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 113   18 JULY 2013   PAGES 12076 TO 12157

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1 [PROCEEDINGS ON 18 JULY 2013]

2 [09:41] CHAIRPERSON: I'm sorry we're starting

3 late; we had a number of matters to attend to and

4 interviews in chambers. Mr Mathibedi – he's not here; we

5 have Mr Ngalwana with us. In your absence, Mr Ngalwana, Mr

6 Mathibedi undertook to give us a statement relating to the

7 minutes that either were taken or weren't taken at the JOC

8 meeting on the 14th. Do you have that statement?

9 MR NGALWANA: I'm told it's not yet

10 ready, Chairperson.

11 CHAIRPERSON: When will it be ready?

12 MR NGALWANA: May I take instructions on

13 that over –

14 CHAIRPERSON: Revert when you have them,

15 yes.

16 MR NGALWANA: I did read about that in

17 the transcript.

18 CHAIRPERSON: Yes, thank you. I

19 understand that the representatives of the Human Rights

20 Commission wish to say something. Is that correct?

21 MS HARDY: Yes, that's correct, Chair.

22 Thank you. The Human Rights Commission just wishes to

23 place on record that we confirm, we are in fact in

24 attendance today because we are of the view that our

25 presence and participation in the Commission's process is

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1 important, and in line with our constitutional mandate, and

2 of course our role before this Commission. We also

3 recognise the importance of the participation of those

4 parties who have provisionally withdrawn. We respect their

5 position and we are deeply concerned at the fact that they

6 are not at present participating in the process. We are

7 aware that the continued participation of those parties may

8 be dependent on a judgment that is due to be delivered at

9 2PM this afternoon, and in light of that judgment and once

10 we have an indication from those parties on what their

11 position would be and their continued participation, once

12 we have that indication we may then need to review our

13 position.

14 CHAIRPERSON: Thank you. Is there

15 anything else that you wish to say?

16 MS HARDY: That's all, thank you, Chair.

17 CHAIRPERSON: Mr Kgaka, do you wish to

18 say something as well?

19 MR KGAKA: Yes, thank you, Mr

20 Chairperson. Yes, Mr Chairperson, our instructions are at

21 the moment, is to place on the record that Bapo Ba Mogale

22 also want to provisionally withdraw from the participation,

23 pending the outcome of the urgent application that is

24 outstanding at the North West Gauteng Court.

25 CHAIRPERSON: Yes, thank you. I don't

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1 think you're actually on record as representing them.

2 You're appearing for the administrator, are you, of the

3 Traditional Authority?

4 MR KGAKA: Yes, correct, Mr Chairperson.

5 CHAIRPERSON: Put yourself on record,

6 please.

7 MR KGAKA: My name is Mr Kgaka, Elson

8 Kgaka, E-L-S-O-N, K-G-A-K-A.

9 CHAIRPERSON: And who is your client you

10 represent?

11 MR KGAKA: Mr Chairperson, I'm

12 representing the administrator for Bapo Ba Mogale. You'll

13 recall, Mr Chairperson, that Bapo Ba Mogale, they're under

14 administration.

15 CHAIRPERSON: - was appointed by the

16 Premier of the North West Province. Is that correct? In

17 terms of the relevant act.

18 MR KGAKA: Yes, correct, yes, then he

19 appointed administrators.

20 CHAIRPERSON: Yes. Thank you very much.

21 Sorry, before I remind the Major-General he's still under

22 oath, is there anyone else who wishes to make a statement

23 of any kind before we proceed? There's one thing I want to

24 say before we proceed, and that is that from next week we

25 will be proceeding initially on, as a trial basis, with the

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1 system of simultaneous translation and which the, and if it

2 proves feasible, as we believe it should, it will

3 considerably shorten the amount of time taken because we

4 will not have consecutive translations we have at the

5 moment, but simultaneous translation, so that it should

6 almost double the time available for evidence. Major-

7 General, you're still under oath.

8 WILLIAM MPEMBE: s.u.o.

9 CHAIRPERSON: Before Mr Madlanga proceeds

10 with his cross-examination, we asked you, I think, to see

11 if you could get some information for us. One of the

12 questions, you may remember, related to that information

13 which was obtained on or after the 13th, which could have

14 been used in relation to cordon and search operation. Do

15 you have that information?

16 MAJOR-GENERAL MPEMBE: Correct,

17 Chairperson.

18 CHAIRPERSON: What have you got?

19 MAJOR-GENERAL MPEMBE: Chairperson, the

20 dockets that were registered on the 13th where subsequent

21 arrests were made, it's Marikana CAS118/8/2012, Murder; six

22 people were arrested, and they were arrested on 23rd to 24th

23 October, and there's also Marikana CAS119 of August, 8/12,

24 the CAS is murder, happened on the 13th; nine people were

25 arrested, and they were arrested on the 13th to the 14th.

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1   CHAIRPERSON: Of which month?

2   MAJOR-GENERAL MPEMBE: Of August,

3 Chairperson. Chairperson, then there are also other

4 dockets that were registered, but not on the 13th. Those

5 two were the 13th ones. Marikana CAS136 is the one that was

6 registered on the 16th of August, where one person was

7 arrested for possession of firearm and ammunition.

8 Marikana CAS135 of August 2012, possession of firearms and

9 ammunition and attempted murder; one person was arrested.

10 That was on the 16th of August, Chairperson. Marikana

11 CAS139 of August, it's possession of firearms; one person

12 was arrested. It's also on the 16th of August.

13 Chairperson, this one is Marikana CAS134. That is where

14 more people were arrested.

15   CHAIRPERSON: On what date?

16   MAJOR-GENERAL MPEMBE: It's on the 16th of

17 August that relates to that one. Then it's Marikana

18 CAS121. It's also murder, and four people were arrested.

19 They were arrested on the 23rd/24th October. Marikana

20 CAS107, the charge is murder, and six people were arrested

21 on the 23rd/24th October. Chairperson, these are the

22 dockets that I was also referring to that the information,

23 even though I'm not going to be precise on the information

24 because the investigation is continuing, and also they're

25 revealing the names of the people, which I did not put for

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1 –

2   CHAIRPERSON: Yes, I understand. Thank

3 you. Is that the information to which you were referring?

4   MAJOR-GENERAL MPEMBE: Correct,

5 Chairperson.

6   CHAIRPERSON: Was there anything else

7 that you wish to bring to our attention arising from the

8 cross-examination on Monday and Tuesday, anything else that

9 you want to mention now before Mr Madlanga proceeds with

10 his cross-examination?

11   MAJOR-GENERAL MPEMBE: Correct,

12 Chairperson. Chairperson will recall that I did request

13 the esteemed Chairperson and the Commissioners when I was

14 asked a question of who made a decision to go to stage 3,

15 Chairperson, I was provided with all the transcripts of the

16 15th and the 16th, and also I did get the, I did have the

17 transcripts of the 13th where Adv Ngalwana asked me the

18 question. Chairperson, page 11442, lines 23, 24, of that

19 transcript, and page 11443, line 1 to 25, page 11444, line

20 1 to 21. Chairperson, after those lines it was clear that

21 it's me who took a decision, which I subsequently confirmed

22 with Adv Madlanga.

23   CHAIRPERSON: What was that decision?

24   MAJOR-GENERAL MPEMBE: It's that I did

25 take a decision that we go to stage 3, and I briefed the

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1 Provincial Commissioner.

2   CHAIRPERSON: Is there anything else you

3 want to say in that regard?

4   MAJOR-GENERAL MPEMBE: Chairperson, I

5 understand the confusion that my words which I tried to

6 explain, it was on page, it's on the 15th, which it was

7 referred to by Adv Madlanga. It's page 11946 and it's

8 lines 22 to line 25 on that page, again on page 11947 from

9 page 1 to page 10.

10   CHAIRPERSON: [Inaudible]

11   MAJOR-GENERAL MPEMBE: Correct,

12 Chairperson, page, line 1 to page, line 1 to line 10, where

13 I said – if we could go to where I said I made a decision.

14 I said I made a decision to go to the Provincial

15 Commissioner, and that decision is the one that briefed

16 her, and I think the Judge Hemraj also asked me, that

17 sentence caused a confusion, which I did request that I

18 should request my – but I want to put it on record that my

19 evidence as it is on the 13th, remains, Chairperson.

20   CHAIRPERSON: Is there anything further

21 you wish to say at this point?

22   MAJOR-GENERAL MPEMBE: No, Chairperson.

23   CHAIRPERSON: Are you confident that what

24 you've now said removes the confusion that may have existed

25 previously?

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1   MAJOR-GENERAL MPEMBE: Pardon –

2   CHAIRPERSON: You said last time you gave

3 evidence that there was some confusion on the point. I say

4 are you confident that what you've now told us removes that

5 confusion?

6   MAJOR-GENERAL MPEMBE: Correct,

7 Chairperson.

8   CHAIRPERSON: Thank you. There's one

9 point I want to ask you before Mr Madlanga proceeds with

10 this cross-examination, and that is it's a question he

11 asked you and which I didn't quite understand the answer,

12 so I want to give you an opportunity to explain it to me.

13 The point he put to you is this; he said you decided to

14 leave the JOC and get into the helicopter to find out what

15 was happening on the ground. You then said that when you

16 were in the helicopter you didn't really know what was

17 happening on the ground, so you decided to return to the

18 JOC to find out what was happening on the ground, but you

19 also said that that was 20 minutes after you left. So what

20 Mr Madlanga asked you was when it was apparent to you that

21 you couldn't see what was happening on the ground from the

22 helicopter and you'd have to return to the JOC, why did you

23 allow 20 minutes to elapse before you returned to the JOC.

24 That was the question asked. I'm not sure that I

25 understood your answer. Could you repeat it please, for my

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1 benefit?

2 MR NGALWANA: Chair, my recollection of

3 the evidence as regards why the General –

4 CHAIRPERSON: The evidence, this is

5 something that happened yesterday when you weren't – not

6 yesterday, on Tuesday when you weren't here. I put the

7 question which Mr Madlanga asked, which he asked without

8 objection. The witness gave an answer. I don't understand

9 the answer. I just want him to repeat it so I can

10 understand it. So would you answer my question, please?

11 MR NGALWANA: Chair, it's simply the

12 premise of the Chairperson asking the question that I wish

13 to correct.

14 CHAIRPERSON: The passage on which the

15 question was based by Mr Madlanga was taken directly from

16 the statement the witness made. I had the passage in front

17 of me when he put the question. It was correctly put to

18 the witness, so there's no substance in your objection.

19 Would you please proceed, Major-General?

20 MAJOR-GENERAL MPEMBE: Chairperson,

21 firstly I did say that my reason to go the chopper, I said

22 I wanted to see and also to link up with what is happening;

23 that will give me a proper perspective, and what I

24 indicated is that I could see the dispersal process by the

25 Nyalas, and I could hear from the radio the instructions

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1 that were given, particularly by Brigadier Calitz, who's an

2 operational commander.

3 [10:01] The only matter that I could not see are the

4 people that were on the ground, but because I was in the

5 chopper I could hear everything that was taking place,

6 linked up with what I could see. I couldn't detect any

7 other problem, except when I heard Lieutenant-Colonel

8 Vermaak was talking about, I did testify, said bodies lying

9 down, and that's when then I wanted to go back to the JOC

10 with the reasons already I have indicated of me trying to

11 talk with Brigadier Calitz on the radio, but I did say that

12 I did not contact him on the cell phone, with the reasons

13 that I have also given.

14 CHAIRPERSON: Thank you. Commissioner

15 Hemraj would like to ask you a question also.

16 COMMISSIONER HEMRAJ: Your evidence,

17 General, earlier on about the possibility of a cordon and

18 search operation earlier on as a result of arrests can only

19 refer to those arrests on the 13th and the 14th of the nine

20 people in that second Marikana CAS number you've given us.

21 MAJOR-GENERAL MPEMBE: Chairperson, may

22 the question be repeated?

