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 148 14 NOVEMBER 2013 PAGES 16402 TO 16590



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1		1	Page 16404
1	[PROCEEDINGS ON 14 NOVEMBER 2013]	1	won't go back on those aspects now in your cross-
2	[09:05] CHAIRPERSON: The Commission resumes.	2	examination –
3	Major-General, you're still under oath. WILLIAM MPEMBE: Yes, Chairperson.	3 4	MR MPOFU: Yes, as to whether – CHAIRPERSON: You're asking something
4 5		4 5	else?
	CHAIRPERSON: Mr Mpofu, I know you are pressed for time, so I'm going to try to adhere to time	6	MR MPOFU: - it can destroy a building
6 7	limits strictly today, and General, may I say this to you -	7	and all that, I won't deal with that, yes.
8	and please don't take offence – when you give your evidence	8	CHAIRPERSON: Can you, just for the sake
8 9	sometimes, and I can understand why but sometimes when	9	of those of us who are going to read the record later,
10	you're asked a question you give your answer and then you	10	which I take it means all of us, identify the exhibits
11	say "As I have said in my testimony," and then you repeat	11	which depicts this Scorpion that you're talking about?
12	what you said before. That's not necessary; it's on	12	MR MPOFU: I think it's 55, HHH55,
13	record. We are pressed for time and it will save time if	13	Chairperson.
14	you don't – look, if there's something that you feel it	14	CHAIRPERSON: I see, thank you.
15	necessary to explain, you have the fullest right to do	15	MR MPOFU: It's one of three photographs.
16	that, but you don't have to say "As I said in my	16	MR MPOFU: HHH55 has three profiles of
17	testimony," and then repeat your testimony which we've	17	the same –
18	already heard. You understand?	18	CHAIRPERSON: Thank you. Alright, carry
19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	19	on.
20	CHAIRPERSON: If you feel that it's	20	MR MPOFU: Thank you, Chairperson.
21	necessary for you to say something to make sure what you're	21	General, I know that you said this was not your decision to
22	now saying is understood, you can do so. So in other	22	bring the STF, so obviously the Scorpion which came with
23	words, I don't want to hamper you in your evidence, but	23	the STF was also not your decision, but you must understand
24	please bear that in mind. Mr Mpofu -	24	that when I'm questioning you, I'm also questioning you in
25	MR MPOFU: Thank you very much,	25	your capacity as the CEO of the operation, so to speak, for
	Page 16403		Page 16405
1	Chairperson.	1	your responsibility and accountability at that level. You
2	Chairperson. CHAIRPERSON: Are you ready to proceed?	2	your responsibility and accountability at that level. You understand?
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1	Page 16410 question because the situation didn't arise and if you	1	Page 16412 the free lessons are –
2	can't answer, you can't answer, but can you help us – it's	2	CHAIRPERSON: It's not an appropriate
3	something Mr Mpofu wants to know, if General Annandale	3	forum for us to debate –
4	hadn't brought the STF, would you, looking back, have said,	4	MR MPOFU: Ja.
5	'Hey, we need the STF, please bring them," or would you	5	CHAIRPERSON: - what is and what is not
6	have left the matter?	6	good cross-examination, but you carry on with yours.
7	MAJOR-GENERAL MPEMBE: I could have said	7	MR MPOFU: Then thank you, I agree with
8	they should be brought.	, 8	that last remark, Chairperson. Now General, again, I just
9	CHAIRPERSON: I don't think we'll get any	9	want to say this again for you so that it's clear; you
10	further with that –	10	heard the Chairperson correcting me when I used the term
11	MR MPOFU: We won't get further. That's	11	CEO, but as the overall commander you would agree that one
12	still not –	12	of your responsibilities was to see to it that things are
13	CHAIRPERSON: I don't know whether you'll	13	done by the book, correct?
14	get any further than that.	14	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
15	MR MPOFU: For the record, that's not an	15	MR MPOFU: And when we say one of your
16	answer to the question, but we'll leave that for argument,	16	responsibilities was to make sure that things are done by
17	General. I think the Chairperson has tried –	17	the book, the book in that sentence would mean the
18	COMMISSIONER HEMRAJ: Well General, if	18	prescripts, correct?
19	you were planning the operation, would you have included	19	MAJOR-GENERAL MPEMBE: Standing Order
20	the STF in the units that you would have had on the scene,	20	262.
21	if you were planning the operation and if you were in	21	MR MPOFU: Yes. Well ja, when I say
22	General Annandale's place?	22	things should be done by the book, I mean the prescripts as
23	MAJOR-GENERAL MPEMBE: Correct,	23	a unit. In other words, let me help you, I mean, when I
24	Chairperson.	24	say the prescripts I mean the Constitution of the Republic
25	MR MPOFU: Okay, well of course if you're	25	of South Africa, (1), okay? I mean the legislation and the
1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 16411 in General Annandale's place you would have done exactly what he did. That's not what I was asking. I'm saying if, let's assume General Annandale didn't exist, would you on your own initiative, looking at the situation, have ordered or requisitioned, or whatever the correct word is, the bringing of the STF from wherever they are based, on an own initiative, no Annandale, no nobody? CHAIRPERSON: I think that's merely a repetition of what Adv Hemraj asked and she got the answer, so – MR MPOFU: Ja, no it's not the – CHAIRPERSON: If you don't like that answer then of course you could do something about it. If it suits you, then maybe it's sensible to move on.	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 16413 common law. That's (2), okay. And (3), I mean the Standing Orders. (4), I mean the plan that was devised, in other words things also had to be done according to the plan, and fifthly I mean the, what one might call ethics, professional ethics, rules of common decency and that kind of thing. You understand? So when I say the prescripts I mean that body of things that you had to follow. MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR MPOFU: Are we together? Yes, so when you, your job was to make sure things are done by the book, it encompassed those things, correct? MAJOR-GENERAL MPEMBE: Yes, Chairperson. MR MPOFU: Right, now were you aware for
15	MR MPOFU: Ja, I will, Chairperson. I	15	example that Colonel Scott, who was the architect of the
16	just didn't want it to be amended as if that was my	16	plan, did not even know what rule 262 entailed until after
17	question –	17	Roots, or at Roots?
18	CHAIRPERSON: No, but you're giving an	18	CHAIRPERSON: I don't think that's an
19	opportunity to the witness to amend his answer by asking	19	entirely accurate statement.
20	the question again. Some cross-examiners quit when they're	20	MR MPOFU: Well, that's what he said –
21	ahead, or when they think they're ahead.	21	CHAIRPERSON: He did say he wasn't aware
22	MR MPOFU: No, Chairperson, all cross-	22	of what that actually, what that document said. He was
23	examiners that I know, I teach cross-examination for 15	23	aware of what its predecessor had said and he assumed that
24	years, I've been teaching it, is if a question is changed	24	the context of 262 was more or less in line with the
25	and I leave it, then I'm not going to leave it, whatever	25	previous, but you are correct insofar as you say that he
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	Page 16414		Page 16416
1	wasn't acquainted specifically with the contents of	1	it's in the police presentation L114, the last dash. It
2	Standing Order 262, and that's the question you're asking.	2	says, "this was not only a security issue and the root of
3	Do you understand that? Colonel Scott admitted that his	3	the conflict was outside the mandate of the police." You
4	knowledge of Public Order Policing rules was based upon the	4	would agree with that?
5	previous standing orders which preceded 262, and he wasn't	5	MAJOR-GENERAL MPEMBE: Chairperson, I'm
6	aware of the actual terms of 262. Were you aware of that?	6	just requesting the page –
7	MAJOR-GENERAL MPEMBE: No, Chairperson.	7	MR MPOFU: 114, L114. Slide 1, L114.
8	MR MPOFU: Thank you.	8	CHAIRPERSON: I think what he said –
9	MAJOR-GENERAL MPEMBE: And I just want	9	actually what he said in his evidence a moment ago. He
10	also to explain again, very short, Chairperson, Colonel	10	said the police were only concentrating on the security
11	Scott did not plan for the operation. We planned for the	11	side. What he said there as we can see now from the
12	operation and I think it was said also to the Commission.	12	screen, the last bullet, this is at the JOCCOM briefing on
13	He was there to compile, and I did explain to the	13	the morning of Wednesday the 15th at 6am. This was not only
14	Commission if Captain Bembe was there, he could have done	14	a security issue which is the point you make, and the root
15	the same work.	15	of the conflict, the very words you used was outside the
16	MR MPOFU: Alright, I'll leave that for	16	mandate of the police.
17	argument. Let's go back to what I had said to you about	17	MR MPOFU: Yes, that's why I used those
18	things being done by the book. Or no, before we get there;	18	words. You would go along with that, General, correct?
19	that's going to be the kernel of my cross-examination with	19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
20	you this morning, so I just want to, I'll ask you just a	20	MR MPOFU: Then you said something in, I
21	few loose ends before we get to it, ja. You would agree	21	think on Friday or on part of the other cross-examinations.
22	there's a whole debate which doesn't really involve you	22	Effectively you are saying if the parties had done what
23	about the characterisation of the whole operation. All I	23	they did after the tragedy which was to get together and
24	want from you is your own confirmation that this operation	24	talk then the tragedy would not have happened. Is that
25	had two main components to it, and was neither one nor the	25	your view?
	Page 16415		Page 16417
1	Page 16415 other. In other words, would you agree – let's start with	1	MAJOR-GENERAL MPEMBE: Chairperson, I'm
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1	Page 16418 MAJOR-GENERAL MPEMBE: The definition of	1	Page 16420 understand the reciprocal role of Lonmin.
2	these parties, will it include strikers themselves?	2	MR MPOFU: Ja, you remember the – we've
3	MR MPOFU: Ja. Yes, it does because they	2	agreed that the strikers wanted to talk. So for the
4	were also involved in the talks afterwards –	4	situation that happened after the tragedy to take place,
5	MAJOR-GENERAL MPEMBE: No –	5	the Lonmin would've had to reciprocate and –
6	MR MPOFU: That's exactly what I'm going	6	CHAIRPERSON: Reciprocate – I'm not sure
7	to get into right now.	7	reciprocate is the right word. What you mean I think is
8	CHAIRPERSON: Yes, I'm sorry to	8	respond.
9	intervene. I take it when you gave your answer yes, you	9	MR MPOFU: Ja.
10	were including the strikers. I mean it didn't require, as	10	CHAIRPERSON: To indicate a willingness
11	I understood you, it didn't require what one can call	11	on their side –
12	unilateral action from the employer. It required a	12	MR MPOFU: Ja.
13	particular attitude and response from the strikers as well.	13	CHAIRPERSON: - to talk to the strikers
14	I take it that's what you said. That's what you meant, is	14	at least –
15	that right?	15	MR MPOFU: Accept their offer, ja.
16	MAJOR-GENERAL MPEMBE: Correct,	16	CHAIRPERSON: No, hang on. I am not sure
17	Chairperson. I only wanted to inquire whether it's a broad	17	whether offer is the right word either. No, let's get it
18	understanding for the commission also.	18	formulated correctly. I think what you want - what you are
19	MR MPOFU: Yes, ja.	19	asking is what was lacking from Lonmin's side according to
20	CHAIRPERSON: - as you see I understood	20	what you are putting, was an appropriate response to the
21	it and I think Mr Mpofu did as well. So we're all on the	21	requests or desire on the part of the strikers to talk to
22	same page at the moment.	22	them. Is that correct?
23	MR MPOFU: Thank you, General, but that's	23	MR MPOFU: Yes, in fact, Chairperson,
24	a very pertinent question that you're asking. Would you	24	maybe –
25	also agree that from your own interaction with the	25	CHAIRPERSON: Engage with them perhaps in
	Page 16419		Page 16421
1	strikers, starting from the 13th up to the 16th, your own	1	the Lonmin –
2	interactions and those of other people, that it was the	2	MR MPOFU: - we know engage is –
3	consistent view of the strikers that they wanted to talk to		
Š	5	3	CHAIRPERSON: Alright, we leave that.
4	management?	4	Engage is an unfortunate word. But I think I put it
4 5	management? MAJOR-GENERAL MPEMBE: I just wanted	4 5	Engage is an unfortunate word. But I think I put it correctly. What was lacking, you say, was that – I'm not
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	Page 16422		Page 16424
1	after – now when I say you once again, I mean you and SAPS,	1	paragraph 16 –
2	ja. Did you, after receiving these numerous requests from	2	MR MPOFU: Well –
3	the strikers convey them to Lonmin?	3	MAJOR-GENERAL MPEMBE: - until to page
4	MAJOR-GENERAL MPEMBE: Correct,	4	28.
5	Chairperson.	5	MR MPOFU: Yes, General, I don't want to
6	MR MPOFU: And we know that Lonmin was	6	go to that because of time. I'm saying a nutshell,
7	not prepared to speak to the strikers, correct?	7	including 004 and 00 whatever, did you understand that the
8	MR SHOZI: No, Chairperson, it's	8	Lonmin had put two preconditions to talking. One being
9	incorrect. Lonmin never said that. Lonmin is on record as	9	that they had to lay down arms and two, that they would
10	having said on the 15th of August we are prepared to speak	9 10	only speak to the recognised unions in general.
11	to the strikers if they lay down their weapons. So the	10	MAJOR-GENERAL MPEMBE: Yes, it's part of
12	premise of the question is incorrect.	12	
			them, but there are others also that they did put in. Not
13	,	13	in the mountain, without weapons, in a safe environment.
14	CHAIRPERSON: I don't if that's quite	14	MR MPOFU: Yes. No. I understand that.
15	correct. Part of Lonmin's attitude, as I understand it – I	15	I'm saying the – when the discussions – well I'm telling
16	know this is the time to debate it, we will debate it when	16	you now that I'm putting it to you as a fact, if you know,
17	your witnesses are in the witness box more fully, my	17	you know, if you don't, you don't. You can tell us. That
18	understanding was they were prepared to negotiate through	18	are you aware that when the subsequent negotiations
19	the recognised union structures. The recognised union	19	happened which you referenced earlier, that the strikers
20	structures meant they were prepared to negotiate about this	20	were still bearing arms and that Lonmin spoke, not only
21	wage claim or demand with NUM because the recognised union	21	with the recognised union but with the delegation of the
22	structures only accorded bargaining rights in respect of	22	workers themselves.
23	wages to NUM. That I think is a fairly consistent stance	23	MAJOR-GENERAL MPEMBE: Chairperson, I was
24	that was adopted by Lonmin. Whether it's – was appropriate	24	told that –
25	or not is a matter that will be debated later, but is my	25	MR MPOFU: Yes.
	Page 16423		Page 16425
1	Page 16423 state and facts correct or not?	1	Page 16425 MAJOR-GENERAL MPEMBE: - Lonmin at one
1 2	6	1 2	-
	state and facts correct or not?		MAJOR-GENERAL MPEMBE: - Lonmin at one
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		1	
1	Page 16426	1	Page 16428
1	we're not prepared to negotiate while you people have got	1	to read you extracts just to save time which would – which
2	weapons in your hands? We haven't got weapons in our	2	come from Exhibit L, that I will argue later in support of
3	hands, we don't think it appropriate if you have weapons in	3	that, Chairperson. If you go to L96, Exhibit L96 at the
4	yours. Would that have been an appropriate thing for	4	last bullet, you say, the last two bullets. The
5	Lonmin to say? Do you understand the question?	5	representatives stated that the protestors wanted the mine
6	MAJOR-GENERAL MPEMBE: I understand the	6	management to give them an increase to ensure that their
7	question, Chairperson, and my question was on both. My	7	salaries were R12 500 per month and the next bullet you say
8	approach was on both as they put it to me. Yes, on the	8	- or rather not you, the document says, "the group was
9	other hand I saw it as a frustration because the police	9	informed that their requests would be forwarded to the JOC
10	were there, they could escort them to go there.	10	and the SAPS could not force the mine to negotiate with
11	CHAIRPERSON: Yes.	11	them." Remember that?
12	MAJOR-GENERAL MPEMBE: On the other hand	12	MAJOR-GENERAL MPEMBE: I see,
13	I could see they themselves, when they say it and I mean with such dependence uncomence and what has been and to the	13	Chairperson. MR MPOFU: Yes, and then if you go to
14	with such dangerous weapons and what has happened to the	14	
15 16	securities, on the other hand I saw it as reasonable. CHAIRPERSON: So that was a reasonable	15	L109, I'll just read them successively. L109, the bullet
16 17	request, but of course they went further than that. They	16 17	just before the last one. You say, "the mine's management were still not prepared to engage in negotiations." And
17	didn't just say we want – if you put your weapons down,	17	then if you go to L113, second bullet, "Lonmin stated that
10	we'll talk to you. They said, as I understand it, even if	10	the mine would not negotiate with the striking miners as
20	you do you put your weapons down we still won't talk to	20	there was a two year wage agreement in place with all the
21	you. We'll only talk through the recognised union	21	unions." Then if you go to L117, at the last bullet, "the
22	representatives and that appears from statement of Mr	22	representatives asked if the mine's management was present
23	Kwadi, let's get his name right, Mr Kwadi, Peter Fanyana	23	and they were informed that the mine had indicated that
24	Kwadi, Exhibit KK, page 9 where he says in paragraph 9.1,	24	they would not negotiate with them unless the workers put
25	he's talking about what he said to Mr Mathunjwa on the 16th	25	down their weapons and returned to normal duties."
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	Page 16427		Page 16429
1			1 490 10127
1	in the morning. He says, "I advised Mathunjwa that Lonmin	1	Remember that being said? General?
2	in the morning. He says, "I advised Mathunjwa that Lonmin management was not prepared to discuss the strikers'	1 2	Remember that being said? General? [09:44] CHAIRPERSON: Were you present at that
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2	management was not prepared to discuss the strikers'	2	Remember that being said? General? [09:44] CHAIRPERSON: Were you present at that
2 3	management was not prepared to discuss the strikers' demands or grievances outside of collective bargaining structures and therefore would not recognise AMCU's collective bargaining agent for the strikers." Now that	2 3	Remember that being said? General? [09:44] CHAIRPERSON: Were you present at that meeting on the 15th of August between SAPS management and Lonmin, representatives of Lonmin, which took place at half past 5 in the morning on the 15th, which is dealt with in
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	Page 16430		Page 16432
1	claims that were being raised because of this two-year	1	put the later passages to you.
