getting onto that chopper? 5 MAJOR-GENERAL MPEMBE: Chairperson, that 6 would have made me to be in a better position while I 7 listen to the radio, I could also see the visuals of, from 8 the chopper. 9 MR NGALWANA: What would you seeing the 10 visuals from the chopper enable you to do? 11 MAJOR-GENERAL MPEMBE: Chairperson, it 12 would give me a better view and understand also the 13 communication in the radio. 14 MR NGALWANA: Would the visuals that you, 15 well logically speaking would the visuals that you see from 16 the chopper enable you better to perform your functions as 17 an overall commander? What I'm trying to get at is 18 whatever you see from the chopper down there, what would it 19 enable you to do, if anything, as overall commander, 20 General? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson, when I was at the chopper I could see the 23 dispersal process of the two Nyalas pouring water and I 24 could hear the instructions of Brigadier Calitz, who was 25 the operational commander, giving the instructions. I need</p>	<p style="text-align: right;">Page 11489</p> <p>1 say you saw, you heard Brigadier Calitz giving 2 instructions, that indicates that what you saw at that 3 stage was what we call scene 1, because that's where 4 Brigadier Calitz was. Is that correct? 5 MAJOR-GENERAL MPEMBE: Chairperson, the 6 indication that I had, it was when Brigadier Calitz was 7 asking why the TRT and the STF are not moving, that's the 8 one that I started hearing him saying, and then when the 9 chopper started saying no, it seems as if there are bodies 10 lying down, it's then that I heard bodies lying down, the 11 first time that I hear bodies lying down. 12 [10:15] CHAIRPERSON: It's scene 1 though, hey. 13 Are you talking about scene 1 or scene 2? 14 MR NGALWANA: May I phrase it thus, 15 Chair, with your leave. General, at the time you were at 16 the chopper, did you know whether there was scene 1 or 17 scene 2? 18 CHAIRPERSON: That's not the question. 19 You now know that there was a scene 1 and a scene 2, don't 20 you? That's correct, isn't it? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: And you may not have known 24 at the time which was scene 1 and which was scene 2, but 25 you now know where scene 1 was.</p>
<p style="text-align: right;">Page 11488</p> <p>1 also to put it to the Commission that I could not see 2 people moving around, only vehicles, Nyalas, and the 3 bigger, and the cannons. 4 COMMISSIONER HEMRAJ: General, you being 5 up in this helicopter, would you have directed the 6 operation if you thought it was not going according to 7 plan? Would you have given any orders from there because 8 you were in a better position to see what was happening? 9 MAJOR-GENERAL MPEMBE: Operationally 10 speaking once the operation has commenced, it's in the 11 hands of the operational commander. If I hear on the radio 12 that there is something going wrong and seeing that there 13 is also something going wrong, without any help sought from 14 me I can intervene. Operationally speaking I expect that 15 the operational commander should also communicate with me. 16 CHAIRPERSON: How high was the helicopter 17 in which you were, above the ground? 18 MAJOR-GENERAL MPEMBE: Chairperson, I am 19 not quite well up in terms of the measurements, but I can 20 give estimation of knowing that it was the highest chopper 21 that was flying in terms of the levels. 22 CHAIRPERSON: Did you have a pair of 23 binoculars with you? 24 MAJOR-GENERAL MPEMBE: No, Chairperson. 25 CHAIRPERSON: I take it the fact that you</p>	<p style="text-align: right;">Page 11490</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 CHAIRPERSON: Now the scene that you were 4 looking down at initially as you've described to us, do you 5 now know whether that was scene 1? 6 MR NGALWANA: Chair, perhaps he should 7 describe what it is that he saw. 8 CHAIRPERSON: Maybe he must answer the 9 question and you can then ask your question. 10 MAJOR-GENERAL MPEMBE: Chairperson, as 11 I'm saying, I saw the water cannons, that could have been 12 scene 2 already, but that's what I saw, but what I heard is 13 correct, that could have been scene 1. 14 CHAIRPERSON: When you heard mention of 15 dead bodies – sorry, not dead, when you heard mention of 16 bodies, bodies down, did you appreciate that someone may 17 have been killed? 18 MAJOR-GENERAL MPEMBE: Chairperson, that 19 could, it has given me the indication that there is 20 something wrong, but because I was high I thought that 21 where I was I tried to communicate with the operational 22 commander, but that time the communication was very high 23 between him and the chopper. Then realising that, I 24 ordered the pilot to take me back to the JOC. 25 COMMISSIONER HEMRAJ: Can I just</p>

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1 understand that? You were able to hear Brigadier Calitz
 2 while you were in the chopper?
 3 MAJOR-GENERAL MPEMBE: Brigadier and
 4 others.
 5 COMMISSIONER HEMRAJ: When you heard the
 6 phrase "bodies down," you tried to communicate with
 7 Brigadier Calitz?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 COMMISSIONER HEMRAJ: I'm not clear as to
 11 what happened then. Was he unable to hear you or what
 12 exactly happened when you tried to communicate with him?
 13 Were you asking him what had happened?
 14 MAJOR-GENERAL MPEMBE: I testified that
 15 at that time the communication was very high between him
 16 and Lieutenant-Colonel Vermaak. Realising that, then I
 17 gave the pilot the order to take me back to the JOC.
 18 COMMISSIONER HEMRAJ: Sorry, forgive me,
 19 I don't understand that. Were there communications between
 20 Brigadier Calitz and Colonel Vermaak? Is that the reason
 21 you couldn't communicate with Brigadier Calitz?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 COMMISSIONER HEMRAJ: I see.
 25 MR NGALWANA: General, when you were on

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1 the chopper, could you explain briefly what it is that you
 2 heard in the conversation between Brigadier Calitz and
 3 Lieutenant-Colonel Vermaak?
 4 MAJOR-GENERAL MPEMBE: I heard after the
 5 Brigadier Calitz asked why TRT and the others are not
 6 moving forward, Lieutenant-Colonel Vermaak said there are
 7 bodies down. To me it was not clear where and how these
 8 bodies are down because I didn't hear anything, maybe a
 9 report of, or there is any shooting.
 10 MR NGALWANA: Is there anything else you
 11 heard, or is that all, that you considered significant?
 12 MAJOR-GENERAL MPEMBE: There was also
 13 what I heard when Brigadier Calitz was giving dispersal
 14 instructions, and he was ordering the water cannons to pour
 15 water and giving the instructions to POP members. I also
 16 heard him saying, "Do not engage the target before the
 17 target engages you." That is what, that is significant
 18 that I heard also on the radio while I was still in the
 19 chopper.
 20 MR NGALWANA: What did you then do after
 21 hearing this conversation, General?
 22 MAJOR-GENERAL MPEMBE: I said I ordered
 23 the pilot to take me to the JOC to find out and understand
 24 what it's all about the bodies.
 25 MR NGALWANA: And so you got to the JOC.