23 COMMISSIONER HEMRAJ: Yes. Your earlier

24 evidence about the possibility of an earlier cordon and

25 search operation, you had said it was as a result of

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1 information that would be obtained from persons that had

2 been arrested. Now that can only pertain to the persons

3 arrested on the 13th and 14th in the CAS number 119 of

4 August. Isn't that so?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson, including CAS118, I said we had two CAS

7 numbers.

8 COMMISSIONER HEMRAJ: Yes, but I

9 understood your evidence to be that those persons were

10 arrested on the 23rd and 24th of October.

11 MAJOR-GENERAL MPEMBE: I said the dockets

12 were those of the 13th and the information obtained from -

13 that's the information which I said I didn't indicate - I

14 could not indicate here how was it obtained, but that

15 information led to the arrest which took place in October,

16 but without us attending that scene and processing the

17 scene, because we were talking about stages 4 and 5 by

18 then, and then I said that information also assisted us to

19 do a follow-up operation, and also that information could

20 be used for the cordon and search.

21 COMMISSIONER HEMRAJ: Yes, thank you.

22 CHAIRPERSON: Mr Madlanga, I'm sorry we

23 took so long before giving you a chance, but would you care

24 to proceed with your cross-examination?

25 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):

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1 Thank you, thank you, Mr Chairman. General, I'm just going

2 to refer to evidence that you gave on Tuesday, and I'm

3 going to premise my question on that. You agreed with me

4 that it is necessary for an overall commander to keep

5 himself or herself informed as an operation is unfolding,

6 that the operational commander - the overall commander

7 rather, may do this by radio or cell phone, as at least two

8 possibilities, and that there were problems with the radio

9 system, and lastly that because of the problems with the

10 radio system you assumed or believed that cell phone

11 contact would also present problems. Now my question is

12 this; did you even consider contacting Brigadier Calitz by

13 cell phone, General?

14 MAJOR-GENERAL MPEMBE: Chairperson, I did

15 testify that I did not contact him.

16 MR MADLANGA SC: No, I'm asking did you

17 even consider contacting him; I'm not asking whether you

18 did contact him, specifically by cell phone.

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson, and that's why my reason was that knowing that

21 Brigadier Calitz had a problem with a radio while he was

22 still under the electricity lines and also he was, I know

23 that they were between the mountains. That's why I thought

24 that the sign would not be better off, knowing that I'm

25 also in the air.

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1   CHAIRPERSON: I think you mean the
2   signal. When you say the sign, I think you mean the
3   signal. Your evidence, as I understand it is because there
4   was a problem with the radio signals you assumed that there
5   would be the same problem with the mobile phone signals as
6   well. Is that -
7   MAJOR-GENERAL MPEMBE: Correct,
8   Chairperson.
9   MR MADLANGA SC: Please tell me when you
10   have in front of you paragraph 51 of your statement GGG12
11   and paragraph 28 of your statement HHH3, just have both
12   paragraphs ready.
13   CHAIRPERSON: Give us the two paragraph
14   numbers again, please.
15   MR MADLANGA SC: 51 of GGG12, Mr
16   Chairman, and 28 of HHH3.
17   MAJOR-GENERAL MPEMBE: Chairperson, I can
18   confirm that they are in front of me, I do have them.
19   MR MADLANGA SC: 51 reads, "At all times
20   while I was in the helicopter, which was a period of about
21   20 minutes or less, I was accessible by radio both to the
22   operational commander, Brigadier Calitz, and to the JOC.
23   As overall commander I could only give direction when
24   direction was sought either from the JOC or from the
25   operational commander. Neither sought direction," and then

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1   going to paragraph 28 of the other statement, "I should add
2   to what I say in paragraph 51 of my original statement that
3   as overall commander I am the soundboard to the operational
4   commander and the JOC when problems arise and they inform
5   me through the radio or cell phone of those problems and
6   seek my guidance. This did not happen." I take it to mean
7   that they did not seek your guidance. "It is not the
8   function of the overall commander to usurp the functions of
9   the operational commander, particularly when the
10   operational commander is better positioned as being on the
11   ground and experiencing action firsthand." General, the
12   distinct impression I get from this is that you were simply
13   waiting to be contacted, and because you were not contacted
14   then you just decided to remain and let things unfold. Or
15   it does not seem, as you suggest, that you ever even
16   considered making contact yourself. Do you agree with the
17   impression I have?
18   MAJOR-GENERAL MPEMBE: No, Chairperson.
19   Chairperson, my conduct of the 13th is very clear. I'm a
20   general that leads in the front -
21   MR MADLANGA SC: The 16th, General, the
22   16th please.
23   MAJOR-GENERAL MPEMBE: I'm giving an
24   example of the 13th -
25   MR MADLANGA SC: Oh, oh.

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1   MAJOR-GENERAL MPEMBE: - to answer the
2   question of the 16th.
3   CHAIRPERSON: Let him proceed.
4   MAJOR-GENERAL MPEMBE: I did testify in
5   this Commission that I'm a general that leads in the front,
6   and also the Commission said that I assume a position of
7   the operational commander on the 13th. Hence I say it could
8   not be true that I could just be sitting and waiting for
9   the report that comes from the ground.
10   MR MADLANGA SC: No further questions,
11   Commissioners, thank you.
12   CHAIRPERSON: Before - I think the next
13   cross-examiner is going to be Mr Burger on behalf of
14   Lonmin. Before he starts his cross-examination, Mr
15   Ngalwana, you said you'd take instructions in regard to the
16   affidavit in respect of the minutes of the meeting of the
17   14th. In your absence on Tuesday there was also a mention
18   made of certain things which Captain Moolman did or didn't
19   do, and the witness suggested that information should be
20   got from her and I said it would be more appropriate if
21   counsel, or the attorneys representing the police did that.
22   Do you know whether that's been done? If not, perhaps you
23   could instruction in respect of that matter also.
24   MR NGALWANA: I understand it is being
25   done, Chairperson, and -

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1   CHAIRPERSON: Thank you. Mr Burger.
2   MR BURGER SC: Chair, my learned friend
3   Mr Shozi will pose questions to the General.
4   CHAIRPERSON: Mr Shozi.
5   MR SHOZI: Chair, members of the
6   Commission, thank you. Chair, we learnt for the first time
7   yesterday that we would have cross-examine General Mpembe
8   today and the effect of that was that we didn't have the
9   opportunity to indicate both to the Chair and the
10   Commissioners and our colleagues what documents we'd be
11   relying upon for our cross-examination. We do apologise
12   for that. We will try as far as possible and confine
13   ourselves to the documents which are squarely before you.
14   There is, however, one document, Chair, it's part of the
15   exhibits but it's been a while since it was last referred
16   to it in these proceedings and so we didn't think it would
17   be readily available to you and so we took the liberty to
18   make copies of the document and in due course, when we get
19   to it, we will beg your leave to hand it up.
20   CHAIRPERSON: Have you given a copy to
21   the witness before we started this morning, or has he not
22   seen it yet?
23   MR SHOZI: No, Chair, we haven't, but I'm
24   confident that it won't prejudice the witness in any way.
25   It's a short passage that we'll be referring to from the

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1 document.
2   CHAIRPERSON: I see. Well, if of course
3 you don't get to it before the tea adjournment then you can
4 give it to the witness to look at during the tea
5 adjournment and draw his attention to the passage in
6 particular upon which you wish to rely.
7   MR SHOZI: We'll happily do that,
8 Chairperson, thank you.
9   MS PILLAY: Chair, if I may just indicate
10 that Mr Ngalwana was informed of the document that Mr Shozi
11 is referring to, this morning.
12   CHAIRPERSON: He may have been informed,
13 but the question is whether the witness knows, because Mr
14 Ngalwana, as he knows very well, isn't allowed to answer
15 questions on behalf of the witness. The witness must
16 answer on his own behalf.
17   CROSS-EXAMINATION BY MR SHOZI: General,
18 good morning.
19   MAJOR-GENERAL MPEMBE: Good morning,
20 Advocate.
21   MR SHOZI: At the commencement of the
22 proceedings this morning you took the Commission through a
23 number of passages which emanates from your testimony of
24 the 13th of June. Do you recall that?
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2   MR SHOZI: Would you care to tell the
3 Commission who drew your attention to these passages?
4   MAJOR-GENERAL MPEMBE: I do not
5 understand the question, except by saying that this is my
6 past evidence-in-chief.
7   MR SHOZI: I'm aware of that. I'm simply
8 asking you who was it that drew your attention to these
9 passages that you referred the Commission to this morning.
10   MAJOR-GENERAL MPEMBE: Chairperson, it's
11 myself. I did a research on myself after having received -
12   CHAIRPERSON: I thought that -
13   MAJOR-GENERAL MPEMBE: Maybe I don't
14 understand the question.
15   CHAIRPERSON: Yes, I'm sorry to interrupt
16 you. I thought that on Tuesday your attention was drawn to
17 certain passages by Mr Madlanga and you asked – or he
18 suggested to you that you'd said certain things at certain
19 stages in your evidence and you asked for the references,
20 and am I correct in thinking that the passages you referred
21 to this morning are the ones to which your attention was
22 drawn by Mr Madlanga on Tuesday? Oh, I see, sorry, I
23 misunderstood. I understand you – sorry, I mentioned it
24 now. You asked to be provided with a transcript of your
25 previous evidence so you could look through it. Is that

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1 correct?
2   MAJOR-GENERAL MPEMBE: That's correct,
3 Chairperson.
4   CHAIRPERSON: And is the exercise you
5 performed yesterday; once you'd been given the transcript,
6 did you go through it and identify those passages? Is that
7 what you're saying?
8   MAJOR-GENERAL MPEMBE: That's correct,
9 Chairperson.
10   MR SHOZI: I see. Now -
11   MR MADLANGA SC: If I may, I drew his
12 attention specifically to the earlier evidence, and as to
13 the later evidence, at that stage I did not yet have the
14 transcript and I said but from recollection from what you
15 had said yesterday, General, referring to his evidence that
16 was given on Monday. So yes, just to add to what, my
17 recollection of it, Chair.
18   MR SHOZI: Now, General, I want to
19 explore four themes with you this morning, if I may, the
20 first of which is this, and it pertains to the interaction
21 which you had with Mr Blaauw of Lonmin on Monday 13 August
22 2012. Do you remember the interaction that you testified
23 about, i.e. your request to him to secure for you a
24 Fanagalo interpreter? You recall that?
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson.
2   MR SHOZI: The second theme that I want
3 to explore with you is the suggestion, or perhaps more
4 precisely the criticism against Lonmin that what Lonmin
5 should have done between the period 14 August to 16 August
6 was to have gone to the mountain to negotiate with the
7 strikers in relation to their wage demands. The third
8 theme that I want to explore with you pertains to the
9 events of the 16th of August and the role that you played,
10 or perhaps the role that you ought to have played in your
11 capacity both as the commander of the JOC and the overall
12 commander of the operation. And then lastly I'm going to
13 deal very briefly with the events at Potchefstroom, or the
14 Potchefstroom meeting.
15 [10:21]   There is just one small matter, General Mpembe,
16 that I want to get out of the way, or perhaps clear with
17 you, and that pertains to your evidence of the 14th of June.
18 You testified in relation, or in answer to a question by
19 the Chairperson, you will recall that on the 16th of August
20 you asked to be flown over the area for you to get a clear
21 view of what was happening. You recall that?
22   MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson.
24   MR SHOZI: And you testified that whilst
25 you were still airborne, you heard over the radio Colonel

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1   Vermaak saying that there were bodies down. You recall
2   that? The Chairperson asked you whether at that point you
3   gained the impression that people may have been killed.
4   You recall that?
5   MAJOR-GENERAL MPEMBE: Correct,
6   Chairperson.
7   MR SHOZI: And your answer was
8   essentially to the effect that you were high; because you
9   were high, you struggled to communicate with your ground
10   forces. Now what I want to ask you is this; when you said
11   you were high, did you mean that you were high as being in
12   the air, or you meant some other form of being high?
13   COMMISSIONER HEMRAJ: Mr Shozi, exactly
14   what are you suggesting to the witness? I don't think it's
15   a matter for amusement. Exactly what are you suggesting to
16   the witness?
17   MR SHOZI: Commissioner Hemraj, I'm
18   simply asking the witness what he meant by being high,
19   whether he was high as being high in the air or he meant
20   some other form of being high.
21   COMMISSIONER HEMRAJ: Well, what are you
22   suggesting might be the other forms of being high then?
23   MR SHOZI: That's what I'm asking the
24   witness, Commissioner Hemraj.
25   COMMISSIONER HEMRAJ: Perhaps you might

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1   favour us with the page and reference number of the
2   transcript that you're referring to.
3   MR NGALWANA: Chairperson, this is
4   clearly an objectionable question. It shouldn't be allowed
5   because the suggestion is – I can't even utter the words.
6   CHAIRPERSON: No, no, I'm not sure that
7   you're right, Mr Ngalwana, because my recollection actually
8   is that he heard the reference to the people being down
9   when he was on the way to the helicopter, before he
10   actually got into the helicopter. So if I'm right on that
11   – and I'm not saying I am, but that's my impression – if
12   I'm right on that, but there's a passage elsewhere in the
13   evidence where he says he was high, then he couldn't have
14   been high in the sky if he was still on the ground on the
15   way to the helicopter. Then it's a permissible question.
16   So, but what he's being asked for is the reference – Mr
17   Shozi is being asked for the reference to where he says he
18   was high, and then perhaps possibly that could be
19   juxtaposed, if there is such a reference, with the other
20   passage in his evidence where he talks about when he heard
21   on his radio as he walked to the helicopter. But perhaps
22   we can first get from him the reference to which he is
23   referring.
24   MR SHOZI: Chair, the page is 11490, line
25   13 to 24.