2	agreement. I don't know whether you were aware of that,	2	Now, and then on the same day, paragraph 3.3,
3	but that was NUM's attitude also.	3	that's the page before the one I read from, page 3, Mr
4	MAJOR-GENERAL MPEMBE: I'm not aware of	4	Kwadi says he had various telephone interactions with Mr
5	that, Chairperson, but what I'm aware –	5	Mokwena and Mr Kgotle about the appropriate response to the
6	CHAIRPERSON: You can take it from me,	6	situation. This was after Mr Mathunjwa had said to him
7	that was the evidence we got.	7	that the striking employees were acting of their own accord
8	MAJOR-GENERAL MPEMBE: Okay, thanks,	8	and they weren't members of AMCU. He says he had, I repeat
9	Chairperson.	9	what I read a moment ago, "I had various telephone
10	CHAIRPERSON: Mr Zokwana, the president	10	interactions with Mokwena and Kgotle about the appropriate
11	of NUM, when he came said that that attitude of NUM's as	11	response to the situation. A decision was taken that no
12	expressed to the workers was not correct, that they	12	person from management should receive any memorandum in
13	mightn't have been able to strike, but they certainly could	13	respect of the demands as both AMCU and the National Union
14	negotiate about it; there as nothing preventing negotiation	14	of Mineworkers advised they had no knowledge or involvement
15	and he referred to an incident in the past where there had	15	in the impending march. Both unions advised their members
16	been negotiation for a wage increase despite the fact that	16	were not involved in the events at hand." So I don't know
17	there was a two-year or three-year agreement in place. So,	17	if you knew that at the time, but if you had know, would
18	but anyway, you didn't know about that, but of course now	18	that also have increased your frustration?
19	that you do know about it, it makes it worse because not	19	MAJOR-GENERAL MPEMBE: Correct,
20	only had Lonmin said we don't want to negotiate, we won't	20	Chairperson.
21	negotiate partly because there's a two-year agreement, but	21	MR MPOFU: Thank you –
22	NUM, the only people with whom Lonmin indicated they were	22	CHAIRPERSON: Mr Mpofu, I'm sorry if I've
23	prepared to negotiate on behalf of the RDOs, had also said	23	trespassed onto property, onto ground you were intending to
24	that there can be no negotiation during the two-year	24	cover. Accept my apologies.
25	period. Now if you had known that, would you have been	25	MR MPOFU: It was done in [inaudible]
1	Page 16431 even more frustrated than you were?	1	Page 16433 fashion, Chairperson.
2	MAJOR-GENERAL MPEMBE: Correct,	2	MR NTSONKOTA: Sorry, Chair, before Mr
3	Chairperson, but that was also shown when I called them in	3	Mpofu continues, for the record again, name is Thando
4	that meeting.	4	Ntsonkota on behalf of NUM. Chair, my recollection of the
5	CHAIRPERSON: Yes, yes. No, I	5	evidence on this aspect of the wage agreement goes a little
6	understand.	6	bit further than what the Chair has expressed. If I
7	MR MPOFU: Yes, but –	7	recollect accurately, the position was that notwithstanding
8	CHAIRPERSON: Sorry, there's a further	8	the two-year wage agreement, as it had happened in the past
9	point that I can put to you, just to clear the ground for	9	NUM could have been in a position to negotiate it.
10	Mr Mpofu. According to, also according to exhibit KK, the	10	However, because the strikers as early as June had
11	statement of Mr Kwadi, in paragraph 3.7 on page 4, this is	11	expressed to Mr Da Costa that they do not want any unions
12	what happened on the 10th – you weren't there yet, but you	12	involved, so even if we wanted to negotiate – and we could
13	remember part of the history of this is that there was a	13	- we most likely would not have been in a position to
14	march to the Lonmin offices on the 10th and there were	14	because we didn't have any mandate that we could have gone
14	discussions between a group of people who went inside and	14	to put to management.
15	people from Lonmin, and what appears here in the second	16	CHAIRPERSON: No, no, the mandate point
17	part of paragraph 3.7, Mr Kwadi speaking, he says, the	17	is correct. You are entitled to clarify that, but what I
18	crowd intimated they were illiterate. They were asked for	18	put was also right, that the evidence of the chairman of
10	their demands in a memorandum and they said we can't give a	10	the NUM branch at Lonmin was that they at meetings actually
1 17	memorandum because we're illiterate. "The crowd intimated	20	told the workers there's nothing we can do about this wage
20	memoranuum because were initerate. The crowd initiated		demand while the two-year wage agreement is in place, and
20	/ 31 / 12052 84 / 1	.).1	
21	they were illiterate. They wanted to address the	21	
21 22	they were illiterate. They wanted to address the management orally about their demands. They were informed	22	Mr Zokwana when he came said that may have been what they
21 22 23	they were illiterate. They wanted to address the management orally about their demands. They were informed their request would not be acceded to." So as early as the	22 23	Mr Zokwana when he came said that may have been what they said, but it's not correct, there was something we could
21 22 23 24	they were illiterate. They wanted to address the management orally about their demands. They were informed their request would not be acceded to." So as early as the 10th of August Lonmin said we're not prepared to negotiate	22 23 24	Mr Zokwana when he came said that may have been what they said, but it's not correct, there was something we could have done; we could have negotiated it. There was a
21 22 23 24 25	they were illiterate. They wanted to address the management orally about their demands. They were informed their request would not be acceded to." So as early as the	22 23	Mr Zokwana when he came said that may have been what they said, but it's not correct, there was something we could

	Page 16434		Page 16436
1	where despite the fact that there was an agreement covering	1	difference?
2	a period, there had been a change in circumstance and we	2	MAJOR-GENERAL MPEMBE: Chairperson, I
3	raised that in negotiations and in fact succeeded in	3	just want to understand the term "capitulation," what does
4	getting an increase. So what the chairman of the local	4	it mean?
5	branch of NUM had told the workers at meetings was in fact	5	MR MPOFU: Alright –
6	incorrect. So that's necessary to get the whole picture	6	CHAIRPERSON: Capitulation really means
7	before us. But anyway, these matters will be covered	7	surrender, I suppose, giving up the attitude that you've
8	presumably more fully when the Lonmin witnesses give	8	adopted.
9	evidence, but what we're busy with at the moment, or rather	9	MR MPOFU: Yes, let me – I'll also
10	what Mr Mpofu is busy with at the moment is trying to	10	attempt, and I'll take one step back. I promise I won't
11	illustrate from the mouth of the overall commander that the	11	give you a long – Mr Magidiwana gave us a very crash course
12	police had a measure of frustration not only with the	12	in collective bargaining. What he was saying is that what
13	strikers because of their behaviour, or misbehaviour, but	13	would break the impasse was that if they were sitting at
14	also with Lonmin for the reasons that he's busy exploring,	14	the mountain, the chimneys wouldn't work, to use his words,
15	and I think that's permissible questioning and I'm going to	15	and therefore one of the two parties had to give something.
16	allow him to continue. Mr Mpofu?	16	Now what I'm saying, what was being asked for here was
17	MR MPOFU: Yes, Chair –	17	effectively end the strike, put your weapons down, come
18	CHAIRPERSON: But the fuller attitude of	18	back to work, then we'll talk to you. What I'm saying is
19	NUM has been correctly stated.	19	that in that, that would no longer be now a bargaining, it
20	MR MPOFU: That's correct, Chairperson.	20	would be giving up, as it were. Do you understand?
21	CHAIRPERSON: You could proceed on the	21	MAJOR-GENERAL MPEMBE: I understand,
22	basis that we're all aware of that.	22	Chairperson.
23	MR MPOFU: Yes, thank you, Chairperson.	23	MR MPOFU: Ja. Right –
24	MR NTSONKOTA: Thank you, Chair.	24	CHAIRPERSON: I think the further point
25	MR MPOFU: Thank you, Mr Ntsonkota. No,	25	that the strike was an unprotected strike, and this is a
	5		5 1//07
1	Page 16435 it's okay. Not to belabour the point, because I think the	1	Page 16437 matter which presumably will be explored later when the
2	Chairperson did cover it, you would agree that what was	2	Lonmin witnesses give their evidence.
3	stated in that last bullet which I've just read to you,	3	MR MPOFU: Yes. You do understand that
4	they wouldn't negotiate with them unless the workers put	4	it was an unprotected strike, but an unprotected strike is
5	down their weapons and returned to normal duties, that that	5	part of legitimate collective bargaining. All it does is
6	would amount to capitulation on the part of the workers?	6	that you don't get protected under the Labour Relations
7	MAJOR-GENERAL MPEMBE: Chairperson, I	7	Act. You can be dismissed. But it's an accepted part of
8	just wanted to get the last bullet in the exhibit L -	8	collective bargaining. Do you know that? Or maybe you
9			
	CHAIRPERSON: He's referring to the	9	don't?
10	CHAIRPERSON: He's referring to the second-last bullet, or the penultimate bullet on slide 113.	9 10	
10 11	5		don't?
	second-last bullet, or the penultimate bullet on slide 113.	10	don't? CHAIRPERSON: I'm not sure that you put
11	second-last bullet, or the penultimate bullet on slide 113. MR MPOFU: No, no, I'm sorry, Chair, I'm	10 11	don't? CHAIRPERSON: I'm not sure that you put it quite accurately that it's legitimate, because if you
11 12	second-last bullet, or the penultimate bullet on slide 113. MR MPOFU: No, no, I'm sorry, Chair, I'm referring to the last bullet on 117. That's the last one I	10 11 12	don't? CHAIRPERSON: I'm not sure that you put it quite accurately that it's legitimate, because if you can be dismissed by the employer and the employer can't be
11 12 13	second-last bullet, or the penultimate bullet on slide 113. MR MPOFU: No, no, I'm sorry, Chair, I'm referring to the last bullet on 117. That's the last one I read, which says the mine hasn't –	10 11 12 13	don't? CHAIRPERSON: I'm not sure that you put it quite accurately that it's legitimate, because if you can be dismissed by the employer and the employer can't be forced to take you back, then I'm not sure the word
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	Page 16438		Page 16440
1	withdraw their labour is sacrosanct. What the legal	1	proceed.
2	consequences are, are defined in the Labour Relations Act,	2	MR MPOFU: Yes, I'm sorry, Chairperson,
3	but our Constitution guarantees your right to withdraw your	3	but as I say, I learned from the best. You asked him just
4	labour at any time, without any warning. You can simply	4	now whether it was reasonable for them to say that the arms
5	walk out.	5	should be put down. All I'm doing now is to say I'm
6	CHAIRPERSON: [Microphone off, inaudible]	6	accepting the answer that it was reasonable for them to say
7	MR MPOFU: Well, it is.	7	the arms should be put down. I'm asking whether does he
8	CHAIRPERSON: [Microphone off, inaudible]	8	also, to follow your question, Chairperson, does he also
9	what you mean by the word "sacrosanct" because if you -	9	think it was reasonable to ask them to capitulate. It was
10	MR MPOFU: Constitutionally speaking.	10	your question.
11	CHAIRPERSON: No, no, you have a right to	11	CHAIRPERSON: I may have been wrong in
12	do it. You're not guilty of a crime, but the	12	asking the question that I was, but –
13	sacrosanctness of it is subject to a very substantial	13	MR MPOFU: Well, then I'll disallow it,
14	qualification, namely that you can't do it with impunity	14	Chairperson.
15	because you can be dismissed and there's nothing you can do	15	CHAIRPERSON: In view of the fact that I
16	about your dismissal if it's an unprotected strike. So,	16	asked it, I'll allow you to ask your question, but let's
17	but maybe it's a semantic debate we're engaging in, which	17	not have a long debate with him on his answer.
18	isn't going to give us very much assistance in answering	18	MAJOR-GENERAL MPEMBE: Chairperson, for
19	the questions the President has sent to us to answer, but	19	the first part of put down their weapons, it was
20	anyway, carry on with your questioning.	20	reasonable, and returned –
21	MR MPOFU: You said to a previous	21	CHAIRPERSON: And Mr Mpofu accepts that.
22	question to the Chairperson, you said the issue about the	22	Yes, carry on.
23	arms you understood, or I think you said it was reasonable.	23	MAJOR-GENERAL MPEMBE: - and returned to
24	Now the question I want to put to you is, do you also think	24	work, I could say it will amount to – I mean that word,
25	it was reasonable to say the preconditions that are being	25	which I don't understand, and my argument is based
	Page 16439		Page 16441
1	put are basically capitulate and just come back to work and	1	constitutionally, as he said, in turn because people are
2	then we'll talk to you? Do you also think that is - I can	2	not allowed in terms of the Constitution to protest while
3	understand the issue of the arms –	3	armed, and also they have the unions, so I didn't see any
4	CHAIRPERSON: No, Mr Mpofu, we've gone	4	necessity of them arming themselves because they have the
5	over this ground before. You –	5	people that they can talk for them.
6	MR MPOFU: Well, those are things –	6	CHAIRPERSON: Mr Mpofu, I think you've
7	CHAIRPERSON: No, no, no, give me an	7	achieved what you wanted to achieve –
8	opportunity then I'll give you an opportunity also. The	8	MR MPOFU: I have.
9	ground we've gone over is where a question is asked which	9	CHAIRPERSON: So you've got enough on
10	the Commission is in a good a place to answer as the	10	record to argue the point.
11	witness, then the question won't be allowed because it's	11	MR MPOFU: That's correct.
12	just a waste of time, but if you, you were dealing earlier	12	CHAIRPERSON: Whether it's a good point
13	with the question of the police response to the attitude of	13	is a matter we'll see later, but carry on.
14 15	Lonmin and I allowed that and I'll continue to allow it.	14 15	MR MPOFU: We'll see, Chairperson. And
15	You got him to concede, with a bit of help from me, but you	15	is it also correct that it was your view that Lonmin as the
16 17	got him to concede that there was a substantial element of frustration on the part of the police at the attitude of	16 17	employer have a duty to act in such a way as to control or quell the situation? And to be fair to you, because I
18	Lonmin. So you can go on asking questions about the	18	think that's how you've put it, not only Lonmin, but other
19	unprotected strike, and so forth, in that context, but	19	people also had duties, but Lonmin had a primary duty as
20	don't ask him whether it was reasonable for Lonmin to do it	20	the employer to ensure that the situation was quelled.
21	because that's not a matter which we are bound by his	20	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
. 50	() () () () () () () () () ()	22	MR MPOFU: Thank you. Okay, just for the
//	answer and which his answer doesn't really help lis But it	~~	with wind to a strain you. Okay, just for the
22 23	answer and which his answer doesn't really help us. But if you want to ask along the lines that you are previously	23	sake of completion. I'm not really going to ask you a
23	you want to ask along the lines that you are previously	23 24	sake of completion, I'm not really going to ask you a question: I'm just going to make these references for the
	In II Private La Lande	23 24 25	sake of completion, I'm not really going to ask you a question; I'm just going to make these references for the benefit of the Commissioner. In L –

1	Page 16442	1	Page 16444
1	CHAIRPERSON: Do you have to give us the	1	President having approved it, was in breach of the
2	references now? Can't you give them to us in argument?	2	Constitution. Are you aware of that?
3	We've all studied L over and over again, backwards and	3	[10:04] CHAIRPERSON: That is a subject that was
4	forwards and sideways, but I'm sure that if there's	4	covered already. It's a matter for debate, but just to cut
5	something in it that you feel we have to have our attention	5	it short, there's a contention, which will have to be ruled
6	specifically directed to, you can do so at the appropriate	6	on later, that the use of the defence force helicopter for
7	time. I don't think you should -	7	example, without the President's permission, was a breach
8	MR MPOFU: No, it's fine, Chairperson, I	8	of the Constitution. Now I ask you to accept for the sake
9	would have finished by now –	9	of the answer that that may be right. Were you aware that
10	CHAIRPERSON: I don't think you should	10	there was a possible breach of the Constitution in that
11	spend your time but I want you to spend it profitably on	11	regard?
12	this today.	12	MAJOR-GENERAL MPEMBE: No, Chairperson.
13	MR MPOFU: That's fine. I would have	13	CHAIRPERSON: So I think we can move on
14	finished the references by now, but so I'll leave them.	14	to chapter 2.
15	Alright, now let's then go back to what I said would be the	15	MR MPOFU: We're still on chapter 1, and
16	main theme of my cross-examination for you this morning.	16	I wanted to move on but I have to deal with this
17	You remember we had agreed about the cluster of prescripts?	17	qualification now, in case I forget them. In fact it's not
18	MAJOR-GENERAL MPEMBE: Correct,	18	a matter of any conjecture. Section 201 –
19	Chairperson.	19	CHAIRPERSON: Mr Mpofu, you've raised the
20	MR MPOFU: Right, now I'm going to show	20	contention earlier with, I think General Annandale, and I
21	you that there were many, dozens of -	21	think with, I think it was with the National Commissioner
22	MAJOR-GENERAL MPEMBE: I'm sorry,	22	as well, certainly with her. Now that's a legal contention
23	Chairperson, I just want to say I did understand what the	23	that you're going to advance that the Constitution was
24	Advocate is saying, not that necessarily that I agreed,	24	breached. The witness has already told us that – and I've
25	because I was going to be -	25	asked him to accept for the sake of the argument that the
1		1	Page 16445
1	CHAIRPERSON: Yes, yes, ves, no he says	1	Constitution was breached. Was he aware of it? The answer
2	CHAIRPERSON: Yes, yes, yes, no he says he was talking about playing it by the book.	2	Constitution was breached. Was he aware of it? The answer he gives is he wasn't. If there was a breach of the
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		T	
1	Page 16446	1	Page 16448 question you asked him. So repeat the question so he
1	MR MPOFU: And are you aware that the	1	understands it.
2	Constitution also – or let me put it this way – that in	2	
3	terms of the constitutional structure of the division		MR MPOFU: Yes. Thank you, General, I'll
4	between the operational management and the political	4	assist you. As the overall commander, the big chief,
5	management of the SAPS, you are aware that it would be	5	should you have been aware of all the considerations that
6	wrong for operational decisions to be influenced	6	were influencing, or that would influence the decision to
7	politically, or by political considerations, correct?	7	move to the dangerous stage 3?
8	MAJOR-GENERAL MPEMBE: I need the clarity	8	MAJOR-GENERAL MPEMBE: No, Chairperson.
9	on that, Chairperson, because I didn't know of any	9	CHAIRPERSON: You shouldn't have been, or
10	political interference –	10	you weren't?
