

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 151 19 NOVEMBER 2013 PAGES 16914 TO 17018



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1 [PROCEEDINGS ON 19 NOVEMBER 2013]
 2 [09:08] CHAIRPERSON: The Commission resumes.
 3 The impression that Mr Mpofu was not with us was unfounded.
 4 Major-General, you're still under oath.
 5 WILLIAM MPEMBE: Thanks, Chairperson.
 6 CHAIRPERSON: Mr Mpofu.
 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 8 Thank you very much, Chairperson. General, we were still
 9 busy with, I think it's slide –
 10 CHAIRPERSON: There's some music being
 11 played. I suspect it's someone's cell phone. Would you
 12 please turn that off? Whose cell phone is it? What's
 13 going on? No-one knows how to turn it off? Is it off now?
 14 If that happens again the owner of that cell phone I'm
 15 afraid will have to leave the chamber, and anyone else
 16 whose cell phone is on will have to do the same, unless
 17 it's Mr Mpofu, because we can't do without him for the
 18 moment.
 19 MR MPOFU: Thank you, Chairperson.
 20 CHAIRPERSON: Or the Chairman. Right,
 21 now hopefully we've turned off all the cell phones. Mr
 22 Mpofu, is your cell phone off?
 23 MR MPOFU: Yes. Yes, Chairperson.
 24 CHAIRPERSON: General, off? Lucky
 25 escape. Alright, on that serious note we will proceed. Mr

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1 Mpofu.
 2 MR MPOFU: Thank you very much,
 3 Chairperson. General, it is my understanding that when,
 4 you remember we were having a discussion around the 13th and
 5 you made the distinction between what one might call
 6 traditional weapons and dangerous weapons, correct? Or
 7 rather, you know the distinction between those two?
 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 9 as far as I know traditional weapons they also fall under
 10 the definition of a dangerous weapon.
 11 MR MPOFU: So you're saying there's no
 12 difference between the two?
 13 MAJOR-GENERAL MPEMBE: Correct,
 14 Chairperson.
 15 CHAIRPERSON: Is the answer not perhaps
 16 that some traditional weapons might be dangerous weapons,
 17 but others, I mean I would assume that a stick, you could
 18 use a stick quite effectively as a weapon to ward off a dog
 19 that's attacking you or something of that kind, but you
 20 wouldn't call that, and that would be a traditional weapon,
 21 I take it, but it wouldn't be a dangerous weapon.
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 23 according to my understanding of a dangerous weapon, anyone
 24 that can cause the wound, let's say of three centimetre,
 25 but there will be others that will only fall as traditional

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1 weapons.
 2 MR MPOFU: Okay, fine. Ja, I'm happy
 3 with that, and you'd agree that sticks, as the Chairman
 4 says, and knobkieries would normally be traditional, or
 5 used as traditional weapons? Not that they won't hurt you
 6 if you are hit with them, but that they'd be used as
 7 traditional weapons, agreed?
 8 MAJOR-GENERAL MPEMBE: I agree,
 9 Chairperson, on that they might be used as traditional
 10 weapons, but not necessarily that they're excluded –
 11 MR MPOFU: They won't hurt you, yes.
 12 MAJOR-GENERAL MPEMBE: Yes.
 13 MR MPOFU: Okay, but if you go, if you
 14 talk about a panga, that's only a dangerous weapon, it's
 15 not a traditional weapon, correct?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR MPOFU: Yes, and in fact I think
 18 there's a recent amendment to the law which widens the net,
 19 unfairly in my view, but that's irrelevant for the purposes
 20 of this, but that only I think happened in 2013. At that
 21 time the dangerous weapons were mainly what you and I have
 22 agreed are dangerous weapons only, where there's no
 23 ambiguity, correct?
 24 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 25 CHAIRPERSON: I take it you could have

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1 statutes which define dangerous weapons in a way to enlarge
 2 the meaning of the concept for the purposes of that
 3 particular statute, but in ordinary common parlance - this
 4 is what you and I talk, Mr Mpofu, don't we? – a dangerous
 5 weapon wouldn't necessarily be as widely defined –
 6 MR MPOFU: Correct.
 7 CHAIRPERSON: - as is found in some
 8 statutes. Is that correct?
 9 MR MPOFU: Yes, that's exactly where I'm
 10 going, Chairperson.
 11 CHAIRPERSON: And as far as sticks are
 12 concerned, I've been reminded I was possibly a little bit
 13 too expansive in what I said. I take it there are sticks
 14 and sticks. You could have sticks, depending on the
 15 dimensions, which could inflict serious wounds and would be
 16 dangerous weapons, but other sticks of different dimensions
 17 wouldn't fall into that category.
 18 MR MPOFU: Yes, no –
 19 CHAIRPERSON: Certainly it's a matter of
 20 common parlance.
 21 MR MPOFU: That's correct, Chairperson.
 22 In fact the General and I have just agreed that even those
 23 sticks and knobkieries which are used as traditional
 24 weapons, it doesn't mean if someone hits you with it, it's
 25 not going to hurt you. Just like a bottle of Coca-Cola can

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1 hurt you, but it's not classified as a dangerous weapon.
 2 So I think we are together with the General and I –
 3 CHAIRPERSON: I don't know why you single
 4 out Coca-Cola. I would have thought any bottle would –
 5 MR MPOFU: Any bottle, yes, otherwise I
 6 might be sued, yes.
 7 COMMISSIONER HEMRAJ: You see, Mr Mpofu,
 8 the authorities on sticks as dangerous weapons use the
 9 dimensions of the stick to determine whether they fall into
 10 that category or not. That's what the authorities are,
 11 certainly where I come from.
 12 MR MPOFU: Yes, I'm not even there,
 13 Commissioner. I'm prepared to accept that any stick will
 14 hurt you if it's properly used, and I'll speak with
 15 experience.
 16 CHAIRPERSON: Improperly used.
 17 MR MPOFU: Improperly used, yes. But
 18 yes, I think we understand each other. Now if we then take
 19 these loose distinctions, you would accept that what really
 20 was the concern of the police when they were thinking of
 21 "disarming" the strikers where what are clearly dangerous
 22 weapons, the spears, the pangas, even guns, if there were
 23 any guns, correct?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, and "incolas."

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1 MR MPOFU: And "incolas," yes, for sure.
 2 Thanks. Now if then we use that working definition of what
 3 a dangerous weapon might be, then you would agree that at
 4 scene 2, if we exclude the knobkieries, at scene 2 there
 5 were about 130 or so – actually let's just go to the actual
 6 figures. I should have done this last night. 138. I'm at
 7 slide 263. You see where I am, General? 57 spears –
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 MR MPOFU: 57 spears, 29 iron rods, I'm
 11 prepared to accept that those were dangerous, knives,
 12 clearly dangerous, pangas, axe, sjambok maybe not so
 13 dangerous, but let's put it in, but the total of those
 14 weapons is about 138, agreed?
 15 CHAIRPERSON: It's a matter of
 16 arithmetic.
 17 MAJOR-GENERAL MPEMBE: Correct,
 18 Chairperson, but –
 19 CHAIRPERSON: [Microphone off,
 20 inaudible], That's correct, isn't it? It's a matter of
 21 arithmetic.
 22 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 23 but knobkieries –
 24 CHAIRPERSON: Yes, yes, I know, we take
 25 knobkieries out –

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: You've got 128. If you put
 3 the knobkieries in, you've got almost 300.
 4 MR MPOFU: 131.
 5 CHAIRPERSON: And the debate would be
 6 whether knobkieries in the circumstances could be
 7 characterised as dangerous weapons, but I don't know that
 8 you and Mr Mpofu have to engage in that debate, but –
 9 MR MPOFU: No, not really. We don't.
 10 I'm just doing the arithmetic, ja. I find 131, if you
 11 include the sjambok.
 12 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 13 I do agree.
 14 MR MPOFU: Okay, that's fine. And we
 15 also know that from clicking which you witnessed that some
 16 or most of the people had two weapons each, correct?
 17 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 18 MR MPOFU: Thank you. So if you say that
 19 some of the people had two weapons each, that would – okay,
 20 let's assume this is that all of the people had weapons, it
 21 should be about 60 something, but obviously some had one
 22 weapon. So you would probably have more than that of
 23 people who had weapons, correct?
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson.

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1 MR MPOFU: Thanks. Now also according to
 2 your knowledge, or at least there is no evidence, it might
 3 still be coming; according to your knowledge none of the
 4 people who were arrested there were linked to any
 5 particular weapon, to any particular panga. Those pangas
 6 were just piled on a blanket, if I remember well. You are
 7 aware of that?
 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 9 I'm aware of that, but I don't know whether the – I think
 10 those that we arrested the people, as I said yesterday,
 11 they will be able –
 12 MR MPOFU: No, no, fair enough, that's
 13 why I'm saying according to your knowledge, obviously
 14 someone else might come with different knowledge, but
 15 according to your knowledge those arms were simply piled on
 16 a blanket and they didn't say this one is this one, this
 17 one was held by this one, of those 259 people, correct?
 18 MAJOR-GENERAL MPEMBE: That's what I was
 19 informed.
 20 MR MPOFU: Yes, thank you.
 21 CHAIRPERSON: Let me ask you this; on
 22 what charges were Mr Mpofu's clients arrested? I know a
 23 charge was later added of murder, but I'm not interested in
 24 that for the moment. On what charges were they actually
 25 arrested? Can you tell us, or don't you know?

