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 106 13 JUNE 2013 PAGES 11366 TO 11482



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1	Page 11366	1	Page 11368
1	[PROCEEDINGS ON 13 JUNE 2013]	1	bloodshed. We still have to resolve that. We still have
2	[09:45] CHAIRPERSON: The Commission resumes.	2	to resolve that and we are also no more prepared. We have
3	We're pleased to welcome back Adv Bizos from his successful	3	already lost two police officers. We are no more prepared
4	lecture tour to France. Major-General, nice to see you	4	and we are not going to lose another police officer." Are
5	back as well. We've had a bit of a delay; I suggest you	5	you still with me, General?
6	stand up, I'll swear you in again. Do you swear that the	6	MAJOR-GENERAL MPEMBE: Correct,
7	evidence you'll give before this Commission will be the	7	Chairperson.
8	truth, the whole truth, and nothing but the truth? Please	8	MR NGALWANA: "So I do not know what you
9	raise your right hand and say, "I swear, so help me God."	9	are going to do, but we are putting this to you as the
10	WILLIAM MPEMBE: I swear, so help me God.	10	leadership and we trust you to say that this will have to
11	CHAIRPERSON: Thank you, you may be	11	be resolved. I am going to also see AMCU people, but I
12	seated. Mr Semenya is back with us too; welcome back. Mr	12	need to put it to you to say you cannot come and do like
13	Ngalwana, you have more questions in examination-in-chief,	13	this. We do not know how many people might die tomorrow or
14	I believe.	14	tonight, and people are dying. I know that you also come
15	EXAMINATION BY MR NGALWANA (CONTD.):	15	up and say but why police are not intervening, but they
16	Yes, thank you, Chair. Morning, General.	16	cannot intervene in the situation that is seen that it is
17	MAJOR-GENERAL MPEMBE: Morning, Advocate.	17	going to cause more harm than good." What did you seek to
18	MR NGALWANA: General, you will recall	18 10	convey to the trade union when you said what you said
19	that when we adjourned, I think it was on Monday we were dealing with the issue bloodshed. Remember this is the	19 20	there, General? MAJOR-GENERAL MPEMBE: Chairperson, I was
20	-	20 21	MAJOR-GENERAL MPEMBE: Chairperson, I was persuading the, Mr Zokwana to convince the protesters at
21 22	evening meeting that you had with NUM and AMCU and management. I want to take you to page 2 of GGG4, which is	21	the koppie to hand in weapons voluntarily. Chairperson, on
22	the paginated page 225 at the bottom right-hand corner of	22	Saturday the firearms – on Sunday the firearms from the
23	the documents bundle. It's the documents bundle, volume A,	23	security personnel were taken. On Monday –
25	pagination 225.	25	MR NGALWANA: Sorry, General, by whom
20		20	
	Page 11367		Page 11369
1	CHAIRPERSON: Page number again? Sorry,	1	were those firearms taken from security?
2	I didn't hear.	2	MAJOR-GENERAL MPEMBE: By protesters. It
3	MR NGALWANA: Pagination 225.	3	is allegedly by protesters. On Monday the police firearms
4	CHAIRPERSON: 225, thank you.	4	and radios were taken also by protesters, and also there
5	MR NGALWANA: I'm going to read a	5	was an intelligence that others, particularly coming from
6	passage, General, and I'd like you to very briefly just	6	the media that they saw others that they had firearms
7	explain to the Commission what you sought to convey to the	7	underneath their blankets. The reason for such a serious
8	meeting. It begins at the fourth line from the bottom, the	<u> </u>	
1		8	persuasion, it was to put in the right context of how they
9	sentence beginning, "We do not want to be seen." You see	8 9	should see the situation like myself. The most preferred
10	sentence beginning, "We do not want to be seen." You see that?		should see the situation like myself. The most preferred due to our doctrines, it was the leadership to take a stand
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	Page 11370		Page 11372
1	MAJOR-GENERAL MPEMBE: Chairperson, I	1	to the top of page 231?
2	said I know that we do not know how many people might die	2	MR NGALWANA: Chair, you'll recall I read
3	tomorrow or tonight, and people are dying. That was the	3	through all of this on Monday.
4	situation that was taking place. So the bloodshed that I	4	CHAIRPERSON: [Inaudible] exactly
5	was referring to, it's what has happened and what is	5	explained fully what he meant surely by the passage at the
6	happening currently, and what might also happen in what, in	6	foot of 230 and the top of 231. Wouldn't it answer the
7	the future. By that time I did not know that the incident	7	question that you asked him a moment ago, be easier to
8	of the 16th will happen, but I did also see that if the	8	understand against that background also?
9	dispersal has to take place, there might be shooting taking	9	MR NGALWANA: Okay. General, for the
10	place either from the police, or either from the protesters	10	sake of completion, may I take you also to paginated 228.
11	and also from the police.	11	That will be page 5, for those who don't have the
12	CHAIRPERSON: In other words the blood	12	pagination. That will be page 5 of GGG4. At the bottom
13	that you thought was going to be shed would be the blood of	13	you continue, you say three lines from the bottom, "Now I
14	strikers or police, or both. Is that correct? That's	14	need to do my job and you all also call me to remove
15	because the strikers were in possession of firearms which	15	firearms. I cannot go there and disarm people; it will be
16	they'd taken from the security guard and the police and	16	bloodshed. So then I need to," and then it becomes
17	might use then, and of course the police in disarming them	17	inaudible, and you continue to say, "and go to a specific
18	would use firearms as well. Is that the way you saw it?	18	house, disarm, and so on." You see that?
19	MAJOR-GENERAL MPEMBE: Chairperson, when	19	MAJOR-GENERAL MPEMBE: Chairperson, yes.
20	a dispersal process takes place we do not use sharp	20	MR NGALWANA: You go on later in the same
21	ammunition, but what I'm saying is that the individuals,	21	excerpt, talking about "beating this elephant bit by bit
22	those that had firearms, they might also shoot at the	22	because me going there to the mountain, disarming people,
23	police and the police might defend themselves, the	23	it is going to be bloodshed." You see that?
24	individuals.	24	MAJOR-GENERAL MPEMBE: Chairperson,
25	CHAIRPERSON: That's why what you're	25	that's correct.
	Dago 11271		Page 11272
1	Page 11371 saying, as I understand you – I just want to make sure I	1	Page 11373 MR NGALWANA: Later on the same page
1 2		1 2	6
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2	saying, as I understand you – I just want to make sure I understand you correctly – is that the strikers who are	2 3	MR NGALWANA: Later on the same page towards the bottom of the page around lines, perhaps 16,
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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	saying, as I understand you – I just want to make sure I understand you correctly – is that the strikers who are being disarmed might use their firearms, even I suppose might use pangas and so forth, and that would cause bloodshed on the part of the police, shed police blood. Equally the police in defending themselves would presumably have to regard it necessary to fire back, in which case some of the strikers' blood could also be shed. Is that the way you understand it? MAJOR-GENERAL MPEMBE: That's correct, Chairperson, but I was not only referring on the following day, but what I was referring to, and that maybe is what I wanted – that's why I was saying there "tomorrow or tonight, and people are dying." MR NGALWANA: General, you also – it may be put to you by those who may cross-examine you that you considered that there might be bloodshed if the police went and did the dispersion, say on the 15th, but then on the 16th, barely 24 hours later, the police implemented the dispersal action. What had changed by the 16th? CHAIRPERSON: I'm sorry, Mr Ngalwana, before you answer that question, shouldn't you put some of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR NGALWANA: Later on the same page towards the bottom of the page around lines, perhaps 16, 17, you say, "They will have to act and we are also not prepared to use less bullets, and I know that you do not want us to shoot, shoot." CHAIRPERSON: You said line 16, but it's actually 26. MR NGALWANA: Yes, sorry. Yes, Chairperson, about line 26. You then continue and say, "Here it is that the police are shooting, are killing people, and we do not want to go that route, but at the same time we are also not prepared that our members should die, but we have a duty to disarm." You then at the bottom of the page, that's 230 pagination, page 7 of GGG4, about line 28, three lines from the bottom, you say, "I cannot go to the mountain. It is not, has never been strategically in my training. I have not thought because I must disarm somebody, how do I disarm somebody with an axe and I have a firearm? It will never work. There is no training in the whole world to be like that." You see that? MAJOR-GENERAL MPEMBE: Correct, Chairperson.

1	Page 11374 GGG4. You testified either on Friday or Monday that what	1	Page 11376 that page. Sorry, am I interrupting the interpreter? Line
2	you understood Mr Mathunjwa to be saying when he said, "So	2	7 where you testified that this was Major-General Annandale
3	our impression," this is about line 8, starting at about	3	who said, "Then also we absolutely welcome the fact that
4	line 8 on that page, "So our impression is that, is they	4	you are saying you are denouncing the violence and that
5	are willing to go back to work but we must come at 9	5	that will mean that these people will hand in their
6	o'clock." He is giving now a report-back of what his	6	firearms so that we can then sit with yourselves and
7	impression was from the mountain when he was addressing	7	leadership. We can then have a practical plan in terms of
8	those people.	8	that, so that people will be in a position to then in that
8 9	[10:04] He said, "Their overall impression," that is Mr	9	demarcated area put down their pangas and spears and
9 10			
	Mathunjwa and his group, their impression, "was that they did welcome us and they are propaged that by tomogravy	10	whatever," to which Mr Mathunjwa responds several lines
11	did welcome us and they are prepared that by tomorrow	11 12	down, "I mean from tomorrow when we engage them, maybe some, the way forward maybe will be say wherever, just
12 13	surely there will be a way forward by all these things will be over. That is our impression, not even an	13	leave whatever and then police come and collect it. Maybe
	interpretation. That is what they said." I think here	13	sometimes if I come and bring it to you there will be that
14 15	just to put in perspective, I don't want to ask you the	14	sort of," and then it trails off. You testified, General,
16	same questions. You've given evidence of what you	16	that that was also in your understanding a clear indication
17 19	understood Mr Mathunjwa to be saying there, that Mr Mathuniwa meant that people will lay down their arms	17 19	that Mr Mathunjwa was saying the people are going to disarm
18 10	Mathunjwa meant that people will lay down their arms.	18 19	voluntarily tomorrow. Do you confirm?
19 20	MAJOR-GENERAL MPEMBE: Chairperson, correct.	20	MAJOR-GENERAL MPEMBE: Chairperson, confirmed.
20		20	
			MR NGALWANA: You then play devil's
22	on the next page, pagination 235, page 12 of GGG4, round	22 23	advocate and you said, "Well, if they don't disarm, then what?"
23	about line 10, where Mr Mathunjwa says, "So that is our	23 24	
24 25	belief that this thing will be over by tomorrow, but they made it clear," by they of course he's referring to the	24 25	MR MADLANGA SC: Mr Chairman, Commissioners, I did hear my learned friend when he first
25	made it clear, by they of course he's relefining to the	25	
	D 44075		
	Page 11375		Page 11377
1	people at the koppie, "they made it clear that they do not	1	Page 11377 started along this line that in a way he was put in context
1 2		1 2	•
	people at the koppie, "they made it clear that they do not		started along this line that in a way he was put in context
2	people at the koppie, "they made it clear that they do not want NUM there." Then in line 14 to 16 you ask him a	2	started along this line that in a way he was put in context to what the Chairman, but now he's going on and on and on,
2 3	people at the koppie, "they made it clear that they do not want NUM there." Then in line 14 to 16 you ask him a pointed question. You say to him, "Are you saying tomorrow	2 3	started along this line that in a way he was put in context to what the Chairman, but now he's going on and on and on, and it's a repetition of what we have heard already. Is it
2 3 4	people at the koppie, "they made it clear that they do not want NUM there." Then in line 14 to 16 you ask him a pointed question. You say to him, "Are you saying tomorrow they will hand in their weapons, they will disperse?" to	2 3 4	started along this line that in a way he was put in context to what the Chairman, but now he's going on and on and on, and it's a repetition of what we have heard already. Is it really necessary?