11	CHAIRPERSON: I must profess, I share	11	MAJOR-GENERAL MPEMBE: I wasn't.
12	your difficulty in understanding the question, and I	12	CHAIRPERSON: Mr Mpofu says, he's putting
13	understand my colleague, both my colleagues share our	13	the question slightly differently. He says should you have
14	difficulty. Mr Mpofu, I'm afraid you're going to have to	14	been aware, not whether you were, but should you have been
15	reformulate the question so that we can understand it.	15	aware of all the considerations which prompted the decision
16	MR MPOFU: Yes, I'll assist all who are	16	to move to stage 3 as it was formulated at the 1:30 JOCCOM
17	confused.	17	meeting. That's his question. Now what's your answer to
18	CHAIRPERSON: And we'll be grateful for	18	that? In other words, if there were other considerations –
19	such assistance that you can give us. I must also say that	19	let me reformulate the question. If there were other
20	on the assumption that you are correct that there was	20	considerations which led to the decision to implement stage
21	improper political interference in what amounts to an	21	3, which as he says is a very risky stage, but if there
22	operational decision, I'm not quite sure what advantage	22	were other considerations which led to that decision which
23	could be derived from covering the matter with this	23	you were not aware of, which were not communicated to you,
24	witness. I think I understand where you're going. I can	24	would you regard that as inappropriate and incorrect? Is
25	understand the arguments that you're going to advance. I	25	that your question, Mr Mpofu?
1	Page 16447	1	Page 16449
1	can also understand questions you may ask of other	1	MR MPOFU: That's correct, Chairperson.
2	can also understand questions you may ask of other witnesses who are to come, but you will remember that we	2	MR MPOFU: That's correct, Chairperson. MAJOR-GENERAL MPEMBE: Yes, Chairperson,
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	Page 16450		Page 16452
1	breach or contravention or non-compliance rests. Now I	1	strike it out of the papers, but let's carry on with the
2	haven't got a problem with your putting the second part to	2	cross-examination for the moment.
3	the witness, endeavouring to establish facts which will	3	MR MPOFU: Ja, okay, now I'm saying that
4	found an argument that there was a breach or contravention	4	you are aware that there are no circumstances where the
5	or non-compliance with the law, but I'm not interested in	5	police are allowed to use maximum force?
6	whether the witness thinks those facts amount to a breach,	6	MAJOR-GENERAL MPEMBE: Chairperson, I
7	contravention, or non-compliance; that's for us to decide.	7	don't understand the word "maximum force."
8	But the facts underlying that, obviously you can ask and I	8	MR MPOFU: Well, it's the opposite of
9	won't stop you, but please stick to that.	9	minimum force.
10	MR MPOFU: Thank you. That's all I'm	10	MAJOR-GENERAL MPEMBE: Yes –
11	canvassing, Chairperson. That's why I said I'd leave the	11	CHAIRPERSON: Mr Mpofu, there can be a
12	rest to argument, just now. Now when it comes to – and I'm	12	situation where in the particular circumstances there's no
		12	difference between minimum force and maximum force –
13	assuming you're familiar, as you said, with the prescripts,	13	
14	but of course, as the Chairperson says, it's not with the		MR MPOFU: Except for those circumstances
15	precision of a lawyer. I'm just saying that you would be	15	which are, must be rare, do you accept that –
16	generally familiar with the prescripts. Is that a fair	16	CHAIRPERSON: Sorry, this matter was
17	assumption?	17	debated at length with previous witnesses. It's all on
18	MAJOR-GENERAL MPEMBE: Correct,	18	record. I don't propose to allow you to have a debate on
19	Chairperson.	19	the matter again –
20	MR MPOFU: Yes.	20	MR MPOFU: I'm not debating it. I just
21	CHAIRPERSON: [Microphone off, inaudible]	21	asked one question, Chairperson. Is he aware or is he not
22	that Mr Mpofu said it, but never mind, you've accepted the	22	aware that –
23	assumption, so we can carry on.	23	CHAIRPERSON: No, he says that –
24	MR MPOFU: Now you are aware, are you	24	MR MPOFU: If he says he's not, he's not,
25	not, that in terms of the Police Act at least, in terms of	25	I move on.
	Page 16/51		Page 16453
1	Page 16451 the Police Act – and I'll argue, you can, don't worry about	1	Page 16453 CHAIRPERSON: He said he didn't know what
1 2	the Police Act – and I'll argue, you can, don't worry about	1 2	
	the Police Act – and I'll argue, you can, don't worry about the other part, I'll argue that also in terms of the common		CHAIRPERSON: He said he didn't know what
2	the Police Act – and I'll argue, you can, don't worry about the other part, I'll argue that also in terms of the common law, that the police are enjoined to employ nothing more	2	CHAIRPERSON: He said he didn't know what maximum force meant –
2	the Police Act – and I'll argue, you can, don't worry about the other part, I'll argue that also in terms of the common law, that the police are enjoined to employ nothing more than minimum force, correct?	2	CHAIRPERSON: He said he didn't know what maximum force meant – MR MPOFU: No, he said he doesn't know
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1	Page 16454	1	Page 16456
1	the dispersal, and when you disperse the crowd you use	1	presented and they were, working documents were produced
2	minimum force.	2	and they were worked on and there were changes and
3	MR MPOFU: And is there any suggestion	3	modifications and so on. The nature of those modifications
4	that you know of where you must use maximum force?	4	we don't have to deal with at the moment, but that's a
5	CHAIRPERSON: Is his knowledge relevant?	5	fact, isn't it though, and you weren't here when Mr
6	I mean we can think of hostage situations and some of these	6	Chaskalson cross-examined Colonel Scott, but all that
7	threats to life, situations of that kind. We can imagine	7	material was put before us. I think that's what Mr Mpofu
8	them. Whether he can, does it –	8	is referring to, but that was a bit of an aside which
9	MR MPOFU: Well, the legislator didn't	9	probably wasted more time than anything. What you are
10	imagine it, Chair. It would have said you must use minimum	10	being asked about is really before Roots, are you referring
11	force except in hostage situations –	11	to what he said before Roots?
12	CHAIRPERSON: No, it doesn't say –	12	MR MPOFU: No, I said you in the broad
13	MR MPOFU: Law, section 13(3)(b) –	13	sense, are you aware that before Roots, with the help of
14	CHAIRPERSON: No, no, Nr Mpofu, I'm	14	some of the people who were working under you or yourself,
15	not going to argue the law with you now, but we agreed	15	I don't know, the National Commissioner made a statement to
16	earlier that there are circumstances where minimum force	16	the public and the media to the effect that maximum force
17	and maximum force coincide because there's nothing short –	17	had been used? Were you aware of that?
18	MR MPOFU: No, I did not agree to that,	18	MAJOR-GENERAL MPEMBE: Chairperson, if I
19	Chairperson.	19	may be referred to the document?
20	CHAIRPERSON: Well, perhaps you should	20	MR MPOFU: I think it's FFF4.
21	have. There will be circumstances where it's not possible	21	CHAIRPERSON: [Microphone off, inaudible]
22	for any force to be used except what amounts to maximum	22	FFF4, it's one of the documents to which you were referred
23	force, which is equal to minimum force in those	23	when you were told the nature of the cross-examination Mr
24	circumstances. But I don't know if it's a profitable	24	Mpofu will be addressing.
25	debate for us to have now –	25	MR MPOFU: Can you go to –
	Page 16455		Page 16457
1	MR MPOFU: Anyway –	1	CHAIRPERSON: [Microphone off, inaudible]
2	CHAIRPERSON: And I'm not sure if it's	2	FFF4, have you got it? Document headed "Civil unrest
3	going to take your cross-examination of the witness any	3	incident Lonmin Mine, Marikana, North West Province,
4	further, so let's carry on.	4	internal brief" – no, no, FFF4 is the –
5	MR MPOFU: Anyway, let me just short-	5	MR MPOFU: Is the President's one, yes.
6	circuit this. Are you aware that according to what you –	6	CHAIRPERSON: This is the President's
7	well, and again I'm using the word "you" liberally – what	7	one.
8	you stated before the versions were – I'm trying to put	8	MR MPOFU: Yes, I'm talking about FFF5.
9	this nicely – refined at Roots, that –	9	CHAIRPERSON: FFF5 is the public one.
10	MR MATHIBEDI SC: Sorry, Mr Chairman,	10	MR MPOFU: Thank you, Chairperson.
11	what's the basis of saying the versions were refined at	11	CHAIRPERSON: Are you dealing with – but
12		12	the one you gave notice of that you were going to deal with
. ~	Roots?		
13	Roots? CHAIRPERSON: I think he's referring to	13	in cross-examination is FFF4, is that right?
		13 14	in cross-examination is FFF4, is that right? MR MPOFU: Yes, well then it means I
13	CHAIRPERSON: I think he's referring to		-
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13 14 15 16 17	CHAIRPERSON: I think he's referring to some of the ground that was covered in Mr Chaskalson's cross-examination where various versions of what happened, the working papers were presented from which one can follow the evolution of what amounted to the final police	14 15 16 17	MR MPOFU: Yes, well then it means I made – CHAIRPERSON: No wait, no let's be clear so the witness can follow. Are you going to question him
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	Page 16458	1	Page 16460
1	CHAIRPERSON: No, no, no, if you're going	1	would think, but the point that's going to be put to you
2	to refer to FFF5, the question is whether the witness has	2	based on these passages will now be put to you by Mr Mpofu.
3	had an opportunity to see it.	3	MR MPOFU: Yes. Well, let me put it this
4	MR MPOFU: Well, it's two words – maximum	4	way; I thought you and I had agreed before that private
5	force.	5	defence also encapsulates minimum force, but that might be
6	COMMISSIONER HEMRAJ: Do you have the	6	a matter for legal argument. So the statements are really
7	document, General?	7	the same, that they would act with absolute minimum force,
8	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	8	or they would act in private defence, which also requires
9	I do have it. I just wanted maybe to check with the –	9	minimum force. You understand?
10	CHAIRPERSON: You were referred to it as	10	MAJOR-GENERAL MPEMBE: I do not
11	well. It's headed "Media statement from the South African	11	understand, but –
12	Police Service, Corporate Communication, National Media	12 13	CHAIRPERSON: I'm not sure that you
13	Centre." Is this the document you're referring to? MR MPOFU: And the part I'm referring to	13	stated it correctly, Mr Mpofu – MR MPOFU: No –
14		14	
15	is page 2.		
16 17	CHAIRPERSON: It's page 2 at the foot of	16 17	of private defence a person defending himself or defending another may be obliged to use what amounts to maximum –
17	the page, it's the last line of the penultimate paragraph. You see the paragraph that begins "The dispersion action	18	MR MPOFU: No.
19	had commenced." If you go down to the end of that	19	CHAIRPERSON: Yes, yes, maximum
20	paragraph you'll see the sentence which reads, "Police	20	force. A person dealing for example with a hostage
20	retreated systematically and were forced to utilise maximum	20	situation or a cash heist or something of that kind might
22	force to defend themselves." Do you see that?	22	be obliged to shoot the assailant and that would be, would
23	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	23	constitute killing someone in those circumstances, would
24	CHAIRPERSON: That's the sentence that Mr	24	constitute maximum force, but that's the question –
25	Mpofu is going to ask you about.	25	MR MPOFU: Ja, that was the –
	Page 16459		Page 16461
1	MR MPOFU: Thank you, and then after	1	CHAIRPERSON: The question of the
2	MR MPOFU: Thank you, and then after Roots, you can go to L282.	2	CHAIRPERSON: The question of the application is a matter we needn't debate with the witness.
2 3	MR MPOFU: Thank you, and then after Roots, you can go to L282. MR MPEMBE: I just want to find the slide	2 3	CHAIRPERSON: The question of the application is a matter we needn't debate with the witness. MR MPOFU: Ja.
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1	situation. That's a different thing altogether.	1	police then –
2	CHAIRPERSON: Well, it could be private	2	CHAIRPERSON: No, I'm sorry, Mr Mpofu. You put
3	defence because you could be defending the hostage, but	3	the question differently before the adjournment. You put
4	perhaps we can state the same proposition saying you can	4	it correctly then. You spoke about an attack or an
5	use as much force as you need, but no more.	5	imminent attack and that was correct, so I suggest you
6	MR MPOFU: Yes.	6	repeat the question the way you did before the adjournment.
7	CHAIRPERSON: Right. If we -	7	MR MPOFU: Yes, okay. Would you
8	MR MPOFU: That's minimum force,	8	therefore agree, given your answer before tea, that in the
9	otherwise known as minimum force.	9	absence of an attack or an imminent attack on, that
10	CHAIRPERSON: As much as you need may in	10	threatened the life of anybody, the issue of self-defence
11	fact involve quite a lot, but anyway, let's not debate	11	would not arise at all because it's a prerequisite, as we
12	the -	12	agreed.
13	MR MPOFU: Anyway, I'll leave it.	13	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
14	CHAIRPERSON: Let's not debate that	14	CHAIRPERSON: That ignores the application of the
15	further. If you want to make a point to the witness,	15	doctrine of putative defence but I take it that's not a
16	please put it to the witness –	16	matter that need be debated with this witness.
17	MR MPOFU: [Microphone off, inaudible]	17	MR MPOFU: And it's not a matter that's
18	move on to something else, Chairperson.	18	an issue in this Commission. That has not been raised by
19	CHAIRPERSON: Yes, it might be more	19	anybody but be that as it may –
20	profitable to do so.	20	CHAIRPERSON: I'm not sure about that. If, at the
21	MR MPOFU: Ja, I think so. You also –	21 22	end of the day, the facts indicate – I don't say they will,
22 23	CHAIRPERSON: Sorry, if you're moving on to another point, Mr Mpofu, I was intending to take the tea	22	they may well not and I certainly haven't even got a prima facie view on the matter at the moment but if the facts at
23 24	adjournment at 10:30 –	23 24	the end of the day indicate that the principles of putative
24 25	MR MPOFU: Can I just, so that I finish	24 25	defence apply, we will say so, but if they don't, we won't.
23		23	defence apply, we will say so, but if they don't, we won't.
	Page 16463		Page 16465
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2	this chapter, as you called it – CHAIRPERSON: Yes, yes, of course.	2	MR MPOFU: Ja. CHAIRPERSON: And I know the police didn't raise
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	Page 16466		Page 16468
1	when you were in the witness box, that when you got to the	1	there was an attack. He is not going to decide whether
2	helicopter you heard something on the radio about people	2	there was an imminent attack. He is not going to decide
3	proceeding to the – the strikers, or some of them	3	whether the principles of self-defence or private defence
4	proceeding to attack the TRT, I think you said and you then	4	apply. He may have his own views on the matter. You say
5	got in the helicopter and went up in the air, is that	5	he used to lecture in criminal procedure, he may have
6	right?	6	fairly informed views but his views won't bind us. In
7	MAJOR-GENERAL MPEMBE: Correct,	7	fact, without intending any disrespect towards him, I'm not
8		8	interested in his views on that matter. We will form our
9	CHAIPPERSON: Did you so that was just before	9	
	CHAIRPERSON: Did you – so that was just before		own views based upon what we've seen and it will be
10	the shooting. Did you, when you were in the air did you	10	evidence of eye witnesses and so on.
11	observe any attack on anybody by anybody else?	11	MR MPOFU: Chairperson, maybe I didn't
12	MAJOR-GENERAL MPEMBE: No, Chairperson.	12	put this clearly. I'm not canvassing that with him. I'm
13	I already said to the Commission very shortly that I saw it	13	saying to you, Chairperson, if he saw a video that you may
14	on the video.	14	now have seen, I would assume that you are interested to
15	CHAIRPERSON: What did you – yes, after the event	15	see that video. If you are not, then I'll move on but –
16	obviously when you came down again but did you see it on	16	CHAIRPERSON: Can I ask a question? Do you know
17	the video that same day or did you see it subsequently?	17	what videos are on the police hard drive?
18	We're talking about scene 1 now.	18	MAJOR-GENERAL MPEMBE: I will not know
19	MAJOR-GENERAL MPEMBE: Yes, Chairperson,	19	the exhibit number but it was played here when I was giving
20	I've seen it on a subsequent –	20	my evidence-in-chief.
21	CHAIRPERSON: No, I know, we all have but did you	21	CHAIRPERSON: So the videos you've seen, videos or
22	see it on the 16th of August or only subsequently?	22	video – is it one or more?
23	MAJOR-GENERAL MPEMBE: Only subsequently,	23	MAJOR-GENERAL MPEMBE: It's one video
24	yes.	24	that was played by Adv Ngalwana when he showed me.
25	CHAIRPERSON: Alright. And did you see from the	25	CHAIRPERSON: I see.
	Page 16467		Page 16469
1	Page 16467 air anything that happened at scene 2 where some of the	1	Page 16469 MAJOR-GENERAL MPEMBE: Yes.
1 2		1 2	-
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2	air anything that happened at scene 2 where some of the strikers were killed or injured?	2	MAJOR-GENERAL MPEMBE: Yes. CHAIRPERSON: Okay, so the video you saw to which
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 9 from that that you felt that you had a contribution to 10 make, inter alia to save lives, et cetera, which you 11 thought you were better able to make than Brigadier Calitz, 11 though no fault of his own but for the reasons you've 12 through no fault of his own but for the reasons you've 13 stated. That's correct too, isn't it? 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson. What I was saying, I didn't speculate what 16 would have happened if Brigadier Calitz goes. 17 CHAIRPERSON: No, we could speculate but it's an 18 unprofitable speculation. We will never know the answer. 19 He might have agreed with Colonel Merafi's attitude for 20 example, it's a possibility, and if Colonel Merafi's plan 21 had been adopted there might or might not have been far 22 more serious consequences than in fact there were but that 	7	the culture of the people. That's what you said. Now	7	to then and there at that time?
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14MAJOR-GENERAL MPEMBE:Correct,14reasons were, you felt from a linguistic point of view and15Chairperson. What I was saying, I didn't speculate what15a cultural point of view you could better deal with the16would have happened if Brigadier Calitz goes.16situation.17CHAIRPERSON: No, we could speculate but it's an17MAJOR-GENERAL MPEMBE:And the other one18unprofitable speculation. We will never know the answer.18is that I wanted to rely on my experience because by then,19He might have agreed with Colonel Merafi's attitude for19the Chairperson will remember that by then it was the only20example, it's a possibility, and if Colonel Merafi's plan20contingency plan that was drawn on Saturday so –21had been adopted there might or might not have been far21CHAIRPERSON: Yes.22more serious consequences than in fact there were but that22MAJOR-GENERAL MPEMBE:That's the main	12	through no fault of his own but for the reasons you've	12	I did also indicate that my reasons on Monday –
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22 more serious consequences than in fact there were but that 22 MAJOR-GENERAL MPEMBE: That's the main	20	example, it's a possibility, and if Colonel Merafi's plan	20	contingency plan that was drawn on Saturday so –
h l l l l l l l l l l l l l l l l l l l	21	had been adopted there might or might not have been far	21	CHAIRPERSON: Yes.
h l line line line line line line line li	22	more serious consequences than in fact there were but that	22	MAJOR-GENERAL MPEMBE: That's the main
23 again is a matter, to some extent, of speculation, isn't 23 issue also, but for the 16th and I think Chairperson is	23	again is a matter, to some extent, of speculation, isn't	23	issue also, but for the 16th and I think Chairperson is
	24		24	correct to say that then there was, then we had the time of
25 MAJOR-GENERAL MPEMBE: Correct, 25 planning and everything was in place, there was the	25	MAJOR-GENERAL MPEMBE: Correct,	25	-
		RCHIVE FOR JUSTICE		

1	Page 16474	1	Page 16476
1	interpreter there, I had many reasons. The only difference	1	Isn't that a neutral fact?