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1 How long were you on the air for, if you remember?
 2 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 3 not precise on that, but in my estimation it's about 20
 4 minutes.
 5 MR NGALWANA: You then got back to the
 6 JOC. What did you then learn about what it is that had
 7 happened?
 8 MAJOR-GENERAL MPEMBE: On my arrival at
 9 the JOC, to my dismay I learned that there was a shooting
 10 that took place and there are people that are dead. There
 11 were reports that were coming from different scenes. It
 12 was when I learned that we now have scene 1 and scene 2.
 13 COMMISSIONER HEMRAJ: Can I just enquire
 14 what time this was that you received these reports?
 15 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 16 not quite sure, but it was the time when I arrive at the
 17 JOC.
 18 COMMISSIONER HEMRAJ: Possibly what time
 19 would that have been?
 20 MAJOR-GENERAL MPEMBE: It could have been
 21 between 16:30 to, between 16:00 to 16:30.
 22 COMMISSIONER HEMRAJ: 16:00 to 16:30, or
 23 15:30 to 16:00, General?
 24 MAJOR-GENERAL MPEMBE: I'm not quite
 25 sure, but it was in the afternoon of that day.

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1 CHAIRPERSON: We know from your evidence
 2 yesterday approximately when you got into the helicopter.
 3 That we were able to ascertain by cross-referencing it to
 4 what you'd heard over the radio. Now the question now is
 5 what time did you get back.
 6 MAJOR-GENERAL MPEMBE: Chairperson, it
 7 could have been at about 16:30.
 8 MR NGALWANA: Okay, you're back at the -
 9 sorry, I've lost my train. You're now back at the JOC,
 10 General. You discover what had happened. As overall
 11 commander, what do you then do? Take us through what you
 12 did for the rest of that afternoon.
 13 MAJOR-GENERAL MPEMBE: Chairperson, I
 14 heard from the radio that the medical emergencies have been
 15 sent to the scene. I also checked as whether are there
 16 people enough to handle those that have been injured. I
 17 also ensured that checking in terms of those that are
 18 injured and critically injured, they also get medical
 19 attention and the hospitals, and the injured people were
 20 sent in different hospitals. After realising that the
 21 injured ones are being - and then also I asked the
 22 management to assist me to identify those that have died
 23 because at that time I was also supposed to compile a
 24 report. I was assisted in terms of getting those that - it
 25 was a process of being helped since from that day and those

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1 that have been arrested, I also checked as to whether the
 2 processing of the arrest is taking place.
 3 MR NGALWANA: Sorry to interrupt you,
 4 General. Did you compile the report?
 5 MAJOR-GENERAL MPEMBE: The JOC did
 6 compile a report to inform the NATJOC.
 7 MR NGALWANA: Is this the report that
 8 would have formed part of the National Commissioner's media
 9 address the following day, which was the 17th? Is that what
 10 you're referring to, or you're referring to something else?
 11 MAJOR-GENERAL MPEMBE: Chairperson, it's
 12 correct, with also, with the necessary changes, because it
 13 might not have been maybe taken as it is, but it also
 14 formed part of a media statement.
 15 CHAIRPERSON: I'm sorry to interrupt you.
 16 Just to go back to something you said a few moments ago,
 17 when did you learn that there had been two scenes, as it
 18 were, a scene 1 and a scene 2? When did you learn that for
 19 the first time?
 20 MAJOR-GENERAL MPEMBE: Chairperson, it's
 21 when I arrived at the JOC.
 22 CHAIRPERSON: That you said was about
 23 4:30.
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 CHAIRPERSON: Correct?
 2 MAJOR-GENERAL MPEMBE: Yes.
 3 CHAIRPERSON: So it was known by round
 4 about 4:30 already that there had been two scenes,
 5 incidents at two particular scenes, scene 1 and scene 2.
 6 That we can accept as a fact.
 7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.
 9 CHAIRPERSON: And who made the report to
 10 you?
 11 MAJOR-GENERAL MPEMBE: Chairperson, it's
 12 when I arrive at the JOC and when I was asking, the reports
 13 were coming from the scenes.
 14 CHAIRPERSON: You still haven't answered
 15 my question actually. The question is, who told you that
 16 there were two scenes? I understand reports that were
 17 coming in, but who actually was the person who told you
 18 that there were two scenes?
 19 MAJOR-GENERAL MPEMBE: Major-General
 20 Annandale informed me that Captain Loest did report about
 21 scene 1, and he also informed me that General Naidoo
 22 informed him also that there is scene 2.
 23 MR NGALWANA: Did General Annandale say
 24 to you it was reported to him as "scene 1," General?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson.

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1 MR NGALWANA: How was it described to
 2 you? Do you remember?
 3 MAJOR-GENERAL MPEMBE: It was, I was only
 4 being informed that there are people that have been shot at
 5 one koppie, and there are also other ones shot at another
 6 koppie.
 7 MR NGALWANA: Right, is there anything
 8 else of significance that happened on the 16th of August,
 9 before we move on to the following day, General?
 10 CHAIRPERSON: Before you move on then to
 11 that, you talked about arrangements being made for
 12 processing those arrested, as you put it. Where did the
 13 processing take place?
 14 [10:34] MAJOR-GENERAL MPEMBE: At the mine's
 15 premises, the reason being that Marikana Police Station was
 16 under renovation and there was no electricity at that time.
 17 CHAIRPERSON: When did you discover that?
 18 When did you find out that you couldn't use the Marikana
 19 Police Station for the purposes of processing those
 20 arrested because it was under renovation and there was no
 21 electricity? So you had to use premises at Marikana, at
 22 the mine really, the mine buildings I take it, for that
 23 purpose. When did you discover that?
 24 MAJOR-GENERAL MPEMBE: Chairperson, in
 25 the morning when it was also to say that - when General

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1 Annandale said - when we were tasking Brigadier Seboloke
 2 and Brigadier Seboloke said that Marikana Police Station is
 3 still under renovation, there is no electricity.
 4 CHAIRPERSON: What time was that? What
 5 time did you receive that report?
 6 MAJOR-GENERAL MPEMBE: It was in the
 7 JOCCOM of 6 o'clock.
 8 CHAIRPERSON: You knew already during the
 9 JOCCOM of 6 o'clock that the Marikana Police Station
 10 couldn't be used for the purpose of processing people
 11 arrested, so that's why you had to request Lonmin, as I
 12 understand it, to make space available to you for that
 13 purpose. Is that correct?
 14 MAJOR-GENERAL MPEMBE: Correct,
 15 Chairperson.
 16 CHAIRPERSON: So does that mean that you
 17 anticipated at the 6 o'clock JOCCOM meeting that space for
 18 processing persons arrested would be required or might well
 19 be required in the course of the day?
 20 MAJOR-GENERAL MPEMBE: Correct,
 21 Chairperson.
 22 CHAIRPERSON: When did you approach mine
 23 management to ask them to provide a processing space?
 24 MAJOR-GENERAL MPEMBE: Chairperson, it
 25 was done by Brigadier Seboloke.

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1 CHAIRPERSON: When did it happen?

2 MAJOR-GENERAL MPEMBE: Precisely I'm not

3 going to be able to say because it was done by him.

4 CHAIRPERSON: In the morning before the

5 media conference held by the Provincial Commissioner,

6 during the conference, after the conference, when exactly

7 more or less?

8 MAJOR-GENERAL MPEMBE: I may not say in

9 the morning or what, but I know that the tasking was done

10 at 6:00 but the confirmation I did not know or at what time

11 he has approached the mine management.

12 CHAIRPERSON: Had this been done by the

13 time of the special JOCCOM meeting at 1:30?

14 MAJOR-GENERAL MPEMBE: Chairperson, at

15 13:30 I remember there was a time when he was only

16 confirming about the detention, the detention facilities in

17 other police stations.