2 3 4 5	people at the koppie, "they made it clear that they do not want NUM there." Then in line 14 to 16 you ask him a pointed question. You say to him, "Are you saying tomorrow they will hand in their weapons, they will disperse?" to which he responds, "Yes."	2 3 4 5	started along this line that in a way he was put in context to what the Chairman, but now he's going on and on and on, and it's a repetition of what we have heard already. Is it really necessary? MR NGALWANA: Chair, this will become
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1	meaning – you play devil's advocate and say, "Well, if	1	you said police cannot go and disarm people because there
2	there's no voluntary disarmament by the protesters or	2	might be bloodshed, yet less than 24 hours later you do
3	strikers, then what?" and you understood him to say he	3	exactly that; you go as the police to disarm people. So
4	wasn't prepared to even entertain a negative answer to the	4	what had changed on the 16th that the police could go and
5	question of whether or not these people would disarm. You	5	effect the dispersal action that couldn't be done the
6	remember that? That is clear from line –	6	previous day?
7	CHAIRPERSON: Sorry, I don't see that on	7	MAJOR-GENERAL MPEMBE: Chairperson, when
8	page 237, overall number 14. He says, "I don't have a	8	I was persuading the two union leadership, I did testify
9	specific answer."	9	that on the 14th the plan was considered and approved by the
10	MR NGALWANA: No well, let me read the	10	JOCCOM and a dispersal process was also adopted as a
11	whole – the witness has already given an answer, but let me	11	principle. On the 15th when I was persuading, and
12	read the whole thing. Line 12, Mr Mathunjwa – pagination	12	passionately persuading the two union leadership, I could
13	237, page 14 of GGG4, Mr Mathunjwa to the question, "If	13	not tell them what we as the police when we had the
14	they do not hand over tomorrow, what next?" Then at line	14	constitutional mandate of preventing crime, what are we
15	12, beginning 12 this is what Mr Mathunjwa says, "Yes, I	15	busy doing, because that is a high confidentiality plan.
16	think it is quite normal to answer that question" - the	16	Chairperson, on the 16th August 2012 things completely
17	question "If they don't hand over tomorrow, then what?" –	17	changed. Negotiations by the SAPS directly with the
18	"because all our desire is a positive adherence to our	18	protesters themselves since Monday when I intercepted with
19	call, that everyone when you say you denounce violence,	19	them at the railway line, had failed. Chairperson,
20	leave whatever that will be injuring people. So I do not	20	negotiations with the protesters through the presidents of
21	have a specific answer what next will happen because I	21	the two trade unions had failed. Chairperson, I did
22	believe that tomorrow will be a day of joy for everyone, so	22	testify that despite what happened on Monday, we even
23	I have not point in that direction of negativity, of saying	23	called upon the negotiation by the hostage negotiators, and
24	no, people will say no to violence or whatever, and again	24	it was simultaneously done while I was busy negotiating
25	when we say weapons, what do we mean, yes pangas and what	25	with the management and the trade unions. The negotiators
	Page 11379		Page 11381
1	6		5
	exactly," and I ask you, General, what you understood Mr	1	were negotiating with the protesters, so the negotiation
2	Mathunjwa to be saying, to which you responded, "He was not	1 2	were negotiating with the protesters, so the negotiation took place according to me since Monday, Tuesday,
2	Mathunjwa to be saying, to which you responded, "He was not	2	took place according to me since Monday, Tuesday,
2 3	Mathunjwa to be saying, to which you responded, "He was not even prepared" – I'm paraphrasing – "He wasn't even	2 3	took place according to me since Monday, Tuesday, Wednesday, and even the morning of Thursday. I did testify
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		I	
1	Page 11382	1	Page 11384 escape the wrath of the justice. They will be pursuing the
1	monitoring the process, trying also to talk to the	1	individuals until such time," I take it by "they" he was
2	protestors themselves, they reported to the JOC that the	2	
3	mood of the crowd has changed for the worse. Chairperson,	3	referring to the police. "They will be pursuing the
4	and I feared they might take their frustrations out on	4	individual until such time - this is a challenge that
5	innocent bystanders. There was also on the radio from the	5	everyone should use for the betterment of everyone." Now I
6	negotiators that there were already threats made against	6	know you were not at the koppie when Mr Mathunjwa on the
7	the police that they would die in Marikana that day.	7	16th addressed the protestors or strikers, correct?
8	Chairperson, these are the factors that I considered in	8	MAJOR-GENERAL MPEMBE: Chairperson, it's
9	terms of changing because as the police we have a	9	correct.
10	constitutional mandate.	10	MR NGALWANA: But we do at least have a
11	COMMISSIONER HEMRAJ: General, what does	11	transcript of one of his two addresses and that is 009.
12	it mean when you say they might take their mood out on	12	Before I take you to 009, may I ask you this General? Did
13	innocent bystanders? What are you referring to?	13	you receive any report that Mr Mathunjwa had advised the
14	MAJOR-GENERAL MPEMBE: I was saying they	14	people during his address at the koppie about the things
15	might take out their frustration on innocent bystanders.	15	that he says he would advise them, at pagination 240?
16	CHAIRPERSON: Who were the bystanders you	16	MAJOR-GENERAL MPEMBE: Chairperson, when
17	had in mind?	17	I have checked the exhibit 009 I did not see the words, but
18	MAJOR-GENERAL MPEMBE: Chairperson, there	18	what I heard, what I saw is that he did encourage the
19	were also reports that there were women and there were	19	protestors to leave the mountain. But specifically to say
20	people that were coming from the informal settlement and	20	"Leave whatever you have there and the police will come and
21	also the other part of the informal settlement that was	21	process it and get evidence and those that they are being,
22	next to where they were sitting.	22	or they will be found that they have committed a crime,
23	CHAIRPERSON: Were these the women who	23	justice will pursue them," that one I do not see it in
24	were actually urging the men to go from the informal	24	exhibit 009.
25	township to the koppie? They're not likely taking out	25	COMMISSIONER HEMRAJ: General, on the 16th
	Page 11383		Page 11385
1			
-	their frustrations on them; these women were on their side	1	itself did you receive any report whatsoever about what Mr
2	weren't they?	2	Mathunjwa says in his address to the strikers on the
2 3	weren't they? MAJOR-GENERAL MPEMBE: Chairperson, based	2 3	Mathunjwa says in his address to the strikers on the koppie, on the 16th itself?
3 4	weren't they? MAJOR-GENERAL MPEMBE: Chairperson, based on my experience, when people they become angry they would	2 3 4	Mathunjwa says in his address to the strikers on the koppie, on the 16th itself? MAJOR-GENERAL MPEMBE: The report that I
3 4 5	weren't they? MAJOR-GENERAL MPEMBE: Chairperson, based on my experience, when people they become angry they would go and start destroying, and that's the frustration that	2 3	Mathunjwa says in his address to the strikers on the koppie, on the 16th itself? MAJOR-GENERAL MPEMBE: The report that I had, Chairperson, was that he did address the protestors to
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1	Page 11386 he was pleading with them.	1	Page 11388 Paragraph 88 he says, "I knelt down, I pleaded with them.
2	COMMISSIONER HEMRAJ: General, did you -	2	I was on my knees holding the microphone, I said Comrades,
3	CHAIRPERSON: Sorry, he pleaded with them	2	it had already been decided, please leave this place."
	twice, on both occasions. You only know about the first	4	Paragraph 89 he says, "I recall that some of the workers
4	-	4 5	came to the microphone to speak and explain how they had
5 6	occasion, that's correct, isn't it? COMMISSIONER HEMRAJ: General, did you	6	come to be on the koppie. They explained that they were
7	receive a report on the 16th to the effect that Mr Mathunjwa	7	marching to NUM's offices when they were shot by NUM
	did not tell the strikers to lay down their arms?	8	officials." Paragraph 90 he says, "Other workers came and
8	-	_	
9		9	said that they appreciated the effort that I had made as
10 11	- the report that I got is that he was pleading with them	10	president of AMCU. They then said to me that I should
	to leave the koppie, but as to what precise pleading and	11	leave because I had tried everything. They said that the
12	the words of that pleading, I did not get it on the 16th.	12	employer did not want to speak to them, they would remain
13	CHAIRPERSON: Does that mean that you	13	on the koppie. They had not attacked anyone. They said
14	weren't told whether or not he told the people to leave	14	let the police come and kill them." Lastly paragraph 91 he
15	their arms behind?	15	says, "I said to them that it was not necessary that they
16	MAJOR-GENERAL MPEMBE: I'm sorry,	16	must please," or "I said to them that it was not necessary
17	Chairperson, may I understand the question?	17	and that they must please leave the koppie." It continues,
18	CHAIRPERSON: I'll repeat the question	18	"I explained to them that the life of a black worker was
19	again. You said you didn't know exactly what words he	19	cheap, that they would be replaced and that their demands
20	used, you were told that he told the people to leave the	20	would not have been realised. I pleaded with them to leave
21	koppie. Then you said you didn't know exactly how he put	21	the koppie." General, on the evening of the 15th Mr
22	it, what words he used. I asked you does that mean that	22	Mathunjwa says to you that he will go to the koppie – I'm
23	you weren't told whether or not he told the people to lay	23	paraphrasing now - and say to these people they must leave
24 25	down their arms? The question of laying down arms,	24 25	their weapons where they are; that if they don't leave
20	mentioning that or not mentioning it wasn't conveyed to	25	their weapons where they are, they will not escape the
	Page 11387		Page 11389
1	Page 11387 you. Is that a fair summary of what you're saying?	1	Page 11389 wrath of justice, that's the second thing, and the third
1 2		1 2	-
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1	what happened at the meeting and the so-called undertaking	1	commanders were present at the – you're talking about the
2	given, whether he conveyed that to other commanders.	2	6AM JOCCOM meeting, General?
3	MR NGALWANA: General, did you convey the	3	MAJOR-GENERAL MPEMBE: Chairperson,
4	discussions at the meeting reflected in GGG4 to the	4	correct.
5	Provincial Commissioner?	5	MR NGALWANA: And you're saying that is
6	MAJOR-GENERAL MPEMBE: Chairperson,	6	where you told the various other commanders about the
7	correct.	7	discussions and Mr Mathunjwa's, shall we call them
8	MR NGALWANA: In brief terms – or let me	8	indications? Let's not call them undertakings; shall we
9	start by asking you this. When and where did you convey	9	call them Mr Mathunjwa's indications about what he
10	that to the PC?	10	understood was going to happen the next morning. Are you
11	MAJOR-GENERAL MPEMBE: On the 15th on,	11	saying you conveyed those discussions to the other
12	immediately after the debriefing meeting. I phoned the	12	generals, the other commanders in the morning JOCCOM
13	Provincial Commissioner, I explained to him what has	13	meeting at 6 o'clock on 16 August 2012?
14	transpired in that meeting.	14	MAJOR-GENERAL MPEMBE: Correct,
15	CHAIRPERSON: Her.	15	Chairperson.
16	MAJOR-GENERAL MPEMBE: I'm sorry,	16	MR NGALWANA: Who was there? Can you
17	Chairperson, her. I informed her what has happened and	17	recall which commanders were present?
18	that we are going to brief the members and then we will see	18	MAJOR-GENERAL MPEMBE: Chairperson –
19	what is going to happen on the 16th.	19	COMMISSIONER HEMRAJ: Doesn't that appear
20	MR NGALWANA: Just tell the Commission in	20	from the minutes –
21	fairly precise terms, as precisely as you can remember,	21	MAJOR-GENERAL MPEMBE: I just want to go
22	what it is that you told the PC about the discussions in	22	to the minutes of that meeting.