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1   CHAIRPERSON: - think that's being put is
2   that the way the question was asked, which aroused a sort
3   of a snigger from some of the people here, was suggesting
4   something improper and there was an insinuation of that,
5   and that's something which I'm not going to allow and I
6   would suggest that you withdraw any insinuation that would
7   be objectionable. Let's just ask the question. You can
8   ask the question along the lines that I debated with Mr
9   Ngalwana, but I think the innuendo which gave rise to the
10   unfortunate merriment should be withdrawn, and you should –
11   MR SHOZI: Chair, it wasn't –
12   CHAIRPERSON: And you should apologise
13   for it.
14   MR SHOZI: It wasn't meant, Chair, to
15   offend the witness, and if that's the impression that's
16   been gained I'm very happy to move away from the question,
17   Chairperson.
18   CHAIRPERSON: It might be helpful to
19   apologise first and withdraw the innuendo, insofar as there
20   was one, and then you can proceed.
21   MR SHOZI: Chair, to the extent that
22   there was an innuendo, I withdraw it.
23   CHAIRPERSON: And you apologise?
24   MR SHOZI: I do indeed, Chairperson.
25   CHAIRPERSON: Thank you. But perhaps I

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1   can ask this other question. I must confess, I thought you
2   said that you heard reference to people being shot and
3   being down when you were still on the ground, walking to
4   the helicopter. Now I may be wrong, but let me ask you
5   therefore, for purposes of clarity; you did hear something,
6   did you not, on your radio as you were walking to the
7   helicopter? Is that correct?
8   MAJOR-GENERAL MPEMBE: Chairperson, if I
9   recall, what I said is that I heard saying that the
10   protesters are moving to the TRT line by that time, but
11   there was not any other shooting at that time.
12   MR SHOZI: Now General, am I correct in
13   my understanding that when the events at Marikana began to
14   unfold on the 9th of August, you were on leave at the time,
15   correct?
16   MAJOR-GENERAL MPEMBE: Correct,
17   Chairperson.
18   MR SHOZI: Am I also correct in my
19   understanding that your real involvement, your first real
20   involvement with the events at Marikana began in earnest on
21   Monday, 13th August 2012, correct?
22   MAJOR-GENERAL MPEMBE: Correct,
23   Chairperson.
24   MR SHOZI: In point of fact what happened
25   on Monday is that you were appointed by the Provincial

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1   Commissioner - and those of our colleagues who act for the
2   police refer to her affectionately as the PC – you were
3   appointed by the PC on the morning of the 13th of August
4   both as the commander of the JOC, as well as the overall
5   commander of the operation, correct?
6   MAJOR-GENERAL MPEMBE: As the CJOC,
7   correct, Chairperson.
8   MR SHOZI: No, General, both as a CJOC
9   and the overall commander. That's your evidence.
10   MAJOR-GENERAL MPEMBE: Chairperson, CJOC
11   and overall commander is one word.
12   MR SHOZI: No, it's not. I'm sorry.
13   General, can I take you to your statement, please, GGG12?
14   Is your evidence that the commander of the JOC performs the
15   same function as the overall commander of the operation?
16   Is that your evidence?
17   MAJOR-GENERAL MPEMBE: Correct,
18   Chairperson, hence I said it is referring to the one word.
19   MR SHOZI: Is it also correct that
20   pursuant to your appointment as both the commander of the
21   CJOC and the overall commander, you were then instructed by
22   the PC, or as you prefer, requested by the PC to attend to
23   a group of a strikers who were marching from the Karee
24   Mine, presumably back to the koppie at the time?
25   COMMISSIONER HEMRAJ: Mr Shozi, you

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1   referred us to GGG12. Are you drawing our attention to
2   anything in GGG12, or are you moving on?
3   MR SHOZI: I beg your pardon,
4   Commissioner Hemraj, I'm moving on.
5   CHAIRPERSON: You see paragraph 3 of that
6   paragraph, it directly contradicts the point you put to the
7   witness because it says "On Monday, 13 August at about
8   8:30, I attended at the interim joint operational centre
9   established at the Lonmin Mine. I arrived with the
10   Provincial Commissioner, Lieutenant-General Mbombo, and
11   Major-General Naidoo. Lieutenant-General Mbombo then
12   appointed me as the commander of joint operational centre,
13   CJOC. In that capacity I was also the overall commander of
14   the operation to restore public order at the Marikana area.
15   Brigadier Calitz had already been appointed the operational
16   commander." So what this passage indicates is that what
17   you put to the witness was wrong, and what the witness said
18   in reply was correct. Isn't that so?
19   MR SHOZI: I follow, Chairperson.
20   CHAIRPERSON: Yes.
21   MR SHOZI: Thank you.
22   CHAIRPERSON: I expect counsel who put
23   things that are incorrect, who later discover they're
24   incorrect, to correct themselves and not expect me to do
25   so.

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1   MR SHOZI: Point taken, Chair. Now we
2   know from your evidence, General Mpembe, that when you went
3   to attend to this group of strikers next to the railway
4   line, you asked Captain Moolman to come along with you, the
5   SAPS legal advisor. Correct?
6   MAJOR-GENERAL MPEMBE: Correct,
7   Chairperson.
8   MR SHOZI: We also know that you also
9   asked Mr Hendrik Blaauw of Lonmin to also come along with
10   you, correct?
11   MAJOR-GENERAL MPEMBE: Correct,
12   Chairperson.
13   MR SHOZI: Now you testified that when
14   you began to interact with the protesters, it became clear
15   to you, soon became clear to you that they were
16   communicating to you in Fanagalo, at which point you then
17   asked Mr Blaauw to secure a Fanagalo speaker for you.
18   Correct?
19   MAJOR-GENERAL MPEMBE: Correct,
20   Chairperson.
21   MR SHOZI: Now Mr Hendrik Blaauw's
22   recollection of events is different from yours. Mr Hendrik
23   Blaauw's recollection of events is that when you asked him
24   for an – you never in fact asked him to get you, or secure
25   for you a Fanagalo interpreter. Would you like to comment

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1   on that?
2   MAJOR-GENERAL MPEMBE: Chairperson, I did
3   ask Mr Blaauw to arrange for me a Fanagalo interpreter, and
4   actually I also stick to my, what I've said in my statement
5   and in my evidence.
6   CHAIRPERSON: Yes, I want to ask you a
7   question about that, but perhaps Mr Mahlangu can interpret
8   what you said first before I ask my question. You deal
9   with this matter in paragraph 12 of your statement, exhibit
10   GGG12, but I think there may be a misprint there. I want
11   to ask you about that. But I'm reminded that you corrected
12   it when you gave evidence. I wasn't, I'd forgotten that,
13   but let me just get it absolutely clear. What you said was
14   you asked Mr Blaauw for an interpreter, said you need an
15   interpreter. You didn't require management to negotiate
16   with the people, you needed an interpreter. What your
17   statement then says is, "Mr Blaauw then told me Lonmin
18   would send an interpreter because Lonmin was not prepared
19   to negotiate with the marchers." Now my colleague,
20   Commissioner Hemraj remembers it, but I assume that in any
21   event there was a misprint there, a word left out. I take
22   it that what, or you tell us what did Mr Blaauw say when
23   you asked him for an interpreter?
24   MAJOR-GENERAL MPEMBE: Mr Blaauw said to
25   me, Chairperson, that the management is not prepared to

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1 negotiate with the protesters. Then I said no, I'm not
2 asking for negotiation, but I'm asking for an interpreter.
3   CHAIRPERSON: What did Mr Blaauw say?
4 When you asked for an interpreter, what did Mr Blaauw say?
5   MAJOR-GENERAL MPEMBE: Chairperson, Mr
6 Blaauw said that the, he will organise that interpreter,
7 but ultimately he did not; the interpreter did not come.
8   CHAIRPERSON: But if you look at the last
9 page then, on page 5 of exhibit GGG12, it's the last
10 paragraph, paragraph 12, there seems to be something wrong
11 with that statement. Am I correct? What should it read?
12 You've now told us that Mr Blaauw said that Lonmin would
13 send an interpreter, so that part, "Mr Blaauw then told me
14 Lonmin would send an interpreter," that's correctly
15 recorded. It then goes on, because Lonmin was not prepared
16 to negotiate with the marchers and that, that doesn't quite
17 fit in. So how should that read?
18   MAJOR-GENERAL MPEMBE: Chairperson, what
19 I was trying to explain there is that actually, maybe Mr
20 Blaauw will be able to interpret what he was talking, to
21 whom was he talking, but what he reported to me, it was
22 that the mine is not prepared to negotiate with the
23 marchers. Then I said I'm not asking for that they must
24 come and negotiate; then I'm asking for an interpreter.
25 Then he said the interpreter will be sent, but they are not

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1 prepared to negotiate. So negotiate it was for, maybe, in
2 my understanding it was for something else.
3   CHAIRPERSON: Yes, alright. Yes, thank
4 you. I think it's now clear what's wrong with the last
5 line on page 6. Instead of "because," it should be "but."
6 So the sentence should then read – if I'm wrong, please
7 tell me, I don't want to put words in your mouth
8 incorrectly – "Mr Blaauw then told me that Lonmin would
9 send an interpreter, but Lonmin was not prepared to
10 negotiate with the marchers." Is that what you meant to
11 say?
12   MAJOR-GENERAL MPEMBE: Yes, it's correct,
13 Chairperson.
14   CHAIRPERSON: So the misprint was
15 "because" should be "but."
16   MAJOR-GENERAL MPEMBE: Okay.
17   CHAIRPERSON: Is that right? Is that
18 right?
19   MAJOR-GENERAL MPEMBE: Yes, that's
20 correct, Chairperson.
21   MR SHOZI: General Mpembe, I understood
22 your testimony previously to be that Mr Blaauw had said to
23 you that Lonmin would not provide you with a Fanagalo
24 interpreter. Is your evidence now that Lonmin did in fact
25 agree to provide with an interpreter, a Fanagalo