18 CHAIRPERSON: You see, I asked you this

19 question because what you've been telling us now is not the

20 same as what you said in paragraph 53 of your statement

21 that you made in November last year, which you've already

22 confirmed under oath to be correct. What you say there is

23 after describing how you went back to the JOC, found out

24 that people had died and been injured and arrested, you

25 then say, paragraph 53, "I immediately left for the

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1 Marikana Police Station with Brigadier Seboloke. I have

2 found the conditions not conducive. The police station was

3 under renovation; it did not have power and cells to detain

4 the deceased. I approached mine management and SAPS was

5 provided with a processing space a short distance from the

6 JOC to be utilised as a processing centre. Detectives and

7 officers from the Marikana Police Station moved to the

8 premises offered by the mine for processing of the

9 detainees." And then you go on. Now that you say took

10 place after you got back to the JOC, which we know was

11 after 4:30. You say you went yourself to the police

12 station, you found certain things. Now this is exactly

13 what you told us earlier. What's true, what you said in

14 your statement or you have told us this morning?

15 MAJOR-GENERAL MPEMBE: Chairperson,

16 Brigadier Seboloke was tasked earlier on to check the

17 place. When I got to the JOC and when he reported to me

18 that the police station is not - does not have electricity,

19 I wanted to check as to whether what is he telling me,

20 can't we utilise any other place at a police station.

21 Hence I drove with him there and then he already informed

22 me on our way to the police station, to say, "General, as a

23 result of this electricity shortage I have already

24 approached the mine management," and he also took me to a

25 place where the mine management has already given us a

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1 place. That is what I'm trying to say there.

2 CHAIRPERSON: The statement "I approached

3 mine management" isn't correct?

4 MAJOR-GENERAL MPEMBE: As I'm saying,

5 Chairperson, it is Brigadier Seboloke, so it is not

6 correct, but thinking that he was acting under my command

7 when I tasked him, that's why I took as if it's done by me.

8 CHAIRPERSON: What you said wasn't right,

9 though. What you said wasn't correct. Why did you say

10 something that wasn't correct? Under oath you reaffirm

11 here when you began your evidence.

12 MAJOR-GENERAL MPEMBE: Chairperson, what

13 I'm saying is that I'm explaining that it is done by

14 Brigadier Seboloke -

15 CHAIRPERSON: But you said "I approached

16 mine management." You didn't approach mine management, he

17 did. Why did you say you did?

18 MR NGALWANA: With respect, Chair, I

19 thought the witness -

20 CHAIRPERSON: I'm waiting for your

21 answer.

22 MAJOR-GENERAL MPEMBE: Chairperson, it's

23 the fact that it was reported to me by Brigadier Seboloke -

24 CHAIRPERSON: Is that your explanation?

25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

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1 CHAIRPERSON: I understand. Please

2 proceed, Mr Ngalwana.

3 MR NGALWANA: What did you then do the

4 evening, General, of the 16th of August, leading on to the

5 17th of August?

6 MAJOR-GENERAL MPEMBE: Chairperson, after

7 we - there was a lot of activities that were taking place

8 that we need to brief different people and the National

9 Commissioner. We have also to brief other dignitaries of

10 what has happened. On the 17th the National Commissioner

11 was expected to give a media briefing. The press

12 conference was facilitated by Lieutenant-General Petros and

13 before the National Commissioner could give the media

14 briefing, I briefed the media also by playing the video

15 that has been played here.

16 MR NGALWANA: And that's the video that

17 shows you addressing people next to the railway line and

18 telling them to leave their weapons there, is that correct,

19 General?

20 MAJOR-GENERAL MPEMBE: Correct,

21 Chairperson.

22 MR NGALWANA: Are you aware of any media

23 coverage of your, shall we call it in loose terms,

24 presentation to the media before the National Commissioner

25 addressed the media?

<p style="text-align: right;">Page 11503</p> <p>1 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>2 MR NGALWANA: Then you handed over to the</p> <p>3 National Commissioner to address. Do you recall what her</p> <p>4 address was?</p> <p>5 MAJOR-GENERAL MPEMBE: The words</p> <p>6 precisely I won't be able to say them, but I know that the</p> <p>7 National Commissioner did make the announcement of the</p> <p>8 incident.</p> <p>9 CHAIRPERSON: Mr Ngalwana, is it</p> <p>10 necessary to lead this evidence? We have the text of what</p> <p>11 she said.</p> <p>12 MR NGALWANA: Yes.</p> <p>13 CHAIRPERSON: Exhibit FFF5, and unless</p> <p>14 there's something particularly you want to highlight from</p> <p>15 this witness it's not necessary to re-prove what she said -</p> <p>16 with a hyphen between the re and the prove - what she said</p> <p>17 through this witness.</p> <p>18 MR NGALWANA: I was about to say</p> <p>19 precisely that, thank you, Chairperson. Can we, General,</p> <p>20 just perform a sweeping exercise, we are now going to move</p> <p>21 to the criticisms of the experts. But before we get there,</p> <p>22 I just want to perform a sweeping exercise if you like -</p> <p>23 CHAIRPERSON: Mr Ngalwana, are you going</p> <p>24 to deal with the material covered? I don't want to tell</p> <p>25 you how to run your case because I'm sure you know it</p>	<p style="text-align: right;">Page 11505</p> <p>1 MAJOR-GENERAL MPEMBE: The purpose was to</p> <p>2 get the information, to collate the information so that it</p> <p>3 could be presented to the Commission.</p> <p>4 MR NGALWANA: You will see, General,</p> <p>5 between the tram lines at the top of the that first page it</p> <p>6 says "Call-up: Debriefing and preparation for Judicial</p> <p>7 Commission of Inquiry," and so on, and it gives the dates,</p> <p>8 and if you go to the next call-up instruction in the same</p> <p>9 collection of documents, on page 275 you see the same</p> <p>10 "Call-up: Debriefing and Preparation." Is it the same</p> <p>11 thing we referred - it also talks of debriefing and</p> <p>12 preparation. How do you explain the use of the word</p> <p>13 "debriefing" in the call-up instruction?</p> <p>14 MAJOR-GENERAL MPEMBE: Chairperson, the</p> <p>15 word "debriefing" word here is not the one that is intended</p> <p>16 in terms of Standing Order 262. It was for the collection</p> <p>17 of information for the Judicial Commission of Inquiry</p> <p>18 because it was already being announced on the 17th.</p> <p>19 MR NGALWANA: As I understand it these</p> <p>20 meetings, this series of meetings took place from the 27th</p> <p>21 of August to the 31st of August, if you look at that first</p> <p>22 page, and then again from the 3rd of September to the 6th of</p> <p>23 September 2012. The 6th of September, that's correct isn't</p> <p>24 it?</p> <p>25 MAJOR-GENERAL MPEMBE: Correct,</p>
<p style="text-align: right;">Page 11504</p> <p>1 better than I, but the impression I got from the statement,</p> <p>2 supplementary statement, was at this point of the evidence</p> <p>3 he was going to tell us what's contained in paragraphs 31</p> <p>4 and 32 of the supplementary statement, before you get onto</p> <p>5 his answers to the criticisms. I would have thought that's</p> <p>6 the logical way to do it, if I may say so, but if you</p> <p>7 disagree of course you are free to proceed as you wish.</p> <p>8 MR NGALWANA: Yes, thank you, Chair. The</p> <p>9 sweeping exercise starts at paragraphs 31 and 32, moving on</p> <p>10 to the next issues. General, may I ask you to turn to GGG3</p> <p>11 in the documents bundle? You'll find that it's pagination</p> <p>12 272 under flag 14.</p> <p>13 MAJOR-GENERAL MPEMBE: Sorry,</p> <p>14 Chairperson, I just wanted to get to the -</p> <p>15 MR NGALWANA: Go to flag 13, page 272 of</p> <p>16 the document bundle, bundle A, I think.</p> <p>17 CHAIRPERSON: 14, Mr Ngalwana. You said</p> <p>18 13, I think. I think what you want is 14.</p> <p>19 MR NGALWANA: Thank you, Chair.</p> <p>20 CHAIRPERSON: As you said before it's</p> <p>21 page 272.</p> <p>22 MR NGALWANA: 272, flag 14. That is a</p> <p>23 call-up instruction. Could you just explain to the</p> <p>24 Commission, in brief terms, what the purpose of the call-up</p> <p>25 was?</p>	<p style="text-align: right;">Page 11506</p> <p>1 Chairperson.</p> <p>2 MR NGALWANA: Were you in attendance on</p> <p>3 all those days, General?</p> <p>4 [10:54] MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>5 attend these meetings but I was not always sitting in those</p> <p>6 meetings; there were other things that one would have to</p> <p>7 attend.</p> <p>8 MR NGALWANA: Do you recall on how many</p> <p>9 days you were there? Do you remember how many days you</p> <p>10 were present at these meetings, General?</p> <p>11 MAJOR-GENERAL MPEMBE: Chairperson, as</p> <p>12 I've indicated, I will be attending but if there is any</p> <p>13 other matter that may, calls me, because we were also being</p> <p>14 called to attend somewhere, I will go out and attend</p> <p>15 something that I was supposed to attend. It might also</p> <p>16 happen that I did attend all the meetings in terms of</p> <p>17 signing the attendance register, but also going somewhere.</p> <p>18 MR NGALWANA: So shall I take it you were</p> <p>19 not present throughout the proceedings? Is that what</p> <p>20 you're telling us?</p> <p>21 MAJOR-GENERAL MPEMBE: Correct,</p> <p>22 Chairperson.</p> <p>23 MR NGALWANA: In those sessions that you</p> <p>24 were present, could you explain briefly what it is that you</p> <p>25 observed happening at those meetings?</p>