23	this meeting, General.	23	MR NGALWANA: The minutes are TT4 and
24	MAJOR-GENERAL MPEMBE: I said to the	24	there's no list of attendees. Do you recall, General,
25	Provincial Commissioner that the AMCU president Mr	25	which commanders were present?
1	Page 11391 Mathunjwa gave us the assurance that the crowd will lay	1	Page 11393 MAJOR-GENERAL MPEMBE: Chairperson, we
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RCHIVE FOR JUSTICE

		1	
	Page 11394		Page 11396
1	saying is all command structures, those that are on the	1	I'm there I will also sit and also give, listen and also
2	ground, they were there at the meeting of 6 o'clock.	2	give some comments to understand that the operation is
3	That's why I'm talking about Brigadier Calitz and all other	3	going in the right direction. According to the brief
4	commanders that were actually working on the ground, and	4	minutes we will start first with the overall intelligence
5	those that were representing the units in the JOCCOM, all	5	briefing.
6	of them, at 6 o'clock they were there.	6	MR NGALWANA: Was that the first item in
7	MR NGALWANA: As I understand it, the	7	that meeting? MAJOR-GENERAL MPEMBE: Chairperson,
8	Commissioners seem to want precisely the names of the	8	• •
9	people who were there. If I can take you, perhaps let's do	9	despite the meeting procedures of each and every one,
10	it this way, back to TT4, General, on page 252. Well, take	10	attendance list and the others, the first presentation it
11	you to 251. We know that Lieutenant-Colonel Scott was	11	will be what does the intelligence say in relation to where
12	there, if you look at the middle of the page. There's an	12	we are and where we are getting to.
13	entry that says, "Lieutenant-Colonel Scott further	13	MR NGALWANA: General, you are talking in
14	indicated to the meeting that the timeline for deployment	14	general terms. Is that what in fact happened on that
15	will be as follows," and there it gives 6 o'clock, 7	15	meeting? Was there an intelligence report given at the
16	o'clock, and so on. So Lieutenant-Colonel Scott was there,	16	beginning of that meeting?
17	correct?	17	MAJOR-GENERAL MPEMBE: It's correct,
18	MAJOR-GENERAL MPEMBE: Correct,	18	Chairperson. CHAIRPERSON: On that note we'll take the
19	Chairperson.	19	
20	MR NGALWANA: At the top of the $-$ well,	20 21	adjournment. [COMMISSION ADJOURNS COMMISSION RESUMES]
21 22	sort of 1, 2, 3, 4, 5, 6, 7 lines from the top of that page	22	[11:33] CHAIRPERSON: The Commission resumes.
22	there's reference that Brigadier Calitz will be in charge	22	Major-General, you're still under oath.
23 24	of this group with Colonel Makhubela – CHAIRPERSON: I'm sorry, Mr Ngalwana, I'm	23 24	WILLIAM MPEMBE: s.u.o.
24 25	CHAIRPERSON: I'm sorry, Mr Ngalwana, I'm going to cut you short. If you go to the next page 252	24 25	CHAIRPERSON: Mr Ngalwana, further
23	going to cut you short. If you go to the next page 232	23	
	Page 11395		Page 11397
1	Page 11395 under paragraph 3.3, the various JOCCOM role-players give	1	Page 11397 questioning in examination-in-chief.
1 2	5	1 2	
	under paragraph 3.3, the various JOCCOM role-players give		questioning in examination-in-chief.
2	under paragraph 3.3, the various JOCCOM role-players give input. So it's quite clear from that at least all those	2	questioning in examination-in-chief. EXAMINATION BY MR NGALWANA (CONTD.):
2 3	under paragraph 3.3, the various JOCCOM role-players give input. So it's quite clear from that at least all those people were there. That's a quicker way of doing it, I	2 3	questioning in examination-in-chief. EXAMINATION BY MR NGALWANA (CONTD.): Yes. General, at the very real risk of incurring the wrath
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	Page 11398		Page 11400
1	dealing with – the morning of the 16th of August there's a	1	CHAIRPERSON: No, sorry. It would be
2	JOCCOM meeting. You've explained that you started with an	2	helpful; this would be 10.1 or 10A or something like that.
3	intelligence report. Just take the Commission through what	3	Unless you want to put it at the end after -
4	was the content of the intelligence report.	4	MR NGALWANA: We could put it immediately
5	MAJOR-GENERAL MPEMBE: Chairperson, we	5	after TT5, and perhaps we can call it TT5A or something.
6	were briefed by the intelligence that at that time, and I	6	CHAIRPERSON: Yes, yes, and the
0 7	need just to rectify that 3 000, actually it's 300	7	pages would have to be also 249A and B or something like
8	mineworkers had gathered at the koppie and we were a little	8	that. But it's only one page, I think, isn't it?
8 9	bit surprised to hear that they were also in possession of	8 9	MR NGALWANA: It's only one page, Chair.
		9 10	CHAIRPERSON: So 249A and we'll mark it
10	dangerous weapons and a further point was that they will decline and not to surrender these dangerous weapons to the	10	TT5.1, shall we?
11		12	
12	police and that they will leave the koppie, they will not		MS PILLAY: Chair, the page is part of
13	leave the koppie, and that they are prepared to fight if	13	TT5 already, the existing TT5. This is the last page of
14	their demands are not met, which includes resisting the	14	the existing TT5.
15	police. With what has happened on the 15th, we knew that Mr	15	CHAIRPERSON: Oh, I see. I see. So it's
16	Mathunjwa is still going to address them. That option was	16	already an exhibit. The only problem is it's not in the
17	considered; he has to be given a chance to see what is	17	bundle. Alright, so all we do is we make it 249A then and
18	going to happen in that morning. That was also where we	18	it will fit in neatly, and we could have copies and if
19	started to say then we need also to take that into account.	19	someone would be kind enough to punch them for us, then we
20	Chairperson, at that time the commanders also gave various	20	could put this page in our file.
21	feedbacks in terms of what was happening yesterday and the	21	MR NGALWANA: Yes, I'm not sure I follow
22	way forward. We also then said the deployment will be done	22	because –
23	with stage 2 of the operational strategy.	23	CHAIRPERSON: Mr Ngalwana, listen to me.
24 25	MR NGALWANA: Sorry, General, if I might	24	Let's take it slowly. What Ms Pillay has said is that that
25	stop you there. During the intelligence reports or	25	document you've got in your hand is actually part of
-			
	Page 11300		Page 11/01
1	Page 11399 feedback at the JOCCOM, was this done verbally or was there	1	Page 11401 exhibit TT5. When you put a copy of TT5 in your bundle,
1 2	5	1 2	Page 11401 exhibit TT5. When you put a copy of TT5 in your bundle, that page somehow landed on the floor. So all you have to
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1	Page 11402 MAJOR-GENERAL MPEMBE: Chairperson, it's	1	Page 11404 in that document. What mistake is there? Let's take it
2	correct, but what I want to indicate is that we did not	2	line by line. The first line says, "Approximately 3 000
3	have a JOCCOM meeting at 12. I don't remember having a	3	mineworkers are gathered at the koppie." Is that factually
4	JOCCOM meeting, but the information that was given to us in	4	correct?
5	the morning, it was this one.	5	MAJOR-GENERAL MPEMBE: Not factually
6	CHAIRPERSON: The question is, you don't	6	correct. That's one of the type, that's a typing error
7	appear to have had a JOCCOM meeting at 12, but did that	7	which I think, because at that time we were reported that
8	document, was it put before – I don't like the Afrikaansism	8	it was 300, not 3 000.
9	"serve," it didn't – het dit voor die vergadering gedien?	9	MR NGALWANA: Well, perhaps the more
10	Was it put before the JOCCOM meeting at 1:30 or not? It's	10	accurate way of phrasing the question, inasmuch as you were
11	not reflected in the minutes –	11	not there at the koppie you wouldn't know whether there
12	MR NGALWANA: 6AM.	12	were 300 or 3 000. Perhaps the way to phrase it is was it
13	CHAIRPERSON: No, no, no, the 12 o'clock	13	reported that there were approximately 3 000 mineworkers
14	document couldn't have been put before the 6 o'clock	14	there at the koppie when the intelligence report was
15	meeting. That we know. The question is was the 12 o'clock	15	presented?
16	document, the one you've just been handed which is 12	16	MAJOR-GENERAL MPEMBE: At about 300.
17	o'clock, noon, was that put before, or the information in	17	MR NGALWANA: Now you were at the JOCCOM,
18	it conveyed to the 1:30 meeting of the JOCCOM? It's not	18	General. The intelligence report is presented. What then
19	reflected in the minutes which are exhibit EE, page 269 of	19	happens?
20	the bundle, but that doesn't mean that it wasn't	20	MAJOR-GENERAL MPEMBE: Chairperson, the
21	necessarily put before the meeting. So my question is, was	21	feedback was also given of the deployment and also that the
22	it put before the 1:30 meeting? If you can't remember, you	22	feedback of Mr Mathunjwa was given, and thereafter then we
23	can't remember.	23	also discussed the strategy of that morning, that is stage
24	MR NGALWANA: Chair, with your leave, can	24	2 of the operational plan.
25	we take it step by step because I fear my witness might be	25	MR NGALWANA: When you say the feedback
1	Page 11403	1	Page 11405 of Mr Mathuniwa was given, by whom was that feedback and
1	confused –	1	of Mr Mathunjwa was given, by whom was that feedback and
2	confused – CHAIRPERSON: Alright, let's take it – we	1 2 3	of Mr Mathunjwa was given, by whom was that feedback and which feedback are you referring to?
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	Page 11406		Page 11408
1	to be exactly the same as the document beginning at page	1	what my SS3 says. It starts with South African Police
2	108 until page 139, the only difference being that the one	2	Services, there's - in fact the other page number that
3	beginning at page 88 is in smaller font and the one	3	appear from the hard drive of the SAPS is 1665, then it
4	beginning at 108 is in larger font. So to page 108 we go.	4	starts with the plan of the 10th of August 2012.
5	General, is that the document that was discussed on the	5	MS PILLAY: If you look at the top of
6	morning of the 16th of August JOCCOM?	6	your document you'll see page 1 of 89. That's the
7	MAJOR-GENERAL MPEMBE: Correct,	7	electronic page number, towards the top of your document.
8	Chairperson.	8	MR MSIMANG: Page 1 of 89, yes.
9	MR NGALWANA: I'm told for those who	9	MS PILLAY: That's right, so if you go to
10	don't have the pagination it's slide 65 of SS3. General,	10	73, that's what the witness is talking about, page 73 of 89
11	from that document - you've read, it have you not, since	11	to page 80 of 89.
12	the meeting of the morning of the 16th? In other words,	12	MR MSIMANG: Okay, thank you.
13	you've gone through that document, correct?	13	MR NGALWANA: I'm indebted to Ms Pillay.
14	MAJOR-GENERAL MPEMBE: Correct,	14	General, that morning, General, was stage 2 the only issue
15	Chairperson.	15	that was discussed at that meeting, that morning meeting of
16	MR NGALWANA: Are there any slides in	16	JOCCOM, 16 August 2012, 6 o'clock?
17	that document that were not before the JOCCOM?	17	MAJOR-GENERAL MPEMBE: Correct,
18	MAJOR-GENERAL MPEMBE: Correct,	18	Chairperson, and the commanders were also informed that, in
19	Chairperson.	19	that meeting that the contingency plan will also be kept in
20	MR NGALWANA: Can you tell us which	20	mind and if there is going to be any other thing that will
21	slides those are? You'll be referring to them in terms of	21	follow, the briefing will be done.