2	that I wanted to show now when I disagree with the	2	MAJOR-GENERAL MPEMBE: Correct,
3	Advocate, it was only to say yes, on the 16th I was	3	Chairperson, but there was no Fanagolo speaking person.
4	comfortable because there was, structures, everything was	4	MR MPOFU: Yes, but we know now the
5	put in place.	5	Fanagolo speaking person was the Lonmin guy that we have
6	CHAIRPERSON: Yes. Anyway, Mr Mpofu I think may	6	discounted just now.
7	explore that point further but he is interested in the	7	CHAIRPERSON: On the 13th there was no Fanagolo
8	contrast between what you did on the 13th and the 16th. Mr	8	person. They actually asked for one and Lonmin for some
9	Mpofu, I take it you want to carry on with the point.	9	reason declined to provide one. So the witness, according
10	MR MPOFU: Thank you, yes Chairperson.	10	to his evidence, then spoke basically in isiZulu which,
11	As far, I'm just limiting it to what I will call the	11	being an Nguni language, could be understood fairly easily
12	language and culture reason. Brigadier Calitz didn't	12	by Xhosa speaking, isiXhosa speaking people but the Lonmin
13	suddenly acquire the knowledge of the languages and the	13	man speaking Fanagolo wasn't there. He asked for, I think
14	culture in the three days. He still had that handicap,	14	he asked the Lonmin representative to arrange for – Mr
15	correct?	15	Blou, I think it was, and Mr Blou refused. So there is
16	MAJOR-GENERAL MPEMBE: No, Chairperson.	16	that difference between the 13th and the 16th.
17	MR MPOFU: Oh, so he had – what did he	17	MR MPOFU: Ja, well, he didn't know that
18	do, a crash course in two days in Zulu or Fanagolo?	18	before he went there.
19	MAJOR-GENERAL MPEMBE: There was a	19	MR SHOZI SC: Chair, for the record, we
20	Fanagolo interpreter and he was also interpreting the	20	didn't decline to provide a Fanagolo interpreter on Monday.
21	actions of the minds. He was well-armed in terms of not,	21	That's not our case, we dispute that.
22	armed in terms of the people who can assist him.	22	CHAIRPERSON: Let's get, let's ask – yes, I hear
23	MR MPOFU: Well, are you talking about	23	what you say. Let's ask the witness. My understanding may
24	the interpreter from Lonmin?	24	well have been wrong. Am ${\rm I}$ – what was the position on the
25	MAJOR-GENERAL MPEMBE: Correct,	25	13th? Did you ask for the Lonmin representative to provide
	Page 16475		Page 16477
1	Chairperson.	1	a Fanagolo interpreter?
2	MR MPOFU: Can you envisage a situation	2	MAJOR-GENERAL MPEMBE: Correct,
3	where the interpreter from Lonmin, for example, would have	3	Chairperson.
4	given the necessary warnings in the languages that were	4	CHAIRPERSON: And did the Lonmin representative
5	necessary?	5	provide a Fanagolo interpreter?
6	MAJOR-GENERAL MPEMBE: Chairperson, he	6	MAJOR-GENERAL MPEMBE: No, Chairperson.
7	could have interpreted them.	7	CHAIRPERSON: What was his response to your
8	MR MPOFU: No, remember the warnings that	8	request?
9	were given to the people, the 3 000 gathered, in their	9	MAJOR-GENERAL MPEMBE: Chairperson –
10	languages. That's what the prescripts say, correct?	10	CHAIRPERSON: What was his response to your
11	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	11	request in regard to the provision of a Fanagolo
	MR MPOFU: Ja, now I'm asking you a	12	interpreter?
12	3,5,5,5,5,5,5,5,5,5,5,5,5,5,5,5,5,5,5,5		
13	question, whether can you as the C-JOC envisage a situation	13	MAJOR-GENERAL MPEMBE: If they, they said
	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000	13 14	they are not prepared to negotiate.
13	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given		they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away.
13 14	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000	14	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu.
13 14 15 16 17	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262?	14 15 16 17	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I
13 14 15 16	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo,	14 15 16 17 18	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my
13 14 15 16 17	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members	14 15 16 17	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other
13 14 15 16 17 18	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there.	14 15 16 17 18	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the
13 14 15 16 17 18 19	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there. MR MPOFU: Yes, but we know that the	14 15 16 17 18 19	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the people – I suppose that includes their body language – and
 13 14 15 16 17 18 19 20 	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there. MR MPOFU: Yes, but we know that the warning, or rather when you decided that because of your	14 15 16 17 18 19 20	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the people – I suppose that includes their body language – and on the day that we spoke about, on Tuesday, you could even
 13 14 15 16 17 18 19 20 21 22 23 	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there. MR MPOFU: Yes, but we know that the warning, or rather when you decided that because of your language proficiency you should go yourself and be the	 14 15 16 17 18 19 20 21 22 23 	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the people – I suppose that includes their body language – and on the day that we spoke about, on Tuesday, you could even understand the meaning of the words in the songs which are
 13 14 15 16 17 18 19 20 21 22 23 24 	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there. MR MPOFU: Yes, but we know that the warning, or rather when you decided that because of your language proficiency you should go yourself and be the operational commander and the C-JOC, there were also many	 14 15 16 17 18 19 20 21 22 23 24 	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the people – I suppose that includes their body language – and on the day that we spoke about, on Tuesday, you could even understand the meaning of the words in the songs which are all, as I said on Monday, admirable reasons why you chose
 13 14 15 16 17 18 19 20 21 22 23 24 25 	question, whether can you as the C-JOC envisage a situation where those warnings which were to be given to the 3 000 people or so in their own languages would have been given by the Lonmin interpreter or not, according to the prescripts 262? MAJOR-GENERAL MPEMBE: In Fanagolo, Chairperson, correct. And there were so many POP members that could have spoken all the languages that were there. MR MPOFU: Yes, but we know that the warning, or rather when you decided that because of your language proficiency you should go yourself and be the	 14 15 16 17 18 19 20 21 22 23 	they are not prepared to negotiate. CHAIRPERSON: Mr Shozi, your objection falls away. Carry on, Mr Mpofu. MR MPOFU: Thank you. Really General, I don't want to go around in circles on this. The gist of my question is this, that while you thought, among other things, that your understanding of the culture of the people – I suppose that includes their body language – and on the day that we spoke about, on Tuesday, you could even understand the meaning of the words in the songs which are

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1	Page 16478		Page 16480
1	you did not take into account on the 16th. That's all, and	1	MR MPOFU: Yes, not that you're agreeing
2	I'd like your comment on it.	2	with it, ja. Okay, I'm saying, look, there are two
3	MAJOR-GENERAL MPEMBE: Chairperson, on	3	possibilities, at least you've introduced two
4	the 13th I already said, I'll be very quick, there was no	4	possibilities, or the second possibility. The first one
5	negotiator. On the 16th there was, negotiators were	5	which I canvassed with General Annandale was that he just
6	provided for Brigadier Calitz, there was a Fanagolo	6	upped and left in Pretoria and drove to the Marikana area,
7	speaking person. There were many POP members who can speak	7	and I think the word I used was "uninvited." The second
8	different languages that could assure that the operation	8	possibility, which is what you raised, was that he could
9	goes well.	9	possibly have been called up by the Provincial
10	[11:16] MR MPOFU: Alright, well we'll leave that	10	Commissioner. What I'm saying is that for the purposes of
11	for argument.	11	this question I'm not, I don't mind which of those is true,
12	COMMISSIONER HEMRAJ: But weren't some of	12	we'll argue that in due course. The gist of what I'm going
13	the negotiators able to speak some of the African languages	13	to be talking to you about is that you were sidelined and
14	as well? Some of the negotiators that were with Colonel	14	General Annandale was installed, either by himself or by
15	McIntosh on the 16th.	15	someone else, in your place. That's all. So we don't have
16	MAJOR-GENERAL MPEMBE: I'm not sure, but	16	to go to the wherefores and whys. You understand?
17	I think I was relying also on the officers, but maybe if we	17	MAJOR-GENERAL MPEMBE: I understand,
18	check the names of the negotiators, because I know that	18	Chairperson.
19	they were four, but as on the 13th they were not there.	19	MR MPOFU: Thank you. Now you also, I
20	MR MPOFU: Thank you, and also we've	20	think you did confirm that – okay, sorry, that is a
21	already established that – once again, just to be fair, let	21	repetition. We've spoken about the chairing of meetings
22	me – I'm now giving you instances which I'm going to argue	22	and so on. But would you agree that Colonel Scott
23	at the end show that you were, after the 13th you were no	23	effectively reported to General Annandale, and I'm taking a
24	longer the real CJOC and you had either been removed or you	24	globular view of his evidence; I can't pinpoint a
25	had disengaged yourself. I'm not interested which one it	25	particular section, but would that be fair?
	-		
1	Page 16479		Page 16481
1	is, but –	1	Page 16481 MAJOR-GENERAL MPEMBE: No, Chairperson.
2	is, but – MR MATHIBEDI SC: Sorry, Mr Chairman, he	1 2	MAJOR-GENERAL MPEMBE: No, Chairperson. MR MPOFU: Okay, would it be fair to say
	is, but – MR MATHIBEDI SC: Sorry, Mr Chairman, he had been removed, the witness had been removed by who?		MAJOR-GENERAL MPEMBE: No, Chairperson. MR MPOFU: Okay, would it be fair to say that according to the records at least, after the 13th up to
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1	CHAIRPERSON: You've given examples,	1	reasons I've given, but let's not get bogged down on that
2	you've given us examples of instructions that you gave	2	issue now. You've got more important questions to ask,
3	during that period in your capacity, I take it, as overall	3	haven't you?
4	commander. What Mr Mpofu wants to know is can you give us	4	MR MPOFU: Chairperson, there's no need
5	any other examples. Is that right, Mr Mpofu?	5	for us to be bogged down. That's why I used the exact
6	MR MPOFU: That's right, Chair. Thank	6	words of Mr Shozi, so that we don't get bogged down. I was
7	you, Chairperson.	7	giving in actually. He provided for you what Mr Shozi
8	MAJOR-GENERAL MPEMBE: Chairperson, on	8	calls the Protea chopper, otherwise known as the Lonmin
9	the 14th I said I chaired the meeting when the plan was	9	chopper, correct?
10	debated, I was chairing that meeting. There were changes	10	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
11	that were made to the plan. I think I said it in detail	11	I just want to give – not, a short explanation.
12	in –	12	Chairperson, as I have said, he was always in the JOC. He
13	MR MPOFU: Okay, I'll leave that for	13	could also be able to detect any emergencies where the
14	argument. But what we do know for sure is that – or	14	chopper could have been needed.
15	rather, one of the issues that I'm going to argue is an	15	MR MPOFU: Yes, okay. That's the reason.
16	indication of your being sidelined is that we know for sure	16	Okay, I was just interested in the fact. Ja, okay. You
17	that the time of the operation on the 16th was determined	17	would accept that in the regulations there's no such thing
18	not by you but by General Annandale, correct?	18	as a deputy CJOC, or the parts that I read you. It says
19	MAJOR-GENERAL MPEMBE: Yes, Chairperson.	19	the CJOC must be in overall command of the specific
20	MR MPOFU: And we know that when you	20	operation for which he or she is designated, and is
21	wanted to see for yourself, to put it mildly, you had to	21	responsible for all actions taken. And then says the
22 23	ask General Annandale for transport, correct? MAJOR-GENERAL MPEMBE: Chairperson, I did	22 23	appointed CJOC is responsible for well planned and
23 24	explain that in any operation, whether it's even in the	23 24	coordinated actions for the duration of an operation. It doesn't foresee a so-called deputy CJOC, correct?
24	normal situation, even the Provincial Commissioner, I just	24	MAJOR-GENERAL MPEMBE: No, Chairperson.
20	normal situation, even the revincial commissioner, r just	20	
	Page 16483		Page 16485
1	Page 16483 want to make an example, you have a deputy responsible for	1	Page 16485 MR MPOFU: Thanks. And you've already
1 2	want to make an example, you have a deputy responsible for resources and that person knows where, which resources are	1 2	-
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1	Page 16486	1	Page 16488
1	MR MPOFU: No, General, I'm sure you	1	what you were talking about.
	understand the question. It's not that. I know the	2	MR MPOFU: Yes, yes.
	hierarchy. I'm saying to you as the CJOC, the man who has	3	CHAIRPERSON: Now we know that that
	been appointed to be all the things I've read to you, who	4	assumption isn't correct and you've got to approach the
	must take responsibility ultimately for all actions, as	5	matter certainly from a different angle.
	I've read it out to you, okay, would it be consistent with	6	MR MPOFU: Yes, I think it's JJJ192.
	a person of that statute if they were really holding that	7	CHAIRPERSON: If there is a particular
	position, that your immediate superior, the Provincial	8	passage to which you wish to refer –
9	Commissioner, in relation to the very operation that you	9	MR MPOFU: Yes.
10 a	are in overall command of, would discuss some of the	10	CHAIRPERSON: - and if the witness hasn't
11 (considerations which would influence the movement to a	11	got a copy, I suppose it will have to be put up on the
12 (dangerous stage of that operation with someone who's -	12	screen.
13	forget the ranks, who's not even a member of SAPS, with	13	MR MPOFU: Yes. Yes, thank you,
14 :	someone who is an employee of Lonmin as opposed to the big	14	Chairperson.
15 0	chief?	15	MR SHOZI: Chair, of course the contents
16	MAJOR-GENERAL MPEMBE: I did not know	16	of this transcripts are yet to be agreed upon between the
17 a	about the situation, Chairperson.	17	parties. So if Mr Mpofu could have regard –
18	MR MPOFU: Well, assume that I'm correct.	18	CHAIRPERSON: Yes, Mr Mpofu –
19	Now you know, would it surprise you?	19	MR MPOFU: I'll bear that in mind.
20	CHAIRPERSON: Sorry, let me ask a	20	CHAIRPERSON: The caveat that's been
	question before Mr Mpofu proceeds. Have you read the	21	expressed by Mr Shozi is correct, that there is still some
	transcript of the discussion which took place on the	22	controversy as to the accuracy of the transcription, and so
	Tuesday between, I think it was more than one	23	subject to that caveat you can proceed, but the witness
	representative of Lonmin –	24	must understand there may be an argument about the precise
25	MR MPOFU: Mr Mokwena and another one.	25	correctness of what's been transcribed, but I presume the
	Page 16487		Page 16489
1	CHAIRPERSON: Yes, representatives of	1	general gist of it is beyond controversy.
	Lonmin on the one hand and the Provincial Commissioner,	2	MR MPOFU: Yes, thank you, Chairperson.
	Lieutenant-General Mbombo on the other. Have you – it's an	3	Yes, I'll bear that in mind, Mr Shozi. The parts that I'm
	exhibit before us. Have you had an opportunity to read it?	4	going to refer to are quite clear, with respect. One is
5	MAJOR-GENERAL MPEMBE: No, Chairperson,	5	page 9, the printed page 9.
6	it's the first time that I hear.	6	CHAIRPERSON: What line are you referring
7	MR MPOFU: Ja, okay –	7	to, or the passage to which you will refer the witness –
8	CHAIRPERSON: So I think that's an	8	MR MPOFU: Yes, I'm trying to get it.
9	explanation for some of the mystification that the witness	9	CHAIRPERSON: - at what line does it
10	has shown in response to the questions you asked. Maybe	10	begin?
11 <u>·</u>	you can, if you consider it necessary, put a few short	11	MR MPOFU: Yes, thank you, Chairperson.
12	extracts from the transcript in question, which really	12	Yes, okay, there's a part that says, it's line 29, I
13	formed the underlying and assumed basis of the questions	13	suppose, Chairperson, General, this is a discussion between
14	you asked him, which he didn't understand –	14	Mr Mokwena and the SAPS Commissioner. When we say SAPS
15	MR MPOFU: Yes, fair enough, Chairperson.	15	Commissioner, it's Provincial Commissioner. I think that's
16	So -	16	common cause. It says, "But when I was speaking to
17	CHAIRPERSON: So then you may or may not	17	Minister Mthethu," who I -
	get a meaningful answer.	18	CHAIRPERSON: That's obviously a
18		10	transcription error.
18 19	MR MPOFU: Yes. No, thank you,	19	
19		20	MR MPOFU: Mthethwa.
19 20	MR MPOFU: Yes. No, thank you, Chairperson, I think yes, I was, as it were, trying to		MR MPOFU: Mthethwa. CHAIRPERSON: Yes.
19 20 21	MR MPOFU: Yes. No, thank you, Chairperson, I think yes, I was, as it were, trying to short-circuit, because –	20	
19 20 21 22	MR MPOFU: Yes. No, thank you, Chairperson, I think yes, I was, as it were, trying to short-circuit, because – CHAIRPERSON: No, I think I'm correct in	20 21 22	CHAIRPERSON: Yes. MR MPOFU: - "he mentioned a name to me
19 20 21 22 23	MR MPOFU: Yes. No, thank you, Chairperson, I think yes, I was, as it were, trying to short-circuit, because – CHAIRPERSON: No, I think I'm correct in saying you assumed he'd read it.	20 21	CHAIRPERSON: Yes. MR MPOFU: - "he mentioned a name to me that is also calling him, that is pressurising him.
19 20 21 22	MR MPOFU: Yes. No, thank you, Chairperson, I think yes, I was, as it were, trying to short-circuit, because – CHAIRPERSON: No, I think I'm correct in	20 21 22 23	CHAIRPERSON: Yes. MR MPOFU: - "he mentioned a name to me

	Page 16490		Page 16492
1	yes. Now remember now when I was talking to the National	1	with someone holding the position of C-JOC who is, after
2	Commissioner last night, she said to me, 'Look General, who	2	all, responsible for all the actions at the end of the day?
3	are the shareholders here?' So I said I do not know the	3	MAJOR-GENERAL MPEMBE: Chairperson,
4	shareholders, but I know that when I spoke to the Minister	4	before I respond I just want to state very shortly
5	he mentioned Cyril, and then she says, 'Now I got it.' You	5	CHAIRPERSON: State?