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1 MAJOR-GENERAL MPEMBE: I attended the
 2 first one which was opened and addressed by the Provincial
 3 Commissioner, and the Provincial Commissioner was saying
 4 that all of us that we are there, we need to bring all the
 5 information to be collated so that it should be presented
 6 to the Commission of Inquiry. The one also I attended is
 7 the one where I took part, particularly it's the one where
 8 the shooting of the 13th took place. Chairperson, we were
 9 divided in groups; those that's of the 13th, you will go
 10 there, and also the others they will go there, and then
 11 when we come back, we have to give a feedback to Colonel
 12 Visser.

13 MR NGALWANA: Were there any notes that –
 14 let's talk about your group, or involved in the events of
 15 the 13th, were there any notes that were taken before you
 16 went back to report to Colonel Visser?

17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson.

19 MR NGALWANA: Who took notes?

20 MAJOR-GENERAL MPEMBE: The individual
 21 members were also making notes, but there was a specific
 22 person that will be taking these notes. To us the one that
 23 I remember, because I was also one of them that took the
 24 notes to the members when they were reporting to me, and I
 25 also give the feedback to Colonel Visser.

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1 MR NGALWANA: Did you submit these notes
 2 to Colonel Visser or to anyone?

3 MAJOR-GENERAL MPEMBE: When you go to
 4 Colonel Visser, we were sitting there and we were telling
 5 him what we were discussing, looking at the notes, and also
 6 that we could leave the notes with him, he will capture all
 7 what we have told him in the computer.

8 MR NGALWANA: In addition to what you've
 9 testified to earlier, in earlier days about what happened
 10 on the 13th, in addition to that, is there anything else
 11 that you told Colonel Visser in your report-back?

12 MAJOR-GENERAL MPEMBE: Actually what you
 13 were relating to Colonel Visser, you had to relate all the
 14 activities that took place while, the ones that they are
 15 within your knowledge, for example all the meetings that I
 16 held with protesters, the union leaders.

17 MR NGALWANA: Who was coordinating
 18 matters? In other words, who was the convenor of this
 19 meeting, dividing people up into groups, and so on,
 20 General?

21 MAJOR-GENERAL MPEMBE: Brigadier Van
 22 Graan of Legal Services Head Office, he was the
 23 facilitator.

24 MR NGALWANA: I know we talk loosely, we
 25 say he was a convenor, but do you know what in practical

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1 terms it is that he did on those days that you were
 2 present?

3 MAJOR-GENERAL MPEMBE: He was
 4 facilitating the process.

5 MR NGALWANA: Yes, what I'm asking is in
 6 facilitating the process, what is it that he was doing?

7 MAJOR-GENERAL MPEMBE: Chairperson,
 8 firstly he will welcome us and we were dealing with the
 9 events on the day-by-day, what happened – first of all is
 10 to say what happened on, from the 9th until also for the
 11 16th, each and every incident and event that happened on the
 12 day-by-day.

13 MR NGALWANA: Can I just understand,
 14 General, just going back to the notes issue, I'm not sure I
 15 understood you correctly. Did you say that you submitted
 16 notes to Brigadier – no, to Colonel Visser, or did you say
 17 that you went with your notes to Colonel Visser and gave
 18 him feedback from your notes? Which is it? Did you give
 19 him the notes or did you make a report-back based on your
 20 notes?

21 MAJOR-GENERAL MPEMBE: I gave him
 22 feedback based on my notes.

23 MR NGALWANA: What then became of your
 24 notes?

25 MAJOR-GENERAL MPEMBE: I am still having

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1 the notes.

2 MR NGALWANA: The Commission may very
 3 well require to have them presented. Of course the
 4 Commission will make that decision. You –

5 CHAIRPERSON: It will be helpful for us
 6 to have the notes. Do you have them here or can you bring
 7 them for us on Tuesday?

8 MAJOR-GENERAL MPEMBE: They are not here,
 9 Chairperson. I can bring them on Tuesday.

10 CHAIRPERSON: We look forward to
 11 receiving them.

12 MR NGALWANA: Right, on each of the days
 13 that members were attending, I see there is an attendance
 14 register, General, if you look at the back of those call-up
 15 instructions. Did everyone to your knowledge sign the
 16 attendance register who was there?

17 CHAIRPERSON: Mr Ngalwana, when it's
 18 convenient, we will take the tea adjournment, but you will
 19 indicate to me when it's appropriate.

20 MR NGALWANA: Yes, Chair, thank you. Let
 21 me ask the question differently. There has been a
 22 suggestion that if one looks at the attendance register
 23 there appears to be very few, if any, lower-ranking members
 24 of the police, like warrant-officers and sergeants. You
 25 sent a call-up instruction, you'll find this at page 275.

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1 General, are you with me?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MR NGALWANA: Do you know whether or not

5 the people that you called up to attend the meeting of the

6 30th did attend? Page 275, General, still under flag 14.