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1 MAJOR-GENERAL MPEMBE: Chairperson, there
 2 were various charges. Others they were charges of
 3 possession of dangerous weapons and others they were
 4 possession of unlicensed firearms, possession of ammunition
 5 that did not have the firearm that can discharge it, and
 6 then others, there were really various charges.
 7 CHAIRPERSON: Were any of them arrested
 8 on charges of public violence?
 9 MAJOR-GENERAL MPEMBE: The charge that I
 10 could remember is that they were having a gathering with,
 11 where no notice has been served.
 12 CHAIRPERSON: Is that an offence?
 13 MAJOR-GENERAL MPEMBE: When they –
 14 CHAIRPERSON: I can understand the
 15 conveners may be in trouble for that.
 16 MAJOR-GENERAL MPEMBE: Yes, that –
 17 CHAIRPERSON: But I'm not sure that the
 18 attenders – some people call them attendees, but that's not
 19 right, it's attenders – I'm not sure an attender of a
 20 gathering in respect of which notice has not been given
 21 commits an offence. The conveners may well be guilty of an
 22 offence, but anyway, leaving that aside, was anybody
 23 charged with public violence, or don't you know?
 24 MAJOR-GENERAL MPEMBE: I'm not sure,
 25 Chairperson, but those, it's correct, Chairperson, those

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1 that could have been those that have been identified as
 2 leaders later only for no notice served.
 3 MR MPOFU: Okay, thank you, Chairperson.
 4 Well, let me assist you, General, and if you dispute what
 5 I'm going to say –
 6 CHAIRPERSON: I'm sorry, forgive me, Mr
 7 Mpofu –
 8 MR MPOFU: Sorry, Chairperson.
 9 CHAIRPERSON: Mr Tokota has come to my
 10 aid and perhaps I should put this before you carry on with
 11 your question. It looks, 265, slide 265, exhibit L –
 12 MR MPOFU: That's where I'm going –
 13 CHAIRPERSON: Is that where you're going?
 14 Oh, I'm sorry –
 15 MR MPOFU: Yes, thank you.
 16 CHAIRPERSON: Forgive me, Mr Mpofu.
 17 MR MPOFU: No, thank you.
 18 CHAIRPERSON: I'm sure you'll do it
 19 better than I will, so carry on.
 20 MR MPOFU: No, no, no, thanks,
 21 Chairperson.
 22 CHAIRPERSON: Yes, you will. Carry on.
 23 MR MPOFU: Yes, General, at –
 24 MR MATHIBEDI SC: Mr Chairman, before my
 25 colleague moves away, it's not an objection, it's just a

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1 matter of clarity. I would like to find out from my
 2 colleague, is it his case that the 163 knobkieries are not
 3 dangerous weapons?
 4 MR MPOFU: Yes, well it's argument
 5 really. That's why we said, I can't argue that –
 6 CHAIRPERSON: I'm sorry, Mr Mpofu. He
 7 asked you what your case is. Your answer is it's argument.
 8 I take it that means –
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: - you concede it's a matter
 11 for argument, you're not going to debate it with the
 12 witness?
 13 MR MPOFU: With the witness, yes.
 14 CHAIRPERSON: But your argument will be
 15 that they're not dangerous weapons?
 16 MR MPOFU: That's correct.
 17 CHAIRPERSON: So your learned friend
 18 knows what to prepare for.
 19 MR MPOFU: That's correct.
 20 CHAIRPERSON: Alright, thank you.
 21 MR MPOFU: Thank you, Chairperson.
 22 MR MATHIBEDI SC: Mr Chairman, but what's
 23 the basis of saying that? There is no evidence to that
 24 effect that those weapons, you know, were measured.
 25 CHAIRPERSON: No, no, no, Mr Mpofu is

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1 going to argue it at the end. By the end he hopes he will
 2 have enough material on record, maybe we, I don't know
 3 where these knobkieries are, maybe the knobkieries will
 4 have to come for us to look at them and maybe we must get
 5 someone to get their dimensions. All these are matters
 6 which I'm sure Mr Mpofu will deal with before he argues the
 7 matter. So you can't ask him to argue it now because he
 8 hasn't yet got all the material on record on which his
 9 argument is going to be based. Is that correct?
 10 MR MATHIBEDI SC: Thanks, Mr Chairman.
 11 CHAIRPERSON: You agree with that?
 12 MR MPOFU: Yes.
 13 MR MATHIBEDI SC: But as long as he can
 14 bear that in mind.
 15 CHAIRPERSON: Oh yes, no, no, no, I'm
 16 sure he'll bear in mind. If he doesn't, you and I will
 17 remind him. Carry on, Mr Mpofu.
 18 MR MPOFU: Thank you. Well, now that it
 19 has arisen, General, where are those weapons that were
 20 piled on that blanket?
 21 MAJOR-GENERAL MPEMBE: I don't understand
 22 the question. Now? Where are they now?
 23 MR MPOFU: Ja, now.
 24 CHAIRPERSON: The question is where are
 25 they now? Are they in some exhibit room somewhere in some

<p style="text-align: right;">Page 16926</p> <p>1 police station, or where are they? 2 MAJOR-GENERAL MPEMBE: Correct, 3 Chairperson, they are still in exhibit in some of the 4 police stations. 5 MR MPOFU: Okay, now we were just about 6 to go to 265 when I stopped the Chairperson. You see, 7 before we go there, let me just assist you with something. 8 The only person – I just want to eliminate the issue of 9 firearms. The only person who was accused – and I'm using 10 that word broadly now – the only person who was accused of 11 any possession of a firearm was Mr Mzoxolo Magidiwana, and 12 he has already testified here to say that, you know, and 13 there's a whole lot of evidence which suggested that it 14 either was a case of mistaken identity or it was planted, 15 or whatever, I don't know, but he has denied ever 16 possessing any firearm. But I suppose of these things are 17 in some exhibit room, his fingerprints no doubt will be 18 found on that firearm, but that's the only person, all I 19 want to say to you, that's the only person who was linked, 20 rightly or wrongly, to a firearm, of the attenders, as the 21 Chairperson calls them. Can you just accept that? 22 MAJOR-GENERAL MPEMBE: Chairperson, what 23 I do know also that there are firearms that they were not 24 belonging to those people. 25 MR MPOFU: Correct, no –</p>	<p style="text-align: right;">Page 16928</p> <p>1 legal issues with you, but I just, I'm taking advantage of 2 the fact that you are an expert in evidence gathering and 3 in Criminal Law. So the issue of gatherings, let's leave 4 it out because the Chairperson has just raised it with you, 5 but our argument will be that the offence of attending an 6 illegal gathering went away together with apartheid. 7 [09:28] In the current dispensation the offences which 8 are listed in the act attached to the conveners and all 9 sorts of things, and obviously you're not allowed to carry, 10 but merely attending is no longer an offence. You accept 11 that? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson, only the conveners. 14 MR MPOFU: Yes, and it's not suggested 15 that the 259 people were conveners, correct? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson – 18 MR MPOFU: Thank you. 19 MAJOR-GENERAL MPEMBE: - except if it can 20 be discovered that some of them were actually the 21 conveners. 22 MR MPOFU: No, but the conveners in the 23 act are the people who have actually been recorded as such 24 in terms of section – I can't remember the section, but 25 some of the early parts of the Gatherings Act somebody gets</p>
<p style="text-align: right;">Page 16927</p> <p>1 MAJOR-GENERAL MPEMBE: So what we know, 2 and this is under investigation, is that how could a 3 firearm have taken itself there on the scene. So surely it 4 should have been carried by somebody else. 5 MR MPOFU: Yes, but I'm sure even the 6 police don't suggest that it was carried by 259 people. 7 MAJOR-GENERAL MPEMBE: Correct, 8 Chairperson. 9 MR MPOFU: Thank you. 10 MAJOR-GENERAL MPEMBE: As I say, it's a 11 matter of investigation. 12 MR MPOFU: Alright, ja. Now we can then 13 now go to slide 265, and this is the issue that the 14 Chairperson was talking about. You see, Marikana 15 CAS134/08, that's the big case of the 259 arrests. You see 16 that? 17 MAJOR-GENERAL MPEMBE: Yes, Chairperson, 18 I see it. 19 MR MPOFU: Yes, ja, so let's deal with 20 that. Those 259 according to the police were arrested for 21 public violence, possession of dangerous weapons, and the 22 Gatherings Act. Does that now refresh your memory? 23 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 24 MR MPOFU: Yes, now the argument, and 25 it's mainly legal argument and I'm not allowed to debate</p>	<p style="text-align: right;">Page 16929</p> <p>1 designated as a convener. None of the people that day has 2 such a designation, correct? In fact nobody had even 3 applied, let alone to have a convener, correct? 4 MAJOR-GENERAL MPEMBE: Yes, in terms of 5 the Gatherings Act that is section 4 - 6 MR MPOFU: Yes. 7 MAJOR-GENERAL MPEMBE: No-one, but I 8 don't know whether those five Madoda couldn't be 9 identified, but that's what I'm saying, if it can be 10 discovered later during investigation, but not at that 11 time – 12 MR MPOFU: No, but McIntosh said the five 13 Madoda, they must have called the five bravest men, 14 whatever that means. 15 CHAIRPERSON: There are photographs of 16 them and videos of them and so on. I think before your 17 videographers for some reason decided it was inappropriate 18 to stay on the scene they seemed to have been quite busy 19 taking pictures of people, and I would imagine that there 20 shouldn't be any difficulty at all in identifying the five 21 from the various photographs that were taken. But anyway, 22 I don't think we need worry about that for the moment, 23 that's someone else's problem. Mr Mpofo may be involved in 24 that problem, but you and I aren't, so we don't have to 25 worry about it.</p>