6	know why she said she got it? Remember Cyril was in the	6	MAJOR-GENERAL MPEMBE: Very shortly, is
7	appeal committee of Malema. Remember?" Mr Mokwena, "Yes."	7	to say I am not aware of this. It's the first time that I
8	"And he was very strong in terms of the decision that was	8	see it and I see there they say it's the SAPS Commissioner.
9	made." "Yes." "And remember that in Impala Malema came	9	I know sometimes they will say it's the top cop only to
10	with our Premier and spoke to those people about that they	10	find it's a constable.
11	should make their demands, but in a way that - and after	11	CHAIRPERSON: Yes, well, we are told that the
12	that we ourselves as the police, we managed, you know,	12	reference to the SAPS Commissioner is a reference to
13	manage the situation after Malema came. Now our discussion	13	Lieutenant-General Mbombo.
14	with the National Commissioner was around this thing that	14	MAJOR-GENERAL MPEMBE: Yes.
15	say is this thing now happening such that again Malema come	15	CHAIRPERSON: We must assume that that's correct.
16	and defuse this thing so that it becomes as if Malema has	16	We're also told that the transcription is not necessarily
17	taken charge of the mining, the mine." Mr Mokwena, "Yes."	17	entirely correct and there is ongoing discussions between
18	"Once again remember Malema's view that the mines should	18	the SAPS and Lonmin about that, but the general gist of it
19	be" Mr Mokwena, "Nationalised." SAPS Commissioner,	19	I take it is correct and – but I think we must accept,
20	"nationalised and all that, so it has got a serious	20	until we're told it's not so, that the reference to the
21	political connotation that we need to take into account,	21	SAPS Commissioner is a reference to Lieutenant-General
22	but which we need to find a way of defusing. Hence I told	22	Mbombo. Sorry, I was interrupting you but that's in
23	these guys that we need to act such that we kill this	23	response to the point you were making.
24	thing." "Immediately, yes."	24	MAJOR-GENERAL MPEMBE: Yes, Chairperson,
25	[11:36] CHAIRPERSON: That's Mokwena speaking,	25	that whatever I say now it will be a matter of speculation,
	5		D 4/400
1	Page 16491 "Immediately yes Mr Mokwena SAPS Commissioner When	1	Page 16493 of not correct not correct, but as I've said earlier on I
1	"Immediately, yes, Mr Mokwena. SAPS Commissioner, When	1	of not correct, not correct, but as I've said earlier on I
2	"Immediately, yes, Mr Mokwena. SAPS Commissioner, When tomorrow we have to move in if today we do not find co-	2	of not correct, not correct, but as I've said earlier on I was not there, I don't have any knowledge of this and I
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2 3 4	"Immediately, yes, Mr Mokwena. SAPS Commissioner, When tomorrow we have to move in if today we do not find co- operation n these people, we need to move in such that we kill it because we need to protect a situation where any	2 3 4	of not correct, not correct, but as I've said earlier on I was not there, I don't have any knowledge of this and I cannot say that General Mbombo – and as I've indicated, if General Mbombo spoke there, she has no obligation to ask
2 3 4 5	"Immediately, yes, Mr Mokwena. SAPS Commissioner, When tomorrow we have to move in if today we do not find co- operation n these people, we need to move in such that we kill it because we need to protect a situation where any jig and jive from a political area," Okay and it goes	2 3 4 5	of not correct, not correct, but as I've said earlier on I was not there, I don't have any knowledge of this and I cannot say that General Mbombo – and as I've indicated, if General Mbombo spoke there, she has no obligation to ask permission from me.
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RCHIVE FOR JUSTICE

1	Page 16494	1	Page 16496
1	at the appropriate time, is that correct, Mr Mpofu?	1	appears, that there had been a telephone conversation with
2	MR MPOFU: No, I'm afraid not,	2	the Minister of Safety and Security who had said he was
3	Chairperson. I accept that – that's why I'm saying to him	3	being pressurised by someone who was identified as Mr
4	I'm not going to canvass the whys and wherefores. I'm	4	Ramaphosa. Now whether there was such a conversation,
5	asking this for a very limited purpose which I've made	5	whether there was any pressure of that sort is a matter
6	clear. For the third time, I'm going to make it for the	6	that we will presumably be wiser about later when the
7	third time. The question, General, is simply, would you as	7	Minister and Mr Ramaphosa testify, but the question I think
8	the Chief JOC or the big person who is responsible for all	8	Mr Mpofu wants to know from you is, did the Provincial
9	the actions and so on, would you find it strange that major	9	Commissioner at any stage say to you what she allegedly or
10	consideration for when the operation should get to a	10	apparently said to Lonmin, that this information that there
11	particular stage and concluded, are not discussed with you?	11	was this alleged pressure by Mr Ramaphosa exercised on the
12	Forget that they were discussed with Mr Mokwena, that's	12	Minister, did she ever tell you about that or was that
13	just a secondary part, that they're not discussed with you	13	something that she did not mention to you?
14	but what is more, they are discussed with someone who is	14	MAJOR-GENERAL MPEMBE: No, there was no
15	not even a member of SAPS. That's just for emphasis. The	15	discussion between myself and General Mbombo about Mr Cyril
16	real question is about you, sir.	16	Ramaphosa and the Minister and –
17	MAJOR-GENERAL MPEMBE: Chairperson, I am	17	MR MPOFU: Thank you, Chairperson, that's
18	on record. I don't want to go in deeper detail, that I	18	enough. Sorry, Commissioner, to put -
19	briefed the Provincial Commissioner and from that point of	19	COMMISSIONER TOKOTA: General, do I
20	view I believed that what I briefed about going to stage 3,	20	understand you to be saying, look, I'm not in charge of the
21	it was that one. And as I say, this is the first one, I	21	police, General Mbombo is in charge. I have no control
22	really don't have comment.	22	over her actions, discussing things with certain people and
23	CHAIRPERSON: Well, you told us - we covered that	23	she has no obligation to report to me what she has
24	before, I don't propose doing it again – you told us before	24	discussed, what plans she had and I can't question that.
25	in one of your statements that, and later in your evidence	25	So therefore in this regard I can't help you. Is that the
	Page 16495		Page 16497
1	Page 16495 that you briefed her on the Thursday. Now this discussion	1	Page 16497 way I understand, is it correct?
1 2		1 2	
	that you briefed her on the Thursday. Now this discussion		way I understand, is it correct?
2	that you briefed her on the Thursday. Now this discussion takes place on the Tuesday, so it's said, and we see the	2	way I understand, is it correct? MAJOR-GENERAL MPEMBE: Exactly correct,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	that you briefed her on the Thursday. Now this discussion takes place on the Tuesday, so it's said, and we see the person who we are told is Lieutenant-General Mbombo saying to someone else that you would have to move in on Wednesday, that's tomorrow, and the reason, among the reasons given would seem to be the need, as she puts it, to kill this thing because otherwise the same thing will happen that happened at Impala, Mr Malema will come and Mr Malema will claim the credit for having – it's not put as clearly as that but that, I take it, is what it amounts to – for having defused the situation. Now, that's what the questioning is about. Now I take it the idea of getting in before Mr Malema can come and do anything was not discussed with you, is that correct? MAJOR-GENERAL MPEMBE: Yes, Chairperson, but including the whole discussion, I didn't know about it. CHAIRPERSON: Obviously you weren't at, you weren't at the discussion but I take it we can accept that Lieutenant-General Mbombo didn't say to you, by the way, we've got to act quickly because we've got to sort the thing out before Mr Malema comes. That was never put to you, was it, by anybody? Am I correct? MAJOR-GENERAL MPEMBE: Correct,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	way I understand, is it correct? MAJOR-GENERAL MPEMBE: Exactly correct, Commissioner. MR MPOFU: You couldn't have put it better, I'm sure, but did – we've now dealt with those two considerations. A third consideration that also arises from this conversation is on page 15 where she says, r rather – CHAIRPERSON: Could we have page 15 please and while you're getting it, Mr Mpofu will tell us what line he's referring to. MR MPOFU: Yes. CHAIRPERSON: Have you got a copy of the document? MAJOR-GENERAL MPEMBE: I have it here. Somebody put it here but it, immediately when the question was asked it disappeared. CHAIRPERSON: Have you found it again? It reappeared. The case of the disappearing and reappearing document. It has now reappeared. MAJOR-GENERAL MPEMBE: Yes, Chairperson. CHAIRPERSON: We are told by Mr Mpofu, whose instructions in this regard we will comply with, that we must look at page 15. What line must we look at, Mr Mpofu?

		1	
1	Page 16498	1	Page 16500 day, the Wednesday. In fact no action was taken to sort
1	that all these members that are here, I have to pay them so how much am I going to cough out for all these days. I	2	out the problem on the Wednesday by the Lieutenant-General.
3	mean I have to, I have given them now up until the weekend	3	You were the one who took action in arranging for the
	if we cannot sort this thing but my hope is that by	4	presidents of the unions to come and address the strikers,
4			
5	tomorrow the latest or you get the gist." What she's	5	is that right?
6	really saying is that because of financial considerations	6	MAJOR-GENERAL MPEMBE: Correct,
7	the thing should be ended soon, not later by the weekend	7	Chairperson, and I told her this is what is going to happen
8	but preferably tomorrow. Was that key challenge discussed	8	and she didn't disagree with me, she agreed with me.
9	with you, the consideration for moving at a particular time	9	MR MPOFU: Ja, well, okay we've already
10	as opposed to another?	10	covered that point that she, although she said preferably
11	MAJOR-GENERAL MPEMBE: No, Chairperson,	11	the following day but her timeframe was until the weekend,
12	but according to my personal knowledge the dispersal and	12	so I'm not going to go through that again. Okay, let's go
13	the evidence before this Commission is that the dispersal	13	to page 8. A fourth consideration that seems to have
14	didn't go on Wednesday, it actually happened on another	14	played a role on when and how the operation should be done
15	day.	15	is contained – Chairperson, I think we can start at line,
16	MR MPOFU: Yes, which was the same week.	16	page 8 line 15, well, where it says "SAPS Commissioner."
17	That's why she said, "I give them until this weekend, if we	17	The second, the third SAPS Commissioner on the page. "You
18	cannot sort this thing but my hope is that by tomorrow" -	18	see I want us to, I want us, you remember last night,
19	so it could have been Wednesday, Thursday, Friday, until	19	Albie, I raised this thing that when we were dealing with
20	the weekend, you understand that?	20	Impala we had a lot of allegations and rumours and some of
21	MAJOR-GENERAL MPEMBE: No Chairperson, I	21	these allegations they were pointing to the management,
22	don't understand.	22	that the management is colluding with AMCU and so on and so
23	MR MPOFU: Do you know what the weekend	23	forth and at some point, at some point ourselves, we were
24	is? It means Friday, Saturday, Sunday, any time between	24	asking ourselves questions to say but these rumours that we
25	the time she was talking and Friday, Saturday, Sunday,	25	are getting, these issues are being said, they might find
1	Page 16499	1	Page 16501
1	correct?	1	truth somehow because we were looking at how the management
2	correct? MAJOR-GENERAL MPEMBE: No -	2	truth somehow because we were looking at how the management was moving forward in terms of taking action, in terms of,
2 3	correct? MAJOR-GENERAL MPEMBE: No - CHAIRPERSON: I would interpret "until the	2 3	truth somehow because we were looking at how the management was moving forward in terms of taking action, in terms of, you know, because what we believe is, is that whether there
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1	Page 16502	1	Page 16504
1	separate them from the allegation that can come and say but	1	must bear that in mind too, but let's hear. What precisely
2	they are supporting them? So I want us to, when you said	2	do you want to ask him about this allegation? Sorry,
3	people must be arrested, I want us to be very clear that	3	before you answer the question can I just put it to you,
4	any information that we get, we should get so that we	4	the way I see what the Commissioner was saying, the
5	arrest people, that is our interest because yourselves here	5	Provincial Commissioner. She was saying in the case of
6	as management you will clear yourselves from this Mr	6	Impala and from Impala onwards there was the suggestion
7	Mokwena perception, SAPS Commissioner, you know Mr Kwadi	7	that the mine owners were in fact trying to undermine NUM
8	here. You will clear yourself by ensuring that you defuse	8	and replace them with another union, namely AMCU, and there
9	the situation" and so on and so on. The gist of this is	9	was the suggestion that that was part of the explanation
10	that, and this goes directly to the fact that you remember	10	for what was happening.
11	the people I represent were arrested, some of them, you	11	[11:56] And she is now saying there was this allegation.
12	understand that? Do you know that I represent people who	12	We've got to know whether that's correct or not and she
13	were arrested in the operation?	13	seems to be linking her question to the fact that Lonmin
14	MAJOR-GENERAL MPEMBE: No, I understand	14	wasn't giving a lot of information to the SAPS in regard to
15	Chairperson, but I need just maybe to bring this to the	15	the people who were on the koppie, people whose faces could
16	attention of the Commission to say I find it really	16	be seen on the photographs and that kind of thing. And she
17	extremely difficult for me to comment on something that I	17	seems to be suggesting that look here if you don't give us
18	am told in the Commission, it talks about my senior and I	18	this information, I'm saying I'm not sure if she's saying
19	was never being given before and now I am expected to	19	it directly, but if you don't give us this kind of
20	answer questions and really I find it extremely difficult	20	information we will be strengthened in the perception that
21	for me.	21	you people are really in a sense trying to help AMCU to
22	MR MPOFU: Okay General, once again I	22	undermine NUM and which in effect affects the effectiveness
23	must preface whatever I am going to say with an apology for	23	of our operation. That's what I understand her to be
24	that situation, you are quite right, but just remember all	24	saying. Whether I'm right or not is another matter. But
25	I'm asking you about is not the details of who said what	25	if that's so, what questions you want to ask this witness
	Page 16503		Page 16505
1	and why and so on. All I'm saying is that you as C-JOC, if	1	about that.
2	these were some of the considerations that were taken to	2	MR MPOFU: Yes, thank you, Chairperson.
3	influence the direction, let's leave it neutral like that,	3	Well with respect, Chairperson, I think this - that's why I
4	of the operation, that when those considerations were being	4	was asking the last question. This aspect is more – 100
5	discussed, not with you as the C-JOC but with outsiders, is	5	times more relevant than even the other three aspects that
6	-	6	we covered, for me. Because I represent people who were
7	CHAIRPERSON: I'm sorry, Mr Mpofu, I understood	7	arrested. What has been suggested here –
8	what you were saying in relation to the earlier	8	CHAIRPERSON: Yes, I understand that, Mr
9	considerations that you put. I'm not quite sure where this	9	Mpofu.
10	one takes you –	10	MR MPOFU: Can I finish?
11	MR MPOFU: Well –	11	CHAIRPERSON: The question is the
12	CHAIRPERSON: Sorry, can I just – I think I	12	relevance of asking the question of this witness.
13	understand what the Commissioner allegedly said to Lonmin	13	MR MPOFU: No.
14	but I'm not quite sure about, firstly about the question	14	CHAIRPERSON: I'm sure you will ask
15	that you are asking about it, perhaps you could make that	15	questions of Lieutenant General Mbombo when she comes about
16	clear to us.	16	this, but what question are you asking this witness about?
17	MR MPOFU: Ja.	17	MR MPOFU: Well I'm asking the same
			question - this is the fourth time now. I'm asking the
18	CHAIRPERSON: And we can then see whether, in the	18	question - this is the fourth time how. This asking the
18 19		18 19	same question that I've asked in respect of the other three
	CHAIRPERSON: And we can then see whether, in the		
19	CHAIRPERSON: And we can then see whether, in the circumstances, we can expect the witness to give an answer.	19	same question that I've asked in respect of the other three
19 20	CHAIRPERSON: And we can then see whether, in the circumstances, we can expect the witness to give an answer. You will remember we have ground rules here. One of them	19 20	same question that I've asked in respect of the other three issues namely whether if there was a consideration of
19 20 21	CHAIRPERSON: And we can then see whether, in the circumstances, we can expect the witness to give an answer. You will remember we have ground rules here. One of them is that a person to be cross-examined should be given prior	19 20 21	same question that I've asked in respect of the other three issues namely whether if there was a consideration of killing, to use that unfortunate word, a perception that
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		1	
1	Page 16506 commissioner to be saying that. What I understand is –	1	Page 16508 [12:20] CHAIRPERSON: The Commission resumes. Major-
2	MR MPOFU: Well I –	2	General, you're still under oath.
3	CHAIRPERSON: Can I just put this to you	2	MAJOR-GENERAL MPEMBE: Correct,
4	first? My understanding was she was saying that you will	4	Chairperson.
5	quote "kill" unquote this perception if you give us the	5	MAJOR-GENERAL MPEMBE: s.u.o.
6	information and if you don't give us the information then	6	CHAIRPERSON: Mr Mpofu, you were going to take
7	you won't kill the perception and the perception will still	7	this question that's dealt with on pages 8 and 9, I think
8	be there.	8	it is, of the exhibit further with the witness.
9	MR MPOFU: No.	9	CROSS-EXAMINATION BY MR MPOFU (CONTD.):
10	CHAIRPERSON: But anyway, now you and I	10	Yes. Thank you, Chairperson, if I can just make an
11	have debated it, let's see what precisely formulated	11	enquiry. Sorry, sorry General. Okay, I won't revisit the
12	question –	12	issues that I've discussed with you. All I think I can
13	MR MPOFU: Ja.	13	just say to you is that I'm going to argue at the end of
14	CHAIRPERSON: - you have to ask this	14	the case that these indications that I've given of what
15	witness based on the passage –	15	seems to be serious operational matters having a bearing on
16	MR MPOFU: Yes.	16	the operation for which you were responsible or for which
17	CHAIRPERSON: - that you read to him from	17	you carried the overall responsibility, those matters being
18	the transcript.	18	discussed not with you but with someone who is not even a
19	MR MPOFU: Thank you. Okay, to do that,	19	member of SAPS are clear indications of the extent to which
20	General, I'll just read the lat two sentences, not that	20	you were sidelined and to which nobody really took you
21	whole long thing. "So I wondered when you said people must	21	seriously as the real C-JOC.
22	be arrested, underline arrested, so when you said people	22	CHAIRPERSON: I'm sorry, why do you say – I
23	must be arrested, I want us to be very clear that any	23	understand the first part of your question but why do you
24	information that we get we should get so that we arrest	24	say no-one took him seriously?
25	people. That is our - because yourselves there as manager	25	MR MPOFU: Well – [microphone off,
1	Page 16507	1	Page 16509
1	you will clear yourself from this perception, from this	1	inaudible].
2	you will clear yourself from this perception, from this perception," and so on. So it's very clear that the	2	inaudible]. CHAIRPERSON: No, I think you should actually.
2 3	you will clear yourself from this perception, from this perception," and so on. So it's very clear that the perception by arresting people, the perception that there	2 3	inaudible]. CHAIRPERSON: No, I think you should actually. MR MPOFU: Ja.