7 MAJOR-GENERAL MPEMBE: Chairperson, what

8 is normally happening is that when a call-up instruction is

9 being done one expects that all members should attend.

10 CHAIRPERSON: The question isn't what you

11 expect. The question is whether they did. From 1.7

12 downwards to 1.14, in other words eight people, there were

13 constables who were called upon to attend the session, and

14 who's being called upon in a letter which you wrote and

15 signed. Do you know whether they duly went to

16 Potchefstroom?

17 MR NGALWANA: Are you able to say,

18 General, whether those people attended the meeting?

19 MAJOR-GENERAL MPEMBE: Chairperson, when

20 I check the attendance register it's very few of those

21 members that signed the attendance register.

22 CHAIRPERSON: That's the point. Perhaps

23 we can explore the reasons for that, if any, when we've

24 taken the tea adjournment. We now adjourn for tea.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [12:00] CHAIRPERSON: The Commission will resume.

2 I'm sorry we're resuming late, but there were matters we

3 had to attend to in chambers after the tea party that we

4 had. You're still under oath, Major-General.

5 WILLIAM MPEMBE: s.u.o.

6 CHAIRPERSON: Mr Ngalwana, you were going

7 to deal with some aspects I think following on from the

8 attendance registers and so forth at the Potchefstroom

9 conference. Is that right?

10 EXAMINATION BY MR NGALWANA (CONTD.):

11 Yes, just one aspect, thank you, Chair. General, let's see

12 if we can dispose this quickly. The people you called up,

13 do you know whether or not they attended the meetings?

14 MAJOR-GENERAL MPEMBE: No, Chairperson.

15 MR NGALWANA: Thank you. I move on. Can

16 I take you back, General, to – this shouldn't incur the

17 wrath of the Chairperson, it's something we forgot to deal

18 with some time ago. We're not going to spend too much time

19 on it. Can I take you back to Lieutenant Baloyi's

20 statement, Captain Baloyi's statement. It's under flag 6,

21 just two aspects there, volume B, GGG16 I'm told.

22 CHAIRPERSON: What page do you want us to

23 go?

24 MR NGALWANA: Particularly page 3 of 5,

25 which is the paginated 37.

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1 CHAIRPERSON: Thank you, and what

2 paragraph number?

3 MR NGALWANA: Paragraph 7. Have you

4 found it, General, paragraph 7, GGG16?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 MR NGALWANA: Go to paragraph 7. You'll

8 see Captain Baloyi, or Colonel Baloyi, Lieutenant –

9 Warrant-Officer – Colonel Baloyi – Lieutenant, he says in

10 paragraph 7, talking about the 13th, "I advised the

11 General," at the end of paragraph 7, "I advised the General

12 that stun grenades should be used to disperse them." Did

13 he?

14 MAJOR-GENERAL MPEMBE: No, Chairperson.

15 MR NGALWANA: What was your answer,

16 General? Did he advise you as he suggests?

17 MAJOR-GENERAL MPEMBE: No, Chairperson.

18 MR NGALWANA: In paragraph 8 he says, "I

19 called other members to come with me to get into the Nyala

20 and only two members responded to my call, and I told the

21 driver that the General," referring to you, "wanted us to

22 delay the strikers until we got them together before

23 disarming them." You see that? Did you convey that wish

24 to the members that you wanted them to delay the strikers

25 until you got to them so that you could disarm them?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson.

2 MR NGALWANA: Can I take you to GGG15,

3 which is Joseph Omphile Merafe's statement. It's under

4 flag 7, pagination 40. Have you found it, General?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 MR NGALWANA: May I ask you to turn to

8 paragraph 1-7, 17, pagination 45 in your file? Lieutenant-

9 Colonel Merafe says – again he is talking about the 13th,

10 Monday the 13th of August 2012, he says, "When I saw that

11 the miners were not going to listen to Major-General Mpe

12 and lay down their weapons," do you see that?

13 MAJOR-GENERAL MPEMBE: Correct,

14 Chairperson.

15 MR NGALWANA: Can I just read the whole

16 paragraph and then the interpreter can interpret. "When I

17 saw that the miners were not going to listen to Major-

18 General Mpe

19 General Mpe

20 General Mpe

21 General Mpe

22 General Mpe

23 General Mpe

24 General Mpe

25 General Mpe

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1 that I do not agree with him." I take it he's still
 2 talking about the incident next to the railway line,
 3 General. Is that factually correct?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR NGALWANA: Is it correct when he says
 7 you did not agree with him and you said that you did not
 8 want another Tatane incident?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR NGALWANA: In paragraph 18 he says,
 12 and I'm reading the second paragraph, unnumbered paragraph
 13 under paragraph 18, he says, "Major-General Mpeembe
 14 instructed us to follow the miners on foot and he was also
 15 walking with them." You see that?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR NGALWANA: When he says you were
 18 walking with them, I take it he's referring to the miners.
 19 Would that be factually correct that you were walking with
 20 the miners?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 MR NGALWANA: Can I take you to the
 23 statement of Mr Joseph Mathunjwa, which is under flag 13 of
 24 your file? It is exhibit NN, for those who don't have
 25 pagination. Turn to paragraph 37, pagination 162, or page

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1 12 of exhibit NN, paragraph 37, General. Have you found
 2 it?
 3 MAJOR-GENERAL MPEMBE: I did find it,
 4 Chairperson.
 5 MR NGALWANA: Second sentence in that
 6 paragraph, "He said," he's talking about you, Mr Mathunjwa,
 7 he says you said "that the koppie was now a security zone."
 8 Did you say that to Mr Mathunjwa?
 9 MAJOR-GENERAL MPEMBE: No, Chairperson.
 10 MR NGALWANA: In paragraph 38, second
 11 sentence, he says, "The General mentioned that four people
 12 had been identified as leaders and that two of these were
 13 NUM members and two of them were AMCU members." It is of
 14 course if one, after you've read the initial part of the
 15 statement, he's talking about the first meeting, what you
 16 said to them at that first meeting on the 15th of August,
 17 the meeting that started at around 2 in the afternoon. Did
 18 you mention to Mr Mathunjwa or to the meeting on the 15th
 19 that afternoon that two, or four of the strikers had been
 20 identified as leaders?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 But what I said is that the people that I addressed on the
 23 13th, others belonging to NUM and others are belonging to
 24 AMCU, but not four.
 25 CHAIRPERSON: While you're dealing with

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1 that point, you told us that on Monday you showed the
 2 photographs to the Lonmin people and asked if they could
 3 identify the people who were visible on the photographs,
 4 and they said they couldn't because the people who could do
 5 the identification had already gone home, but they would be
 6 back the next morning. Did you get feedback in the course
 7 of the Tuesday or even the Wednesday from Lonmin,
 8 identifying some of the people on the photographs and
 9 giving information presumably from Lonmin's records as to
 10 the union affiliation of those persons?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 CHAIRPERSON: Did you ask them if they
 14 could give you the residential addresses of those people as
 15 well?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 CHAIRPERSON: And did they do so?
 18 MAJOR-GENERAL MPEMBE: No, Chairperson.
 19 MR NGALWANA: Paragraph 38, General –
 20 sorry, paragraph –
 21 CHAIRPERSON: Is that because they didn't
 22 know, or they didn't have it available or did they give any
 23 explanation as to why they couldn't give you the addresses
 24 of these people?
 25 MAJOR-GENERAL MPEMBE: Chairperson, they