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1 interpreter?
2   MAJOR-GENERAL MPEMBE: Chairperson, I
3 said it in my statement in paragraph 12. "Mr Blaauw then
4 told me that Lonmin would send an interpreter, because
5 Lonmin was not prepared to negotiate with the members, with
6 the marchers."
7   MR SHOZI: In point of fact, General
8 Mpembe, Lonmin would have had no reason to refusing to
9 provide you with a Fanagalo interpreter because the very
10 next morning they did in fact provide the police with a
11 Fanagalo interpreter.
12   MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson, we were provided with an interpreter on the
14 following day. I want to state it as a fact that on the
15 13th I did not get a Fanagalo interpreter.
16   MR SHOZI: In fact your inability on the
17 13th to have secured a Fanagalo interpreter didn't in any
18 way affect your communication with the strikers, correct?
19   MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson, but notwithstanding the fact that it could
21 have enhanced more understanding between ourselves and the
22 protesters.
23 [10:41] MR SHOZI: I see. Can I move on to
24 something else then, General Mpembe, and that is the
25 suggestion that between the period 14 to the 15th of August,

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1 Lonmin should in fact have gone to the koppie to negotiate
2 with the protestors on their wage demand.
3   MR NGALWANA: Chair, it's – I don't
4 recall that there is such evidence that the SAPS position
5 was that Lonmin should go to the mountain and negotiate
6 with protestors.
7   CHAIRPERSON: Mr Shozi can give us a
8 reference in the records to which he is referring.
9   MR SHOZI: Chair, I didn't suggest that
10 that was, this criticism came from SAPS. It's been
11 suggested in these proceedings that Lonmin should in fact
12 during that period have gone to the koppie to negotiate
13 with the protestors. Now I'm simply engaging the General
14 as one who negotiated with the unions and Lonmin.
15   CHAIRPERSON: Who made the suggestion?
16   MR SHOZI: I think it's Mr Mpofu on
17 behalf of arrested persons.
18   CHAIRPERSON: I understand that, but
19 what's the point of asking this witness about it? I mean
20 you could ask him if he agrees with the suggestion, and if
21 he does you can follow that up, but the way you put the
22 question initially, I must confess I got the impression
23 that you were saying that that was effectively his
24 evidence, or had been his evidence. If I misunderstood you
25 I apologise. But anyway, we now know what you intended to

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1 convey, so we don't have to spend further time on it.
2   MR SHOZI: No, Chair, with respect, it
3 wasn't the evidence of the witness, nor was the case made
4 by the police. It was made by another party –
5   CHAIRPERSON: Alright, well then –
6   MR SHOZI: - in these proceedings, but
7 I'm simply exploring the point with the witness to solicit
8 his views on the matter.
9   CHAIRPERSON: Well then I suggest you –
10 the question should be formulated differently than the way
11 you formulated it. Perhaps I can ask a question to clear
12 the way. Major-General, Mr Shozi has now explained that he
13 doesn't say that you said that Lonmin should go to the
14 koppie and negotiate with the strikers, and he goes
15 further; he says he doesn't say that's what the SAPS said.
16 He says Mr Mpofu said it. But he wants to explore this
17 suggestion with you. So by way of clearing the road for
18 him, I'd like to ask you this question. Have you any views
19 that you can give us as to whether the Lonmin was – it
20 would've been advisable for Lonmin to go to the koppie to
21 negotiate with the strikers? Have you got any views on
22 that? Based obviously upon your experience and what you
23 saw on the ground on the relevant days, have you got any
24 views on that point?
25   MAJOR-GENERAL MPEMBE: Chairperson, the

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1 Lonmin position was made very clear by Mr Mokwena in the
2 meeting that we held between the unions and, on Wednesday,
3 and is recorded in OOO4 – OO4. Maybe we can get that
4 relevant quotation of Mr Mokwena.
5   CHAIRPERSON: - that quotation has been
6 looked at, have you got the reference for us, Mr Shozi,
7 where Mr Mpofu put that point – the reference in the
8 record, where Mr Mpofu put that point?
9   MR SHOZI: Yes, I do, Chair. And if I
10 could assist General Mpembe, the passage he is looking for
11 from exhibit OO4, it is page 27 of OO4, line 17 to 25.
12 And, Chair, the passage you asked for, it is the transcript
13 of the 7th of Feb this year, page 4787. General, I wonder
14 if it could be placed before you, perhaps, the transcript
15 that I'm just – that I've just referred to of the 7th of
16 Feb, page 4787. Have you go that in front of you?
17   MAJOR-GENERAL MPEMBE: No, Chairperson.
18   MR SHOZI: It is day 44.
19   COMMISSIONER HEMRAJ: Mr Shozi, the
20 witness doesn't have a copy of the transcript before him.
21 Generally the transcripts are not placed before the witness
22 unless counsel cross-examining puts copies of the pages
23 before him.
24   MR SHOZI: The point I was making,
25 Commissioner Hemraj, is that we couldn't – we didn't have

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1 the opportunity to do so, so it's being placed before him.
2 Thank you.
3   CHAIRPERSON: You gave us a reference
4 which I didn't write down, in OO4, what was the reference?
5   MR SHOZI: It is page 27, Chair.
6   CHAIRPERSON: Thank you.
7   MR SHOZI: Thanks, Ms Pillay.
8   MR NGALWANA: Perhaps our learned friend
9 could refer us to the lines in 4787 where –
10   MR SHOZI: I will take the witness
11 through the line, thank you. It's line 22. We can pick up
12 from line 22, General Mpembe, if you have it in front of
13 you.
14   MAJOR-GENERAL MPEMBE: Yes, Chairperson,
15 I could see it.
16   MR SHOZI: And Mr Mpofu put the question
17 in the following terms. He says, Ja. No, I agree with Mr
18 Burger. Would you agree that as of the 15th when there was
19 some relative peace that there was an opportunity for
20 Lonmin to engage with the strikers as they requested and as
21 Mr Gwala also suggested," and here comes the important
22 part, "to go and engage with them where they were, namely
23 at the koppie." So that's the point that is being made,
24 that Lonmin should've gone to the koppie to negotiate with
25 the protestors where they were.

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1   MAJOR-GENERAL MPEMBE: Chairperson, I
2 said that in answer to that, in my presence Mr Mokwena made
3 the Lonmin position with regard to this.
4   MR SHOZI: Now do you agree with Mr
5 Mokwena's position there? OO4, page 27, that's where Mr
6 Mokwena articulates Lonmin's position. Have you read the
7 passage?
8   CHAIRPERSON: I'll read the passage out
9 for the benefit of those who haven't got it before them, so
10 we can follow the point you're making.
11   MR SHOZI: Thank you, Chair.
12   CHAIRPERSON: Mr Mokwena says this – I'm
13 starting a bit earlier than the lines you referred to,
14 starting at line 17. "Our position, General, is as Lonmin
15 management, our position is as follows. We're willing to
16 engage our employees within the structures that are known,
17 in a very safe environment where there are no weapons, not
18 on the mountain. So we are willing to meet our employees
19 through their structures, through their leaders, to discuss
20 any issue, not when they are armed, not when they are
21 actually outside the Lonmin property. So when the workers
22 are back, disarmed, tomorrow, tonight, through their
23 leaders we will meet them. That is our position. So we
24 are not against meeting, discussing issues with their" – I
25 take it, it should be our - "employees, through their right

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1 structures. We are prepared to do that." That's the

2 passage to which the witness – to which you gave us the

3 reference.

4   MR SHOZI: Now you've seen the passage,

5 General Mpembe. Would you agree with me that it would have

6 been unrealistic, perhaps even unfair, to have expected

7 Lonmin to go to negotiate with the strikers on the koppie

8 where they were armed?

9   MAJOR-GENERAL MPEMBE: Chairperson, the

10 purpose of - also one of the purpose of that meeting, I

11 understand the safety of the Lonmin; in my opinion because

12 even though it's not good to give an opinion, in my

13 understanding is that not only Lonmin, if the Lonmin and

14 the unions did what they do after the tragedy, I believe

15 that the tragedy could have been averted.

16   CHAIRPERSON: I think that it would help

17 us if you – I think I know what you meant, but I think it

18 would help us if you spelt out what exactly you mean in

19 that regard. What was it about what was done after the

20 tragedy which, if it had been done prior to the tragedy, it

21 would've averted the tragedy? As I say I think I know what

22 you mean, but I'm not sure. Perhaps you could spell it out

23 for us.

24   MAJOR-GENERAL MPEMBE: Chairperson, in my

25 understanding it was that Lonmin and the unions, they did

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1 negotiate the conditions of the workers.

2   CHAIRPERSON: You say the unions because

3 you – sorry, Mr Mahlangu, please carry on. Sorry.

4   MR MAHLANGU: Thank you. I just

5 completed the sentence.

6   CHAIRPERSON: I see. By the unions,

7 you're referring to the fact that AMCU also took part in

8 those discussions, is that correct?

9   MAJOR-GENERAL MPEMBE: Chairperson, I'm

10 referring to both AMCU and NUM.

11   CHAIRPERSON: And NUM.

12   MAJOR-GENERAL MPEMBE: Because on the

13 ground they were both, in my mind, they were relevant

14 stakeholders. They were relevant stakeholders to have

15 assisted to avert the tragedy.

16   CHAIRPERSON: And am I correct in saying

17 that after the tragedy, these discussions to which you

18 refer included Lonmin - the participants in the discussion

19 included Lonmin, NUM, AMCU, and I think there were also

20 people who were described in the ultimate agreement as

21 delegates, people who were not part of either union, but

22 who were delegated by, and represented some of the strikers

23 on the koppie. Is that correct as well?

24   MAJOR-GENERAL MPEMBE: Chairperson, with

25 that I'm not quite sure, but what I'm saying is that the

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1 efforts that were made after, as the Chairperson is

2 alluding, if they were made before, and those are the ones

3 that I'm referring to.

4   MR SHOZI: But, General, I'm putting –

5 with respect, I'm putting a different proposition to you

6 and it is the following. It would've been imprudent of

7 Lonmin to have gone to negotiate with the strikers on the

8 koppie where they were armed between the period 14th to the

9 16th of August. Do you agree with that?

10   MAJOR-GENERAL MPEMBE: May you please

11 repeat your question?

12   MR SHOZI: It would've been unwise of

13 Lonmin to have gone to the koppie between the period 14th to

14 the 16th of August to negotiate with the strikers at the

15 koppie where they armed. Do you agree with that?

16   MAJOR-GENERAL MPEMBE: Chairperson, in

17 answer to the question, I'll refer to the process that we

18 did when we were there, practically including myself, is

19 that myself, Mr Kwadi, and the delegates of the unions,

20 they were also escorted with vehicles to communicate with

21 the strikers, to give the strikers an assurance that they

22 will sit and negotiate their grievances. There were also –

23 it is mentioned also in many of the exhibits before the

24 Commission that we did not even want Mr Mathunjwa, Mr

25 Zokwana, when speaking to the protestors, not to go out of

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1 the Nyala, precisely so for their safety.

2   Chairperson, sitting where I am as a reasonable

3 person, we believed that – I believe that if the mine could

4 have done the same thing, just to tell them to say, as they

5 have said, we cannot negotiate with the protestors, which I

6 understand is correct, I'm not sure I'm much well

7 knowledgeable about labour relation, but to give the

8 protestors themselves an assurance that they will now go

9 and negotiate with the NUM and the AMCU, because those

10 unions were there; Chairperson, I need to say, maybe it

11 could have helped.

12   MR SHOZI: General, I'm still unclear as

13 to what your answer is to my question. Can I ask you, do

14 you still have exhibit OO4 in front of you?

15   MAJOR-GENERAL MPEMBE: Chairperson, I

16 will get the exhibit.