<p style="text-align: right;">Page 16930</p> <p>1 MR MPOFU: I can even assist you. None 2 of the five Madoda were arrested. One was killed, Mr Noki; 3 Mr Nzuzza is here, he was not arrested and the other three, 4 Mr Booi and another two were not part of that, so let's put 5 that out of the way. So if you accept that then we'd agree 6 that those 259 people were not conveners in any sense, 7 whether they factor as you were saying in terms of being 8 five Madoda or having filled some form in terms of the 9 Gatherings Act, correct? 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 11 MR MPOFU: Thank you. And the issue of 12 dangerous weapons we've already dealt with. To your 13 knowledge no weapon was linked to any specific person, but 14 you say it might be that someone else has got that 15 information, correct? 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 17 MR MPOFU: And when it comes to public 18 violence you and I will agree, you and I are both experts 19 in criminal law, that that crime is done in the public, 20 correct? 21 CHAIRPERSON: I don't know that we can 22 get involved in – 23 MR MPOFU: In that – 24 CHAIRPERSON: - in criminal law aspects. 25 MR MPOFU: Okay.</p>	<p style="text-align: right;">Page 16932</p> <p>1 CHAIRPERSON: - because you'll give us 2 the benefit of your submissions on the law in due course. 3 MR MPOFU: At the time, thank you. No, 4 fair enough, Chairperson. Then all I can ask you is, you 5 agree that these people, these 259 people were arrested at 6 a koppie which is behind the main koppie, somewhere in the 7 veld, correct? 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 9 MR MPOFU: Thank you. 10 CHAIRPERSON: Isn't it correct, some of 11 the people who were arrested, who are your clients in fact, 12 were wounded or taken to hospital, some of them were 13 arrested in hospital? 14 MR MPOFU: Ja. 15 CHAIRPERSON: Some of them were, I'm not 16 sure if they were arrested, but they were certainly, they 17 came into the custody of the police at scene 1 even, but 18 the majority of them were, as you say, arrested at scene 2 19 or in the vicinity thereof. 20 MR MPOFU: Yes, no, Chairperson, 21 unfortunately no, all the ones that I'm referring to – 22 that's why I framed the question that way, when I said the 23 259 it's true that the actual number now is 272 because 24 that is an addition of the 259 plus those who were later 25 arrested. So I'm confining it to the people who were</p>
<p style="text-align: right;">Page 16931</p> <p>1 CHAIRPERSON: If your clients are 2 ultimately prosecuted or if the prosecution continues to a 3 plea stage and beyond, then these matters will be 4 ventilated, it's not a matter – 5 MR MPOFU: Chairperson, yes I'm sorry, 6 that's true, but maybe I misunderstood. I thought the 7 definition of phase 1 is – I'll get the document - deals 8 exactly with the issue. I'll paraphrase, it says whether 9 or not the persons who were arrested were in fact liable 10 for any criminal offence, I'm paraphrasing. But that's – 11 it might also happen in a criminal case, but I thought 12 here – 13 CHAIRPERSON: Yes, no, no, obviously the 14 nature of our investigation – you're correct, but the 15 nature of our investigation would obviously be far 16 different from that which would take place in a criminal 17 trial if it proceeds. 18 MR MPOFU: No, of course, no, agreed, 19 thank you, Chairperson. But okay, let me put it this way 20 then, because Chairperson is right, I don't have to – 21 CHAIRPERSON: If this witness can't deal 22 with it from his own knowledge, to call in aid his 23 knowledge of criminal law is not an appropriate way of 24 doing it – 25 MR MPOFU: No, fair enough.</p>	<p style="text-align: right;">Page 16933</p> <p>1 arrested in the veld. 2 CHAIRPERSON: I see, ja okay. I'm 3 sorry - 4 MR MPOFU: Thank you. 5 CHAIRPERSON: I should have appreciated 6 that, I didn't. I'm sorry, but please proceed. 7 MR MPOFU: Thank you, Chairperson. 8 General, before we get to the next big topic, which 9 hopefully is the only big topic, I just want to round up a 10 few loose ends before we get to the topic which might be 11 our last topic. Just for clarity, when you were answering 12 one of Mr Chaskalson's questions yesterday you said - and 13 I'm just checking my notes - you said that the encirclement 14 that was envisaged was not going to be done with barbed 15 wire, but with Nyalas. Am I not misquoting you? 16 MAJOR-GENERAL MPEMBE: Definitely 17 misquoting. 18 MR MPOFU: Okay, what did you say was 19 going to be done with Nyalas? 20 MAJOR-GENERAL MPEMBE: No, it was said by 21 Adv Chaskalson, then I said I was not in any meeting where 22 an encirclement was going to be done by Nyalas. 23 MR MPOFU: Okay, no it's fine. Then I - 24 MAJOR-GENERAL MPEMBE: But Adv Chaskalson 25 was encirclement of the koppie by Nyalas, but what I did</p>

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1 say is that the encirclement that we envisaged on that day,
 2 it was when the people have been –
 3 MR MPOFU: Broken into small groups –
 4 MAJOR-GENERAL MPEMBE: - yes, then that
 5 could be encirclement and that could be done by Nyalas, but
 6 not the koppie.
 7 MR MPOFU: Alright, no, fair enough.
 8 Okay, so only the encirclement of the small groups was
 9 envisaged to be done by Nyalas, or with Nyalas, correct?
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson, but Nyalas that do have members that will be
 12 actually now also communicating to that small number of
 13 group to drop weapons and –
 14 MR MPOFU: Yes, no, fair enough. So if
 15 that was envisaged then how many Nyalas do you think would
 16 circle one small group?
 17 MAJOR-GENERAL MPEMBE: It could be two to
 18 three Nyalas. It will depend in terms of the group that
 19 they will – because we could – we were saying the group
 20 that could be – it was not going to be more than even 10
 21 people.
 22 MR MPOFU: Yes, well that's exactly my
 23 worry. If we had groups, if we had 3 000 people in groups
 24 of 10 then you'd have about 300 groups, correct?
 25 MAJOR-GENERAL MPEMBE: No, Chairperson,

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1 we were not envisaging to encircle 3 000 people.
 2 MR MPOFU: Okay, if it was half of the
 3 crowd, then it would be 150 groups, correct?
 4 MAJOR-GENERAL MPEMBE: We were not even
 5 thinking of 1 000 that will remain behind; we were thinking
 6 a very small group that will remain behind. And to be
 7 precise, we were only looking at the militant group, even
 8 to use the word, but not as 3 000 or 2 000, no.
 9 MR MPOFU: Okay, even then the militant
 10 group was estimated at about what, 400, 500?
 11 MAJOR-GENERAL MPEMBE: We were estimating
 12 it between 2 to 300.
 13 MR MPOFU: Okay, so you'd have 30 groups
 14 then and you'd need about 90 Nyalas to encircle them into
 15 groups of 10, correct?
 16 MAJOR-GENERAL MPEMBE: Chairperson, the
 17 majority of the people could have dropped their weapons and
 18 they were already dropping their weapons. Our argument was
 19 that it's only those, that few that we were targeting, not
 20 3 000 people.
 21 MR MPOFU: Okay, alright, but if they
 22 didn't then you'd have needed 90 Nyalas to encircle them,
 23 correct?
 24 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 25 think the Nyalas that were there, they were enough to do