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1	Page 16510 exactly the point that you had no knowledge when you should	1	Page 16512 Mpembe. I don't know why it was given to us. Do you know
2	have because these were matters that concerned what I'm	2	anything about it?
3	calling loosely your operation, if you were the C-JOC.	3	MR MATHIBEDI SC: We know nothing, Mr
4	MAJOR-GENERAL MPEMBE: Chairperson, I	4	Chairman.
5	repeat again, this has never been used to disperse on the	5	CHAIRPERSON: Sorry?
6	16th. According to me they were never being a consideration	6	MR MATHIBEDI SC: We know nothing, it was
7	for the dispersal. the considerations that were considered	7	not made available to us.
8	were the ones that I briefed the Provincial Commissioner	8	CHAIRPERSON: Mr Chaskalson, can you help us?
9	about and which is in front of the Commission.	9	MR CHASKALSON SC: I think it was given
10	MR MPOFU: Ja, well, that's even worse,	10	to you, Chairperson, because Mr Mpofu indicated that he
11	General. It means that if the, or rather when General	11	wanted to use it and I suggested that a copy be given to
12	Mbombo was listening to your five points which you told him	12	the Commissioners and the witness before it gets used.
13	the following day, she was just going through the motions.	13	Where it comes from, it's one of the statements in the
14	There already were other considerations which had been	14	statements directory on the SAPS master hard drive.
15	taken into account.	15	COMMISSIONER HEMRAJ: And it's not been
16	CHAIRPERSON: How can he answer that, Mr Mpofu?	16	before –
17	MR MPOFU: Well –	17	MR CHASKALSON SC: And it's not yet an
18	CHAIRPERSON: I can understand that that's a	18	exhibit.
19	question that you want to ask Lieutenant-General Mbombo -	19	MR MPOFU: Ja -
20	MR MPOFU: No –	20	CHAIRPERSON: Are you going to deal with it?
21	CHAIRPERSON: But if you, how can you put it to	21	MR MPOFU: Yes, I'm moving on –
22	him that she was just going through motions? How does he	22	CHAIRPERSON: We'd better give it an exhibit
23	know from his own knowledge whether she was going through	23	number then.
24	the motions? I can understand it's a legitimate question	24	MR MPOFU: Chairperson?
25	to ask her.	25	CHAIRPERSON: We'd better give it, if it's not
1	Page 16511 MR MPOFILI Vos	1	Page 16513
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2	MR MPOFU: Yes. CHAIRPERSON: But I have problems with your	2	previously an exhibit we'll have to give it an exhibit number.
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1	Page 16514 spurned, alright. Ms Pillay, thank you very much for	1	Page 16516 CHAIRPERSON: Did you – let's just get this out of
2	giving a copy to the witness. Now this statement isn't	2	the way. Can you recall having made a typed statement such
3	signed by you but it's got your name on it. Have you seen	3	as the one that I have in my hand which is now exhibit
4	it before? You see this is also a problem in respect of	4	HHH62, in August of this year, of last year?
5	the requirement that people get prior notification of	5	MAJOR-GENERAL MPEMBE: Chairperson, the
	documents so that they can study them. I haven't seen the	6	statement that I made it was the manuscript which maybe
6 7	documents so that they can study them. Thaven't seen the document before either. I don't know what new material is	7	could have been typed.
8	in it or possibly what material isn't in it. May I ask you	8	CHAIRPERSON: I see. In any event, you can't
9	this question, Mr Mpofu, assuming you hold this cross-	9	answer the question then either at this stage.
10	examination, were to hold this cross-examination over till	10	MAJOR-GENERAL MPEMBE: Yes.
11	after lunch so that the witness has an opportunity to study	11	CHAIRPERSON: That's the sort of question you can
12	the document and so do we, the Commissioners, would that	12	be asked after lunch when you've had a chance to study the
13	prejudice you in the presentation of your cross-	13	document. Alright, okay. Mr Mpofu?
14	examination?	14	MR MPOFU: Thank you very much,
15	MR MPOFU: Chairperson, if you can just	15	Chairperson. I apologise again, Chairperson. I have to
16	allow me one question and then it will be clear and then I	16	ask this in a careful way because I know you have refuted
17	will, depending on the answer.	17	my premise but if –
18	CHAIRPERSON: [Microphone off, inaudible]	18	CHAIRPERSON: I don't know what your premise is
19	MR MPOFU: Thank you, Chairperson.	19	but I suspect he may not have refuted it, he may simply
20	CHAIRPERSON: - put his clarifying question first.	20	have rejected it. Whether it's a successful rejection so
21	MR MPOFU: Yes.	21	that the proposition –
22	MR MATHIBEDI SC: Sorry, Mr Chairman, we	22	MR MPOFU: Exactly.
23	also would like to have a look at the statement before, you	23	CHAIRPERSON: - stands refuted, is a matter we may
24	know, any questions can be put to the witness.	24	have to decide later.
25	MR MPOFU: Ja.	25	MR MPOFU: Thank you, Chairperson.
	Page 16515		Page 16517
1	Page 16515 CHAIRPERSON: It's suggested that subject to this	1	Page 16517 That's why I'm saying if, if ultimately the Commission
1 2		1 2	
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1	Page 16518	1	Page 16520
1	a C-JOC and it spells out his responsibilities but that	1	Brigadier Calitz and to the JOC. As overall commander I
2	must be a real C-JOC who has really got the	2	could only give direction when that direction was sought,
3	responsibilities and is able to appropriately take those	3	either from the JOC or from the operational commander.
4	responsibilities because he is clothed with the necessary	4	Neither sought direction." What did you want to
5	authority. So that's the question he is asking. Do you	5	communicate to the Commission when you included that in
6	understand the question?	6	your statement?
7	MAJOR-GENERAL MPEMBE: I –	7	MAJOR-GENERAL MPEMBE: Chairperson, it's
8	CHAIRPERSON: I know you reject the assumption on	8	explained in terms of exhibit HHH page 11, paragraph 28.
9	which it rests, so if you answer the question you won't be	9	MR MPOFU: Okay General, we're going to
10	taken to have impliedly accepted the assumption but he says		get there just now. I'll rely on the screen. HHH3
11	if you accept that assumption, which he knows you don't,	11	paragraph 28, please.
12	what is your answer in respect of the further point that he	12	MAJOR-GENERAL MPEMBE: Page 11.
13	has put to you? Am I putting it correctly, Mr Mpofu?	13	MR MPOFU: Page 11.
14	MR MPOFU: Thank you, Chairperson, very	14	MAJOR-GENERAL MPEMBE: Paragraph 28,
15	much, yes.	15	Chairperson.
16	MAJOR-GENERAL MPEMBE: That's why I'm	16	CHAIRPERSON: Yes, you see the paragraph? Oh,
17 18	saying, Chairperson, I don't believe so that it was like that but I think when the Provincial Commissioner appointed	17 18	it's not on the screen yet. It's page 11 of the statement, supplementary statement, page 11 para 28. Para 28.
19	me as the C-JOC I did believe that I am the real C-JOC. I	19	MR MPOFU: Thank you very much.
20	never thought that she could make me a token C-JOC.	20	[12:40] CHAIRPERSON: I'll read it out for the
20	MR MPOFU: Yes. No, that I accept,	20	benefit –
22	General, and I'll move on just now if – this is my last	22	MR MPOFU: Yes.
23	attempt. I accept, one, that you saw, must have seen	23	CHAIRPERSON: - of people who haven't got
24	yourself as the real C-JOC or that appointment to be what	24	the screen in front of them. "I should add to what I say
25	it purports to be. I also accept that nobody said to you,	25	in paragraph 51 of my original statement," that's the
	Page 16519		Page 16521
1	listen here, you are not the real C-JOC, just sit here and	1	paragraph that was read by Mr Mpofu, "that as overall
2	listen here, you are not the real C-JOC, just sit here and say nothing, but all I'm saying to you is that if, if the	2	paragraph that was read by Mr Mpofu, "that as overall commander I am the soundboard to the operational commander
2 3	listen here, you are not the real C-JOC, just sit here and say nothing, but all I'm saying to you is that if, if the Provincial Commissioner, between the Provincial	2 3	paragraph that was read by Mr Mpofu, "that as overall commander I am the soundboard to the operational commander and the JOC when problems arise, and they inform me through
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1	Page 16522 commander didn't seek guidance from you? What do you say	1	Page 16524 MAJOR-GENERAL MPEMBE: I still do not
2	about that?	2	understand the question, Chairperson.
3	MAJOR-GENERAL MPEMBE: I did say it's	3	MR MPOFU: Well, okay, we'll leave it for
4	correct what the Chairperson is saying. But in this case I	4	argument. Anyway, that argument is going to –
5	couldn't say anything when I didn't see anything wrong, or	5	CHAIRPERSON: Sorry, can I ask a question
6	when there was nothing reported to me.	6	flowing from your question? If you had seen something from
7	MR MPOFU: Yes, and in any event the	7	the air which required immediate attention and which wasn't
8	operational commander is always, or let's say usually would	8	receiving attention, because you could hear on the radio
9	always, or usually be in a better position than anyone	9	what instructions Brigadier Calitz was giving, I take it –
10	sitting in the JOC because the operational commander would	10	that's right, isn't it?
11	be on the ground. So the prescript that says you must	11	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
12	communicate to the overall commander obviously assumes that	12	CHAIRPERSON: Now if you'd seen something
13	the operational commander would always be in a better	13	which you thought required an instruction from him, which
14	position from that point of view. Do you understand what	14	he was not giving, even though he didn't seek guidance from
15	I'm saying?	15	you, would you have said to him, 'Look here, Brigadier
16	MAJOR-GENERAL MPEMBE: No, Chairperson.	16	Calitz, there's this problem, you'd better deal with it, or
17	MR MPOFU: I'm saying isn't it so that by	17	you'd better issue an instruction along these lines'?
18	definition the operational commander, who would be on the	18	MAJOR-GENERAL MPEMBE: Correct,
19	ground, would always be in a better position to make	19	Chairperson.
20	assessments than someone, albeit senior, who is not on the	20	CHAIRPERSON: So from the fact you didn't
21	ground?	21	do so can we infer you didn't see anything which required
22	MAJOR-GENERAL MPEMBE: In that aspect,	22	in your opinion an intervention of the kind I've mentioned?
23	yes, Chairperson.	23	MAJOR-GENERAL MPEMBE: Correct,
24	MR MPOFU: Yes, so that the duty to	24	Chairperson.
25	communicate with the overall commander is imposed, despite	25	MR MPOFU: And I will also argue that you
	Page 16523		Page 16525
1	the fact that the operational commander would always be in	1	were also still trying to convey the same criticism or
2	the fact that the operational commander would always be in a better position. Do you understand that?	2	were also still trying to convey the same criticism or commentary when you referred in paragraph 56 of HHH – or
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	Page 16526		Page 16528
1	Are you saying none – which one of those two could not have	1	didn't tell you, then that's something for which you can't
2	eventuated?	2	be held responsible.
3	MAJOR-GENERAL MPEMBE: None of them.	3	MAJOR-GENERAL MPEMBE: Correct,
4	Chairperson, and the inference that can be drawn there is	4	Chairperson, and Chairperson, just in addition, as I said
5	that it's purely a situational appropriateness that	5	before I did also explain what I meant in paragraph 56,
6	Brigadier Calitz could have applied and I need also to	6	again exhibit HHH3, paragraph 29.
7	state that in my testimony I even said that should also be	7	MR MPOFU: Ja, no, that's fine. It's not
, 8	taken into account with regard to exhibit FFF1, and	8	
9	-	9	necessary. MR MATHIBEDI SC: Sorry, Mr Chairman, the
	paragraph 5.2.8.	-	
10	MR MPOFU: Okay, I'll also leave that for	10	purpose of exhibit HHH3, as clearly set out in paragraph 3,
11	argument. Thank you –	11	was to address the criticisms that were levelled against
12	CHAIRPERSON: Sorry, let's take this	12	the police by the expert. That should be taken into
13	point further. In 56 you say that what you would have done	13	consideration.
14	if you'd been told immediately after scene 1, but before	14	MR MPOFU: Okay.
15	scene 2, that people had been killed. So a number of	15	CHAIRPERSON: Yes, yes, that's not an
16	points flow from that. The first is you've told us that	16	objection though, that's an observation you could make at
17	you were not told and you did not know immediately after	17	the appropriate time. I think we must allow Mr Mpofu to
18	scene 1, before scene 2, that people had been killed.	18	continue. If he asks a question to which objection can be
19	That's correct, isn't it? You didn't know.	19	taken, you can object, but I don't like comments being
20	MAJOR-GENERAL MPEMBE: Correct,	20	added in -
21	Chairperson.	21	MR MATHIBEDI SC: Sorry, Mr Chairman, if
22	CHAIRPERSON: Secondly, the people to	22	I could be allowed to say something.
23	whom you refer in 52, to whom you would have responded if	23	CHAIRPERSON: You may.
24	they had – sorry, 51, if direction is required, were	24	MR MATHIBEDI SC: This deals with the
25	Brigadier Calitz and those in the JOC. Now according to	25	issue as to whether the witness was criticising the conduct
20	Englatici cultiz and those in the solo. Now according to	20	issue as to whether the withess was childsing the conduct
	Page 16527		Page 16529
1	Page 16527 the evidence we've heard so far - whether that's correct or	1	Page 16529 of the police in not informing him of the situation on the
1 2	•	1 2	•
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2	the evidence we've heard so far - whether that's correct or not is a matter that may be debated later – those in the JOC didn't know about scene 1 at that stage. So if that's	2	of the police in not informing him of the situation on the ground. CHAIRPERSON: [Microphone off, inaudible]
2 3	the evidence we've heard so far - whether that's correct or not is a matter that may be debated later – those in the JOC didn't know about scene 1 at that stage. So if that's correct they couldn't have told you. If they did know,	2 3	of the police in not informing him of the situation on the ground. CHAIRPERSON: [Microphone off, inaudible] that and he did say that his understanding is they didn't
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		1	
	Page 16530		Page 16532
1	attack happened almost immediately before the shooting of	1	in a manner which does justice to your clients' cause. I
2	the people?	2	understand that. Without wishing to set a precedent, I'll
3	MAJOR-GENERAL MPEMBE: I just wanted to	3	allow you to ask this question, but don't quote it to me
4	say when? Was it the 13th or the 16th?	4	again next time you try to do the same thing.
5	MR MPOFU: 16th.	5	MR MPOFU: I won't. I promise,
6	MAJOR-GENERAL MPEMBE: Or the 16th, or	6	Chairperson. General, in fairness, I think in any event
7	whether was it imminent or was in progress or what? I just	7	you didn't understand the question, in fairness, so I'll
8	wanted to find out –	8	just repeat it. All I'm asking you is whether you have
9	MR MPOFU: Ja, whether it's imminent or	9	testified here that you have - and we all know you were not
10	whatever, but that it happened almost back to back. There	10	there, but that subsequently you saw the, what you call the
11	was what you saw on television as what you call the attack,	11	attack. For now I'm accepting that as a fact. I'll
12	and almost immediately thereafter was the defence, correct?	12	dispute it on another occasion. All I'm asking you is
13	MAJOR-GENERAL MPEMBE: Chairperson, I	13	simply whether the attack that you saw was followed almost
14	don't know what is correct there. I just wanted to find	14	immediately by the defensive action of shooting the
15	out the question correctly.	15	attackers on a –
16	CHAIRPERSON: It doesn't matter what he	16	CHAIRPERSON: Is it the attack or the
17	saw on the television. We went through that -	17	imminent attack?
18	MR MPOFU: Yes, it –	18	MR MPOFU: Whatever.
19	CHAIRPERSON: We went through that	19	CHAIRPERSON: Remember you covered that
20	before. We've seen it –	20	ground before.
21	MR MPOFU: No, Chairperson, this is a	21	MR MPOFU: Ja, whatever. Okay –
22	different question, with greatest respect. The fact that	22	CHAIRPERSON: So the question is the
23	we mention the same thing doesn't mean I'm asking it for	23	attack or imminent attack that you saw, was it followed
24	the same purpose. I'm just simply, I'm asking the witness	24	immediately by the response which is characterised by SAPS
25	whether when he saw the so-called attack it was immediately	25	as being an exercise of either self-defence or private
	Page 16531		Page 16533
1	Page 16531 followed by the private defence or not.	1	Page 16533 defence, from what you saw on the television, the video
1 2		1 2	0
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1	Page 16534	1	Page 16536
1	strikers. You see, the police fired. You saw the police	1	you say you saw that and then you saw what you've
2	firing, right?	2	described.
3	MAJOR-GENERAL MPEMBE: Correct,	3	MAJOR-GENERAL MPEMBE: Chairperson, what
4	Chairperson.	4	I say is that I was told that that one was used first but,
5	CHAIRPERSON: Now before the police fired	5	yes.
6	you saw the strikers, didn't you?	6	MR MPOFU: General Mpembe, I'm not
7	MAJOR-GENERAL MPEMBE: Correct,	7	talking about what you were told, you told this Commission
8	Chairperson.	8	that you saw something, okay. Forget about what you were
9	CHAIRPERSON: Right, now what were the	9	told for now. I'm saying to you when you saw what you call
10	strikers doing?	10	the last resort force that was used, was it almost
11	MAJOR-GENERAL MPEMBE: Oh, they were	11	immediately preceded by the attack or not, or the charging?
12	charging at the police.	12	MAJOR-GENERAL MPEMBE: The charging came
13	MR MPOFU: Yes, and that charging, was it	13	first, Chairperson.
14	almost immediately followed by the firing? That's the	14	MR MPOFU: And was it immediately
15	question really. Yes or no?	15	followed by the minimum force, last resort? Correct?
16	MAJOR-GENERAL MPEMBE: Which firing?	16	MAJOR-GENERAL MPEMBE: There was the
17	Because there were so many firings that happened.	17	teargas used, Chairperson.
18	MR MPOFU: The one that the Chairperson	18	MR MPOFU: No, I'm not going to leave
19	was talking to you about two questions ago. The big one,	19	this one. Forget the teargas, forget what the police call
20	you remember, when people were mowed down, that firing.	20	incident 1 or incident 2 or wat nogal.
21	MAJOR-GENERAL MPEMBE: Chairperson, I	21	CHAIRPERSON: But why must he forget the
22	testified that I was also informed that all minimum force	22	teargas?
23	was used and that one was the last one. But the last force	23	MR MPOFU: Because I'm not talking about
24	that was used I could see it on the screen.	24	it.