17   CHAIRPERSON: While you're doing that,

18 perhaps I can ask a question which may also help clear some

19 of the ground. Are you saying that if Lonmin had done what

20 the trade union presidents had done and gone under police

21 escort to the place where the trade union presidents went

22 and had a person in the Nyala, speaking through a

23 loudhailer to the people on the koppie, inviting their

24 leaders to come forward and then telling them what they say

25 - in the passage I read out from exhibit OO4, page 27 and

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1 28, if that had happened, you think that might have helped
2 to alleviate the situation and avoid the tragedy? Is that
3 what you're saying?
4   MAJOR-GENERAL MPEMBE: Correct,
5 Chairperson.
6   CHAIRPERSON: Mr Shozi, I see it's now 11
7 o'clock; perhaps we can take the tea adjournment at this
8 stage and then you can continue the debate with the witness
9 thereafter.
10   MR SHOZI: I'm in your hands,
11 Chairperson.
12   CHAIRPERSON: We had a bit of
13 simultaneous operation there in anticipation of next week.
14 We'll now adjourn for tea.
15   [COMMISSION ADJOURNS   COMMISSION RESUMES]
16 [11:34] CHAIRPERSON: The Commission will
17 proceed. Major-General, you're still under oath.
18   WILLIAM MPEMBE: s.u.o.
19   CHAIRPERSON: Mr Shozi, I take it you've
20 got further questions to ask the witness. There was an
21 aspect that we were busy with just before we adjourned,
22 which I take it you want to take further?
23   MR SHOZI: I do indeed, Chair, thank you.
24 Chair, there was a request during the tea break from Mr
25 Ngalwana for us to provide a statement by Mr Hendrik

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1 Blaauw, and we have undertaken to do so, so we'll be doing
2 so in due course. Thank you.
3   CHAIRPERSON: Which reminds me, you
4 didn't really follow up – you started putting something to
5 the witness and then it became clear that the statement he
6 had made required an amendment, which we then dealt with.
7 What he said, you'll remember, was that he asked for the
8 assistance of a Fanagalo interpreter near, at the spot near
9 the railway line. Mr Blaauw said that he would comply with
10 the request, but he didn't do so that day, but there was
11 one made available the next day, I think it was put. Now,
12 but he also said that Mr Blaauw said that Lonmin weren't
13 prepared to negotiate with the marchers. Now as far as I
14 can recall, that point was then left in the air and you
15 didn't put to the witness if his evidence on that point was
16 in accordance with the Lonmin evidence, so – Adv Hemraj
17 says that you did put that Mr Blaauw denied that there was
18 a request for an interpreter.
19   MR SHOZI: I did, Chair.
20   CHAIRPERSON: So in other words I'm wrong
21 therefore in thinking that the matter was left in the air.
22 Is that right?
23   MR SHOZI: I did indeed, Chair.
24   CHAIRPERSON: Okay, alright. So I
25 withdraw what I said. Please proceed.

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1   CROSS-EXAMINATION BY MR SHOZI (CONTD.):
2 I'm indebted to Commissioner Hemraj. Now General, just
3 before the adjournment I was exploring with you the
4 suggestion that Lonmin should have gone to the koppie to
5 negotiate with the protesters, and we're looking at exhibit
6 OO4. Can I ask you if you could please just, ask again to
7 have a look at exhibit OO4, and tell me when you have it in
8 front of you.
9   MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson, I have in front of me.
11   MR SHOZI: Can I ask you then again to go
12 back to page 27, and this is where Mr Mokwena articulates
13 Lonmin's position towards negotiations.
14   MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson, I'm already on page 27.
16   MR SHOZI: So can I ask you then with
17 your one eye, so keep your one eye on page 27 and if you
18 can please, with your other eye go to page 11 of the same
19 document. Are you there?
20   COMMISSIONER HEMRAJ: Which lines on page
21 11, Mr Shozi?
22   MR SHOZI: From line 3, Commissioner
23 Hemraj, and perhaps for context if you go back one page,
24 it's page 10, you will see that person who's talking is the
25 NUM president, starting at page 10. So over the page at

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1 page 11 it says this from line 3 – tell me when you are
2 there. Page 11, line 3, Mr Zokwana says the following,
3 "The minute you climb there to address," by "there" he
4 means at the koppie, "The minute you climb there to address
5 those members, I can assure you, and we had this experience
6 from Impala, so we think people should be told nicely that
7 they should leave that mountain, go to where they're
8 employed, and that any other debate pertaining to
9 grievances will be entertained by different unions. It's
10 how things are done." And here comes the important part.
11 "You can't negotiate with people who are armed. Those guys
12 are armed." Now what I want to put again to you, General
13 Mpembe, is the following. It would have been imprudent, it
14 would have been unwise of Lonmin to have gone to negotiate
15 with the strikers on the koppie where the strikers were
16 armed. Would you agree with that?
17   MR NGALWANA: Chair, it's not an
18 objection; it's just a request for guidance from the Chair
19 and the Commissioners. Our learned friend has admitted, or
20 rather conceded that this line was not advanced by General
21 Mpembe that the Lonmin management must go to the koppie and
22 negotiate with armed people. He said it's counsel who's
23 put, who said that. I'm not sure whether counsel was
24 giving evidence or was just making a remark from the bar.
25 So it escapes me why this line of questioning should then

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1 be explored with this witness, inasmuch as it's not his
2 view. I'm not sure if –
3   CHAIRPERSON: Of course it doesn't –
4   MR NGALWANA: I'm not sure if the
5 Chairperson and the Commissioners are interested in the
6 opinion of the witness. As far as I know, I mean the
7 probative value of such opinion, even if admissible –
8   CHAIRPERSON: Well, the difficulty is the
9 – look, he is an expert, presumably, in maintaining law and
10 order. He was asked a question by Mr Shozi how should
11 Lonmin have acted. He said if they'd acted before the
12 event the way they acted after the event, then it may be
13 that the tragedy might not have occurred. That's the
14 evidence he's given. Now I take it Mr Shozi - that
15 evidence is there. I take it Mr Shozi is entitled to deal
16 with that evidence. If he doesn't deal with it then he can
17 be taken as having accepted it. So it's a line that Mr
18 Shozi started, but once he started it and he got the
19 answers, I don't think it would be fair for me to stop him.
20 I take it he will bear in mind the need for brevity and
21 conciseness in this, but it is evidence your witness gave
22 in answer to a question asked by this witness. So I think
23 one can't just expect him to accept the answer and move on.
24   MR SHOZI: Thank you, Chair, I'm
25 indebted.

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1   MAJOR-GENERAL MPEMBE: In my response,
2 Chairperson, to the same question, I said the unions were
3 there on that day, the union leaders, for negotiation with
4 Lonmin. The only aspect which I said is that when the
5 unions went there on that day under the police escort,
6 under the protection of the police, if the mine could have
7 done the same, and which in a practical way where all of
8 the people were there, and I said with the benefit of the
9 hindsight, and I used the word "maybe" something could have
10 happened. Particularly so, and my emphasis on that is the
11 protesters themselves, they were saying "sifuna gobona
12 umlungu." So "umlungu," when going there, talking to them
13 and say "Here are your leaders; I am going to negotiate
14 with them about your grievances," and this is what I'm
15 saying, with the benefit of the hindsight.
16   MR SHOZI: But General Mpembe, in your
17 estimation could sensible wage negotiations have taken
18 place at the koppie where the strikers were armed –
19   CHAIRPERSON: No, Mr Shozi, that's not
20 what he's saying. He's not suggesting, as I understand
21 him, that the wage negotiations were taking place at the
22 koppie. What he's saying is something different. If
23 Lonmin had come, gone, as the trade union presidents had
24 done, been in the Nyala, spoken to the workers and said,
25 "Look here, we're happy to negotiate with your leaders who

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1 are over here, but not here, not with arms; we'll meet them
2 at the office tomorrow," that might have made a difference.
3 That's what he said. It's a might have and a maybe. It's
4 probably a matter that can be dealt with more in argument
5 at the end of the matter rather than debating it with the
6 witness, but if you debate it with the witness, you mustn't
7 put something to him that he's not actually saying. He's
8 not suggesting for a moment – am I right, Major-General?
9   MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11   CHAIRPERSON: He's not suggesting for a
12 moment that your clients acted unwisely because they
13 weren't prepared to engage in wage negotiations, sub hostis
14 as it were, on the koppie. That's not what he says. So,
15 but what he does say, I would have thought it's his
16 opinion, it's prefaced by "maybe," is perhaps a matter
17 which can more fruitfully, profitably be dealt with in
18 argument at the end of the case and you can just put to him
19 that you don't agree when you deal with it in argument,
20 that will cover your position, I would think, but it's not
21 for me to tell you how to run your case.
22   MR SHOZI: What you do say now, of
23 course, General Mpembe, you do say, as you quite correctly
24 pointed out earlier, that you say it with the benefit of
25 hindsight, correct?

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1   MAJOR-GENERAL MPEMBE: Correct,
2 Chairperson.
3   MR SHOZI: You didn't at the time when Mr
4 Mokwena was articulating Lonmin's position to you on the
5 13th of August, you didn't at the time invite him to come
6 along with you and say, or convey to the strikers what you
7 now say you should have done.
8   MAJOR-GENERAL MPEMBE: Chairperson, I
9 said in my statement immediately after I addressed the
10 marchers at the railway line, I did go to the mine
11 management and I said that they should help me with the
12 identification of the protesters, and at that time I said,
13 immediately when they give us feedback to say some of the
14 members are AMCU, then I said "You have to confront the
15 unions and together, all of you, we need to resolve the
16 matter." So going to the meeting on Wednesday, my position
17 was already being put both to the union and to the Lonmin
18 management, hence Mr Mokwena's response in terms of that,
19 in terms of page 27, which I understood, but what I'm
20 saying now is that I don't say, as the Chairperson has
21 already explained it, I don't say that he should have
22 negotiated with the protesters at the koppie, but for the
23 Lonmin could have gone there and say "You all say you want
24 to see 'umlungu.' Here is 'umlungu' and here are your
25 leaders which I did call," because those leaders, I'm

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1 saying AMCU and NUM, they were called by Lonmin through my
2 request with Lonmin. So that, as I'm saying, with the
3 benefit of hindsight, might have helped.
4   MR SHOZI: Yes, I hear you, and this is
5 my last question to you on this theme. You didn't of
6 course at the time, you yourself in precise terms, invite
7 Lonmin to come to the koppie to convey what you say they
8 ought to have conveyed even from inside the Nyala. You
9 didn't at the time do that. Do you agree?
10   MAJOR-GENERAL MPEMBE: Mr Chairperson, I
11 said the purpose of the meeting was clearly articulated to
12 Mr Kwadi, and knowing the – not to Mr Mokwena himself,
13 because I was normally interacting with Mr Kwadi on behalf
14 of Mr Mokwena. But Mr Kwadi, and I need to state, Mr
15 Kwadi, on the same day he was with the union leaders at the
16 mountain, but he did not speak, and he went there as an
17 observer.
18   MR SHOZI: But of course the idea was
19 never for Mr Kwadi to say anything. He was never meant to
20 speak anyway. Do you agree?
21   MAJOR-GENERAL MPEMBE: Correct,
22 Chairperson. But what I'm saying is if the Lonmin could
23 have spoken on that day, and that's why I'm saying it could
24 have made a difference, particularly when the protesters
25 who have asked twice to say "We want to see 'umlungu; we

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1 want to communicate with 'umlungu'."
2   MR SHOZI: We will argue differently,
3 General Mpembe. I want to move on to something else with
4 you now, and that is the events of the 16th of August, and
5 as I said to you earlier, I want to deal with the role that
6 you played, or more precisely the role that you ought to
7 have played in your capacity as the commander, overall
8 commander of the operation and the commander of the JOC,
9 and just to recap, on Monday 13 August you were appointed
10 the commander of the JOC, correct?
11   MAJOR-GENERAL MPEMBE: Correct,
12 Chairperson.
13   MR SHOZI: And you say in your statement
14 GGG12 that in that capacity you were also the overall
15 commander of the operation, correct?
16   MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.
18   COMMISSIONER HEMRAJ: - handled with not
19 even half an hour ago.
20   MR SHOZI: I beg your pardon?
21   COMMISSIONER HEMRAJ: You canvassed the
22 same issue not even half an hour ago.
23   MR SHOZI: Can I ask you please, General
24 Mpembe, to have a look at exhibit SS2, the Standing Order
25 262?