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1 the work.
 2 MR MPOFU: Alright, okay, but let's just
 3 agree on one thing. You didn't have 90 Nyalas there on the
 4 day, correct?
 5 MAJOR-GENERAL MPEMBE: Yes, not 90, but
 6 there were more Nyalas there, even though one could just go
 7 through it –
 8 MR MPOFU: That's fine.
 9 MAJOR-GENERAL MPEMBE: - but there were
 10 more Nyalas that could have done the work.
 11 MR MPOFU: Alright, okay then another
 12 thing that I picked up from what you said yesterday was, I
 13 think it's something I canvassed with either General
 14 Annandale or the National Commissioner; this issue of
 15 NATJOC keeps on popping up. Firstly, do you know which
 16 decisions were taken at your JOC and which decisions were
 17 taken at NATJOC level?
 18 MAJOR-GENERAL MPEMBE: All decisions that
 19 I do know they were taken at Provincial JOC.
 20 MR MPOFU: Yes.
 21 MAJOR-GENERAL MPEMBE: That was the one
 22 that was there. The NATJOC decisions that I do know it's
 23 with regard to the utilisation of resources, even including
 24 the Oryx, and as I said to you last time you say, it's not
 25 handled at provincial level, it's handled at national

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1 level. So it's National that would also ensure that it
 2 comes there legally.
 3 MR MPOFU: Yes. No, fair enough. In
 4 fact that's what sparked this question, it's when you said
 5 – when I was criticising about the use of the Oryx, you
 6 then said that was a decision taken at NATJOC level. Can I
 7 therefore take it that the decisions generally speaking -
 8 and I'm not saying you didn't take the decisions at your
 9 level, but generally speaking, what one might call the
 10 deployment decisions of National Human Resources and I
 11 suppose also material resources were taken at NATJOC level?
 12 MAJOR-GENERAL MPEMBE: Chairperson, my
 13 answer should be interpreted as such that the Province will
 14 only require the resources, but the type of resources and
 15 the availability of resources, that will be made by NATJOC.
 16 MR MPOFU: Correct, good. So then one
 17 can say that the decisions on deployment, that's what I'm
 18 saying, on deployment of personnel and also equipment such
 19 as the Oryx, those decisions were taken at NATJOC level.
 20 MAJOR-GENERAL MPEMBE: Chairperson, the
 21 requests might have been done by the province, but for say
 22 the Oryx should come, that decision is taken at NATJOC,
 23 yes.
 24 MR MPOFU: Ja, that's what I mean by
 25 deployment, the actual deployment. I don't mean - when it

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1 gets there how you use it is obviously your decision, but
 2 the initial deployment - maybe we should call it that - is
 3 done at NATJOC, correct?
 4 MAJOR-GENERAL MPEMBE: May I just repeat?
 5 MR MPOFU: Explain, yes.
 6 MAJOR-GENERAL MPEMBE: I don't deny that
 7 the province might have done a request to NATJOC.
 8 MR MPOFU: Okay, but the actual
 9 deployment was done by NATJOC.
 10 MAJOR-GENERAL MPEMBE: Correct,
 11 Chairperson.
 12 MR MPOFU: Thank you. Apart from those
 13 deployment decisions, are you aware of any other decisions
 14 which were taken by NATJOC regarding this operation?
 15 MAJOR-GENERAL MPEMBE: No, Chairperson.
 16 We were only giving NATJOC feedback.
 17 MR MPOFU: And you don't know what they
 18 would do with that feedback, I mean you obviously wouldn't
 19 have access to their minutes of how they utilised the
 20 information that you gave to them.
 21 MAJOR-GENERAL MPEMBE: No, Chairperson,
 22 it's up to NATJOC.
 23 MR MPOFU: Yes. Have you ever sat in a
 24 NATJOC meeting, either as a guest of some sort, I mean do
 25 you what it looks like?

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1 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 2 on the matters that concerns the province.
 3 MR MPOFU: Yes, and are NATJOC meetings
 4 formal meetings with minutes and a chairperson and that
 5 kind of thing?
 6 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 7 MR MPOFU: Okay, thank you. Right, then
 8 there's been evidence, it's common cause by now I think,
 9 but that stage 6 was conducted in September. Did you take
 10 part in the stage 6 operation which was the raids that were
 11 done in the hostels and in the township in September, a
 12 couple of weeks, or about a month after the massacre?
 13 MAJOR-GENERAL MPEMBE: No, Chairperson,
 14 that was the time when I was at Brits during that IPID
 15 issue.
 16 MR MPOFU: Okay, alright, it was the time
 17 of the IPID issue. Okay, alright, so you can't help us
 18 with stage 6. Forgive me if this is repetition, I suspect
 19 it is because I think Mr Chaskalson asked you, but were you
 20 aware or unaware of the fact that there were mortuary vans
 21 that had been put on standby for this operation?
 22 MAJOR-GENERAL MPEMBE: Not aware and have
 23 no knowledge of it.
 24 MR MPOFU: Yes. Well, should you have
 25 been aware of such an important thing as overall commander,

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1 in your view?
 2 MAJOR-GENERAL MPEMBE: I just want to get
 3 clarity. Am I now being called to speculate?
 4 MR MPOFU: No, no, sorry, General, I'm
 5 not criticising you. I'm accepting that someone else took
 6 that decision. All I'm saying is that should you have been
 7 made aware - maybe I should put it lighter like that - of
 8 such an important decision in your capacity as overall
 9 commander?
 10 MAJOR-GENERAL MPEMBE: Am I expected to
 11 comment what should I have done or -
 12 MR MPOFU: No, just answer the question.
 13 CHAIRPERSON: What he wants to know is,
 14 we know that as overall commander you couldn't be involved
 15 in every detail of the operation, and we know that people
 16 who were subordinate to you were doing things, as it were,
 17 on your behalf without having to tell you everything. But
 18 Mr Mpofo's point, I think, is certain things were
 19 important, important enough to not only justify but
 20 necessitate the overall commander being told about them so
 21 he would have the relevant knowledge. That's your point,
 22 isn't it, Mr Mpofo?
 23 MR MPOFU: That's all, Chairperson.
 24 CHAIRPERSON: Okay, I take it you'll
 25 agree with that. Now what he wants to know - do you agree

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1 with that? There were some things that you as overall
 2 commander should have been told and your subordinates
 3 shouldn't have done them on their own without telling you
 4 about them. Would you accept that?
 5 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 6 CHAIRPERSON: Now what Mr Mpofo says is
 7 this request for mortuary vans to be on standby, to be sent
 8 to Marikana, was that something that was sufficiently
 9 important to have been brought to your attention?
 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 11 MR MPOFU: Thank you. Now then let's
 12 just go to something else, another small issue. Okay, this
 13 one I didn't raise it with you, I think I raised it with
 14 Colonel Scott. If you can just go to - or no, before you
 15 there, is it correct, as Colonel Scott told us, that what
 16 was known as the neutral area, or the safe area, was a
 17 defined static place? In other words it was not something
 18 that was mutable, or that moved from place to place. There
 19 was a place with measurements, I think some of the
 20 measurements are even given here somewhere and the co-
 21 ordinates, it was a place known as the neutral area,
 22 correct?
 23 MAJOR-GENERAL MPEMBE: Chairperson, in my
 24 understanding it is the place where the police were and
 25 where the media could have been, but not necessarily that

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1 it could be a structure there or whatever.
 2 CHAIRPERSON: No, he doesn't mean a
 3 structure. What he means is was it a fixed place? Were
 4 there boundaries? If you think in terms of boundaries,
 5 they weren't boundaries in the technical sense, but you
 6 know what I mean.
 7 [09:48] Whether it was a place, the boundaries of which
 8 were intended to be fixed, it wasn't an area that was going
 9 to get bigger and smaller and move; it was one defined,
 10 previously defined in the plan, area which was going to be
 11 protected by a barrier of barbed wire. That's your point,
 12 is it, Mr Mpofu?
 13 MR MPOFU: That's correct, Chairperson.
 14 CHAIRPERSON: Now do you agree with that?
 15 MAJOR-GENERAL MPEMBE: I agree,
 16 Chairperson, except that it will be defined there on the
 17 ground in terms, but not at the planning stage.
 18 MR MPOFU: No, fair enough. The real
 19 question is, then go to L191. You see there that there are
 20 white lines and there are yellow lines.
 21 MAJOR-GENERAL MPEMBE: Yes, I see the
 22 white lines and –
 23 MR MPOFU: And black lines, ja.
 24 MAJOR-GENERAL MPEMBE: Yes.
 25 MR MPOFU: Ja, now the reason I'm asking

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1 you this, General, really, and I'm not going to spend time,
 2 is because I've asked this question from two police
 3 witnesses and I got two different answers, so it is just
 4 for my own understanding. If you look at the area – and
 5 I've defined it, forgive me, as a horseshoe – the area
 6 that's defined by those Nyalas where to the west it is 80
 7 metres from the crowd, and to the north it is about 50
 8 metres from the kraal, the area defined by the yellow
 9 lines. You see that?
 10 MAJOR-GENERAL MPEMBE: Yes, I do see –
 11 CHAIRPERSON: Well, the area isn't
 12 actually defined by the yellow lines, but I take it what
 13 you mean is you're referring to the horseshoe which was
 14 effectively created by the vehicles which were parked
 15 there.
 16 MR MPOFU: That's correct.
 17 CHAIRPERSON: And the yellow arrow marked
 18 80 metres points towards the middle of the right-hand side
 19 of the horseshoe, and the yellow line marked 50 metres
 20 points to the bottom left-hand corner of the horseshoe. Is
 21 that what –
 22 MR MPOFU: That's correct, Chairperson.
 23 CHAIRPERSON: That's what you're talking
 24 – so you see the horseshoe space which is demarcated, as it
 25 were, by those vehicles? You see that on the screen?