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1 didn't tell me what is the precise reason, but what they
 2 informed me, and that was a request from their side is that
 3 I must not even mention that they were, they are the ones
 4 that they have assisted me to identify these people.
 5 MR NGALWANA: Paragraph 14, General, the
 6 same page, the same statement, third sentence Mr Mathunjwa
 7 relates what Mr Mokwena said at that meeting. He says, "Mr
 8 Mokwena stated that the workers must renounce violence and
 9 return to work peacefully, and then Lonmin would engage
 10 with their grievances." You see that?
 11 MAJOR-GENERAL MPEMBE: Yes, I can see,
 12 Chairperson.
 13 MR NGALWANA: Did Mr Mokwena at that
 14 meeting say that if the workers renounce violence and
 15 return to work peacefully, Lonmin would engage with their
 16 grievances?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson,
 18 what I know it might also be found on exhibit 004, page 27.
 19 That's only what I know what Mr Mokwena said.
 20 CHAIRPERSON: That appears to be correct.
 21 Your flag 7 is followed by the exhibit to which the witness
 22 has referred, which is a transcript of the meeting at
 23 Lonmin before the two presidents went to the koppie, and
 24 I'm not sure whether what Mr Mathunjwa says is an exact
 25 summary of what was said, but we can easily check it by

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1 looking at – it's OO4.
 2 MR NGALWANA: Yes, Chair, I don't think
 3 it's in dispute what was said by Mr Mokwena. I just wanted
 4 to check with the witness whether what Mr Mathunjwa relayed
 5 as to what Mr Mokwena said, that once the workers had come
 6 back to work then Lonmin would engage with their
 7 grievances. In other words, the way I read it, that they
 8 would engage directly with the workers. It's clear what
 9 Lonmin's position is at OO4.
 10 CHAIRPERSON: OO4 is in fact the
 11 transcript of what was recorded at that very meeting. So
 12 if what Mr Mathunjwa says doesn't accord with that, then
 13 what Mr Mathunjwa says is incorrect, and if it does accord,
 14 well he is correct, but we don't have to spend much time on
 15 it because we can just look at OO4 for the ipsissima verba
 16 of what was said at that meeting. Isn't that so?
 17 MR NGALWANA: Absolutely, Chair. I
 18 wasn't going to engage with this anymore. We're just
 19 referring to page 27, line 9 - line 17, page 28, line 9 of
 20 OO4. Can I take you to paragraph 54 of that same
 21 statement, General, pagination 166, page 16 of NN.
 22 [12:20] In the last sentence of that paragraph he says,
 23 "Major-General Mpenbe gave us a salute and said that he was
 24 very optimistic and impressed and had no doubt that the
 25 strike would be over the next day." Perhaps I should put

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1 this in perspective by reading the whole – well, the
 2 previous sentence. This is said in the context where Mr
 3 Mathunjwa says what he reported to that meeting was, "We
 4 said that the workers had been receptive of the proposal,"
 5 he's now talking of the second meeting in the evening of
 6 the 15th. "We said that the workers had been receptive to
 7 the proposal that they return to work and that we would see
 8 them again in the morning to discuss the matter further."
 9 He then says you saluted him. Is that factually correct?
 10 Did you salute him?
 11 MAJOR-GENERAL MPEMBE: No, Chairperson,
 12 but what I said is that I'm impressed.
 13 MR NGALWANA: Did you say you were
 14 impressed during the meeting or later?
 15 MAJOR-GENERAL MPEMBE: It was after the
 16 meeting and I was with Major-General Annandale by that
 17 time, talking to him to say I'm impressed and if this could
 18 happen what we are being told, at least the problem will be
 19 over.
 20 MR NGALWANA: Chairperson, you'll find
 21 that reference at the documents bundle, pagination 243.
 22 It's an off-the-record discussion.
 23 CHAIRPERSON: 243 of my copy is a
 24 certificate by the transcriber, so there must –
 25 MR NGALWANA: It's referred to, because

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1 these were the other way around, it's page 21 of that
 2 transcript.
 3 CHAIRPERSON: I see the certificate is
 4 actually in the wrong place. Anyway, so you say it's page
 5 21, that's page 244 of our copies of the bundles.
 6 MR NGALWANA: Correct, Chairperson.
 7 You'll find the reference to which the General refers, well
 8 firstly this is an off-the-record discussion, so it wasn't
 9 part of the meeting, and secondly towards, I think it's
 10 line 15, General Mpenbe, he says he was addressing the
 11 other Generals in an off-the-record discussion. He says,
 12 "So up to so far I'm really impressed." That's what he's
 13 referring to.
 14 CHAIRPERSON: It's actually not a remark
 15 addressed to General Annandale, it's addressed to Mathunjwa
 16 because it says, "Your leadership is still under testing,
 17 confirmation is the outcome." So he's obviously talking –
 18 he may have been talking to General Annandale at the
 19 beginning, but clearly that remark is addressed to Mr
 20 Mathunjwa.
 21 MR NGALWANA: - cover this, but in
 22 consultation, so let him testify. General, can you
 23 indicate to the Commission what the circumstances were and
 24 who was part of the conversation you were having, and
 25 thirdly – there are three questions – what were the

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1 circumstances, secondly who was part of the conversation,
 2 and thirdly, to whom were you addressing these words?
 3 MAJOR-GENERAL MPEMBE: In that meeting I
 4 did say that the police, it was myself, Major-General
 5 Annandale, and Major-General Naidoo. AMCU, I know only Mr
 6 Mathunjwa, but he also had some delegations, and the
 7 management, it was Mr Kwadi.
 8 MR NGALWANA: General, I'm not now
 9 talking about the meeting. The meeting is over. I'm
 10 talking about the incident – can I refer you to page 21 of
 11 GGG4. Do you have it in front of you? GGG4 is the
 12 debriefing transcript. It's in the documents bundle. It
 13 will either be page 244 for those who have pagination, but
 14 page 21 of GGG4 for those who don't have the pagination.
 15 It's at the bottom right-hand corner, General, you see
 16 page, either 244 or 243, bottom right-hand corner. In the
 17 middle of the page at the top it should be page 21. Have
 18 you found it?
 19 MAJOR-GENERAL MPEMBE: I can see it here.
 20 MR NGALWANA: You see it says "Off-the-
 21 record discussion about vehicles being in convoy," and so
 22 on. Do you see that page?
 23 MAJOR-GENERAL MPEMBE: I just want to see
 24 the word "off-the-record."
 25 MR NGALWANA: It's at the top of the

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1 page, it's written in bold in capital letters and
2 underlined.

3 CHAIRPERSON: It's looks as if it's page
4 690 from the police hard drive, it's got 690 on the top
5 right-hand corner, and just below 690 you see there's words
6 in capital underlined to which counsel is referring you,
7 "Off-record discussion about vehicles being in convoy," and
8 that relates back to something that had been discussed on
9 an earlier page where there's a request that they be
10 escorted. Originally the police said no and then the
11 police agreed that they would escort them, and then
12 obviously there was an off-the-record discussion whether
13 the vehicles should be convoy or not, but that's not
14 relevant, so that wasn't transcribed, and then someone is
15 reported as saying – presumably that's you – after
16 Mathunjwa says "Yes?" then there's a statement made by
17 someone who's not identified, but I suspect it may be you.
18 It says, "President," so you're obviously talking to
19 Mathunjwa, "I do not know, maybe I'm (inaudible) and I
20 think it would also be edifying under the circumstances if
21 we can also hear from the Generals what's been their
22 impression since the time you've been with us from morning
23 up to where we've been, so what has been their impression."
24 So I take it that's a reference to the other Generals
25 present, presumably Annandale. Was Naidoo there as well?