22	pagination. I'm not sure what the slides would be.	22	MR NGALWANA: Just very briefly, could
23	MAJOR-GENERAL MPEMBE: Chairperson, it	23	you take the Commission through what about stage 2 was
24	will be paginated page 117 which was done for the purpose	24	discussed at that meeting? Perhaps if I can take you to
25	of the Commission.	25	pagination page 114 which sets out the Operational
1	Page 11407	1	Page 11409
1	MR NGALWANA: Until what page?	1	Overview.
2	MR NGALWANA: Until what page? MAJOR-GENERAL MPEMBE: Chairperson, it	2	Overview. MAJOR-GENERAL MPEMBE: 114.
2 3	MR NGALWANA: Until what page? MAJOR-GENERAL MPEMBE: Chairperson, it will go until page 123, the, only the first part of it. If	2 3	Overview. MAJOR-GENERAL MPEMBE: 114. MR NGALWANA: Slide 71, for those who
2 3 4	MR NGALWANA: Until what page? MAJOR-GENERAL MPEMBE: Chairperson, it will go until page 123, the, only the first part of it. If I may say there is 16, what is it, 31 there, until that	2 3 4	Overview. MAJOR-GENERAL MPEMBE: 114. MR NGALWANA: Slide 71, for those who don't have pagination. General, are you with us?
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	Page 11410		Page 11412
1	think the word is "non-aggressive police visibility,	1	saying in the meeting of the morning of 16th stage 2 was
2	protecting the members in armed vehicles."	2	discussed. Can I ask you this, because -
3	MR NGALWANA: Yes, and that has been	3	CHAIRPERSON: Sorry, before you ask that,
4	going on since Tuesday.	4	the point Ms Pillay makes is correct, but obviously your
5	MAJOR-GENERAL MPEMBE: Yes, that is then	5	page 129 of your bundle is out of position. It clearly
6	the show of force. But stage 2 Operational Overview, it	6	relates to what happened at the 1:30 meeting. You're still
7	will also go straight to paginated page, the Operational	7	busy with the 6 o'clock meeting and this document is under
8	Overview of stage 2 that was discussed, paginated page 114.	8	the heading "Outstanding Points," so it's clearly misplaced
9	I'm just requesting that this Operational Overview, if it	9	and we can ignore it for the moment while we're talking
10	can go to 114, please.	10	about the 6 o'clock meeting, is that right?
11	MR NGALWANA: Ja, it will be two pages	11	MR NGALWANA: Yes, correct, Chairperson.
12	later from the slide that was there. Yes, General.	12	COMMISSIONER HEMRAJ: If you're at page
12		12	
	3 • • •		114, the stage 2, the discussion at the 6 o'clock JOCCOM
14	stage 1, then add stage 2 deployment and that will be done	14	meeting, was it in as much detail as is set out in these
15	in the following manner; police neutral area, POP Nyalas,	15	slides?
16	and that part will be under the command of Brigadier	16	MAJOR-GENERAL MPEMBE: Correct,
17	Calitz.	17	Chairperson.
18	MR NGALWANA: So in short, General, what	18	MR NGALWANA: Thank you, Commissioner.
19	appears on the slide on the screen, Operational Overview is	19	General, can I take you two pages back where it says
20	what you say was discussed at the JOCCOM?	20	"Operational Overview," which is pagination page 112? The
21	MAJOR-GENERAL MPEMBE: Correct,	21	second slide, it sets out - or the lower slide, it sets out
22	Chairperson. Show of force, that the Nyalas with the razor	22	stage 1, it defines it, stage 2 and defines it, stage 3, it
23	wire will be pre-positioned. Immediate reaction force at	23	defines it and over the page, stage 4, 5 and 6. Now that
24 25	the forward holding area 1 and 2.	24 25	morning you say only stage 2 was discussed. During the
25	COMMISSIONER HEMRAJ: Mr Ngalwana, do you	25	discussion, was it a foregone conclusion that stage 3 would
	Page 11411		Page 11413
1	Page 11411 want the witness to read all of this out?	1	Page 11413 be implemented, while you were discussing stage 2?
1 2	-	1	5
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	Page 11414		Page 11416
1	MAJOR-GENERAL MPEMBE: Chairperson, it	1	MR NGALWANA: Alright, then the media
2	was about half past, past 9 to 10 o'clock by that time.	2	briefing is completed. Could you take the Commission
3	I'm not sure about time, but it was more or less that time.	3	through what then happened and what role you played in
4	CHAIRPERSON: Who had convened the press	4	those events?
5	conference? Who set it up?	5	MAJOR-GENERAL MPEMBE: Chairperson, we
6	MAJOR-GENERAL MPEMBE: It was the	6	were still with the Provincial Commissioner. We went back
7	Provincial Commissioner.	7	to the JOC. At about 11 o'clock the Provincial
8	CHAIRPERSON: Do you know when she did	8	Commissioner said that Major-General Annandale to check
9	that?	9	with the JOC as to whether Mr Mathunjwa has already
10	MAJOR-GENERAL MPEMBE: No, Chairperson.	10	addressed the protesters, and the report came to say that
11	CHAIRPERSON: I think it was on Lonmin	11	he has not been at the koppie. The Provincial
12	premises, wasn't it? Somebody must have asked Lonmin to	12	Commissioner, Chairperson, I don't know whether she phoned
13	make the premises available for the conference. Is that	13	Mr Mathunjwa directly or phoned someone else, but what is
14	correct?	14	my recollection is that the Provincial Commissioner took
15	MAJOR-GENERAL MPEMBE: That's correct,	15	the initiative of contacting Mr Mathunjwa. At that time we
		16	were standing outside the JOC, there is a place there
16	Chairperson. CHAIRPERSON: And the press must have	17	-
17	·····		looking like the trash house, and we were sitting there
18	then been told be there at 9:30, or whatever time was pre-	18	with the Provincial Commissioner in front of the JOC.
19	arranged, for the conference. Is that right?	19	MR NGALWANA: I take it -
20	MAJOR-GENERAL MPEMBE: That's correct,	20	CHAIRPERSON: I take it your reference is
21	Chairperson.	21	to a lapa?
22	CHAIRPERSON: You don't know when the	22	MAJOR-GENERAL MPEMBE: Yes.
23	actual convening, as it were, and the arrangements – the	23	MR NGALWANA: Yes, Chairperson. I take
24	convening took place and the arrangements were made, but	24	it as the Provincial Commissioner is making this call, you
25	you say the Provincial Commissioner did that.	25	are in her presence? In other words you are with her,
	Page 11415		Page 11417
1	Page 11415 MAJOR-GENERAL MPEMBE: That's correct,	1	Page 11417 General?
1 2	-	1 2	-
	MAJOR-GENERAL MPEMBE: That's correct,		General?
2	MAJOR-GENERAL MPEMBE: That's correct, Chairperson.	2	General? MAJOR-GENERAL MPEMBE: Correct,
2 3	MAJOR-GENERAL MPEMBE: That's correct, Chairperson. CHAIRPERSON: So we must ask her.	2 3	General? MAJOR-GENERAL MPEMBE: Correct, Chairperson.
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	Page 11418		Page 11420
1	expected you at 9 o'clock and you are not there, they will	1	Lonmin management's offices for early morning and that
2	be agitated."	2	management did not want to commit to continued
3	CHAIRPERSON: Did she say anything else?	3	negotiations. Mr Mathunjwa stated that the reason for him
4	MAJOR-GENERAL MPEMBE: Nothing,	4	not addressing the protesters at 9 o'clock and that he
5	Chairperson.	5	emphasised - the Provincial Commissioner then emphasised
	•		
6	CHAIRPERSON: - reply? MR NGALWANA: Of course this is over the	6	her concern was with his commitment to finding a peaceful
7		7	solution, and he further requested Mr Mathunjwa to go to
8	phone; you don't hear what Mr Mathunjwa is saying. Was the	8	the koppie and convince the protesters.
9	PC's phone on speaker? Could you hear what Mr Mathunjwa	9	MR NGALWANA: What was Mr Mathunjwa's
10	was communicating back to the Provincial Commissioner?	10	response?
11	MAJOR-GENERAL MPEMBE: No, Chairperson.	11	MAJOR-GENERAL MPEMBE: Mr Mathunjwa said
12	CHAIRPERSON: And he then reported to the	12	to the Provincial Commissioner he will go to the koppie.
13	lapa, didn't he?	13	MR NGALWANA: What then happened,
14	MAJOR-GENERAL MPEMBE: Correct,	14	General?
15	Chairperson.	15	MAJOR-GENERAL MPEMBE: Chairperson, we
16	CHAIRPERSON: And he had a conversation	16	did receive the report that Mr Mathunjwa has gone to the
17	with the Provincial Commissioner in your presence. Is that	17	koppie and he did address the protesters, and Mr Mathunjwa
18	right?	18	did come back to the JOC and when he arrived at the JOC,
19	MAJOR-GENERAL MPEMBE: Correct,	19	then he requested to see the Provincial Commissioner. I
20	Chairperson.	20	was in the JOC at that time, then when I saw him I went to
21	CHAIRPERSON: And what did she say then?	21	him.
22	MAJOR-GENERAL MPEMBE: Chairperson, on	22	MR NGALWANA: Roughly what time are we
23	arrival of Mr Mathunjwa I introduced him to the Provincial	23	talking about now?
24	Commissioner and when I introduced Mr Mathunjwa to the	24	MAJOR-GENERAL MPEMBE: Chairperson, it
25	Provincial Commissioner, I said that the Provincial	25	was towards 1 o'clock, between 12 and 1 o'clock at that
	Page 11419		Page 11421
1	Page 11419 Commissioner, she is the Provincial Commissioner of North	1	Page 11421 time.
1 2	•	1 2	
	Commissioner, she is the Provincial Commissioner of North		time.
2	Commissioner, she is the Provincial Commissioner of North West.	2	time. MR NGALWANA: Yes, please continue.
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	D 11/00		
1	Page 11422 phone the Provincial Commissioner and the Provincial	1	Page 11424 MAJOR-GENERAL MPEMBE: The entry,
2	Commissioner said that as an overall commander I'm still	2	Chairperson, it will be 1004.
3	there, I should address Mr Mathunjwa and –	3	MR NGALWANA: That's on pagination page
4	MR NGALWANA: Please finish the sentence	4	181, page 24 of FF25. Now it reads, "Situation report,"
5	before the –	5	it's at 11:55, "Brigadier Tsiloane reported that the
			president of AMCU just left the base on his own to visit
6		6	
7	when I check where is Mr Mathunjwa, I realised that Mr	7	the group at the koppie, and he left the rest of the group
8	Mathunjwa has gone.	8	of AMCU behind and the Lonmin branded Combi with other
9	MR NGALWANA: No, let's go back a little	9	members of AMCU drove to the koppie and Captain Seleke of
10	bit. You say the Provincial Commissioner says to you as	10	Mobile Operations escorted them." Is that the entry to
11	overall commander you are there. Just say that again,	11	which you wish to refer?
12	because you didn't finish the sentence when the interpreter	12	MAJOR-GENERAL MPEMBE: Chairperson,
13	came in. What did the Provincial Commissioner say you must	13	correct.