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1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson, by vehicles.
 3 CHAIRPERSON: Yes, now Mr Mpofu wants to
 4 ask you about that.
 5 MR MPOFU: Thank you. Now the question I
 6 want to ask is that was the neutral area, correct? Inside
 7 that horseshoe.
 8 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 9 not in a position to confirm it.
 10 MR MPOFU: You can't, okay.
 11 MAJOR-GENERAL MPEMBE: Yes.
 12 MR MPOFU: No, fair enough. Okay, then
 13 maybe you can just answer this. Generally speaking, would
 14 you agree that the neutral area is an area where civilians
 15 are not allowed except with the permission of the police?
 16 In other words you can't just walk up and down in the
 17 neutral area. If you wanted to bring journalists, that's a
 18 different matter. You wanted to bring them to protect
 19 them, but they couldn't just wander about in the neutral
 20 area; that's a police-controlled area, correct?
 21 MAJOR-GENERAL MPEMBE: I just want to
 22 understand "civilians," because media normally are
 23 civilians.
 24 MR MPOFU: Yes, that's why I made that
 25 explanation, General. I'm saying generally speaking the

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1 neutral area is a police-controlled area which is not
 2 accessible to civilians. Obviously if the police want to
 3 bring in a particular type of civilian because they want to
 4 protect them, that's a different matter. That's why I'm
 5 saying generally speaking it's a police-controlled area. I
 6 couldn't just go and wander about there myself, being not a
 7 journalist. Agreed?
 8 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 9 MR MPOFU: Thank you. Maybe I can ask
 10 you this; you did watch some of the goings on near the
 11 koppie from the CCTV area, even if you were not the – or
 12 rather from the CCTV at the JOC, even if you were not on
 13 the ground, correct?
 14 MAJOR-GENERAL MPEMBE: On the 16th,
 15 Chairperson?
 16 MR MPOFU: Yes, on the 16th.
 17 MAJOR-GENERAL MPEMBE: On the 16th not
 18 having watched them, I didn't have that time.
 19 MR MPOFU: Okay, on other days then when
 20 you watched the CCTV, can you confirm that the area, let's
 21 go to 191 again, that that area which has a road in front
 22 of the kraal where you can actually see people scattered,
 23 if you look - I don't know which one you're using, okay, if
 24 you look at the one in front of you. My eyes can't see
 25 that far, but on the 16th and on any other day that is the

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1 road that people were using to go towards and from the
 2 koppie, correct?
 3 MAJOR-GENERAL MPEMBE: Yes –
 4 CHAIRPERSON: I'm sure that you defined
 5 the road with sufficient accuracy for us to follow what you
 6 mean.
 7 MR MPOFU: Yes, fair enough, Chairperson.
 8 CHAIRPERSON: Perhaps you can define it
 9 more accurately and then the witness can give us an answer
 10 that we can understand.
 11 MR MPOFU: Thank you, Chairperson. You
 12 see, you remember the line, the 50-metre line that we spoke
 13 about earlier?
 14 MAJOR-GENERAL MPEMBE: The one that is
 15 next to 80 metres?
 16 CHAIRPERSON: Do you mean the 50-metre
 17 line with the yellow arrowhead at each end?
 18 MR MPOFU: Yes –
 19 CHAIRPERSON: Mr Mpofo –
 20 MR MPOFU: Yes, I do, Chairperson. I'm
 21 trying to operate the pointer at the same time.
 22 COMMISSIONER HEMRAJ: Isn't this the road
 23 that runs parallel to the 80-metre white arrow?
 24 MR MPOFU: Yes.
 25 COMMISSIONER HEMRAJ: Isn't that the one?

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1 CHAIRPERSON: There seem to be two main
 2 roads. The one is the one which runs more or less parallel
 3 to the white arrow which is crossed by the 80-metre arrow
 4 line.
 5 MR MPOFU: Yes.
 6 CHAIRPERSON: And that is in fact running
 7 immediately in front of what looks like a mass group of
 8 people.
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: More or less in the
 11 vicinity of the, it would be the western arrowhead of that
 12 line.
 13 MR MPOFU: That's right. Ja, I'm
 14 pointing –
 15 CHAIRPERSON: Then there's another road
 16 which runs diagonally away from that towards the, it would
 17 be the southern end of the kraal in the extreme left-hand
 18 corner of the picture –
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: And the 50-metre line,
 21 yellow line with yellow arrowheads, that's the, it would
 22 be, the northern arrowhead is very close to the kraal -
 23 MR MPOFU: That's correct.
 24 CHAIRPERSON: - the extreme left-hand
 25 corner.

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1 MR MPOFU: Thank you, Chairperson.
 2 CHAIRPERSON: Now are you referring to
 3 that road, that path, or the earlier one I mentioned, and
 4 which Adv Hemraj mentioned, which is more or less parallel
 5 to the long white line?
 6 MR MPOFU: Yes, thank you, Chairperson –
 7 CHAIRPERSON: Which of two?
 8 MR MPOFU: It's the second one. Thank
 9 you, Chairperson. The one nearest to the kraal with people
 10 on it. General, I've now found my pointer. You see the
 11 one I'm talking to? This one, this road, that was the road
 12 or path that was mainly used by people going to and from
 13 the koppie, correct?
 14 MAJOR-GENERAL MPEMBE: They were also
 15 using other roads, not only that one.
 16 MR MPOFU: I know, General. They didn't
 17 all come from the same place. I'm saying was that the road
 18 that was mainly used by people from Nkaneng who were going
 19 up and down to the koppie?
 20 MAJOR-GENERAL MPEMBE: I say it's one of
 21 them, but they were also using many roads coming to the
 22 koppie.
 23 MR MPOFU: Okay –
 24 CHAIRPERSON: Mr Mpofo, I'm sorry, you
 25 know you've pointed out with the pointer so we can see

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1 here.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: But when we come to read
 4 the record and others read the record later, I'm not sure
 5 they'll know what you're talking about. So I described two
 6 roads, the one parallel to the white line, more or less
 7 parallel to the white line, and the other one which is
 8 actually parallel to the white line which is 80 metres long
 9 - perhaps that's the shortest way to describe it - and that
 10 one is the one that goes, if one looks at it from,
 11 travelling from west to east as it were, that goes to the
 12 corner of that kraal in the corner there.
 13 MR MPOFU: That's correct.
 14 CHAIRPERSON: Now let's call the one
 15 that's parallel to the 80-metre white line road A, and
 16 let's call the road that's parallel to the 330-metre white
 17 line road B.
 18 MR MPOFU: Road B.
 19 CHAIRPERSON: I think you're talking
 20 about road A. Am I correct?
 21 MR MPOFU: Well, now I'm even more –
 22 CHAIRPERSON: The 80 –
 23 MR MPOFU: Yes, correct, Chairperson.
 24 I'm talking about the road that runs in front of the kraal.
 25 CHAIRPERSON: That's right, the one that

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1 is parallel to the white line which is marked 80 metres.
 2 MR MPOFU: Yes, the shorter –
 3 CHAIRPERSON: That's right.
 4 MR MPOFU: Yes, the white line, the only,
 5 actually the only white line, ja.
 6 CHAIRPERSON: Now those people whose
 7 misfortunate it will be to have to read the record in
 8 future will understand what you're talking about.
 9 MR MPOFU: Thank you very much,
 10 Chairperson. Okay, General, I don't want to make a big
 11 thing about this. Can we then just accept it on this
 12 basis; although obviously people came from all over the
 13 show, that road that we have just defined was one of the
 14 roads that was used by people over those days to go to and
 15 from the koppie, correct?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR MPOFU: Thank you. And that road was
 18 also used by the people that were defined by the police –
 19 okay, to avoid having to play the slide, because I don't
 20 know where it is, that road was also used, as we can see on
 21 that slide, by the people who were leaving the koppie after
 22 Mr Mathunjwa's address. I want to put it neutrally, or if
 23 you don't know, you don't know.
 24 MAJOR-GENERAL MPEMBE: No, I don't know.
 25 CHAIRPERSON: His second address.