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1   MAJOR-GENERAL MPEMBE: I have it,
2 Chairperson. I'm just asking maybe the page and –
3   MR SHOZI: Would you care, please, to
4 look at the definitions clause, and that is clause 2 of
5 exhibit SS2.
6   CHAIRPERSON: Yes, it's also, we've also
7 been given a file by the evidence leaders, the document
8 they're referring to is behind tab 11 in that. What
9 definition are you referring to in clause 2 of the Standing
10 Order?
11   MR SHOZI: Would you care to look at
12 clause 2(e), please, General Mpembe, of the definition –
13   CHAIRPERSON: The definition of CJOC?
14   MR SHOZI: Of CJOC. Are you there,
15 General Mpembe?
16   MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.
18   MR SHOZI: You see the CJOC is defined as
19 "Meaning the commander of the joint operational centre, a
20 designated provincial commissioner, a divisional provincial
21 or area commissioner, to take command of the JOC." You see
22 that?
23   MAJOR-GENERAL MPEMBE: Correct,
24 Chairperson.
25   MR SHOZI: And would you turn to clause

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1 8, please, of the same document? Clause 8 deals with the
2 appointment of the CJOC. Tell me when you're there,
3 please.
4 [11:54] MAJOR-GENERAL MPEMBE: I'm there,
5 Chairperson.
6   MR SHOZI: 8.1 is in these terms, "The
7 divisional provincial or area commissioner must ensure that
8 the CJOC is designated and that he or she is conversant
9 with this order and relevant legislation, and is well
10 trained to take responsibility for the operation." Do you
11 see that?
12   MAJOR-GENERAL MPEMBE: Correct,
13 Chairperson, I see it.
14   MR SHOZI: Do you regard yourself as
15 being well trained to take responsibility for the
16 operation?
17   MAJOR-GENERAL MPEMBE: Chairperson, as I
18 indicated before, is that my training and the combination
19 of my training and my experience, yes, I see myself as
20 competent to do the work.
21   MR SHOZI: Now clause 8.2 is in these
22 terms. It says, "The CJOC is in overall command of the
23 specific operation for which he or she is designated, and"
24 – here comes the important part – "is responsible for all
25 actions taken." Do you see that?

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1 MAJOR-GENERAL MPEMBE: Correct,
2 Chairperson, I see it.
3   MR SHOZI: Let me ask you this; did you
4 regard yourself, or do you regard yourself as you sit here
5 today, as having been responsible for all actions taken in
6 relation to the Marikana operation?
7   MAJOR-GENERAL MPEMBE: No, Chairperson,
8 my reason being that in any organisation, including SAPS,
9 there is what we call a span of control whereby you are
10 also having other officers that assisted you to do the
11 management, and also, but the – yes, the accountability
12 part in terms of to account, and as I'm doing now in front
13 of the Commission.
14   MR SHOZI: But of course you assumed
15 ultimate responsibility for all actions taken in relation
16 to the operation, correct?
17   MAJOR-GENERAL MPEMBE: Chairperson, as
18 I've alluded, there were other role, there are other role
19 players in terms of the structure and who were reporting to
20 me. Chairperson, they also had to have a role to play. I
21 can only answer where I was physically there and as I did
22 on the 13th, but, and according to my supplementary
23 statement I made it clear that I can only answer on the
24 issues where they happened when I was present.
25   MR SHOZI: This order of course doesn't

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1 define the overall commander, and can I ask you what is it
2 that –
3   CHAIRPERSON: I don't think that's right.
4 You put that before, but it's not correct. 8.2, which you
5 read, says, "The CJOC is in overall command of the specific
6 operation." So that surely makes him the overall
7 commander. He said, you may recall, and we dealt with that
8 before in paragraph 3 of this statement, that as CJOC he
9 was the overall commander, and what he said in that regard
10 is in fact supported by clause 8.2. So he admits he was
11 the overall commander. It goes on to say he is responsible
12 for all actions taken, which is the point you're making at
13 the moment, but I mean it doesn't help to deal with the
14 overall command point. It's clear beyond the peradventure
15 of a doubt that he is the, he was the overall commander.
16 He says so, supported by what the Standing Order says in
17 that regard, which goes on to say he's responsible for all
18 actions, and this is the point that you can proceed with.
19 But it doesn't help to worry about the overall commander
20 point. That's beyond dispute, isn't it?
21   MR SHOZI: I take the point, Chair.
22   MR NGALWANA: Chairperson, on that point
23 which you've instructed our learned friend to proceed,
24 regarding specifically the responsibility for all actions
25 taken, this is not an objection, perhaps not even guidance,

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1 but to put our learned friend on notice that he should
2 tread carefully. Remember the Chairperson made – I think
3 it was a ruling some time ago that you won't allow
4 questions that have been dealt with in cross-examinations
5 previously to be traversed again later. I remember, it may
6 have been yesterday or two days ago, that Mr Madlanga dealt
7 with –
8   CHAIRPERSON: It wasn't yesterday.
9 Yesterday I had an alibi.
10   MR NGALWANA: Yes, two days ago or three
11 days ago, Monday or Tuesday, Mr Madlanga for the evidence
12 leaders traversed this point ad nauseam, and so –
13   CHAIRPERSON: I don't know who had
14 suffered from nausea, but he did traverse the point in some
15 detail. The point Mr Ngalwana makes is of course not
16 without substance, because if – I don't know where you're
17 going with this point, but if you're going the same
18 direction Mr Madlanga did, then I'll stop you. But if it's
19 something new you want to contribute on this point,
20 obviously you can proceed.
21   MR SHOZI: With respect, Chair, I'm not
22 going the same direction as Mr Madlanga. Thank you. Just
23 so that we are clear, General Mpembe, you say that you
24 shared this responsibility with other role players, to pick
25 up your language. Who in your mind, who do you have in

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1 mind when you say there were other role players who assumed
2 responsibility for actions taken?
3   MAJOR-GENERAL MPEMBE: Chairperson, as
4 I've indicated in terms of the structure, I was the overall
5 commander. There was also the deputy, I'd say Major-
6 General Annandale who worked as my deputy, or also you can
7 call him as a JOC commander, to exercise my – to be there
8 and represent the overall commander when I'm not there,
9 because I had also to do many work. There was an
10 operational commander; there were many officers responsible
11 for specific units, including individual members. So there
12 was a command structure.
13   MR SHOZI: I see.
14   CHAIRPERSON: I think Mr Shozi wants you
15 to identify the people who were responsible for what
16 happened. You had overall responsibility for all actions
17 taken, but you correctly said you couldn't be everywhere
18 all the time and you had to leave certain of the operations
19 to the people below you, who were the operational commander
20 and others, and what Mr Shozi wants you to do, I think – if
21 I'm wrong he'll stop me – is to identify those to whom you
22 say responsibility must be attributed, and who effectively
23 share the responsibility with you. You have mentioned
24 Major-General Annandale who was in the JOC. He was your
25 deputy, effectively, and everything that happened in the

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1 JOC while you weren't there obviously – or happened or
2 didn't happen in the JOC, but should have happened, is
3 something that can be laid at his door. But I take it
4 there are other people as well to whom you say, who you say
5 are responsible for some of the things that happened and
6 didn't happen. Is that right?
7   MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.
9   CHAIRPERSON: Now Mr Shozi, do you want
10 him to identify those people?
11   MR SHOZI: I'm very keen to know who they
12 are, Chairperson.
13   CHAIRPERSON: Okay, well I've made the
14 question clear for him.
15   MAJOR-GENERAL MPEMBE: Chairperson –
16   MR NGALWANA: Chair, perhaps our learned
17 friend should read carefully the transcript because this
18 was extensively traversed in evidence-in-chief at the
19 beginning about who played what role. So to repeat –
20   CHAIRPERSON: No, now he's talking about
21 responsibility, isn't he? I don't remember it being put in
22 evidence-in-chief on the basis of responsibility, so
23 perhaps the question can proceed.
24   MR SHOZI: Chair, with respect, it
25 wasn't. That's the first point, but the second point is Mr

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1 Ngalwana can't incubate the witness –
2   CHAIRPERSON: You're doing what other
3 people have done before, giving a concurring judgment when
4 I've given a ruling in your favour. Don't waste time.
5 Let's carry on.
6   MAJOR-GENERAL MPEMBE: Brigadier Calitz
7 as operational commander of the operation, well trained POP
8 member, Provincial Head; Major-General Naidoo, forward
9 holding area number 1, commander. We also have Brigadier
10 Fritz. He was in charge of the STF. Also have Brigadier
11 Tsiloane who was in charge of the National Intervention
12 Unit. We also have different commanders under the
13 brigadiers. Forward holding area number 2, it was
14 Lieutenant-Colonel Pitsi. Brigadier Calitz, he was also
15 having Colonel Makhubela. Chairperson, there were also
16 other various officers who were working as section
17 commanders.
18   MR SHOZI: Thank you. With that in mind,
19 can I invite you please then to have a look at page,
20 paragraph 48 of your statement, the main one, GGG12. Are
21 you there, General Mpembe?
22   CHAIRPERSON: 48 of exhibit GGG12?
23   MR SHOZI: Correct, Chairperson, and
24 perhaps we can pick up the story from there. What is
25 happening now is we're in the middle of the implementation

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1 of stage 3 of the operational plan, and you say the
2 following. You say in paragraph 48, "I remained at the
3 JOC. Later I informed General Annandale that I wanted to
4 fly over the area to get a view of what was happening."
5 Let me pause there for a moment. When you say that you
6 remained at the JOC, why did you remain at the JOC, General
7 Mpembe? Why weren't you at the koppie where stage 3 was
8 being implemented?
9   MAJOR-GENERAL MPEMBE: The operational
10 commander was at the koppie.
11   MR SHOZI: But Annandale was also at the
12 JOC. Why did you have to be at the JOC where Annandale
13 was?
14   MAJOR-GENERAL MPEMBE: Major-General
15 Annandale was a deputy CJOC, or a JOC commander.
16   MR SHOZI: And as you remained at the
17 JOC, what contribution did you make towards the
18 implementation of the plan whilst you were at the JOC?
19   MAJOR-GENERAL MPEMBE: Chairperson, I do
20 not understand the question because the planning process,
21 explanation and all any other matters, that's how I
22 contributed, but according to an operation, when an
23 operational commander has been appointed he has to take
24 control of the operation and when the operation is ongoing
25 there will be no any other command that will be given,

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1 except when it comes from the operational commander.
2 Chairperson, I did testify to say as an overall commander -
3 on the 13th, I will use an example of the 13th to illustrate
4 the one of the 16th, as an overall commander on the 16th and
5 when I realised it was necessary, and the reasons I did
6 explain in my statement, I did take the role of an
7 operational command. Chairperson, with what has already
8 been testified to the Commission, we placed completely
9 competent, well trained commanders of POP to take the
10 operation on the 16th, which was not the same magnitude of
11 the one that I did on the 13th.
12   MR SHOZI: I heard you –
13   MAJOR-GENERAL MPEMBE: To give –
14   MR SHOZI: Sorry.
15   MAJOR-GENERAL MPEMBE: To give further
16 explanation, Brigadier Calitz was on the JOC on the 13th
17 also to receive and to guide the operation. So for me to
18 be at the JOC, it is also to receive and to guide those
19 that they need guidance. Chairperson, realising that
20 Major-General Annandale was also there, hence I wanted also
21 to fly to have a better view over the radio, together with
22 where I will be, and I said in my testimony it could have
23 got certain advantages.
24   MR SHOZI: You say in the following
25 sentence that, "Later I informed General Annandale that I

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1 wanted to fly over the area to get a view of what was
2 happening." Now you don't there say that you wanted to fly
3 over the area in order that you could direct operations
4 from the air. You say simply that you wanted to fly over
5 the area simply to get a view of what was happening. You
6 see that?
7   MAJOR-GENERAL MPEMBE: Chairperson, my
8 role as an overall commander is very clear in terms of the
9 Standing Order, that as an overall commander I need to
10 direct the – I need to give guidance in terms of the
11 operations, getting the view, link it up with what is
12 happening, and when I have to give direction I will give
13 direction, and I still used an example of the 13th of
14 practically what I did on the same day, and on any other
15 days when there are so many spontaneous actions that I was
16 request to intervene –
17   MR SHOZI: But that's my point precisely.
18 You were in the air for 20 minutes and you gave no guidance
19 whatsoever. Correct?
20   MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson, because there was no guidance that I, it was
22 sought from me. I had a radio and I was listening to what
23 was happening during the operation, and immediately when I
24 heard that there are bodies then I went to the JOC, and I
25 did testify to that.