14	do as overall commander?	14	MR NGALWANA: So Mr Mathunjwa left before
15	MAJOR-GENERAL MPEMBE: The Provincial	15	he could be escorted. Is that what you're saying?
16	Commissioner said, "As an overall commander, communicate	16	MAJOR-GENERAL MPEMBE: Correct,
17	with Mr Mathunjwa, ask him what is it that he wants to see	17	Chairperson.
18	me about, then you will brief me."	18	MR NGALWANA: Did you then receive any
19	MR NGALWANA: Then what happened?	19	report – we've covered this ground, but since we are here
20	MAJOR-GENERAL MPEMBE: When I check where	20	now let's do it for sake of completion. Did you then
21	is Mr Mathunjwa, I realise that Mr Mathunjwa he was not	21	receive further reports about what Mr Mathunjwa had said at
22	there, but his delegation was still standing where I left	22	the koppie?
23	him while I was talking to the Provincial Commissioner,	23	MAJOR-GENERAL MPEMBE: No, Chairperson.
24	because I just stood a little bit, some few paces where Mr	24	MR NGALWANA: Right, so Mr Mathunjwa has
25	Mathunjwa was and while speaking to the Provincial	25	gone back to the koppie. Did he come back after that?
	Page 11423		Page 11425
1	Page 11423 Commissioner on the cell phone.	1	Page 11425 MAJOR-GENERAL MPEMBE: Chairperson, in my
1 2	Commissioner on the cell phone. [12:32] MR NGALWANA: Yes, then you came back,	1 2	
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		1	
	Page 11426		Page 11428
1	regard to entry 1004, the time of which is 11:55, and it	1	to speak to the Provincial Commissioner, and he's already
2	quite clearly refers to what happened before the first	2	told us about that, and then eventually Mr Mathunjwa left
3	visit because that's dealt with in 1010, and then in 1014	3	before he could speak to him again, and shortly after he
4	we see that there's a situation report that the union rep,	4	left he sent an SMS, which is at 2:15, which is quoted in
5	which is obviously a reference to Mr Mathunjwa, wants to go	5	paragraph 47 of his statement.
6	to the koppie, this is obviously for the second time now,	6	MR NGALWANA: Yes, and what's your
7	to tell the group that the mine management doesn't want to	7	answer, General? Do you agree?
8	negotiate. General Naidoo to talk to the union rep as he	8	MAJOR-GENERAL MPEMBE: Yes, I agree,
9	requested to talk to the SAPS management. That's something	9	Chairperson.
10	the witness will be getting to. So it's quite clear that	10	MR NGALWANA: And of course we will find
11	there's something wrong with this evidence on this point,	11	it in slide 186 of exhibit L. That's where the times and
12	but it's probably a genuine mistake, so perhaps we can sort	12	the SMSes are set out. But mine is a more general question
13	- but let's, I can't see that there's any sinister aspect,	13	in anticipation of cross-examination on the precise time
14	so perhaps you can sort it out now.	14	entries in exhibit FFF5. Could you take the Commission
15	MR NGALWANA: Yes. General, while we are	15	through very briefly, General, in general terms, since you
16	on this point, can you take the Commission briefly through	16	were at the JOC you observed how FFF25 was prepared, the
17	how FFF25 was recorded? The process of recording FFF25	17	entries there were entered. What was the process? What
18	regards the time and the details. Are these entries	18	processes were followed that culminate in an OB entry?
19	contemporaneous? In other words is the entry entered at	19	MAJOR-GENERAL MPEMBE: Chairperson, at an
20	the time that the event to which the entry relates happens,	20	operation such as that and when members are on the ground
21	or at the time that the report about the event is conveyed	21	and the commanders are talking on the radio, we have a
22	to the JOC?	22	member of the service who is called an occurrence book,
23	MAJOR-GENERAL MPEMBE: Chairperson, at	23	he's referred to the OB as in abbreviation occurrence book,
24	this time maybe I need just to put it in the correct	24	who registers the entries.
25	perspective, is that OB entry 1004, it was in the morning	25	MR NGALWANA: Yes, what process does he
	Dama 11107		Dama 11100
1	Page 11427 after the, Mr Mathuniwa spoke to the Provincial	1	Page 11429 follow that culminates in the occurrence –
1	after the, Mr Mathunjwa spoke to the Provincial		follow that culminates in the occurrence –
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Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

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1	Page 11430 COMMISSIONER HEMRAJ: When a member	1	Page 11432 MR NGALWANA: What time did that happen?
2	receives a report and writes down what was reported, is not	2	MAJOR-GENERAL MPEMBE: It does, it did
3	the time recorded on that piece of paper as well?	3	happen at 13:30, but it was recorded as it has happened at
4	MAJOR-GENERAL MPEMBE: The member takes,	4	15:10.
5	when the report comes the member takes the time in the JOC		CHAIRPERSON: That answer isn't entirely
6	at that time and writes it there, but it does happen that	6	correct. What happened was that the meeting started at
7	if the incidents they happen faster, you might find the	7	1:30. Various things happened at the meeting, and one of
8	member might not be able to cope to write the times	8	
0 9	-	0 9	the things is that there was operation tactical briefing given by Lieutenant-Colonel Scott. Another thing that
10	correctly. MR NGALWANA: Let's try and clarify this	9 10	happened was the Provincial Commissioner gave certain
10	by way of example, General. Say an event happens at 11, it	10	instructions, and we know from the minutes of that meeting,
12	is reported to the JOC at 11:15; the person who is doing	12	it was quite a lengthy meeting, a number of things were
12	the JOC entry, the OB entry, enters it in the, does the OB	12	said. At the end of the meeting, obviously, or shortly
14	entry at 11:30. Which time will the person who is entering	14	thereafter, Brigadier Pretorius made this report, but you
15	that event at the OB entry, will he use? Will he use 11	14	can't say this happened at 1:30 because this includes a
16	o'clock or 11:15 or 11:30? Is it clear? General, just	16	reference to the tactical briefing given by the Lieutenant-
17	stop paging. Just listen to me. You're going to run ahead	17	Colonel Scott, which must have taken some time. The
18	of me here. The event happens at 11. The interpreter	18	meeting started at 1:30, it ended – well, we're not quite
19	doesn't have to reinterpret this, it's exactly the same –	10	sure when, but obviously a considerable time later, and
20	the event happens at 11. It is reported to the JOC by	20	this entry was made some time thereafter, but it doesn't
21	radio at 11:15. The person who does the OB entry, does the	21	relate to something that happened at 1:30; it relates to
22	OB entry at 11:30.	22	something that started at 1:30. Isn't that correct?
23	CHAIRPERSON: Well, are you suggesting	23	MAJOR-GENERAL MPEMBE: Chairperson,
24	that he or she went off and had tea in the meanwhile?	24	according to the Standing Order how the occurrence book has
25	could understand if things are happening fast and furious.	25	to be written, it should have said late entry and then it
	Page 11431		Page 11433
1	I can understand for example with entry 1018 where it seems	1	should state this incident started at 13:30 and then it
2	I can understand for example with entry 1018 where it seems there are a whole series of different entries all recorded	2	should state this incident started at 13:30 and then it does explain that. This is what I'm trying to explain, and
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1	Page 11434 MR NGALWANA: So the entries that are in	1	Page 11436 MR MAHLANGU: Just before Mr Ngalwana
2	the OB entry do not necessarily – well, do not happen, or	2	speaks, Mr Chairperson, if I may. I've been given an
3	are not done at the same time as the JOCCOM meeting is	3	assistant here, this young man, to interpret, to help me in
4	going on. Is that correct?	4	the isiXhosa language he's now going to take over.
5	MAJOR-GENERAL MPEMBE: Correct,	5	CHAIRPERSON: Put yourself on record.
6	Chairperson.	6	MR MAHLANGU: The name is?
7	MR NGALWANA: Now then these SMSes have	7	MR NTSINGILA: My name is Zanele
8	happened. Mr Mathunjwa has gone to the koppie, he's	8	Ntsingila.
9	addressed them. He sends an SMS to Major-General	9	CHAIRPERSON: Yes, I swore both him and
9 10	Annandale, who then responds at about half past 2 in the	9 10	his colleague, Ms Ruth who's here as well. They have been
10	afternoon. What then happens at the JOC?	10	sworn in as interpreter and join the staff of the
12	MAJOR-GENERAL MPEMBE: Chairperson, it	12	Commission and I want to extend a welcome to both of them.
13	has happened that the Provincial Commissioner did come back	12	We look forward to hearing and seeing their contribution to
14	from the hospital and when she came back she was also, she,	14	our work.
15	we, myself and Major-General Annandale we were sitting at	14	MR MAHLANGU: Thank you, Chairperson.
16	the lapa in front of the JOC, and there were reports that	16	CHAIRPERSON: So you have an assistant
17	were coming since from that time, including the one of Mr	17	now, Mr Mahlangu, so if you can sit next to him and keep an
18	Mathunjwa having gone and addressed the protesters, and at	18	eye on him for a moment, alternatively you can go outside
19	that time we were still outside with the Provincial	19	and relax for a while.
20	Commissioner, just between 30 and, 13:00 and 13:30. I did	20	MR MAHLANGU: I think at the moment I'll
21	brief the Provincial Commissioner about the happenings and	21	just like to sit around with him, help him where it is
22	when I was briefing her and then she also wanted to know	22	necessary.
23	how far are the people now, Mr Mathunjwa has addressed	23	CHAIRPERSON: Well, as long as he doesn't
24	them, what is the progress. Chairperson, between that time	24	mind, we'll allow that.
25	of 13:30 I advised the Provincial Commissioner –	25	EXAMINATION BY MR NGALWANA (CONTD.):
	Page 11435		Page 11437
1	Page 11435 MR NGALWANA: You mean before 13:30?	1	Page 11437 Thank you, Chair. General, we are now on the 16th of August
1 2		1 2	5
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2	MR NGALWANA: You mean before 13:30? Before 13:00 and 13:30?	2	Thank you, Chair. General, we are now on the 16th of August 2012 between about 12 midday and 1 in the afternoon. The
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	Page 11438		Page 11440
1	Perhaps if he had it in front of him it would help him to	1	MR NGALWANA: Yes, that's the one I'm
2	interpret it.	2	talking about.
3	MR NGALWANA: General, effectively what	3	MAJOR-GENERAL MPEMBE: Thanks, it's just
4	you briefed the Provincial Commissioner on between 12	4	lying around here.
5	midday and 13:00 is what is set out on page 7A, paginated	5	MR NGALWANA: Just to describe it, it's
6	page 7A of the bundle B, the statements bundle, in which	6	written at the top of the page "Crime intelligence input at
7	you record the factors that you put to her. Can I just get	7	JOC pertaining to the decision to disarm people." It's
8	a confirmation, are those the factors that you conveyed to	8	dated 2012/08/16, 12 o'clock. You see that?
9	the Provincial Commissioner as the factors that informed	9	MAJOR-GENERAL MPEMBE: Correct,
10	you in making the decision to move to stage 3? And that is	10	Chairperson.
11	paragraph 17, page 7 of HHH3, for those who don't have the	11	MR NGALWANA: It's a one-page document.
12	pagination.	12	Did that document, or rather, shall I say did it serve?
13	CHAIRPERSON: There are five bullet	13	Was that document before the special JOCCOM meeting at
14	points in para 17. Those, each one of those, is a	14	13:30?