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1 MR MPOFU: You don't know. Yes.
 2 CHAIRPERSON: You mean after his second
 3 address?
 4 MR MPOFU: After his second address, yes,
 5 and you might not know that because you were not there.
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson.
 8 MR MPOFU: Okay, fine, fair enough, thank
 9 you.
 10 MAJOR-GENERAL MPEMBE: I do not know.
 11 MR MPOFU: Would it be fair, given some
 12 of the issues that you and I discussed about the sharing of
 13 radios and so on, or access to radios, to put it more
 14 correctly, to radios and sharing the JOC and so on, would
 15 it be fair to say that to some extent this was a joint
 16 operation between the police and Lonmin?
 17 MR SHOZI: No, Chair, there's no basis
 18 for that question. It was never a joint operation between
 19 SAPS and Lonmin –
 20 CHAIRPERSON: You can't object. He's
 21 asked a question which is either a –
 22 MR MPOFU: The witness can say no.
 23 CHAIRPERSON: The witness will answer.
 24 You can't answer it for him, or suggest an answer before he
 25 answers it. He asked whether it's a joint operation. The

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1 answer is either yes or no. You can't say from Lonmin's
 2 perspective what they think the answer should be. If he
 3 asked the same question of the Lonmin witnesses they
 4 presumably will give their answer, but Mr Mpofo, please
 5 proceed.
 6 MR MPOFU: Yes. General, just to repeat
 7 the question, would it be fair, given some of the
 8 indicators that you and I have discussed – and I don't want
 9 to go through all of them because I'm sure you remember
 10 some of them – would it be fair to say that to some extent
 11 this was a joint operation between the police and Lonmin?
 12 MAJOR-GENERAL MPEMBE: It would, I would
 13 say Lonmin was one of the role players.
 14 MR MPOFU: Okay, thank you, that's
 15 enough.
 16 CHAIRPERSON: Does that mean that you do
 17 not accept that the operation, despite the fact that they'd
 18 contributed some of the things that were used in it, you do
 19 not accept that the operation can be described as a joint
 20 operation between the police on the one hand and Lonmin on
 21 the other? Is that what you're saying?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson, because we were not issuing instructions on
 24 the same basis. They were posting there, we were posting
 25 differently. But Lonmin was one of the role players

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1 because as the employer, we had to work with them.
 2 MR MPOFU: Ja, no I understand. So when
 3 they were posting their armed men, they would post them at
 4 different places, but you would know where they were
 5 posting them, correct?
 6 MAJOR-GENERAL MPEMBE: Yes, then they
 7 will just come and tell us that they have posted there, but
 8 that is the normal posting that they were doing even the
 9 police were not there.
 10 MR MPOFU: Right, and of course they
 11 would have to know where you were posting your armed men,
 12 you know where they're posting their armed men. To that
 13 extent you were working together?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson,
 15 we were not reporting to anybody and I remember vividly
 16 well that there was a time where even General Annandale
 17 chase Lonmin people out in our JOC. I'm not sure, knowing
 18 precisely the date, but I do know there was a time where
 19 they wanted to give us some feedback. General Annandale
 20 said that, "We are still busy, go and stand outside."
 21 MR MPOFU: Yes, General, please bear with
 22 me. The reason why I ask these questions so carefully is
 23 because I accept some of what you're saying. Let me
 24 explain what I'm saying. I accept that – that's why I used
 25 the words "to a certain extent." I accept that there were

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1 times at which the police might have done things and did
 2 not want anyone else to be there. That I accept. I accept
 3 too that for you to do your deployment, you did not need
 4 Lonmin's permission as a police force, or a police service.
 5 That I also accept. All I'm saying is that to the extent
 6 that there was sharing of information over the radio, to
 7 the extent that there was sharing of the logistics, there
 8 was buying of barbed wire for each other, to the extent –
 9 MR MATHIBEDI SC: No, Chair, there was no
 10 buying of barbed wire for each other –
 11 CHAIRPERSON: There's no evidence that
 12 there was buying of barbed wire for each other.
 13 MR MPOFU: Okay, alright –
 14 CHAIRPERSON: That's the first point.
 15 The second point is –
 16 MR MPOFU: But there is –
 17 CHAIRPERSON: - you will recall yesterday
 18 the witness didn't know anything about the barbed wire.
 19 MR MPOFU: Alright –
 20 CHAIRPERSON: So I don't know that he can
 21 help us.
 22 MR MPOFU: Okay, fine. To the extent
 23 that –
 24 CHAIRPERSON: Do you want to raise any
 25 other objections apart from the two I raised?

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1 MR MATHIBEDI SC: No, Chair.
 2 MR MPOFU: Thank you. To the extent that
 3 Mr Botes says that he was permanently posted in the JOC and
 4 when he was not there, he would make sure that someone else
 5 is there in his place, to the extent that Mr Botes attended
 6 the JOCCOM meeting in the morning of the 16th, those kinds
 7 of things, I'm saying to some extent, would you agree that
 8 to some extent this was an operation which was being
 9 jointly managed or controlled by SAPS and Lonmin? And
 10 also, sorry, to the extent that SAPS advised Lonmin to seek
 11 an interdict, according to one of the affidavits, those
 12 kinds of indicia that I'm interested in. So to that
 13 limited extent, would you then accept my proposition?
 14 MAJOR-GENERAL MPEMBE: No, Chairperson,
 15 except that Lonmin was a role player, like any other role
 16 player.
 17 MR MPOFU: Like the strikers? So you
 18 mean your relationship and partnership with Lonmin was the
 19 same as the partnership you had with the strikers?
 20 MAJOR-GENERAL MPEMBE: Do you want I
 21 should equate it to that one?
 22 MR MPOFU: Yes. Ja, I want you to
 23 compare it.
 24 MAJOR-GENERAL MPEMBE: I could say yes.
 25 MR MPOFU: Okay. That's fine.

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1 MAJOR-GENERAL MPEMBE: But particularly
 2 as far as I'm concerned, and the role that I played.
 3 MR MPOFU: Ja, sure. No, fine, fine.
 4 And Lonmin also assisted you to identify some of the
 5 protesters, correct?
 6 MAJOR-GENERAL MPEMBE: Correct,
 7 Chairperson, because Lonmin was the employer and they were
 8 employees and the reason why I confronted Lonmin about
 9 that, because they told us that those were faceless people.
 10 MR MPOFU: Ja, no, but after that they
 11 assisted you in identifying, once they now had faces did
 12 they help you to identify some of the protesters?
 13 MAJOR-GENERAL MPEMBE: The assistance
 14 that we needed we wanted to say now that these people are
 15 your employees, tell us who are they, because you do have
 16 records.
 17 MR MPOFU: Okay, no I'm talking about
 18 something different. Do you remember Lonmin people saying
 19 to you we're going to assist you to identify some of the
 20 protesters, but please don't let this be known? Ja?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson. That was the fear that was all over there
 23 with everybody, but not only necessarily with Lonmin, but
 24 the fear that was there, people didn't know, didn't want to
 25 be seen as assisting the police.

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1 MR MPOFU: Yes, I know they didn't want
 2 to be seen, but I'm saying they did assist the police –
 3 MAJOR-GENERAL MPEMBE: And also to be
 4 known – I'm sorry, Chairperson.
 5 MR MPOFU: Sorry, sorry, General. Sorry,
 6 I cut you, you can finish.
 7 [10:07] CHAIRPERSON: Carry on; carry on with
 8 your answer.
 9 MAJOR-GENERAL MPEMBE: The fear that was
 10 there, no any other person wanted to be associated with the
 11 police, including, even if you would have more, let's say
 12 airtime or whatever, they didn't want because they knew
 13 that that could construe that you are having a relationship
 14 with the police. That was my understanding when Lonmin
 15 raised the issues because the individuals, Lonmin
 16 management that was staying there, they were fearing that
 17 they might be the target.
 18 MR MPOFU: Ja, but you did not feel it
 19 necessary to remark about those other individuals to the
 20 Commission, unlike what you said in paragraph 29 of GGG12,
 21 you say there - sorry.
 22 CHAIRPERSON: Have you got it? It's the
 23 foot of page 14 of the statement.
 24 MAJOR-GENERAL MPEMBE: Correct,
 25 Chairperson, I do have it.