25	MR MPOFU: Okay, I'll accept that for	25	CHAIRPERSON: Sorry, just give me an
	Dago 16525		Page 14527
1	Page 16535 now. When that minimum force was being applied, was it	1	Page 16537 opportunity. You asked him about a video. I already
1 2	now. When that minimum force was being applied, was it	1 2	opportunity. You asked him about a video, I already
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1	was stun grenades and so on. The incident that I'm talking	1	rules as to what should follow. Parties should make
2	to you about is when live ammunition was used by the TRT	2	available questions and indicate which statements are going
3	and we'll talk about it after lunch. But that's really – I	3	to be used in cross-examining witnesses. Now we have a
4	was not saying forget in the sense that I'm dismissing it.	4	situation wherein, you know, General Mpembe was given a
5	I'm simply saying surely if we're talking about self	5	statement during the course of the day and we've also
6	defence and last resort you know that we're talking about	6	received a second one. Now that being the case, it cannot
7	the fatal shooting. So after lunch that's what we'll	7	be expected of the witness to fairly and properly prepare
8	talking about. It was only in that context and if you took	8	for answering questions because it may mean he may have to
9	it differently I apologise.	9	read other documents, and if things go on as they are
10	COMMISSIONER HEMRAJ: Mr Mpofu, Mr Mpofu,	10	continuing, Mr Chairman, we really submit that it's unfair
11	I'm not sure when last the witness looked at the video,	11	and we are being prejudiced. Thanks, Mr Chairman.
12	would it assist you if during the lunch adjournment you	12	CHAIRPERSON: Mr Mpofu, this is one of
13	direct his attention or his counsel's attention to that	13	the matters that we discussed in chambers. I understood
14	part of the video that you're referring to? So that he	14	you to say that unless the witness indicates after tea that
15	might look at it and then be better positioned to answer	15	he's happy to be cross-examined today on these matters, you
16	your questions after lunch. Would that assist?	16	don't propose asking him any questions about it today. You
17	MR MPOFU: Well it wouldn't assist me	17	hope, as I understand it, to be able to finish this
18	because I don't know, he said he saw an attack on	18	afternoon, but if you don't, then other things will have to
19	television. I don't know, it might assist him because he's	19	be done, but clearly Mr Mathibedi is right that we have to
20	the one who saw the attack. I don't know when –	20	be fair to the witness and it is unfortunate that the rules
21	CHAIRPERSON: I'm sorry to interrupt you.	21	we lay down in respect of prior notice of documents and so
22	He did say that he saw a video which Mr Ngalwana showed.	22	on haven't been complied with, but to some extent that's
23	MR MPOFU: Yes.	23	water under the bridge. But I wish to express the hope,
24	CHAIRPERSON: You remember that was a	24	and I'm not just speaking obviously to you but everybody,
25	long time ago and it may well be that it would be helpful	25	that that rule that we issued in the hope of promoting
	Deve 1/520		Dama 1/541
1	Page 16539 for him –	1	Page 16541 fairness and also expeditious dealing with matters will be
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		1	
	Page 16542		Page 16544
1	now to see the video, or would you want to deal with it in	1	that was that it took about, or rather it would have taken
2	re-examination or what exactly is the way forward as you	2	about 12 minutes – these are not exact estimates, because
3	see it, as far as this video is concerned?	3	as it happened, the other two didn't even roll out, but one
4	MR MATHIBEDI SC: Mr Chairman, I'm also	4	of the results is that what could have taken two or three
5	going to ask that this aspect should stand down, because as	5	minutes if it was done simultaneously, was now bound to
6	the General was trying to read the statement, at the same	6	take about 12 minutes, 10 to 12 minutes. Understand me?
7	time we were trying to locate the relevant video, but we	7	MAJOR-GENERAL MPEMBE: Yes, I do
8	only, you know, located it recently. So we would like to	8	understand, Chairperson.
9	have that opportunity of looking at it.	9	MR MPOFU: Yes, now the importance of
10	CHAIRPERSON: That seems fair in the	10	this, and I want your comment, I'm going to argue at the
11	circumstances. All witnesses are important, but this	11	end that this was a crucial deviation in the sense that one
12	witness is particularly important, I think, and we always	12	could not have expected when you were planning that the
13	try to be fair to the parties and to the witnesses, and so	13	strikers were just going to stand there and fold their arms
14	I think we must –	14	for 12 minutes, whereas if it was done simultaneously, the
15	MR MPOFU: Chairperson, yes, what I was	15	situation could have been contained. As it happened now,
16	going to –	16	they were running all over the show. There was just a much
17	CHAIRPERSON: I'm not suggesting that	17	longer period which was an unnecessary deviation from the
18	you're being unfair, Mr Mpofu.	18	plan. There might have been good reasons to do it, but I'm
19	MR MPOFU: No, no, of course. What I was	19	just saying the impact of it was that it then allowed for a
20	going to suggest to, in respect of the video, was actually,	20	much longer time for the strikers to kind of be all over
21	because in my list I had included EEE16 which I suspect	21	the show, if you get what I'm saying.
22	contains what the witness – but I don't want to take a	22	MAJOR-GENERAL MPEMBE: I'm just listening
23	chance and then it turns out that I'm wrong, because EEE16	23	to the question. Is that I must comment?
24	was on the list, but it's a bit longish. So I'll go along	24	MR MPOFU: No, no, you're quite right,
25	with what Mr Mathibedi is saying.	25	it's quite a long speech that I made. Let me break it
	D 1/510		D 4/5/5
1	Page 16543 CHAIRPERSON: I've already reminded you.	1	Page 16545 down. The reason why you wanted to do simultaneous rollout
1	CHAIRPERSON: I've already reminded you,	1	down. The reason why you wanted to do simultaneous rollout
2	CHAIRPERSON: I've already reminded you, you're under oath. Mr Mpofu, do you wish to continue with	2	down. The reason why you wanted to do simultaneous rollout was for the rapidity, so that the rollout happens within a
2 3	CHAIRPERSON: I've already reminded you, you're under oath. Mr Mpofu, do you wish to continue with your – I take it you wish to continue with your cross-	_	down. The reason why you wanted to do simultaneous rollout
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9 CHAIRPERSON: The trouble is, you see, 9 basically between him and General Annandale, but there 10 there wasn't a written, much of a written plan for reasons 10 wasn't much detail attached to it, and it was 12 concept, as be explained to us, and a about 2 ordiok at 11 the JOC meeting a half past 1 how as 13 the JOC meeting he says he was then asked to explain how he 13 should be implemented and no-one des volunteered and he 14 saw the matter going forward, and he then later went down. 14 the nasked, then there was questions how this concept 15 went to the forward holding area, first forward holding 14 the nasked, then there was questions how its oncept 16 areal I think it was, and spoke to the commanders and al he 14 the nasked, then there was then asked to explain how he 16 areal I think it was, and spoke to the commanders and al he 16 depatched to the forward holding area for the splain how as the asked to explain how he 17 the commanders, and he did was he 20 to show yoi thin the plan, because there werent 10 to wasn't much the plan the wasn't much and then he 21 show yoi the plan, because dual how toto 20 to wasn't much and the spla				
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17 could do was show them on his laptop, because there werent 18 even any hardcopy documents to show, so I don't know that 19 Mr Mpofu can show you in the plan, because there's nothing 20 to show. What happened subsequently was that in order to 21 assist the Commission, as he explains, Colonel Scott then 22 subsequently produced the documents that would have been 23 present, that would have been available to us. 25 But he fairly conceded that these werent contemporaneous 26 documents, they were documents that were compiled later. 2 So Mr Mpofu, have I answered the question that was put to 3 you correctly? 4 MR MPOFU: Yes, Chairperson, but I'll 5 before I do that, I'll give what – with your permission, Chairperson, I'll do just one final attempt. General, the 8 premise of my question is the fact that Colonel Scottt Miss is common cause – Colonel Scottt 11 simultaneous rollout and that it did not happen that way, and as I said to you, there might be good reasons and wertili 13 deal with those with Brigadier Calitz and so on. So you accurates urning station that was – well, 14 sus intended to be simultaneous, but as it turned	15		15	
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1	Page 16550 that to disappear, whereas had the rollout been rapid, as	1	Page 16552 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
2	planned, we might have had a situation where the	2	MR MPOFU: Thank you. Now if that is
3	communication would have happened. Do you see where ${\rm I^{\prime}m}$	3	such an important consideration, because we all know if
4	going?	4	people, if this one is assuming this and that, that's just
5	MAJOR-GENERAL MPEMBE: I see,	5	a recipe for chaos. It's better to say do this or don't do
6	Chairperson.	6	this or I'm giving you five minutes or I'm giving you two
7	MR MPOFU: Yes, and do you agree?	7	minutes because then at least you know we are talking about
8	MAJOR-GENERAL MPEMBE: I don't agree,	8	the same thing. That's a desirable thing. That's one of
9	Chairperson.	9	the benefits of communication, isn't it, because you say I
10	MR MPOFU: Okay.	10	give you five minutes then you know, rather than I assume
11	MAJOR-GENERAL MPEMBE: And shortly is to	11	that I've given you five minutes and you assume I've given
12	say one might not be in a proper way to comment on the	12	you three minutes because that's a recipe for disaster,
13	implementation of the barbed wire when I was not there, but	13	correct?
14	according to the Standing Order you need to put first the	14	MAJOR-GENERAL MPEMBE: Correct,
15	defensive mechanism.	15	Chairperson, but in this case that chance couldn't be
16	MR MPOFU: Okay, I'll argue that later.	16	there, as I am told.
17	Thank you, General. Just on this question of warnings, you	17	MR MPOFU: Yes, okay. Would your answer
18	would agree that at the time just before the fatal	18	to that change if I say that what we have observed from the
19	shooting, I'm talking about the live ammunition, it would	19	videos and when we get to your video I'll also cover this
20	have been a good idea – I won't put it higher than that –	20	point, is certainly that there was certainly enough means,
21	to communicate to the strikers to say put down your	21	meaning the loudhailer, and opportunity to give a warning –
22	weapons, or something of that nature, before the actual	22	I'm using the term loosely now – to the media to say just
23	fatal shooting happened. Would that have been a good idea?	23	before the fatal shooting, "Media go away, media go away."
24	MAJOR-GENERAL MPEMBE: Chairperson, as	24	What I'm saying is that could those means and that
25	I've said sequentially in terms of the Standing Order you	25	opportunity have been used to say put down your weapons,
	Dama 1/551		
	Page 16551		Page 16553
1	first put a defensive mechanism, and I am now told that	1	put down your weapons, instead of "Media go away?"
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1			Dama 1/FF/
1	Page 16554 a good position to be able to see that the media was in the	1	Page 16556 CHAIRPERSON: It sounds like a question that may
2	wrong place, so to speak, and that they must be told not to	2	usefully be put to Brigadier Calitz, so obviously this
3	be in that place. I can't, when we get to Brigadier Calitz	3	witness can't help us. So you had better move on to the
4	maybe we'll get to those details. All now I'm talking	4	next point, Mr Mpofu.
5	about is simply just the opportunity to use the loudhailer	5	MR MPOFU: Thank you, thank you,
6	and to warn a particular constituency, if you like.	6	Chairperson. One of the contentious issues in this case,
7	CHAIRPERSON: What I understand your question to	7	for me at least, is the question when it comes to scene 1,
8	be, I'm not sure if the witness can answer it but anyway	8	is whether or not as the strikers claim – I am now talking
9	that's another matter, that why was a warning not given to	9	about the point at which they were shot – whether or not,
10	the strikers to put down their arms, desist than what they	10	as they claim, once they had reached the road they were
11	were doing rather than a warning to the media to go away.	11	going to turn left and go to Nkaneng or, as the police
12	Is that your question?	12	feared, when they got to the road they would cross it and
13	MR MPOFU: Yes.	13	kill them or whatever they feared. And that is quite
14	CHAIRPERSON: I don't know –	14	frankly the only question that might need to be answered.
15	MR MPOFU: Not the full question but it –	15	Now I'm going to ask you questions around that issue, you
16	CHAIRPERSON: I'm not sure we need to know the	16	understand?
17	position of the policeman who gave the one order rather	17	MAJOR-GENERAL MPEMBE: I understand,
18	than the other for the question to be answered, so – let's	18	Chairperson.
19	see, I'm not sure that the General can answer the question	19	MR MPOFU: Yes. Now another deviation in
20	anyway. Let's just see.	20	my book, it might or might not be a valid one, is around
21	COMMISSIONER HEMRAJ: But I think Mr	21	the fact that the TRT according to the plan was always
22	Mathibedi's point might have some merit because there's a	22	supposed to be 100 metres away from, at least 100 metres
23	lot of noise on that video at that particular time, Mr	23	away from the POP line that they were supposed to protect,
24	Mpofu, the video that you're referring to when the voice is	24	agreed?
25	heard saying "Media go away."	25	MAJOR-GENERAL MPEMBE: Agreed,
1	Page 16555		Page 16557
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	Page 16558		Page 16560
1	MAJOR-GENERAL MPEMBE: No, Chairperson.	1	negotiation because the teams were divided according to
2	MR MPOFU: I'm sorry, can you go to L72,	2	their roles.
3	last bullet. It says there – sorry General, are you there?	3	MR MPOFU: Okay. Do you accept, whether
4	MAJOR-GENERAL MPEMBE: Correct,	4	or not you agree with Colonel Scott, let's put it on the
5	Chairperson. Yes, L means there –	5	side now but do you agree that one of the benefits of such
6	MR MPOFU: Exhibit L72 yes –	6	a 100 metre distance would be, could be a life saving one
7	MAJOR-GENERAL MPEMBE: Slide 72.	7	in the sense that there would be time between any perceived
8	MR MPOFU: Slide 72.	8	attack and the point of danger, if you get what I mean? I
9	MAJOR-GENERAL MPEMBE: That's correct,	9	can unpack it if you want. In other words, there would be
10	Chairperson.	10	time if you – just logically, if you're going to have to
11	MR MPOFU: Ja, okay. I'll read it out to	11	travel 100 metres before you are threatening to me, it's
12	you. If you agree with that sentiment or you want to	12	better than if you only have to travel 15 metres before you
13	qualify it you'll let me know. It says there, "The members	13	are a threat to me. Would you agree with that?
14	of POP in the armoured vehicles would have a response group	14	MAJOR-GENERAL MPEMBE: I agree,
15	of members of the TRT approximately 100 metres to their	15	Chairperson, but that was not the only reason and as I
16	rear to respond and assist their colleagues should the	16	said, they were not part of the dispersal group because
17	protesters threaten the members of POPS line to the point	17	it's not a POP crowd management policy that you use live
18	where they could not escape or were forced to exit their	18	ammunition in the dispersal, so we wanted it must be very
19	armoured vehicles." Is that a correct statement of what	19	clear.
20	the plan was intended to be like?	20	MR MPOFU: Okay, I don't think you've
21	MAJOR-GENERAL MPEMBE: Correct,	21	answered my question but I'll move on, on this vein. No,
22	Chairperson.	22	we'll do that once when you've seen the video but maybe let
23	MR MPOFU: And if you go to L138, the	23	me ask you from your memory now and if your memory is not
24	bottom slide and the last small block says that, it's about	24	good we'll wait for the video, do you remember that the TRT
25	the TRT neutral area response team. The response team, as	25	members actually ran, ran towards the point at which they
		1	
1	Page 16559 we know is the TRT – "to remain 100 metres behind the POP	1	Page 16561
1	we know, is the TRT – "to remain 100 metres behind the POP	1	did the basic line, if you know what I mean.
1 2 3	we know, is the TRT – "to remain 100 metres behind the POP monitoring and negotiation group." And after that jump one	2	did the basic line, if you know what I mean. MAJOR-GENERAL MPEMBE: I remember that,
2	we know, is the TRT – "to remain 100 metres behind the POP		did the basic line, if you know what I mean. MAJOR-GENERAL MPEMBE: I remember that, Chairperson.
2 3	we know, is the TRT – "to remain 100 metres behind the POP monitoring and negotiation group." And after that jump one slide, I mean one bullet, "and respond to attacks on POP line on command from the operational commander when the	2 3 4	did the basic line, if you know what I mean. MAJOR-GENERAL MPEMBE: I remember that, Chairperson. MR MPOFU: Yes, okay. And you would
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1	Page 16562 think Colonel Scott was just telling us what was being	1	Page 16564 takes place they might go there. But it was not
2	planned. In any event, the purpose of this question is	2	foreseeable, Chairperson, this is what I want to emphasise
3	that – I think you've answered the question, that the 100	3	while the barbed wire was placed they will advance even
4 5	metre distance was meant to create this response time but you said that was not the only reason, correct? So that's	4 5	when the barbed wire was placed. That to me is critical. MR MPOFU: No, I accept that, but then -
6	fine.	6	okay it might be unfair to ask you. By the way have you,
7	CHAIRPERSON: I was proposing to take the tea	7	as the overall commander, spoken to any of the shooters
8	adjournment at about 3 o'clock, Mr Mpofu, so when it's	8	since the 16th?
9	convenient for you please let me know.	9	MAJOR-GENERAL MPEMBE: I testified that I
10	MR MPOFU: Thank you very much,	10	only spoke to the commanders and I also said what
11	Chairperson. No okay, I'll also leave this for when the	11	commanders told me.
12	video is here. To your knowledge, let me put it this way,	12	MR MPOFU: Okay, so that would mean then
13	to your knowledge was it foreseeable from the point of view	13	it might be not fair to ask you that if it was not
14	of the TRT members who were involved, the shooters – that's	14	foreseeable that the strikers would go to that gap then why
15	what we call them just for short.	15	were the TRT people running towards that gap and forming a
16	[14:58] Was it foreseeable that the strikers were going	16	basic line even before the strikers emerged?
17	to go for that gap towards the road in order either to go	17	MAJOR-GENERAL MPEMBE: Chairperson,
18	to Nkaneng or to attack them, whatever. But was it	18	according to the plan I said TRT was only there, that they
19	foreseeable that they would go for that gap?	19	will come to the fore when the lives of the POP was in
20	MAJOR-GENERAL MPEMBE: No, Chairperson,	20	danger. And my answer is when they ran to the fore it was
21	but I need also to explain that I'm not in a better	21	when the life of POP was in danger.