15	particular factor that was mentioned to the Provincial	15	MAJOR-GENERAL MPEMBE: Correct,
16	Commissioner. Is that correct?	16	Chairperson.
17	MAJOR-GENERAL MPEMBE: Chairperson, with	17	MR NGALWANA: Can you take the Commission
18	regard to those that have come to my knowledge at that	18	through, very briefly, General, what the discussion, the
19	time.	19	primary discussion was at 13:30? Perhaps let me start this
20	MR NGALWANA: What was the Provincial	20	way. I know there was no written agenda, but what was the
21	Commissioner's response to your briefing?	21	first item that was discussed at that special JOCCOM
22	MAJOR-GENERAL MPEMBE: She agreed with	22	meeting?
23	me.	23	MAJOR-GENERAL MPEMBE: Chairperson, that
24	MR NGALWANA: Then what happened	24	was the meeting to assess the situation and the Provincial
25	immediately after the briefing, your briefing the	25	Commissioner also did give the purpose of the meeting and
			······································
	Page 11439		Page 11441
1	Provincial Commissioner, General?	1	when she addressed the meeting, she did not mentioned that
2	MAJOR-GENERAL MPEMBE: Chairperson, while	2	I did brief her earlier on and the different commanders
n		2	
3	I was still briefing the Provincial Commissioner at the	2	also they did give the feedback in terms of what was
3 4	I was still briefing the Provincial Commissioner at the lapa, the Provincial Commissioner tasked Major-General		
		3	also they did give the feedback in terms of what was
4	lapa, the Provincial Commissioner tasked Major-General	3 4	also they did give the feedback in terms of what was happening in the morning until at that time. Then the
4 5	lapa, the Provincial Commissioner tasked Major-General Annandale to call up a special JOCCOM meeting.	3 4 5	also they did give the feedback in terms of what was happening in the morning until at that time. Then the decision was taken that the dispersal process can be
4 5 6	lapa, the Provincial Commissioner tasked Major-General Annandale to call up a special JOCCOM meeting. MR NGALWANA: I take it you briefed the	3 4 5 6	also they did give the feedback in terms of what was happening in the morning until at that time. Then the decision was taken that the dispersal process can be implemented.
4 5 6 7	lapa, the Provincial Commissioner tasked Major-General Annandale to call up a special JOCCOM meeting. MR NGALWANA: I take it you briefed the Provincial Commissioner orally. Is that correct?	3 4 5 6 7	also they did give the feedback in terms of what was happening in the morning until at that time. Then the decision was taken that the dispersal process can be implemented. MR NGALWANA: Now I take it there was an
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	Page 11442		Page 11444
1	provide feedback as agreed." Is that what happened at that	1	[14:29] COMMISSIONER HEMRAJ: I'm sorry, it's not
2	meeting? Is that the report-back that the Provincial	2	clear to me, and forgive me for putting this again,
3	Commissioner gave to the meeting?	3	General, but I need to understand. Was it your decision,
4	MAJOR-GENERAL MPEMBE: Correct,	4	did you convey that to the Provincial Commissioner and say
5	Chairperson. The only matter that was not included under	5	to her these are my decisions, or my reasons for arriving
6	that paragraph, it is the briefing that I did give to the	6	at this decision, or did you say to her this is my advice
7	Provincial Commissioner earlier on.	7	that stage 3 now be implemented?
8	MR NGALWANA: Of course the briefing was	8	MAJOR-GENERAL MPEMBE: Chairperson, what
9	not done at the special JOCCOM meeting. Is that correct?	9	I'm saying is that I made a decision and I gave reasons, so
10	MAJOR-GENERAL MPEMBE: Correct,	10	I expected maybe the Provincial Commissioner to say I agree
11	Chairperson.	11	or disagree, and then also at the JOCCOM meeting they could
12	MR NGALWANA: You were the overall	12	have differed with me and it could not have been done if
13	commander, General, of the operation.	13	that – that's how I understand it.
14	MAJOR-GENERAL MPEMBE: Correct,	14	CHAIRPERSON: But whose decision was it
15	Chairperson.	15	at the end of the day? Who bears ultimate responsibility
16	MR NGALWANA: And the entry in those	16	for this decision? You or the Provincial Commissioner?
17	minutes and also in FFF5, and also in the Provincial	17	MAJOR-GENERAL MPEMBE: Chairperson, as a
18	Commissioner's statement is that she instructed Major-	18	Deputy Provincial Commissioner, if I have taken a decision
19	General Annandale to proceed with implementation of stage 3	19	before I implement something, I will brief my Provincial
20	of the operational plan. You see that?	20	Commissioner. The understanding is that I took a decision,
21	MAJOR-GENERAL MPEMBE: Correct,	21	I briefed her and she agreed with me.
22	Chairperson.	22	CHAIRPERSON: That's not the way it's put
23	MR NGALWANA: By whom was the decision to	23	in your first statement. The first statement you made,
24	implement stage 3 taken?	24	which is before us as exhibit GGG12, the statement you made
25	MAJOR-GENERAL MPEMBE: Chairperson, I	24	in November last year, doesn't put it that way at all.
23		25	in November last year, doesn't put it that way at all.
	Page 11443		Page 11445
1	Page 11443 took a decision; I briefed the Provincial Commissioner, and	1	Page 11445 This is something that is in your supplementary statement
1 2	6	1 2	0
	took a decision; I briefed the Provincial Commissioner, and		This is something that is in your supplementary statement
2	took a decision; I briefed the Provincial Commissioner, and after briefing her she agreed and it was also discussed in	2	This is something that is in your supplementary statement for the first time. Is there a reason for that?
2 3	took a decision; I briefed the Provincial Commissioner, and after briefing her she agreed and it was also discussed in the special JOCCOM meeting, and all commanders agreed for	2 3	This is something that is in your supplementary statement for the first time. Is there a reason for that? MAJOR-GENERAL MPEMBE: I just want to
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		1	
1	Page 11446	1	Page 11448
1	the ground, the Provincial Commissioner instructed the		MAJOR-GENERAL MPEMBE: Chairperson, the
2 3	special JOCCOM to proceed." Now that's not the same tale	2 3	plan as I have indicated earlier, it was, the principle was
3 4	that you're now telling in paragraphs 22 and following of your supplementary statement. Can you explain that to us?	3 4	agreed upon on Tuesday, but what was presented also on, at 13:30 it is that slide which we spoke about, slide 181.
4 5	MR NGALWANA: Perhaps this might be of	5	CHAIRPERSON: So this slide that we see
6	assistance, Chair. The supplementary statement is	6	here at page 130, which was 183 of the police hard drive,
7	precisely that, it covers areas –	7	was that slide shown to the special meeting of the JOCCOM?
8	CHAIRPERSON: No, I said that.	8	MR NGALWANA: For the rest, it's slide
9	MR NGALWANA: - because they were not	9	85. Do you remember the question, General? Was this slide
10	covered in the –	10	before the special JOCCOM, the one Operation Platinum,
11	CHAIRPERSON: I said that it wasn't in	11	Lonmin Mine: Marikana, 16 August 2012, Stage 3, was that
12	the first statement, not in the second – sorry, it's not in	12	slide before the special JOCCOM?
13	the first. It is in the second. Would he explain why it's	13	MAJOR-GENERAL MPEMBE: The slide that was
14	not in the first. That's the question.	14	presented at the JOCCOM, it is, Chairperson, not that page,
15	MR NGALWANA: General?	15	not page 130. It is the plan. The Risk Assessment Stage 3
16	MAJOR-GENERAL MPEMBE: Chairperson –	16	Mission, Strategic Guidelines and the Operational Overview.
17	CHAIRPERSON: I said there may be a	17	CHAIRPERSON: So even though it's phrased
18	perfectly satisfactory explanation. I just want to know	18	in the present tense, "Lieutenant-General Mbombo has
19	what it is.	19	evaluated the situation and instructed Major-General
20	MAJOR-GENERAL MPEMBE: Chairperson, when	20	Annandale to proceed, the threat level is increasing, the
21	I made this statement it was the way in which it was also	21	deadline has not been honoured," those written like that in
22	recorded at, with the OB. The only thing that I need to	22	the present tense, that slide wasn't actually shown at the
23	explain is that earlier on I did brief the – the only part	23	JOCCOM. Is that right? Special JOCCOM.
24	that was not there is the briefing to the Provincial	24	MAJOR-GENERAL MPEMBE: It's correct,
25	Commissioner.	25	Chairperson, that's what the -
	Page 11447		Page 11449
1	MR NGALWANA: May I proceed, Chair?	1	CHAIRPERSON: It was written afterwards.
2	COMMISSIONER HEMRAJ: I just have still	2	MAJOR-GENERAL MPEMBE: Yes, Chairperson.
3	something –	3	CHAIRPERSON: I see.
4	CHAIRPERSON: My colleague Adv Hemraj	4	MR NGALWANA: Can you take us through
5	wants to ask a question.	5	briefly what about stage 3 was discussed the special
6	COMMISSIONER HEMRAJ: In terms of protocol, although you were the overall commander, when the	6	JOCCOM, General?
7 8	Provincial Commissioner was present would you defer to her	7 8	MAJOR-GENERAL MPEMBE: Chairperson, I'll
9	FIOVITICIAL CONTINUSSIONEL WAS PLESENT WOULD YOU DETET TO THE	0	as to paginated page 122 and L will talk about operational
7	in matters of taking decisions?	0	go to paginated page 132 and I will talk about operational
10	in matters of taking decisions?	9	overview and in talking with the operational overview I'll
10	MAJOR-GENERAL MPEMBE: Correct. She is	10	overview and in talking with the operational overview I'll state that this was the only stage that has got phases, and
11	MAJOR-GENERAL MPEMBE: Correct. She is the one that appoints me as the overall commander. So all	10 11	overview and in talking with the operational overview I'll state that this was the only stage that has got phases, and also the phase 4, stage 4, 5 and 6, it was also discussed.
11 12	MAJOR-GENERAL MPEMBE: Correct. She is the one that appoints me as the overall commander. So all the decisions that I have to take I need to communicate	10 11 12	overview and in talking with the operational overview I'll state that this was the only stage that has got phases, and also the phase 4, stage 4, 5 and 6, it was also discussed. Chairperson, in discussing this I would like to do a
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Marikana Commission of Inquiry

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	Page 11454	Page 1145
1 he can then respond to the point pu		1 said the barbed wire will be deployed to create a safe
		2 area. Operational command will give a first warning.
3 the exhibit L, Chairperson.		3 CHAIRPERSON: Mr Ngalwana, would you be
	k he has been.	4 kind enough when he says "the operational commander here,
		5 to put into words what "here" means? It's easier for you
6 would assist because it would seem	°,	6 because it's actually, as you can see, above my head,
7 Chair. Perhaps slide – is it 41? Slid		7 behind me, whereas you can see it better than I can, and I
8 assist. General, do you have slide 1		8 take it you consulted with the witness, so you understand
9 you? I can see it on the big screen,	, but do you have it in	9 better than I can. Now he indicated, when he said "the
10 front of you?		10 operational commander here," if one looks at the slide one
11 MAJOR-GENERAL MPEMBE:	No, I don't have 1	11 sees immediately to the right of what is the barbed wire
12 it here, but I wanted to –	1:	12 line there are firstly two blue shapes and thereafter to
	you can see it on the –	13 the right of them again are four, and I think when he said
14 MAJOR-GENERAL MPEMBE:	I wanted to use 14	14 "the operational commander here" he was pointing to one of
15 slide 181 so that I should also show		15 those blue shapes in the second line, which is to the – and
16 with the command as quick as poss	ible, if I may be allowed. 10	16 very much to the right of the highest arrow pointing from
	, , , , , , , , , , , , , , , , , , ,	17 the phase 1 block. Would that be correct?
18 81?		18 MR NGALWANA: General, could you be more
19MAJOR-GENERAL MPEMBE:		19 specific? Just point to where you would envisage the
20 here in front of me.		20 operational commander to have been again on that slide?