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1 Then General Mpebe says, "It will be fair because the two
2 Generals were there," and then it continues. So do I read
3 it correctly that the other two Generals present were asked
4 for their impression of the discussion, or am I wrong?

5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.

7 MR NGALWANA: Let's do it step by step.
8 General, the person who says, "President, I do not know,
9 maybe I am, circumstances," do you see that part? Who is
10 that? Who is saying that?

11 CHAIRPERSON: While you're thinking about
12 it, may I raise something? I take it that this is a Lonmin
13 transcript from a recording made without disclosure by
14 Lonmin of the discussion, and perhaps Lonmin's
15 representatives can tell us if they still have the tape, in
16 which case someone can listen to it and then the blank
17 speakers as it were can be identified. It may save time
18 that way. The witness may not perhaps remember, but if
19 it's important then I'm sure that, unless Lonmin have
20 either destroyed the tape or taped over it, we'll be able
21 to ascertain who the speakers were.

22 SPEAKER: Chair, we do not know if the
23 tape still exists. We will have to take instruction and
24 come back to you on Tuesday morning. Thank you.

25 MR NGALWANA: Yes, we've –

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1 CHAIRPERSON: Anyway, you don't have to
2 tell us. You can [inaudible]. You don't have to do it
3 formally before the Commission. You can just revert to
4 your learned friends who appear for the police, and if it's
5 necessary, then arrangements can be made for someone,
6 perhaps the witness or someone else, to listen to the tape
7 and see if the identified speakers can be identified, if
8 the tape is available.

9 SPEAKER: Quite so, Chair, thank you.

10 MR NGALWANA: Thank you. General, who is
11 it that uttered those words, "President, I do not know,
12 maybe I am?" Are you able to answer that, or do you prefer
13 to wait for the audio, if and when we receive it?

14 MAJOR-GENERAL MPEMBE: I was normally
15 referring to him, President, when I was talking to him.

16 MR NGALWANA: Shall I take it that's you
17 who's addressing him in that paragraph?

18 MAJOR-GENERAL MPEMBE: Correct,
19 Chairperson.

20 MR NGALWANA: Now the next paragraph –
21 just paint the picture first, what is the setup here? Are
22 you sitting down? Are you standing, and who is part of
23 this group of people?

24 MAJOR-GENERAL MPEMBE: We were in another
25 room at the JOC, but not inside the JOC, and we were

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1 sitting, but there was a time where I was communicating
2 with General Annandale and General Naidoo while Mr
3 Mathunjwa and his entourage was standing somewhere, and
4 also Mr Kwadi was somewhere, but then he did approach us,
5 but when I was uttering the words I was busy talking to the
6 two Generals and he was coming to join us.

7 MR NGALWANA: Yes, you say, "My
8 impression is firstly you were on the dot, particularly to
9 mention to say now you accepted responsibility and you will
10 go there as management from the beginning." Who are you
11 referring to as "you" in that excerpt? Do you want me to
12 read it again? Have you got it in front of you, General?

13 MAJOR-GENERAL MPEMBE: I was talking to
14 President Mathunjwa of AMCU.

15 MR NGALWANA: "Particularly to mention,"
16 and I'm reading this paragraph, "Particularly to mention to
17 say now you accepted responsibility and you will go there
18 as management just from the beginning." Are you addressing
19 Mr Mathunjwa?

20 MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson.

22 MR NGALWANA: Is Mr Mathunjwa management,
23 General?

24 CHAIRPERSON: General, it does look as if
25 someone from Lonmin must have been present during this

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1 discussion as well. I get that impression from line 22,
 2 "that's why I wanted management should listen," and then
 3 the earlier reference to which counsel has referred you,
 4 line 14, "you will go there as management." Now Mr
 5 Mathunjwa was the president of AMCU, he wasn't involved in
 6 management. Management was Lonmin. So the first question
 7 is, was there someone from Lonmin present when this
 8 discussion took place?
 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 10 CHAIRPERSON: Now part of the problem is
 11 we haven't got page 20. Page 20 is missing, and perhaps
 12 that's something which may solve the mystery to some extent
 13 because it may appear from 20 who it was who was there from
 14 Lonmin, but perhaps the witness can help us. Can you
 15 remember who was there from Lonmin? Was it Kwadi or
 16 Mokwena, or who?
 17 MAJOR-GENERAL MPEMBE: I remember Mr
 18 Kwadi.
 19 CHAIRPERSON: Would you agree then that
 20 it looks as if this remark about "You will go there as
 21 management just from the beginning," looks as if it was
 22 addressed to Mr Kwadi because he was the representative of
 23 management presumably at this meeting. I'm trying to help
 24 you, Mr Ngalwana. If I'm doing the opposite, please let me
 25 know.

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1 MR NGALWANA: No, absolutely. I'm
 2 grateful, Chair.
 3 MAJOR-GENERAL MPEMBE: Correct,
 4 Chairperson.
 5 CHAIRPERSON: Mr Ngalwana, you want to
 6 take this point further now?
 7 MR NGALWANA: Yes. No, thank you, Chair.
 8 Then you continue, General, and say, "But to me the
 9 leadership is to get the issues resolved." Who are you
 10 addressing yourself to there? Maybe this goes together
 11 with the next sentence, "So up to so far I am really
 12 impressed as I have said to you," and then inaudible,
 13 "peaceful, what it is, resolution and your leadership is
 14 still under testing at the moment." Who are you addressing
 15 yourself to?
 16 MAJOR-GENERAL MPEMBE: To Mr Mathunjwa.
 17 [12:40] MR NGALWANA: Paragraph 57, I'm moving
 18 on. Paragraph 57 of that same statement, page 17,
 19 pagination 167, Mr Mathunjwa says, he's talking about the
 20 16th of August, "Mr Kwadi informed me that there was a press
 21 conference by the SAPS from the LPD offices. I asked why
 22 AMCU was not invited as NUM was there." You see that,
 23 General?
 24 MAJOR-GENERAL MPEMBE: I see it,
 25 Chairperson.