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1   MR SHOZI: But why didn't you –
2 [12:14] CHAIRPERSON: Sorry, sorry, before you
3 carry on, I just want to take him a couple of steps back.
4 You said that you as the overall commander wants to know,
5 find out what's going on so you could give instructions,
6 directions. I take it that you also had to be in a
7 position to give instructions to the operational commanders
8 if they asked you for instructions. In other words you had
9 to be in a position either on your initiative to give
10 instructions if you considered it was necessary, but also
11 it was possible, I take it, that they would contact you and
12 ask for instructions, should we do this or that. So you
13 were effectively in the air, would I be correct, for two
14 reasons, to acquaint yourself with what was happening, to
15 be able either to give instructions if you considered it
16 necessary, or to be able to answer questions and respond to
17 requests for instructions from the operational commanders.
18 Would that be a fair summary of the position?
19   MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson, this is what I'm trying to say.
21   MR SHOZI: But nothing precluded you,
22 General Mpembe, from giving the directions whilst you were
23 in the air. Nothing precluded you from doing so, correct?
24   MAJOR-GENERAL MPEMBE: Correct,
25 Chairperson. When direction was sought or when I heard

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1 that there is a problem, but none, but on that day none of
2 the two happened.
3   MR SHOZI: Would you care please to have
4 a look at paragraph 49 of your statement? You say there in
5 the third sentence, "I could see the group of people
6 dispersing from the koppie and moving in a north and north-
7 westerly direction." Do you see that?
8   MAJOR-GENERAL MPEMBE: Correct,
9 Chairperson.
10   MR SHOZI: Did you make any effort to
11 communicate what you were observing from the air to your
12 members on the ground or to the JOC?
13   MAJOR-GENERAL MPEMBE: No, Chairperson,
14 because I couldn't see this as - or I couldn't view it as a
15 problem.
16   MR SHOZI: Sorry, I didn't follow that.
17   CHAIRPERSON: He says he didn't see it as
18 a problem. I take it you weren't in the air to give a
19 running commentary to people in the JOC as to what you
20 could see. You were there to give orders if you considered
21 it necessary, or to respond to requests for orders if those
22 - your operational commanders wished to have your
23 instructions on a particular issue. That's what you've
24 explained already.
25   MAJOR-GENERAL MPEMBE: Correct,

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1 Chairperson. Chairperson, I need -
2   CHAIRPERSON: In the paragraph you say
3 you saw people dispersing from the koppie, moving in these
4 two directions, north and north-westerly. You also saw
5 water canons arriving at koppie 3. Did you consider it
6 necessary to give any instructions at that point?
7   MAJOR-GENERAL MPEMBE: No, Chairperson.
8   CHAIRPERSON: Were you asked for any
9 instructions by any of the operational commanders?
10   MAJOR-GENERAL MPEMBE: No, Chairperson.
11 Chairperson, I need also to add, to fast-track the
12 questioning, is to say there were two helicopters; the one
13 of Colonel Vermaak specifically, it was a command post that
14 assisted the operational commander from the air to see on
15 all the sites. There was also the other one that was under
16 the direction of Brigadier Fritz, which could move a little
17 bit away and to check any other problems that the
18 operational commander could not see. So as a result of
19 that I knew that there is an assistance from the air, on
20 the ground for the operational commander. I was listening
21 to either of those if there is any other problem for my
22 intervention or those that might seek also, or sought
23 directive from me.
24   MR SHOZI: Your evidence is that when you
25 heard Colonel Vermaak over the radio saying that there were

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1 bodies down, you then at that stage asked to be flown back
2 to the JOC, correct?
3   MAJOR-GENERAL MPEMBE: Correct,
4 Chairperson.
5   MR SHOZI: And at paragraph 53 of your
6 statement you then say the following - I beg your pardon,
7 paragraph 52. "I learnt that people had been shot and died
8 at the scene when I arrived at the JOC." Do you see that?
9   MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11   MR SHOZI: Why didn't you, at that stage,
12 proceed to the koppie where people had been shot and killed
13 to establish for yourself, after all you're the overall
14 commander of the operation - why didn't you proceed to the
15 koppie to establish for yourself how people had died, how
16 many had died, what the circumstances were? Why didn't you
17 do that?
18   MAJOR-GENERAL MPEMBE: Chairperson, I
19 said I had competent officers whom I have trust that they
20 will handle the situation the same as I could have handled.
21 And Chairperson, to use an example, the same thing that I
22 did on the 13th, so the same officers could have done what
23 I've done on the 13th, to handle the scene and make sure
24 that the processing of the scene is done.
25   MR SHOZI: So was it more important for

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1 you to proceed to inspect the Marikana Police Station
2 rather than proceed to the koppie where people have just
3 died?
4   MAJOR-GENERAL MPEMBE: No, Chairperson.
5   MR SHOZI: So why didn't you go to the
6 koppie then?
7   MR NGALWANA: Chair, this line of
8 questioning assumes something, and I don't want to testify
9 from the bar but if we were in court I would have asked -
10 if we were in a trial situation I would have asked for the
11 General to be excused. But his evidence doesn't relate to
12 what our learned friend assumes. Our learned friend - well
13 I can't go further.
14   CHAIRPERSON: No well, I don't understand
15 the objection. But let him carry on, but I've got another
16 problem. Aren't you asking a question now which he
17 answered a minute or two ago? You asked him why he didn't
18 go to the koppie instead of going back to the JOC and he
19 gave an answer, didn't he? One of the things he had to do
20 was to check - if people were going to be arrested he had
21 to check whether the processing of those arrested could
22 take place, which he apparently did according to what he
23 says in paragraph 53. So he's given the answer. You can
24 ask other questions, but you mustn't repeat the same
25 questions.

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1   MR SHOZI: General Mpembe, why was it
2 important for you - let me ask you this. Why wouldn't you
3 send a junior constable to go and inspect the Marikana
4 Police Station? Why was it important for you personally to
5 go to the police station rather than proceed to the koppie
6 where people had just died? I don't understand that.
7   MAJOR-GENERAL MPEMBE: Chairperson, I
8 did, in my testimony to say that in the meeting of the
9 morning Brigadier Seboloke and Van Zyl were tasked and I
10 was going to confirm my taskings with them, but I still
11 repeat the answers that I have said to say I had competent
12 officers. There was a major-general there who is having
13 the same rank as myself, that is Major-General Naidoo. I
14 had Brigadier Calitz, and I've got also other brigadiers
15 that were there, same competent. I did the same scene on
16 Monday. If there was any other problem and that I was
17 available on the radio, that could have been sorted, but
18 what was more important is also the processing of those
19 that were arrested.
20   CHAIRPERSON: As I understand what you
21 say in paragraph 50, it was a question of priorities and
22 you regarded two matters as being of prior importance. One
23 was ensuring that there were medical personnel on hand to
24 attend to those who were injured, and that there was space
25 in the police cells to deal with those who hadn't been

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1 injured but who had been or were going to be arrested.
2 Those are the two matters you regarded of the most
3 importance, you prioritised them. That's what you said in
4 paragraph 50. That's correct, isn't it?
5   MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7   CHAIRPERSON: Was there anything you
8 could have done in respect of those who were dead? There
9 were people on the ground dealing with the situation, but
10 could you yourself have done anything in relation to those
11 who were dead?
12   MAJOR-GENERAL MPEMBE: No, Chairperson.
13   CHAIRPERSON: As far as the injured ones
14 were concerned, the most important thing you could do was
15 to ensure that medical personnel were available to deal
16 with them, to treat them. Is that right?
17   MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson.
19   MR SHOZI: When was the first time that
20 you went to the scene of the 16th of August?
21   MAJOR-GENERAL MPEMBE: Chairperson, on
22 the 16th I did not go to the scene because as, with the
23 reasons that I've been giving there was a major-general
24 there, there was brigadiers that were there and I was
25 receiving a report, the same thing that I did on the 13th.

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1 But, Chairperson, what I can say is that I played a major
2 role, as an overall commander, as it has been put in front
3 of the Commission, that the tragedy could have been
4 averted.
5   CHAIRPERSON: What you're being
6 questioned about now is what you did and failed to do after
7 the tragedy had happened, and what you regarded as
8 important, to make sure that the injured people were
9 treated, there were medical personnel to deal with them,
10 that those people who were arrested could be lodged and
11 processed properly and lodged in cells that were available,
12 and you also, according to your statement, took it upon
13 yourself to confirm that hospital beds were available for
14 those who needed hospitalisation. Is that right?
15   MAJOR-GENERAL MPEMBE: Correct,
16 Chairperson.
17   CHAIRPERSON: And you regarded it as
18 utmost importance for you as overall commander to see to it
19 that those things were in place and were being done
20 correctly.
21   MAJOR-GENERAL MPEMBE: Correct,
22 Chairperson.
23   MR SHOZI: General, we will argue that
24 you got your priorities wrong; that the first thing you
25 should have done, or ought to have done when you got back

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1 to the JOC, was to proceed to the koppie where 34 people
2 have just died, rather than proceed to the police station
3 to inspect whether or not people could be processed there.
4 Would you like to comment on that?
5   MAJOR-GENERAL MPEMBE: Chairperson, I
6 would not agree that my priorities were wrong, but -
7   CHAIRPERSON: Is that - sorry to
8 interrupt you, is that a valid criticism? Because what he
9 says in para 52 is this; when he got back to JOC he learnt
10 people had been shot and died at the scene. So he then
11 enquired whether the scene is being attended to and
12 Brigadier Van Zyl confirmed that it was. Brigadier
13 Pretorius confirmed that IPID had been informed, and Major-
14 General Naidoo confirmed he was taking the emergency
15 medical services based at forward holding area 1 to the
16 koppie. Now weren't those matters of utmost priority which
17 he dealt with appropriately as soon as he got to the JOC?
18 Is the criticism therefore of any substance? The important
19 point is Brigadier Van Zyl confirmed that the scene was
20 being attended to. So what was important was IPID must
21 know, because things follow from that; emergency medical
22 services must go, because if there are people who haven't
23 died they must receive treatment as soon as possible. It's
24 also important to know those who need hospitalisation,
25 there will be hospitals they can be taken to as a matter of

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1 urgency. It's also important that those who've been
2 arrested can be processed and dealt with appropriately. As
3 a matter of police operations, isn't that the kind of
4 conduct you'd expect from an overall commander to engage
5 in, in a situation such as that in which he found himself?
6 Why must he go to the scene if he's assured that it's being
7 attended to? Admittedly he must ask if it was being
8 attended to, which he did. Once he's told it's being
9 attended to, and he relies on the people who give him the
10 confirmation, why must he go himself to check whether what
11 he's been told is correct? Surely there's no substance in
12 this. Aren't we wasting a bit of time with a non-point?
13   MR SHOZI: Thank you, Chair. General,
14 can I then move onto my last theme, and that is the
15 Potchefstroom meeting, if I may please? To your knowledge,
16 was an agenda prepared for the Potchefstroom meeting?
17   MAJOR-GENERAL MPEMBE: Chairperson, I
18 would take that the call-up could have served the purpose
19 of an agenda, and secondly is that there were
20 administrators that were dealing with the matters of the
21 agendas and also the minutes that were taken, which were
22 not falling under me.
23   MR SHOZI: We know that exhibit L was the
24 end product of the Potchefstroom meeting, but were minutes
25 prepared at the end of each day during the course of the