-		21 MAJOR-GENERAL MPEMBE: The operational
22 to put slide 81, because, just to see		22 commander from here, from this point after the barbed wire
23 you.		has been put to create a safe area, and that place there,
	3 . 1 .	this one here, it could have been made open so that after
25 and I must apologise, I think we do	need to go back to 181 2	25 the first warning the POP will be given a command to come
	Page 11455	Page 1145
1 because a problem with all of these	slides, alternative	1 and position at this place.
2 slides that have been put forward a	s possibilities is they	2 MR NGALWANA: Before you proceed that
3 show the deployment of the barbed	wire before it was	3 far, General, can I ask you, the first line of 1, 2, 3, 4,
4 reoriented at about 11 o'clock, and	so it wouldn't be fair	4 5, the – is it brown or red? In that orange line, is that
5 to this witness to ask to comment o	on this, which wasn't	5 the barbed wire? Is that where the barbed wire would hav
6 what was put before the JOC at 1:3	0 or the commanders at	6 been placed?
7 2:30. This barbed wire line turns up	p to the left. In fact	7 MAJOR-GENERAL MPEMBE: Ja, this orange
8 by 1:30 the barbed wire line had be	en pushed back to the	8 line it indicates where the barbed wire will be placed.
9 right, which was on the original slide	e which was put to the	9 MR NGALWANA: Where would the POP line
10 witness.	10	10 have been in relation to that line?
11 MR NGALWANA: Gene	eral, what was the first 1	11 MAJOR-GENERAL MPEMBE: The POP line will
12 line on –	1	12 be in front of the barbed wire after it has been placed,
13 CHAIRPERSON: Sorry,	if you want 181, 1	13 but there will be a space just open there so that they
14 then let's have 181 then. Sorry, yes	s. 1	14 could be able to take position for dispersal.
15 MR NGALWANA: Take	us through the various 1	15 MR NGALWANA: So to the right of the
16 deployments, the various lines and	stages. 1	16 orange line depicting the barbed wire, you would have the
	•	
17 MAJOR-GENERAL MPEMBE:	The operational 1	17 POP line.
 MAJOR-GENERAL MPEMBE: commander from here, because her 		 POP line. MAJOR-GENERAL MPEMBE: Correct,
	re it will, the first line	
18 commander from here, because her	re it will, the first line 11 onal commander will be 11	18 MAJOR-GENERAL MPEMBE: Correct,
18 commander from here, because her19 of the POP will be here; the operation	re it will, the first line 11 onal commander will be 11 the TRT and STF. The 21	 MAJOR-GENERAL MPEMBE: Correct, Chairperson.
18 commander from here, because her19 of the POP will be here; the operation20 in front. 100 metres away it will be	re it will, the first line 11 onal commander will be 11 the TRT and STF. The 20 st give the warning to 2	 MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NGALWANA: How far from the barbed
 18 commander from here, because her 19 of the POP will be here; the operation 20 in front. 100 metres away it will be 21 operational commander here will firm 22 the protesters. 	re it will, the first line 11 onal commander will be 11 the TRT and STF. The 21 st give the warning to 2 23	 MAJOR-GENERAL MPEMBE: Correct, Chairperson. MR NGALWANA: How far from the barbed wire?
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	Page 11458		Page 11460
1	behind that barbed wire depicted by about five reds or	1	all accept – to give the interpreter a chance.
2	browns and that orange line, you have some small figures -	2	MR NGALWANA: Yes, Chair. So did I
3	I don't know what I can call them – in green, is it green	3	understand you correctly that the TRT line would have been
4	or blue? You have two in front just to the top of the	4	- did you say 80 or 100 metres behind the POP line?
5	longest arrow, that white arrow. You see that?	5	MAJOR-GENERAL MPEMBE: Correct,
6	MAJOR-GENERAL MPEMBE: This one?	6	Chairperson.
7	MR NGALWANA: Yes, there, that cluster,	7	MR NGALWANA: Which one? 100 or 80?
8	what does that represent, that cluster of blue?	8	MAJOR-GENERAL MPEMBE: It's 100.
9	CHAIRPERSON: Let's give the interpreter	9	MR NGALWANA: Were all these phases
10	a chance to interpret that, and I don't like, you know,	10	deployed at the same time, General, or was it done
11	this and that and here and there and so on because that's	11	gradually?
12	going to look terrible on the record for those poor people	12	MAJOR-GENERAL MPEMBE: Not at the same
13	who have to read it later, the historians of the future	13	time.
14	sitting in the archives reading this lot, apart from us	14	CHAIRPERSON: Let's take the tea
15	when we look at it in a few months' time. But anyway,	15	adjournment. May I suggest, Mr Ngalwana, I know it's going
16	let's give the interpreter a chance to interpret first. He	16	to be difficult, but I'd be grateful if you'd try to
17	doesn't have to interpret what I said about the historians	17	formulate your questions in a way which doesn't put thises
18 19	of the future, and then we can carry on. MR NGALWANA: To the right, General, of	18 19	and thats and heres and theres in. So it may have to require a bit of preparation to line up the things to
20	where the barbed wire would have been, there's a cluster of	20	things that we can see on the slide. I know it's not easy,
20	about five or six blue. What did that cluster represent?	20	but that's why I'm asking you to do it over the tea
22	MAJOR-GENERAL MPEMBE: This cluster	22	adjournment. We'll take the tea adjournment now.
23	should have taken position after the first warning has	23	[COMMISSION ADJOURNS COMMISSION RESUMES]
24	taken place. It represents –	24	[15:20] CHAIRPERSON: The Commission resumes.
25	MR NGALWANA: No, General, sorry to	25	Major-General, you're still under oath.
	Page 11459		Page 11461
1	interrupt. That's not where I'm talking. I'm saying to	1	WILLIAM MPEMBE: s.u.o.
2	interrupt. That's not where I'm talking. I'm saying to the right, behind the – ja, there, that cluster.	2	WILLIAM MPEMBE:s.u.o.CHAIRPERSON:Mr Ngalwana, now that
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RCHIVE FOR JUSTICE

		1	
1	Page 11462 if I try to impose what you want to do. I mean you and I	1	Page 11464 MR NGALWANA: The letter A to the east of
2	could sit here alone with the witness, but I'm not sure	2	the barbed wire, that's where the POP line would have been.
3	anybody else will be here. Yes, I guess it will be an	3	Correct?
4	unprotected strike, which is appropriate in this context.	4	MAJOR-GENERAL MPEMBE: The A, correct,
5	MR NGALWANA: Well, thank you, Chair –	5	Chairperson.
6	CHAIRPERSON: - facetious and let's get	6	MR NGALWANA: Now how was it envisaged
7	on with the matter.	7	that the POP line would move with a view to implementing
8	EXAMINATION BY MR NGALWANA (CONTD.):	, 8	the dispersal action? Using the letters A and B and C and
9	Chair, we've tried to follow a more pragmatic approach.	9	D, just explain to the Commission.
10	Whether it's pragmatic or not, I suppose the proof of the	10	MAJOR-GENERAL MPEMBE: The operational
11	pudding will be in the eating. General, may I take you to	11	commander from A will give the first warning to the
12	slide 149. Exhibit L is slide 149, and it will be shown on	12	protesters that, because the barbed wire has already been
13	the big screen. Now the formation that we now see,	12	placed, that they should, they will be given a reasonable
14	General, can you just explain to the Commission whether	14	time to disperse and that order will also be interpreted by
15	that was the original formation or not, as discussed at the	14	the interpreter that we had there at, on that day, in the
16	JOC?	16	language that the protesters understand.
17	MAJOR-GENERAL MPEMBE: Correct,	17	MR NGALWANA: Now when we looked at slide
18	Chairperson.	18	149, which was the deployment, right, the POP line was
19	MR NGALWANA: So was that the original	10	where A was. Remember?
20	formation as discussed at the JOC?	20	MAJOR-GENERAL MPEMBE: Correct,
21	MAJOR-GENERAL MPEMBE: Yes.	20	Chairperson.
22	MR NGALWANA: Can you just explain how it	22	MR NGALWANA: It's now – can you just
23	was envisaged, the deployment was envisaged? Remember that	23	take the Commission through where that line has now moved
24	the bottom is the south and to your right-hand side is the	23	on this slide?
25	east. To the top of that slide is the north, and to the	25	MAJOR-GENERAL MPEMBE: After the first
20		20	
	Page 11463		Page 11465
1	Page 11463 left is the east – west.	1	Page 11465 command the, in encouraging the dispersal process, the POP
1 2	-	1 2	
	left is the east – west. MAJOR-GENERAL MPEMBE: Chairperson, this picture depicts when the barbed wire has been placed from		command the, in encouraging the dispersal process, the POP
2	left is the east – west. MAJOR-GENERAL MPEMBE: Chairperson, this	2	command the, in encouraging the dispersal process, the POP will be given a command to come to position B and take their position at B point. MR NGALWANA: Which is more to the north
2 3	left is the east – west. MAJOR-GENERAL MPEMBE: Chairperson, this picture depicts when the barbed wire has been placed from the south - northerly direction, and the red vehicles there depict the Nyalas that carried the barbed wire.	2 3	command the, in encouraging the dispersal process, the POP will be given a command to come to position B and take their position at B point.
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1	from the eastern direction and north-eastern direction	1	you said you then went to General Annandale about going
2	towards the west, in other words pushing people to go more	2	onto a chopper. What time roughly was that, General, on
3	towards the west? Is that correct?	3	that afternoon?
4	MAJOR-GENERAL MPEMBE: Correct,	4	MAJOR-GENERAL MPEMBE: At about 15,
5	Chairperson, those blue arrows indicate the dispersal	5	between 15:30 and 16:00. That time I went to Major-General
6	process, as well as the sweeping process by the TRT, STF,	6	Annandale to say I would like to see the dispersal, as well
7	and the NIU.	7	also listening to the radio, so whether is there the
8	MR NGALWANA: Now you indicated that at	8	chopper that is available, and Major Annandale said the
9	the time when the deployment was discussed, the blue lines	9	chopper that is available is the one of the Protea, which -
10	were not there. When did the blue lines form part of this	10	MR NGALWANA: Okay. Between – or sorry,
11	picture? Do you know?	11	the interpreter –
12	MAJOR-GENERAL MPEMBE: Chairperson, I	12	CHAIRPERSON: The interpreter.
13	said to encourage the dispersal and the show of force,	13	MR NGALWANA: Now between the end of, or
14	after the POP have taken up their position, after the	14	the adjournment of the special JOCCOM and your going to
15	second warning of the operational commander to the	15	Major-General Annandale to talk about going onto a chopper,
16	protesters and the operational commander will give a	16	what were you doing in that space of about an hour and a
17	command to the TRT to take 100 metres away from the	17	half or so, General?
18	dispersal line and come at D. That will be at that	18	MAJOR-GENERAL MPEMBE: I was still at the
19	position of the north.	19	JOC and listening to what was happening and also giving the
20	MR NGALWANA: I'm not going to take you	20	command, checking as to whether all members are being
21	through how the dispersal action was in fact implemented	21	briefed and posted.
22	because you were not there, General. You can only comment	22	MR NGALWANA: Wasn't there a stage at
23	on what the plan was and how –	23	which Mr Mathunjwa came back before you went to the
24	CHAIRPERSON: It wasn't implemented	24	chopper? Or have I got my events the wrong way around?
25	anyway. As we'd been told over and over again, it was	25	[15:40] MAJOR-GENERAL MPEMBE: Chairperson, I did
	Page 11467		Page 11469
1	disrupted before they got to that stage. So –	1	testify earlier on that Mr Mathunjwa did come and he went
2	MR NGALWANA: By an attempted	2	back and sent the SMS to Major-General Annandale and Major-
3	implementation. Chair, may I request that this inasmuch as	3	General Annandale also sent. That was before the special
4	it's got markings, be entered as a new exhibit? Would it	4	JOCCOM meeting.