22	position to explain whether it was foreseeable for them.	22	MR MPOFU: Okay, so if they went to form
23	MR MPOFU: No, fair enough,, but was it	23	a basic line in front of that gap before the strikers had
24	foreseeable for SAPS, for you, to SAPS as such, you as the	24	even rounded the kraal it would mean that they did so
25	big planners and so on that the – maybe let me put it	25	prematurely, agreed? Or one, or that it was foreseeable
	Page 16563		Page 16565
1	Page 16563 clearer, that there would be an advance towards the	1	Page 16565 that the strikers are going to come there?
1 2	5	1 2	
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2	clearer, that there would be an advance towards the informal settlement on the part of the strikers? Was that	2	that the strikers are going to come there? MAJOR-GENERAL MPEMBE: Chairperson, they
2 3	clearer, that there would be an advance towards the informal settlement on the part of the strikers? Was that foreseeable?	2 3	that the strikers are going to come there? MAJOR-GENERAL MPEMBE: Chairperson, they couldn't have been there because they are not part of the
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3 MR MPOFU: Okay. Yes, Chairperson, this 3 time that the TRT were – no, I'll start with another topic.	
4 will be an appropriate time. 4 We'll get to this. It's correct that one of the key	
5 CHAIRPERSON: All right, we'll now take 5 assumptions which informed your plan and your planning	was
6 the tea adjournment. 6 that some of the strikers were going to refuse to leave the	:
7 [COMMISSION ADJOURNS COMMISSION RESUMES] 7 koppie, correct?	
8 [15:27] CHAIRPERSON: The Commission resumes. 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson	•
9 Major-General, you're still under oath. 9 I'm sorry, Chairperson, it was not an assumption; it was a	n
10WILLIAM MPEMBE:Yes, Chairperson.10intelligence.	
11 CHAIRPERSON: You were asked whether, it 11 MR MPOFU: Yes, based on the intelligence	
12 was suggested to you, you might like to read the two 12 you assumed that some of the strikers would not leave th	;
13 statements and tell us if you were ready to be questioned 13 koppie?	
14 on them, but if the answer is you're not, then it can be 14 MAJOR-GENERAL MPEMBE: Yes, Chairperson 15 MB_MBOEL And it turned out that thet	
15 arranged that you be cross-examined subsequently when 15 MR MPOFU: And it turned out that that	
16 you've had a chance to read them. But in any event, Mr 16 was the wrong intelligence, or in fact if there's such a 17 Moeful have you get other material to cover in cross 17 thing. It shouldn't be called intelligence. The real	
17Mpofu, have you got other material to cover in cross-17thing. It shouldn't be called intelligence. The real18examination –18issue is that as it happened, all the strikers left the	
18examination –18issue is that as it happened, all the strikers left the19MR MPOFU:If the General is not ready,19koppie, correct?	
20 yes, Chairperson. General, you've now read the statements, 20 MAJOR-GENERAL MPEMBE: Chairperson, I w	
21 correct? 21 not there, but I was informed that others, while the barbe	
22 MAJOR-GENERAL MPEMBE: Yes, I did have 22 wire was placed, then that's the time that they came.	as
23 the statements of Brigadier Engelbrecht and my – 23 Others they did disperse.	as
24 MR MPOFU: And also yours, one of – 24 MR MPOFU: Sorry, I'm going to refer you	as
25 MAJOR-GENERAL MPEMBE: And my statement. 25 to a slide and if you can't make it out, we'll deal with it	as
	as

1	Page 16570	1	Page 16572
1	with someone else. Slide 200 I think would be sufficient	1	MAJOR-GENERAL MPEMBE: No, Chairperson.
2	for – 200 or 194 or both. Would you accept, General, if	2	MR MPOFU: Was there any other situation
3	you can - and as I say, I can't press you because both you	3	that you know of where the people with live ammunition,
4	and I were not there – that at the stage of slide 194 and	4	including STF, NIU, and TRT, would be involved in close-
5	200 it would seem that there were no longer people	5	quarter confrontation? I'm assuming that means what it
6	gathering at the koppie, at the big koppie, at least.	6	should mean in English.
7	MAJOR-GENERAL MPEMBE: The indications by	7	MAJOR-GENERAL MPEMBE: Chairperson, the
8	slide is that others were dispersing, but there are other	8	role of the TRT and the STF, other than the one that I've
9	lines, the yellow line as well as the red line, that's	9	already said, it was also to clear up even after
10	showing other strikers that were, as is allegedly being	10	dispersals. It, to clear up in terms of checking what
11	said, that they were attempting to approach the police	11	could have been left behind. Chairperson, may I also state
12	line.	12	that the bullet 1 and bullet 2, they should be also read
13	MR MPOFU: Yes, I accept that, but in any	13	together, but this one that the Advocate is saying now, it
14	event, nobody seems to be saying we're staying at the	14	was the role of that TRT.
15	koppie, no matter what. They might have been attacking or	15	MR MPOFU: Yes. No, I accept that, and
16	whatever, or going to the barbed wire, but there was no,	16	the bullet 1, the reason I didn't read it is because we
17	nobody stayed at the mountain itself, correct?	17	dealt with it before tea. It's where I was questioning you
18	MAJOR-GENERAL MPEMBE: At that one	18	about how far back the response teams were going to be,
19	according to the slides, correct, Chairperson.	19	remember?
20	MR MPOFU: Thank you. And that leads me	20	MAJOR-GENERAL MPEMBE: I remember,
21	to the next question, to the question I wanted to ask you	21	Chairperson.
22	just now. Based on that assumption, to your knowledge, if	22	MR MPOFU: Yes.
23	you know, is it correct that the only time that it was	23	CHAIRPERSON: Slide 80 relates to the
24	envisaged that the TRT would be involved in so-called close	24	operational plan as it existed on Tuesday, the 14th.
25	quarter confrontations, was if the strikers had indeed	25	MR MPOFU: Chairperson, are you –
			······································
	Page 16571		Page 16573
1	Page 16571 refused to leave the mountain and they had taken, I think	1	Page 16573 CHAIRPERSON: It may be that despite the
1 2		1 2	0
	refused to leave the mountain and they had taken, I think		CHAIRPERSON: It may be that despite the
2	refused to leave the mountain and they had taken, I think it was called a high position at the mountain, such that	2	CHAIRPERSON: It may be that despite the fact that that slide relates to the plan as it was, or as
2 3	refused to leave the mountain and they had taken, I think it was called a high position at the mountain, such that they would have to be cleared. Only in that, strictly in	2 3	CHAIRPERSON: It may be that despite the fact that that slide relates to the plan as it was, or as it allegedly was on the 14th, that it may have been carried
2 3 4	refused to leave the mountain and they had taken, I think it was called a high position at the mountain, such that they would have to be cleared. Only in that, strictly in that situation was TRT according to the plan expected to be involved in so-called close quarter confrontations. Is	2 3 4	CHAIRPERSON: It may be that despite the fact that that slide relates to the plan as it was, or as it allegedly was on the 14th, that it may have been carried over later, maybe. Perhaps, can you help us on that? MAJOR-GENERAL MPEMBE: Chairperson, you
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1	Page 16574	1	Page 16576
1	MR MPOFU: Thank you. I'm just going to	1	that right? You never foresaw in your wildest dreams that
2 3	ask you about – to round off the last chapter of the prescripts, if you remember, it was that catchall which is	2 3	34 people would be killed. MAJOR-GENERAL MPEMBE: Correct,
4	the professional ethics, rules of common decency and Ubuntu	4	Chairperson, I could not even foresee that.
5	and all that. Now would you accept that according to the	5	MR MPOFU: And the bloodshed which you
6	professional standards which might be expected from the	6	really, or not really did not foresee in, or rather which
7	police, it would be important that when they communicate	7	you claimed to have foreseen in, when you were talking to
8	with stakeholders in a situation such as the one we are	8	the unionists, what scale of bloodshed? About 20 people
9	discussing, that they do so honestly and truthfully, and	9	dead?
10	play open cards. Would that be a fair assumption?	10	MAJOR-GENERAL MPEMBE: Chairperson, I did
11	MAJOR-GENERAL MPEMBE: I don't understand	11	explain that I was also referring to what was happening
12	"open cards" because there is a time where the other	12	since Sunday, but I did not foresee that 16 people will be
13	information is confidentiality, when it comes to –	13	dead on Thursday.
14	MR MPOFU: Intelligence, no fair enough.	14	MR MPOFU: If it can be shown – big if –
15	MAJOR-GENERAL MPEMBE: Yes.	15	if it can be shown that some of the actions of the members
16	MR MPOFU: Ja, okay. But truthfully and	16	of the police there were influenced by a motive such as
17	honestly, excluding the situations where there might be	17	revenge for what had happened on the 13th to their
18	intelligence considerations.	18	colleagues, that would also be a deviation from a
19	MAJOR-GENERAL MPEMBE: Correct,	19	professional point of view of what would be expected from
20	Chairperson.	20	them, correct?
21	MR MPOFU: Thank you. Now did I	21	MAJOR-GENERAL MPEMBE: I'm unable to
22	understand you correctly that - and I think the Chairperson	22	answer, Chairperson, because I don't know where -
23	asked you this at the end of your evidence - did I	23	CHAIRPERSON: He's not saying it
24	understand you correctly that your evidence was that when	24	happened. He says if it can be shown – IF it can be shown
25	you said to the union leaders that – and I'm paraphrasing –	25	that some of the actions of some of the police on the 16th
1	Page 16575	1	Page 16577
1	to want to disarm people carrying axes with guns would lead	1	were actuated by considerations of revenge, that would not
2	to want to disarm people carrying axes with guns would lead to bloodshed, that you yourself did not believe that you	2	were actuated by considerations of revenge, that would not be in accordance with the plan; that would be a deviation
2 3	to want to disarm people carrying axes with guns would lead to bloodshed, that you yourself did not believe that you were just using it as a ploy of some sort?	2 3	were actuated by considerations of revenge, that would not be in accordance with the plan; that would be a deviation from the plan. Is that your question, Mr Mpofu?
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1	investigators were to be kept in one of the holding areas –	1	MR MPOFU: Yes. No, I'm happy with that.
2	I don't know which one, whether it was 1 or 2 – until after	2	And in terms of the rules of crime scene management and
3	the operation was exactly so that the people who might be	3	also what I call the professional ethics, it would be a
4	involved in the investigation are not the same people who	4	deviation therefrom, wouldn't it, to, once these weapons
5	were involved in the operation, so as not to contaminate	5	have been removed, replace them at a later stage?
6	the scene, and I'm asking you the question bearing in mind	6	MAJOR-GENERAL MPEMBE: Replacement,
7	your background as one of the things you lectured in your	7	Chairperson, I will start with that one; yes, it will be
, 8	life was the crime scene management? Am I correct?	8	seen not to be correct, but the removal might not
9	MAJOR-GENERAL MPEMBE: There is a crime	9	necessarily be incorrect in the sense that if it's for the
10		10	sake of safety it has to be recorded properly and it has to
	scene management, but I just want to get clarity in terms		
11	of precisely what should I answer.	11	be managed correctly.
12	MR MPOFU: Yes, no sorry, it was a	12	MR MPOFU: Yes. No, no, I accept that.
13	compound question. I'm saying accepting that you have some	13	Let's accept that for now. Let's say there might be safety
14	expertise of whatever nature in crime scene management, and	14	considerations regarding the removal; all I am saying is
15	as a person who knows what was being planned, was one of	15	that one that has been done it would not be property, would
16	the reasons why the investigating team – the IDs, I don't	16	it, for someone to come, let's say an hour later, and try
17	know if they're still called that - were kept at one of the	17	and work out whether this knife was facing this way or that
18	holding areas with the intention that they would only come	18	way, and seek to place it back and then take a picture,
19	after the operation, was one of the reasons for that to	19	pretending that that is how the scene was.
20	maintain the integrity –	20	MAJOR-GENERAL MPEMBE: I've already said
21	MR MATHIBEDI SC: Sorry, Mr Chairman –	21	no, Chairperson.
22	MR MPOFU: Sorry.	22	MR MPOFU: Yes, thank you. And I think
23	MR MATHIBEDI SC: I think it should be	23	we did deal with this one yesterday, or the other day, that
24	after the crowd management –	24	not to attend to injured people for a period of about an
25	MR MPOFU: Oh, ja, I'm happy with that –	25	hour when there were helicopters available, and I'm
1	Page 16579	1	Page 16581
1	MR MATHIBEDI SC: - not operation –	1	comparing it to the situation on the 13th when there was one
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		I	
1	Page 16582 MR MPOFU: Yes. No, that's fair enough,	1	Page 16584 answer the next question, which is you didn't correct the
2	but all those considerations were, is covered when it came	2	Provincial Commissioner or point out to anybody that she
3	to the paramount issue of saving Lieutenant Baloyi's life	3	had in fact not had a meeting with Mr Mathunjwa the whole
4	on the 13th, correct?	4	morning. It figures if you didn't see anything wrong then
5	MAJOR-GENERAL MPEMBE: Chairperson, as I	5	you didn't correct it, correct?
6	said, it was done, but those that, who did it, they can say	6	MAJOR-GENERAL MPEMBE: Chairperson, it's
7	under what circumstances.	7	the testimony in this Commission that those minutes, there
8	MR MPOFU: Yes, fair enough. Thank you.	8	was no time that they could be corrected. If the
9	Right, now I'm sorry to do this; I'm jumping back to	9	Provincial Commissioner saw that and she had an opportunity
10	something that I thought I had passed. When Major-General	10	to correct it, she might have corrected it, but my
11	Mpembe, Mbombo, sorry, when Major-General –	11	understanding at that time when she was speaking, I'm
12	CHAIRPERSON: The Provincial Commissioner	12	saying she was referring to that, but it's already been an
13	is a lieutenant-general.	13	evidence before the Commission.
14	MR MPOFU: Lieutenant-General, let's call	14	MR MPOFU: Okay, now according to the,
15	it –	15	one of the key elements of the plan was that stage 3 should
16	CHAIRPERSON: This witness is Mpembe,	16	be proceeded with as a matter of last resort, correct?
17	he's a major-general.	17	MAJOR-GENERAL MPEMBE: It was actually a
18	MR MPOFU: That's correct, yes. So I got	18	last resort.
19	both my ranks and my surnames mixed up. When the	19	MR MPOFU: Yes, and the meaning of that
20	Provincial Commissioner – let's just say that – at the	20	was among other things that all negotiations must have
21	meeting of the 16th, the 1:30 meeting, when she reported to	21	failed or been terminated, correct?
22	that meeting that she had been in a meeting with Mr	22	MAJOR-GENERAL MPEMBE: Chairperson, I
23	Mathunjwa for the whole morning, you knew that that was not	23	just want to say, as I elucidated it in terms of my HHH3 –
24	true, correct?	24	MR MPOFU: Chairperson, if you'll just
25	MAJOR-GENERAL MPEMBE: No, Chairperson.	25	bear with me, I've just lost my - now the negotiations that
	Dago 14502		
1	Page 16583 MR MPOFU: Well, in the morning you had	1	Page 16585 were taking place included the intervention of Mr
1 2	MR MPOFU: Well, in the morning you had	1 2	were taking place included the intervention of Mr
	5		-
2	MR MPOFU: Well, in the morning you had been with the Provincial Commissioner when she was going to	2	were taking place included the intervention of Mr Mathunjwa, correct?
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	Page 16586		Page 16588
1	if you had been at the scene, would it be fair to say that	1	was that you were arranging for cells for the arrestees?
2	you would have enquired as to whether Mr Mathunjwa's	2	MAJOR-GENERAL MPEMBE: I don't know,
3	efforts have borne any fruit or not before getting into the	3	Chairperson, whether I'm now allowed to elaborate something
4	dangerous last resort stage, correct?	4	that I've already said.
5	MAJOR-GENERAL MPEMBE: Correct,	5	MR MPOFU: Yes, once you've answered the
6	Chairperson.	6	question –
7	MR MPOFU: Yes, but even more so, if Mr	7	MAJOR-GENERAL MPEMBE: Because I thought
, 8	Mathunjwa – let's assume you didn't have time to talk to	8	that is already on record where, what I said.
9	him for some reason or another, but as soon as he was	9	CHAIRPERSON: Yes, Mr Mpofu, I understand
10	leaving you could see that some of the people who according	10	that you're not going to finish by half past 4. Is that
11	to the police did not want to be involved in any trouble	11	right?
12	were actually leaving, if you could see that happening,	12	MR MPOFU: Yes, Chairperson, definitely
13	without even talking to Mr Mathunjwa, would you have	13	not.
14	allowed that process to take its course for people to leave	14	CHAIRPERSON: And I understand that
15	voluntarily, assuming that they have now been convinced by	15	you're not available tomorrow.
16	Mr Mathunjwa?	16	MR MPOFU: Yes, Chairperson, thank you.
17	MAJOR-GENERAL MPEMBE: Chairperson, in,	17	CHAIRPERSON: Ja well, we won't go into
18	without any speculation –	18	that, but you're not available tomorrow, and in any event
19	MR MPOFU: Yes.	19	the witness needs time to study these extra statements and
20	MAJOR-GENERAL MPEMBE: - I think	20	so on that have been provided.
21	Brigadier Calitz is in a better position, because if he	21	MR MPOFU: Yes, and the video,
22	could have realised that Mr Mathunjwa was successful,	22	Chairperson.
23	surely he could have, not have continued that stage 3 be	23	CHAIRPERSON: And the video, to identify
24	implemented.	24	the video, and so forth. So in the circumstances it seems
25	MR MPOFU: Yes.	25	best therefore for us to take the adjournment now until
	Page 16587		Page 16589
1	Page 16587 MAJOR-GENERAL MPEMBE: So I'm talking	1	Page 16589 tomorrow. I understand that counsel for the evidence
1 2		1 2	5
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2	MAJOR-GENERAL MPEMBE: So I'm talking about Brigadier Calitz was physically there, who could have	2	tomorrow. I understand that counsel for the evidence leaders has certain questions they wish to ask the General
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1	MR MPOFU: At worst until lunch,	
2	Chairperson. I'm not saying on which day. No, I'm joking,	
3	Chairperson. On Monday.	
4	CHAIRPERSON: Yes, you know, I don't like	
5	that expression "at the worst," because that creates	
6	assumptions which I don't think are satisfactory.	
7	MR MPOFU: Yes, round about lunchtime.	
8	CHAIRPERSON: You are here to question	
9	the witness, to elicit as much, many facts as you can on	
10	behalf of your clients to put their case properly before	
11	the Commission –	
12	MR MPOFU: I appreciate that, thanks.	
13	CHAIRPERSON: It's your duty to do that	
14	and to suggest that we should go on longer than a certain	
15	time which is at the worst, is an unfortunate way of	
16	looking at it.	
17	MR MPOFU: Yes. No, Chairperson, okay,	
18	let's rather put it then as a target rather than as a	
19	restriction. I will try to finish by lunchtime,	
20	Chairperson, but you're quite right, I might stray a little	
21	bit further than that.	
22	CHAIRPERSON: Alright, thank you for	
23	that. We will adjourn now until tomorrow morning 9	
24	o'clock.	
25	[COMMISSION ADJOURNED]	
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