<p style="text-align: right;">Page 16958</p> <p>1 MR MPOFU: Ja, okay, I'll read it out to 2 you; firstly it talks about the morning of the 14th, so this 3 is after the faceless story that happened on the 13th, the 4 faceless allegations, correct? 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson. 7 MR MPOFU: So this is a separate thing. 8 On the 14th you say, "Captain Moolman, Colonel Barnard 9 Heyneke and I once again attended to the mine management 10 offices and requested a meeting with Mr AB Kgotle, Mr Joe 11 Kwadi, Mr Patrick Phega, Mr Poena Prinsloo. At the meeting 12 they agreed that Lonmin would assist with the 13 identification of the protestors at the koppie. They 14 requested, however, that the company would prefer that the 15 fact that they were assisting SAPS not be revealed to the 16 union for the safety of those we were engaging with at 17 managerial level. I gave them the assurance that I would 18 not identify them." Remember that? 19 MAJOR-GENERAL MPEMBE: Yes, I see it and 20 I remember it, Chairperson. 21 MR MPOFU: Thank you. 22 MAJOR-GENERAL MPEMBE: My explanation, 23 Chairperson, is one, is that same that they did not want 24 anybody should know that they're assisting for the purpose 25 of their lives because they feel that their lives, that</p>	<p style="text-align: right;">Page 16960</p> <p>1 MR MPOFU: Yes, but if she was there then 2 she would obviously get to the top of the food chain, 3 correct? 4 MAJOR-GENERAL MPEMBE: No Chairperson, I 5 don't understand the food chain, maybe it's to give 6 instructions or what? 7 CHAIRPERSON: That is an inappropriate 8 metaphor; perhaps you can find a more appropriate one. 9 MR MPOFU: Yes, maybe, let's stick to the 10 pecking order - 11 CHAIRPERSON: Apply the doctrine of 12 situational appropriateness to your metaphor. 13 MR MPOFU: That's correct. Let's talk 14 about the pecking order, let's stick to that phraseology. 15 If she was there she would be on top of the pecking order, 16 or the hierarchy? 17 MAJOR-GENERAL MPEMBE: No, Chairperson. 18 MR MPOFU: She would be at the bottom? 19 MAJOR-GENERAL MPEMBE: She does not 20 actually appear in the structure of the operation; she's 21 not there, completely. 22 MR MPOFU: Okay, well can you go to 23 exhibit EE? Have you got it? Or you can use that one. 24 MAJOR-GENERAL MPEMBE: Yes, I don't have 25 it here but you can -</p>
<p style="text-align: right;">Page 16959</p> <p>1 might put their lives in danger. 2 MR MPOFU: Ja, but they could have put 3 their lives in danger by not working with you. I mean they 4 could have saved their lives, but they decided that they 5 were going to assist you but you mustn't reveal it. That's 6 all I'm saying, okay. 7 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 8 MR MPOFU: Thank you. 9 MAJOR-GENERAL MPEMBE: With the reason 10 given. 11 MR MPOFU: Yes, then General, am I 12 correct that the, what I would call the hierarchy, the 13 pecking order at operational level - let us exclude the 14 National Commissioner for now - would be the Provincial 15 Commissioner, yourself, and General Annandale, there's a 16 bit of a grey area there but for now let's say yourself and 17 General Annandale, and then the operational commander, and 18 then the architect, the planner, the chief planner, and 19 then other people like General Naidoo and so on. Those 20 would be the, that would be the top structure, correct? 21 MAJOR-GENERAL MPEMBE: Chairperson, 22 excluding the Provincial Commissioner. Provincial 23 Commissioner is not part of the structure, but we were 24 reporting to her as she was in charge of the province, but 25 the whole JOCCOM, yes, Chairperson.</p>	<p style="text-align: right;">Page 16961</p> <p>1 MR MPOFU: Okay. 2 MAJOR-GENERAL MPEMBE: I'm ready, 3 Chairperson. 4 MR MPOFU: Yes, okay. Yes, no, I was 5 just saying that insofar - that's why I was saying when she 6 was there. When she was there, then would the pecking 7 order be as indicated there, those first three names, it's 8 General Mbombo, General Annandale, and then you? 9 MAJOR-GENERAL MPEMBE: No, Chairperson, 10 that is only the acknowledgment in terms of the attendance 11 list, but what I am talking about, Chairperson, it is found 12 in my statement, that is GGG12 page 3, that's paragraph 7, 13 the JOC structure. 14 MR MPOFU: I know about the JOC, but I'm 15 not asking you about the JOC structure. I'm saying when 16 the Provincial Commissioner was in attendance as part of 17 the operation or meetings to do with the operation, the 18 pecking order would be her and you and Annandale and the 19 other people who reported to you, correct? 20 MAJOR-GENERAL MPEMBE: Not necessarily, 21 Chairperson. As I'm saying, this attendance list has no 22 meaning in terms of the structure, but what I'm saying is 23 that General Mbombo has appointed me as a CJOC, but that 24 doesn't necessarily mean that she cannot ask General 25 Annandale or General Naidoo about anything, but as a CJOC</p>

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1 person, yes.

2 MR MPOFU: No, General, I think the

3 problem is you are anticipating my question. I'm not going

4 to ask you why she gave the instruction to Annandale and

5 not you, because I see that's where you're going. All I'm

6 saying is, when the, if she's there, and you're looking at

7 this operation broadly speaking, would you agree that she

8 would be the big chief, she would be the person who could

9 give instructions to you or anybody, and then the next in

10 line would be you, and then the next in line would be

11 Annandale, then the next in line would be the operational

12 commander, and then all these other people I mentioned.

13 That would be, not that it's something written somewhere,

14 I'm just saying that would be the hierarchy.

15 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

16 MR MPOFU: Thank you. Now, I'm going to

17 argue that - and I want to give you a chance to comment -

18 that it is curious, to say the least, that when the

19 massacre next to the kraal happened none of those people

20 where there, or are able to assist the Commission.

21 CHAIRPERSON: What do you mean they

22 weren't there? You mean they weren't at the kraal or they

23 weren't at the JOC, or what do you mean by "there"?

24 MR MPOFU: Thank you, no fair enough,

25 Chairperson. None of them witnessed that massacre, neither

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1 the Provincial, or you, or Annandale, or Calitz, or Naidoo,

2 or Scott. Would you care to comment?

3 MR MATHIBEDI SC: Sorry, Mr Chairman, is

4 it my colleague's proposition that the persons, the senior

5 officers referred to should have been at the scene?

6 CHAIRPERSON: It sounds like it. Is that

7 correct, Mr Mpofo?

8 MR MPOFU: That's correct, Chairperson.

9 CHAIRPERSON: That's your proposition

10 that you're putting to the witness.

11 MR MPOFU: Yes.

12 CHAIRPERSON: Well, in due course you'll

13 give him a chance to comment as to whether he agrees with

14 you.

15 MR MPOFU: Or whether it is a good

16 proposition or a bad one.

17 CHAIRPERSON: Sure.

18 MAJOR-GENERAL MPEMBE: No, Chairperson,

19 in terms of the roles that we were playing, we were playing

20 different roles. Even Scott, Scott was not expected to be

21 there, but there where commanders that where there, so none

22 of us we were expected to be there. General Naidoo, he was

23 in charge of the forward holding area 1, so what was

24 expected to him is that in case if anything happens he was

25 expected to take, or even to supply some extra resources

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1 that where there with him, but to be on the scene, but

2 attending the other scene, that's also a different issue

3 which I've already explained.

4 MR MPOFU: Yes, no I'm just talking about

5 scene 1. None of the people that I've mentioned witnessed

6 scene 1, to your knowledge, correct?

7 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

8 but they were not supposed to be there.

9 MR MPOFU: Fine, and these were the

10 people who presumably briefed the National Commissioner and

11 the President about the massacre, correct?

12 CHAIRPERSON: I don't know about that.

13 Isn't the evidence that the witness had given us that not

14 these people so much, but that it was Lieutenant-Colonel

15 Scott who gave the briefing to the President in respect of

16 what happened on the 16th, and the witness gave the briefing

17 in respect to what happened on the 13th. Is that correct?

18 MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson.

20 CHAIRPERSON: Do you know whether any of

21 the other people to whom Mr Mpofo referred also took part

22 in the briefing session with the President?

23 MAJOR-GENERAL MPEMBE: No, Chairperson,

24 but what I do know is that what Colonel Scott said there,

25 it was prepared by the JOC, which consists of the people

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1 that where there.

2 CHAIRPERSON: So did he act in effect as

3 the spokesman for the JOC in briefing the President as to

4 what happened on the 16th of August? Is that correct?

5 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

6 MR MPOFU: So neither the President nor

7 the National Commissioner was briefed directly by anyone

8 who had witnessed the massacre, correct?

9 CHAIRPERSON: That sound right, General,

10 doesn't it?

11 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

12 MR MPOFU: Thank you. You remember

13 yesterday I was criticizing you about -

14 CHAIRPERSON: Are you moving on to

15 another point?

16 MR MPOFU: Yes, Chairperson.

17 CHAIRPERSON: I would like to ask a

18 question. I understand that what was envisaged and planned

19 wasn't what actually happened at scene 1, but what was

20 envisaged was that once the neutral area was separated from

21 the area near the koppie by the barbed wire fence, which

22 was being unrolled, then the members of the service, the

23 POP people, followed by the TRT people, were going to go

24 into the area, to the west of the, of the barbed wire

25 barrier to proceed with the dispersal and the disarmament

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1 operation. That's correct, isn't it?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson, taking to account that TRT, they're at 100

4 metres.

5 CHAIRPERSON: Yes, yes, yes, no, no.

6 MAJOR-GENERAL MPEMBE: Yes.

7 CHAIRPERSON: Now, when that operation

8 was going to take, was taking place, was it still envisaged

9 that the people in the JOC were going to stay in the JOC?

10 Would they still have been in the JOC if the dispersal and

11 disarmament operation had begun on schedule, as was

12 envisaged, would the people in the JOC still have been in

13 the JOC?

14 MAJOR-GENERAL MPEMBE: Correct,

15 Chairperson.

16 CHAIRPERSON: So what was it envisaged

17 they would be doing in the JOC?