5	be necessary to do that? Because the exhibit L slide 181	5	CHAIRPERSON: No, no, that's not right.
6	doesn't have A, B, C and D.	6	Special JOC meeting was 1:30 to 2, as I understand your
7	CHAIRPERSON: Yes, you're quite right.	7	evidence, and the minutes. The minutes I presume are
8	Perhaps we could have a – I don't know if you've got	8	correct at least on the times. Now according to your
9	printed copies now or you can give them to us tomorrow	9	evidence you got an SMS from Mr Mathunjwa at about 2:15.
10	morning and we will then, Ms Pillay will prepare overnight	10	In fact paragraph 46 of your statement, this is your first
11	to inform us what the exhibit description should be and	11	statement at page 20 of the bundle, says, "Mr Mathunjwa
12	then you can hand it in.	12	returned to the JOC at about 2 o'clock," 14:00, so it's
13	MR NGALWANA: Yes, thank you, Chair. Now	13	just at the end of the JOCCOM meeting, "and stated he
14	we were still on what was discussed at that special JOCCOM,	14	wanted to give the Provincial Commissioner feedback. We
15	General. You've explained to the Commission that you	15	advised him to give us the report-back. He however left
16	discussed stage 3 and the implementation thereof. The	16	without informing us of the outcome of his meeting with the
17	special JOCCOM then ends some, well half an hour hence or	17	protesters at the koppie." Then you added something in, in
18	an hour hence. What do you then do from the time the	18	paragraph 26 of your supplementary statement; we won't
19	special JOCCOM ends to the late afternoon? According to	19	worry about that. "Then soon after he left, Mr Mathunjwa
20	EE, the meeting adjourned at 14:00. Is that your	20	sent me an SMS at about 14:15. The SMS read," and you set
21	recollection?	21	out the SMS, and you showed it to General Annandale and he
22	MAJOR-GENERAL MPEMBE: Correct,	22	said he got a similar one, and you said you tried to call
23	Chairperson.	23	him but he didn't answer his mobile phone, and Major
24	MR NGALWANA: Now you've testified, I	24	Annandale undertook to respond to the SMS, he typed the
25	think - or let me rather ask you this. Later the afternoon	25	message, and Major Annandale told us about the SMS. You
	RCHIVE FOR JUSTICE		

	Page 11470		Page 11472
1	then say, "I requested Major-General Annandale to contact	1	asked to ask Mr Mathunjwa what he had to convey to
2	Major-General Naidoo at forward holding area 1 and tell him	2	management? Is that the message which was given to Major-
3	of the SMS and ask him to speak to Mr Mathunjwa before he	3	General Naidoo, which he couldn't implement apparently
4	addressed the protesters." He had gone back to address the	4	because Mr Mathunjwa had already passed forward holding
5	protesters the second time. "Major-General Annandale	5	area 1?
6	contacted Major-General Naidoo and Major-General Naidoo	6	MR NGALWANA: General, did you mean
7	advised Mr Mathunjwa had already driven past forward	7	convey to management or convey to the people on the koppie?
8	holding area by the time General Annandale called." That's	8	MAJOR-GENERAL MPEMBE: Mr Mathunjwa
9	what you say in your statement. So I take it that's right,	9	wanted to tell us something, the management, I mean SAPS
	unless that's –		
10		10	management. That's what I wanted to know what is that that
11	MAJOR-GENERAL MPEMBE: Correct,	11	he wants to convey to SAPS management.
12	Chairperson.	12	MR NGALWANA: Right, now the special
13	CHAIRPERSON: So therefore you were wrong	13	JOCCOM is finished. You remain at the JOC until the time
14	when you said he came back before the JOC meeting. He came	14	you go to the chopper. While you're at the JOC are you
15	back the first time, was before the JOC meeting, and in	15	getting feedback about how the implementation of stage 3,
16	fact he was still away when the special JOC meeting	16	in other words the dispersal action is progressing?
17	started, hadn't come with feedback yet, because he came	17	MAJOR-GENERAL MPEMBE: Correct,
18	back after that, as we've seen from the passage I read to	18	Chairperson. We were receiving the feedback and while we
19	you, and that's the passage I think Mr Ngalwana wants to	19	were receiving the feedback, the dispersal process haven't
20	get you to tell us. But you've confirmed that that	20	yet started and then that's when then I also went to the
21	paragraph in your statement is correct.	21	chopper.
22	MAJOR-GENERAL MPEMBE: Correct,	22	MR NGALWANA: Are you saying at the time
23	Chairperson.	23	you went to Annandale and talked about a chopper, you
24	MR NGALWANA: So there's no need for us	24	hadn't yet heard of the, whether the dispersal action has
25	to traverse that ground again. You agree with what the	25	started?
	Page 11471		Page 11473
1	Page 11471 Chairperson has read to you. General, as you are –	1	Page 11473 MAJOR-GENERAL MPEMBE: Correct,
1 2		1 2	-
	Chairperson has read to you. General, as you are –		MAJOR-GENERAL MPEMBE: Correct,
2	Chairperson has read to you. General, as you are – CHAIRPERSON: I'd like to pose a question	2	MAJOR-GENERAL MPEMBE: Correct, Chairperson.
2 3	Chairperson has read to you. General, as you are – CHAIRPERSON: I'd like to pose a question about that. It was obviously important to speak to Mr	2 3	MAJOR-GENERAL MPEMBE: Correct, Chairperson. CHAIRPERSON: I have to stop you there.
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1	Page 11474 but I take it you didn't know that.	1	Page 11476 MAJOR-GENERAL MPEMBE: The report was
2	MAJOR-GENERAL MPEMBE: Correct,	2	saying "The line is moving towards TRT."
		2	
3	Chairperson.		CHAIRPERSON: Yes, that's right. Now it
4	CHAIRPERSON: So I would have assumed	4	would seem from what we've heard elsewhere that that was
5	that you would have been looking at your watch and you	5	the beginning of the charge forward by the strikers towards
6	would have said well, you thought it in fact started at	6	the police service members who were standing there. This
7	3:30, I take it. Is that right? You had no reason – or	7	seems to be the evidence that we have. So we can therefore
8	could you hear from the radio that messages were coming in	8	determine by reference to that message that you heard on
9	that we can't start just yet because Mathunjwa is still	9	the radio at what time you went to the helicopter. Is that
10	here?	10	right?
11	MAJOR-GENERAL MPEMBE: Correct,	11	MAJOR-GENERAL MPEMBE: Correct,
12	Chairperson, and knowing very well what I have said how I	12	Chairperson.
13	envisaged the dispersal will take place, I knew that there	13	CHAIRPERSON: I understand that Mr
14	was still going to be the order that has to be given,	14	Chaskalson has compiled a timeline, which I think is now
15	reasonable time, the position of the POP and so on. Then	15	generally accepted. Can you tell us, Mr Chaskalson, what
16	that's what I know that that also has to come in after Mr	16	the time of that incident is as far as you can determine
17	Mathunjwa has addressed the protesters.	17	it?
18	COMMISSIONER HEMRAJ: And according to	18	MR CHASKALSON SC: Mr Chair, I'll need a
	5	19	bit more precision on the exact incident to which you're
19 20	your estimation, how much time would those preliminary	20	referring. If you're talking about the point at which the
	steps have taken?		
21	MAJOR-GENERAL MPEMBE: Chairperson, most	21	protesters advanced on the TRT line to the east of the
22	of the time it's, the time there is determined by the	22	kraal, in other words a few seconds before the shooting, I
23	operational commander, but I was listening on, always	23	can give you a time.
24	listening on the radio whether it has started or not.	24	CHAIRPERSON: Yes, that seems to be the
25	COMMISSIONER HEMRAJ: That doesn't really	25	time that's being talked about. What is that time?
	Page 11475		Page 11477
1	Page 11475 answer the question. How much time did you envisage the	1	Page 11477 MR CHASKALSON SC: The shootings
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		1	
1	Page 11478	1	Page 11480
1	dispersal action, or rather the unfortunate shooting	1	talking about the 16th and we know this from paragraph 6 on
2	incident has not been recorded, or at least the Commission	2	that same page. Paragraph 9 he says, "At the time all the
3	doesn't have footage of the shooting in what is now known	3	media was withdrawn because it was the information that we
4	as scene 2. Correct?	4	were to be killed." In paragraph 10 he says, "I captured
5	MAJOR-GENERAL MPEMBE: Correct,	5	incidences inclusive of Mathunjwa addressing the miners.
6	Chairperson.	6	We then moved to the back row next to the TRT and it was
7	MR NGALWANA: And there is no police	7	around 12 noon." Then in paragraph 11 he gives this
8	footage of the shooting at scene 1 either. Correct?	8	explanation, "Captain Adriao of Communication Services
9	[16:00] MAJOR-GENERAL MPEMBE: Correct,	9	said," and he quotes, "'Are you guys from SAPS?'" "Yes,"
10	Chairperson.	10	Warrant-Officer Masinya says. I see he confuses himself
11	MR NGALWANA: Do you know why?	11	and Julius Caesar, referring to himself in the third
12	MAJOR-GENERAL MPEMBE: Chairperson, there	12	person. "You are being identified too as police spies and
13	was a time when I was informed that Captain Adriao did go	13	you should withdraw from this place as the miners said they
14	to the members of the, who were taking the video, to say	14	wanted to kill you." You see that?
15	that their lives is in danger and that that, and with, as a	15	MAJOR-GENERAL MPEMBE: Correct,
16	result of that and the members went back to the JOC.	16	Chairperson.
17	CHAIRPERSON: Did anybody ever ask them	17 18	MR NGALWANA: Is that what was conveyed
18	why they didn't just go to the protected area on the other	18	to you at the JOC? MAJOR-GENERAL MPEMBE: Correct,
19	side of the wire? That was the protected area, wasn't it?		
20 21	The wire was there to protect the police and the media.	20 21	Chairperson. MR NGALWANA: Now in the next paragraph,
21	Did anybody ever ask them why they didn't go there instead	21	MR NGALWANA: Now in the next paragraph, paragraph 12, he then says that they went back to the JOC.
22	of going back to the JOC? They could at least have taken some pictures from there, couldn't they?	22	"The shooting started. We heard this because we were
23 24	MAJOR-GENERAL MPEMBE: Chairperson, I	23 24	listening through the radio at the JOC." Now General, I
24 25	don't know the reason specifically, but what I know is that	24	wish to take you to his second supplementary statement.
20	don't know the reason specifically, but what I know is that	25	wish to take you to his second supprementary statement.
	Page 11479		
	raye 114/9		Page 11481
1	they have given a statement that explaining what happened	1	Page 11481 I'm not sure if that forms part of HHH8, and I promise,
1 2		1 2	
	they have given a statement that explaining what happened		I'm not sure if that forms part of HHH8, and I promise,
2	they have given a statement that explaining what happened there.	2	I'm not sure if that forms part of HHH8, and I promise, this is the last issue I deal with. It's pagination 187 in
2 3	they have given a statement that explaining what happened there. CHAIRPERSON: The fact that they went	2 3	I'm not sure if that forms part of HHH8, and I promise, this is the last issue I deal with. It's pagination 187 in the top right-hand corner, the first page starts at
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2	Page 11482 that's an appropriate time to adjourn, I'll take it. CHAIRPERSON: We will take the adjournment until 9:30 tomorrow morning. [COMMISSION ADJOURNED]	
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