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1 MR NGALWANA: Am I right in saying he's
 2 talking about the Provincial Commissioner's press address
 3 that morning of the 16th?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR NGALWANA: To your knowledge was NUM
 7 or its representatives invited to that media conference?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MR NGALWANA: To your knowledge were
 10 there any NUM representatives at the press conference? If
 11 you didn't see them, you didn't see them. If you saw them,
 12 you saw them. Just tell us whether you saw them.
 13 MAJOR-GENERAL MPEMBE: I did not see
 14 them, but also that the most person that I know of NUM it
 15 was Mr Senzeni Zokwana. The others as I indicated I did
 16 not know them.
 17 MR NGALWANA: Did you see Mr Zokwana at
 18 the media conference that morning?
 19 MAJOR-GENERAL MPEMBE: No, Chairperson.
 20 MR NGALWANA: Paragraph 60, page 18 of
 21 NN, pagination 168, he says, "Mr Kwadi after some time came
 22 back and called us into one of the offices at LPD. He was
 23 accompanied by three people, one of whom I know only as
 24 Patrick who is from Human Resources, and two others. Mr
 25 Kwadi says that he did not have good news. He said that

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1 management could not commit to engaging with the workers if
 2 they returned to work. This was," this is now Mr
 3 Mathunjwa's take, "This was a clear departure of the
 4 commitment given the previous day," which is on the 15th.
 5 You see that, General? Did management during the meeting
 6 of the 15th commit to engaging with workers, and I add in
 7 brackets, directly, if they returned to work?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MR NGALWANA: Paragraph 68, page 20 of
 10 NN, pagination 170, second sentence Mr Mathunjwa says,
 11 "General Mpeembe introduced the AMCU delegation to the
 12 Provincial Commissioner Mbombo and said that she was now in
 13 charge of the operation. Mbombo confirmed that she was now
 14 in charge of the operation and said this thing must end
 15 today because it is costing the State a lot of money." Did
 16 you say to Mr Mathunjwa and his delegation that Provincial
 17 Commissioner Mbombo was now in charge of Operation
 18 Platinum?
 19 MAJOR-GENERAL MPEMBE: No, Chairperson,
 20 this is not true.
 21 MR NGALWANA: Well, I suppose the follow-
 22 up question falls away in light of the first answer that
 23 you gave, but let me ask it anyway. Did Provincial
 24 Commissioner Mbombo confirm that she was in charge of the
 25 operation?

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1 MAJOR-GENERAL MPEMBE: No, Chairperson.
 2 MR NGALWANA: Did Provincial Commissioner
 3 Mbombo says "This thing is costing the State money, a lot
 4 of money?"
 5 MAJOR-GENERAL MPEMBE: No, Chairperson.
 6 MR NGALWANA: Did she say, "This thing
 7 must end today," which is the 16th of August?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MR NGALWANA: Paragraph 69, page 21 of
 10 NN, pagination 171, Mr Mathunjwa says, "I then requested
 11 transport to take me to the koppie in terms of the protocol
 12 that had been explained to me the day before. A female
 13 SAPS officer was appointed to arrange transport. We
 14 waited, but no transport arrived." Is that factually
 15 correct, General?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson.
 17 I just also want to point out to say that Mr Mathunjwa
 18 whenever he was approaching me to arrange transport, I was
 19 always arranging the transport. I don't know why in this
 20 case he will want to say I did not want to arrange the
 21 transport. I just want to mention that on the previous
 22 day, the night, he did request that he should be escorted
 23 to the road; we did arrange that.
 24 MR NGALWANA: Perhaps for the record I
 25 should read the rest of the paragraph. He then says,

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1 "After waiting for 15 to 20 minutes I approached General
 2 Mpembe. He said there was no transport. I pointed to
 3 three Vito Mercedes minibuses. He looked into using these
 4 vehicles and came back to me and said that there were no
 5 keys for the minibuses." You've testified earlier about
 6 this aspect, that you went and looked for keys and the keys
 7 were with people who were already deployed. Is there
 8 anything you wish to add in that regard?
 9 MAJOR-GENERAL MPEMBE: It's correct,
 10 Chairperson, that a female captain, it's Captain Seleke,
 11 and the escorting was arranged.
 12 MR NGALWANA: Well, in paragraph 70 he
 13 says, "General Mpembe then advised us we should use our own
 14 vehicles," and he says, "I reminded him of the protocol of
 15 the day before and the clear instruction not to use our own
 16 vehicles. I asked why this had changed and why now, why we
 17 now had to use our own vehicles. I asked whether no
 18 transport was available because the president of NUM was
 19 not there. I received no answer." Did you have that
 20 conversation with Mr Mathunjwa?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 22 just also want to point out, as I said, when we had a
 23 debriefing a day before, a night before, that was on the
 24 15th, the NUM president was not there and I did arrange a
 25 transport that escorted Mr Mathunjwa to go to the road and

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1 we made sure that he was safe. But the following day, I'm
 2 shocked to hear that this is what he's saying.
 3 MR NGALWANA: Did you say to him he must
 4 use his own vehicle to go to the koppie?
 5 MAJOR-GENERAL MPEMBE: No, Chairperson.
 6 MR NGALWANA: Can I take you to paragraph
 7 83, page 25 of exhibit NN, pagination 175. This is I take
 8 it when he was now coming back, looking to report back
 9 about what had happened after his second address. No, this
 10 is just before the second address, I think. He says, "I
 11 then met with the AMCU branch committee and explained to
 12 them that neither the SAPS nor management was willing to
 13 engage with me, but by this time the situation was tense.
 14 The Provincial Commissioner had left," presumably to the
 15 hospital. "The Generals who had welcomed our intervention
 16 the day before were no longer willing to engage with us.
 17 The protocol of the previous day was not being followed."
 18 Is he correct when he says the Generals were no longer
 19 willing to engage with them as AMCU delegation?
 20 MAJOR-GENERAL MPEMBE: No, Chairperson.
 21 MR NGALWANA: Chairperson, we are now
 22 going to move to the last aspect of the examination-in-
 23 chief, in which we intend dwelling for quite some time, and
 24 that is dealing with the criticisms of the plan by the
 25 experts, as well as the Standing Orders and the other

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1 prescripts.
 2 CHAIRPERSON: It sounds as if we'll have
 3 to let it stand over until Tuesday morning at 9:30. I want
 4 to state that originally I was informed that these premises
 5 will not be available to us on the first Monday and second
 6 Wednesday of the month, so on that basis we did not sit on
 7 the first Monday or the first Wednesday, but I was
 8 subsequently informed shortly before the second Wednesday
 9 that the premises were available the second Wednesday, but
 10 not the third Wednesday. It was by that time too late to
 11 change the arrangements. So we will not be sitting on
 12 Wednesday of next week. I think it's appropriate that I
 13 should tell those concerned about that now. I hope to
 14 spend some time on that day with the evidence leaders, or
 15 some of them, to work on the programme for what we can call
 16 next term, so the day will not be wasted and I'm sure that
 17 those present here will also find important things to do in
 18 connection with the Commission on the Wednesday. I'm sorry
 19 we'll not be sitting, but in fact it may be a blessing in
 20 disguise because it will enable us perhaps to do work that
 21 we couldn't otherwise easily do, but it's important that I
 22 should tell everyone concerned about that now. So at this
 23 point we will adjourn until Tuesday at 9:30.
 24 I should also perhaps say that as of what we can
 25 call next term, in other words the period after the recess

1 we're taking, the idea is that we should start at 9 every
2 morning. It's no longer necessary for us to arrange our
3 times on the basis that we're sitting in Rustenburg, but
4 strong representation has been made to me about people who
5 have aeroplanes to catch, that we should not sit on Friday
6 afternoon, but if we sit from 9 o'clock every morning, we
7 will in fact gain two and a half hours, which in fact is
8 longer than the Friday afternoon that we would lose, which
9 we're losing at the moment in any event. So I thought I
10 should tell everybody about that now so they can bear it in
11 mind for the future. So we will adjourn then until, as
12 I've said before, 9:30 on Tuesday morning, and wish you all
13 a very happy and successful weekend.

14 [COMMISSION ADJOURNED]

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