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1 meeting?
2   MAJOR-GENERAL MPEMBE: Chairperson, as I
3 have indicated, I was not responsible for ensuring that the
4 minutes are taken and so on, but what I know is that
5 General Visser was responsible for all what the question is
6 being asked. Maybe he might be in a better position to
7 shed the light on that matter.
8   MR SHOZI: And as far as you were
9 concerned, did you give a presentation regarding the events
10 of 13 August 2012 for the Potchefstroom meeting?
11 [12:34] MAJOR-GENERAL MPEMBE: Chairperson, not
12 necessarily a presentation, but I was a participant in that
13 meeting and I did speak about the matters of the 13th, which
14 they were already being given here to the Commission.
15   MR SHOZI: What did you say went wrong
16 with the operation of 13 August 2012?
17   MAJOR-GENERAL MPEMBE: Chairperson, I did
18 submit my diary notes to the Commission at what precisely I
19 said there at Potchefstroom.
20   MR SHOZI: Would you care to tell me,
21 please, what did you say went wrong with the operation of
22 13 August 2012, at the Potchefstroom meeting? I'm asking
23 you now as you sit here today, what did you tell the
24 meeting went wrong with the operation?
25   MAJOR-GENERAL MPEMBE: Chairperson, with

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1 what went wrong, I do not understand, but what I'm saying
2 is that what I said in Potchefstroom is contained in the
3 diary notes that I have submitted –
4   CHAIRPERSON: I think counsel wants to
5 check whether what you, what exactly you said, and because
6 it has importance for various reasons. Now are you able to
7 tell us in very few short sentences what went wrong and
8 what you said at Potchefstroom went wrong? Or, I mean why
9 do you want to look into the diary? Can't you remember
10 what you said at Potchefstroom? I mean normally when you
11 ask a witness a question the witness doesn't say please
12 remind me what I said yesterday on the point so I make sure
13 I say the same story again. If you can't remember then
14 obviously you must say so, but I don't think you're saying
15 that. What counsel wants to know from you is can you tell
16 us what you told the meeting at Potchefstroom about what
17 went wrong? Just in a few short sentences. He doesn't
18 want the full story, as I understand it. Is that right?
19   MR SHOZI: Correct, Chairperson.
20   MAJOR-GENERAL MPEMBE: Chairperson, what
21 I said in Potchefstroom is contained in my statement, and
22 also in the diary that I submitted to the Commission.
23   CHAIRPERSON: Ms Pillay, can you help us
24 by telling us what the exhibit number is of the diary
25 extract?

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1   COMMISSIONER TOKOTA: In other words,
2 General, what you are saying is that you didn't give an
3 opinion or a judgment of what went wrong; all you did was
4 to relate the facts of what happened during that period?
5   MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7   MR SHOZI: Was Warrant-Officer Kuhn
8 present at Potchefstroom?
9   MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11   MR SHOZI: Did you ask him, whether
12 before or after Potchefstroom meeting, to prepare a
13 statement explaining why he fired the CS gas on 13 August
14 2012?
15   MAJOR-GENERAL MPEMBE: Chairperson,
16 according to my recollection members were requested to give
17 statements, and Warrant-Officer Kuhn is one of the members
18 that was also expected to give a statement.
19   MR SHOZI: I'm asking you, General
20 Mpembe, as one who was in charge of the operation, did you
21 personally ask Warrant-Officer Kuhn to prepare a statement
22 explaining why he fired the CS gas on Monday, 13th of
23 August? Did you, or didn't you?
24   MAJOR-GENERAL MPEMBE: Chairperson, I
25 stated that all members that used the teargas, not only

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1 Warrant-Officer Kuhn, a teargas or any other thing, were
2 instructed to give statements, and they did give
3 statements.
4   MR SHOZI: I'm going to try for the last
5 time –
6   MAJOR-GENERAL MPEMBE: And, Chairperson –
7   COMMISSIONER HEMRAJ: By whom were they
8 requested to make the statements, General Mpembe?
9   MAJOR-GENERAL MPEMBE: Chairperson, it's
10 – I would say through the JOCCOM that I chaired, by their
11 commanders. We instructed that every member, and it's a
12 procedure that every member that has used a teargas or who
13 has shot a firearm is expected to give a statement, and the
14 statement were discovered by the Commission.
15   COMMISSIONER HEMRAJ: Did you personally
16 ask any person at all to make statements, or was this done
17 by their immediate commanders?
18   MAJOR-GENERAL MPEMBE: Chairperson, as
19 I'm saying that normally in the JOCCOM, different
20 commanders they represent members. So I instructed the
21 commanders to make sure that any member who has used his
22 firearm, he is supposed to submit a statement. Those that
23 have used the teargas is supposed to submit a statement to
24 explain that, and those that, any other member that has
25 used that is supposed to submit statements, and the

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1 commanders, they did confirm with me that members were
2 informed and that the statements were made, and that the
3 statements were also being discovered by the Commission.
4   MS PILLAY: Chair, the diary notes are
5 HHH9, the General's diary notes.
6   CHAIRPERSON: Thank you. The copies of
7 the exhibits we have here at our table stop at HHH8. Is
8 there a copy that we can be given, please?
9   MR NGALWANA: In anticipation of the
10 Chairman's wrath, we shall endeavour to prepare a typed
11 version of this.
12   CHAIRPERSON: Yes, of course that will be
13 helpful. I did have an attempt at deciphering it myself
14 earlier, but it will make it much easier, yes.
15   MR MAHLANGU: Mr Chairperson, General
16 wants to make a request just for a few minutes.
17   CHAIRPERSON: Sorry, I was concentrating
18 on something else. Please forgive me. What do you want to
19 ask me?
20   MAJOR-GENERAL MPEMBE: Chairperson, I
21 will just ask a few minutes comfort break.
22   CHAIRPERSON: - 10 minutes. We'll
23 adjourn for 10 minutes. Sorry, I notice it's now – sorry,
24 I'm a little bit absentminded this morning. I see it's
25 quarter to 1 already. Let's take the adjournment until

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1   half past 1, the lunch adjournment, and that will give you

2   time to do what has to be done and give us chance to have

3   lunch.

4   [COMMISSION ADJOURNS   COMMISSION RESUMES]

5   [13:40]   CHAIRPERSON: The Commission resumes.

6   Major-General, you're still under oath.

7   WILLIAM MPEMBE: s.u.o.

8   CHAIRPERSON: Mr Shozi, you have further

9   questions in cross-examination.

10   CROSS-EXAMINATION BY MR SHOZI (CONTD.):

11   Thank you, Chair. Chair, I was practically finished when

12   we adjourned. General Mpembe, as far as the events of the

13   16th of August, sitting here today with the benefit of

14   hindsight and having had inputs at Potchefstroom, what

15   would you say went wrong with the operation on the 16th of

16   August?

17   MAJOR-GENERAL MPEMBE: Chairperson, the

18   problems that we experienced mostly which they are already

19   mentioned in the Commission, it's the communication of the

20   radios, so if we had communication that could, many of the

21   people could have communicated, that could have assisted a

22   lot. Chairperson, the dedication of the other role players

23   could have assisted us in the sense that if by the time we

24   wanted to know who actually are the destabilisers, or the

25   people that were driving the violence, if we go their names

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1   and where they stay we could have acted better.

2   Chairperson, the less seriousness of, from the other role

3   players to appreciate the problem that we were in, in the

4   sense that they couldn't act, or they couldn't understand

5   the problem, also the urgency of the matter, that also

6   contributed.

7   MR SHOZI: Chair, those are our

8   questions, thank you.

9   CHAIRPERSON: Thank you. Adv Masebe, are

10   you in a position to cross-examine on behalf of your

11   clients today?

12   MS MASEBE: Unfortunately not,

13   Chairperson. We are not ready to proceed. Chairperson,

14   I've obtained instructions that we need to verify certain

15   aspects, and unfortunately it only came late and that is

16   where I find myself, Chairperson, that we can't proceed at

17   this stage.

18   CHAIRPERSON: I see. Thank you. Is

19   there anybody else here who wishes to cross-examine? Mr

20   Tip?

21   MR TIP SC: Thank you, Chair. We

22   presently have no questions for the General.

23   CHAIRPERSON: What do you mean by

24   "presently"?

25   MR TIP SC: I mean that we hope that

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1   there will be cross-examination by other parties and if

2   something arises we'll approach the Chair for leave then to

3   deal with anything that is of consequence, but all things

4   remaining equal, we will not have questions for the

5   General.

6   CHAIRPERSON: Okay, thank you. Yes, we

7   have a situation that certain parties have withdrawn

8   provisionally, dependent upon the judgment which is to be

9   delivered later this afternoon in the High Court in

10   Pretoria, and if it is in favour of the application they

11   may return, in which case they may wish to ask questions of

12   the witness. I understand that the parties concerned, if

13   the judgment is given granting the application and they

14   return, they will in any event not be able to cross-examine

15   tomorrow, and so in the circumstances it's unfortunate, but

16   we will not be able to sit tomorrow because the other

17   alternative will be for the next witness to be called, and

18   the next witness to be deposed. The next witness is

19   Lieutenant – sorry, he's now Colonel, I think, he's been

20   promoted, Colonel Scott. He is to be led by Adv Semenya,

21   who is not available tomorrow because he's taking the chair

22   at a meeting of the General Council of the Bar, of which

23   he's the chairman.

24   So in the circumstances we're in the unfortunate

25   position that we can't proceed tomorrow. We'll accordingly

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1   have to adjourn till 9 o'clock on Monday, by which time we

2   will be in a position to proceed one way or the other,

3   depending upon what – I'm reminded that because it's

4   Monday, we'll be starting at 9:30 and not at 9. So in the

5   circumstances, I regret the fact that we lose a day because

6   a day is very precious to us, and on the other hand we have

7   received a lengthy statement from Colonel Scott and we can

8   profitably spend the day, I would imagine, tomorrow

9   studying it carefully, so that in fact no time will in

10   reality be lost because we'll be able to proceed more

11   expeditiously with Colonel Scott's evidence. So we will

12   adjourn now until 9:30 on Monday morning.

13   MR NGALWANA: Chair –

14   CHAIRPERSON: Mr Ngalwana, do you wish to

15   say something?

16   MR NGALWANA: Just two things. I

17   understood the HRC, while they have hopped off the bus,

18   they've hopped back on again. So I'm not sure if they were

19   not intending – I understood the HRC were back –

20   CHAIRPERSON: Yes, sorry. Yes, thank you

21   for reminding me. I was informed this morning that the HRC

22   are continuing with their participation; in fact, they told

23   us here in the Commission, but that will be irrespective of

24   which way the judgment goes in the High Court this

25   afternoon, but unfortunately their counsel was due to

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1 cross-examine at the end after other parties had cross-
2 examined, and it wasn't foreseeable that she'll be called
3 upon to cross-examine tomorrow and she will only be
4 available on Monday. So that's another factor that I
5 should have mentioned. Seeing you've reminded me that I
6 must give you chance to say something, have you got
7 anything further to tell us about the two matters that were
8 referred to earlier?
9   MR NGALWANA: Yes, I did say there were
10 two aspects I wanted to address the Chair on. The first
11 I've already done. The other one is a two-pronged one,
12 which I'm about to address now. Chair, with regards to the
13 Moolman affidavit, we do have it; it has been prepared but
14 it hasn't been signed yet. So we can circulate and hand
15 out the signed version, we were hoping to do that tomorrow;
16 inasmuch as we're not sitting we can do it on Monday, or it
17 can be done before then. So it can be distributed any time
18 between now and Monday. That's the first point.
19   The second point in relation to the existence or
20 otherwise of the minutes of the 14th, well the person who
21 was tasked with that task – excuse my tautology, if it is
22 one – was not apparently given that task timeously and has
23 now been declared to be unfit to do certain things because
24 he's indisposed, and so that task has now been conveyed to
25 him, or given to him to prepare an affidavit, which will be

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1 submitted in the course of Monday, because he's ill. So he
2 has been – I think that has been conveyed to him and he
3 will prepare the affidavit, which will be circulated on
4 Monday.
5   CHAIRPERSON: Well, perhaps we can wish
6 him a speedy recovery and look forward to his affidavit on
7 Monday. Anyone else wish to say anything before we
8 adjourn? Well, we'll adjourn then until Monday morning at
9 9:30.
10   [COMMISSION ADJOURNED]
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