18 MAJOR-GENERAL MPEMBE: It is to, when

19 they did get feedback also to understand what is the

20 progress of the operation.

21 CHAIRPERSON: What would they have done

22 about the feedback they got? What was it envisaged - I

23 know it's a hypothetical question but you say they would've

24 received feedback about what was happening, how the

25 operation was proceeding. Now what was it envisaged would

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1 the people in the JOC do, or what might they do in response

2 to the feedback which it was thought that they would

3 receive? Were they going to do anything about it, or were

4 they just going to listen to it or what was going to

5 happen?

6 MAJOR-GENERAL MPEMBE: Chairperson, it

7 will depend on the feedback that they will get, but it is

8 that they will give guidance based on the feedback that

9 they get and -

10 MR MPOFU: Thank you, General. Now, just

11 to tie up another loose end that came from another loose

12 end, you just spoke now about the postings that were done

13 separately by the police and Lonmin. You remember that?

14 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

15 MR MPOFU: And if you go to slide HHH60.1

16 - rather, I'm sorry, exhibit, thank you, exhibit HHH60.1.

17 MAJOR-GENERAL MPEMBE: HHH60, I don't

18 have it here. Maybe it could be -

19 MR MPOFU: Ja, I think it's difficult to

20 come by, maybe we'll rely on the one.

21 CHAIRPERSON: Put the question again,

22 please, Mr Mpofo,

23 MR MPOFU: I was just saying, referring

24 the witness to HHH60.1 at this stage, Chairperson. The

25 question before that was whether he remembers us discussing

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1 the issue of postings, and he said yes.

2 CHAIRPERSON: This is Ms Barnes's

3 exhibit?

4 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

5 MR MPOFU: Yes. Now, I'm just referring

6 to it because it talks about the postings that you're

7 talking about. You see there it says mining security

8 posting, 16th August 2012?

9 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

10 MR MPOFU: I'm not going to take you

11 through the whole thing because I think you discussed it

12 with Ms Barnes, but all I'm saying is that this reflected

13 some of the postings, literally both in terms of vehicles

14 and equipment and arms which were distributed to Lonmin

15 Security. Do you understand it in the same way?

16 MAJOR-GENERAL MPEMBE: Correct,

17 Chairperson.

18 MR MPOFU: Right, now, the real point

19 that I'm getting to is this; it is true, isn't it, that the

20 police equipment, unlike the Lonmin equipment, did not

21 include shotguns, correct? Putting aside the rubber bullet

22 thing.

23 CHAIRPERSON: You mean shotguns from

24 which -

25 MR MPOFU: From which pellets -

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1 CHAIRPERSON: From which pellets would be

2 fired.

3 MR MPOFU: As opposed to rubber bullets.

4 CHAIRPERSON: As opposed to rubber

5 bullets?

6 MR MPOFU: Yes, that's correct.

7 MAJOR-GENERAL MPEMBE: I did say the

8 police do not use pellets.

9 MR MPOFU: Yes, now, what I really want

10 to know is, if you look at that heading, "Mining Security

11 posting 16 August 2012," to your knowledge, were any of

12 those people posted at the main operation or near the

13 koppies?

14 MAJOR-GENERAL MPEMBE: No, not to my

15 knowledge. I don't know what might have happened there.

16 MR MPOFU: Yes.

17 MAJOR-GENERAL MPEMBE: But to my

18 knowledge they were not posted with the police to -

19 CHAIRPERSON: Do you know what those

20 postings mean? You see, S1, S3, 05, TR2, D1 and so on, do

21 you know what they mean?

22 MAJOR-GENERAL MPEMBE: No, I don't know,

23 Chairperson.

24 CHAIRPERSON: So that's something we'll

25 have to find out from the Lonmin witnesses when they come.

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1 MR MPOFU: Fair enough, yes. That's why
 2 I was asking what is it, to your knowledge. So you say
 3 it's possible that they might have been posted there, but
 4 you didn't know anything about it?
 5 MAJOR-GENERAL MPEMBE: I didn't know
 6 anything about it.
 7 MR MPOFU: Okay, now, the reason why this
 8 is of some interest, and the Chairperson is right, it will
 9 be more explored more fully when the Lonmin people come,
 10 but for your purposes can I refer you to HHH63? Is it not
 11 – oh, it's new, we left it there yesterday, I think
 12 Chairperson. It's just a one-pager.
 13 COMMISSIONER HEMRAJ: Is this the shotgun
 14 list of the nine shotgun victims?
 15 MR MPOFU: Yes, shotgun victims, yes. I
 16 know that –
 17 [10:27] CHAIRPERSON: I'm not sure that we, did I
 18 give it an exhibit number? I don't remember giving it an
 19 exhibit number –
 20 MR MPOFU: No, it was not, Chairperson –
 21 CHAIRPERSON: We were handed a document
 22 which hasn't yet been dealt with.
 23 MR MPOFU: That's correct, Chairperson,
 24 it's my mistake. It was just a reserved number.
 25 CHAIRPERSON: Alright, let's sort it out

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1 now. HHH –
 2 MR MPOFU: 63. It was a reserved
 3 number –
 4 CHAIRPERSON: - 63, list of shotgun
 5 victims?
 6 MR MPOFU: Yes, that's correct,
 7 Chairperson. It was a reserved number which we got from Ms
 8 Pillay. General, you've got it? It's a one-pager. I
 9 think I gave it to you –
 10 CHAIRPERSON: Yes, list of shotgun
 11 victims from 1/8/12 –
 12 MR MPOFU: Ja.
 13 CHAIRPERSON: - to 16/8/12, right.
 14 MR MPOFU: Yes. Sorry, General, I gave
 15 it to your representatives last week, but it probably just
 16 didn't find its way to you. But it's not a train smash.
 17 MAJOR-GENERAL MPEMBE: I did receive it.
 18 I was told that put it awhile, but I did –
 19 MR MPOFU: You just mislaid it.
 20 MAJOR-GENERAL MPEMBE: Yes.
 21 MR MPOFU: No, there's a copy coming to
 22 you now. Okay, General, once again, as I say, I don't want
 23 to waste your time too much on this; it's simply to say
 24 that that is a list which we have compiled with the
 25 assistance of the evidence leaders, which is probably not

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1 complete because it's ongoing work, but that is a list to
 2 date – let's call it that – it's a list to date of people
 3 who according to the post mortems and those kinds of
 4 things, those types of medical reports, let's use the
 5 generic term, who sustained or died from shotgun injuries.
 6 The two people who died are at the bottom of the list,
 7 number 8 and number 9, Mr Bongani Mdze, and Mr Bonginkosi
 8 Yona, and those who were injured with shotguns, who include
 9 the people that I represent, we'll start from number 4,
 10 Nkosipendilo Fantis, Mr Solensi Matikimala, number 6, Mr
 11 Mfaneleko Hlugulwana, and number 7, Mr Puka Ramapapu, so
 12 for now, and that's why I was name dropping the name of the
 13 evidence leaders, so you can accept that this is a list
 14 that is compiled from the medical records by ourselves with
 15 the assistance of the evidence leaders. So for now you
 16 must just accept that it is so. Your legal representatives
 17 might find that we made it up or whatever, but for the
 18 purposes of this question, can you accept that those are
 19 people who are indicated medically to have either died or
 20 injured from shotgun pellets, correct?
 21 MAJOR-GENERAL MPEMBE: Yes, Chairperson,
 22 I cannot dispute it.
 23 MR MPOFU: Okay, thank you. And all I
 24 can ask for is the comment. If you accept my assurances
 25 that this is what the medical evidence says, and if we also

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1 accept your evidence that the police did not use pellets,
 2 who do you think killed or injured these people?
 3 MAJOR-GENERAL MPEMBE: I don't know,
 4 Chairperson.
 5 MR MPOFU: Any guesses?
 6 MAJOR-GENERAL MPEMBE: It's difficult for
 7 me to guess, Chairperson –
 8 MR MATHIBEDI SC: Sorry, Mr Chairman,
 9 it's not for the witness to guess, with due respect.
 10 MR MPOFU: It's okay.
 11 CHAIRPERSON: He says he can't guess, so
 12 the point falls away.
 13 MR MPOFU: Ja.
 14 CHAIRPERSON: So we don't have to spend
 15 half an hour arguing whether he can guess. He's already
 16 told us he can't.
 17 MR MATHIBEDI SC: But, Mr Chairman, with
 18 due respect, it's not –
 19 CHAIRPERSON: No, no, your point is
 20 taken.
 21 MR MATHIBEDI SC: We are not dealing with
 22 a guessing game here, Mr Chairman.
 23 MR MPOFU: Alright, we'll leave it at
 24 that, General.
 25 CHAIRPERSON: A guess wouldn't help us,

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1 would it?

2 MR MPOFU: It won't, not at this stage.

3 We'll canvass it – we've got some guesses, so we'll canvass

4 it with those people that –

5 COMMISSIONER HEMRAJ: At some stage will

6 you make some reference to the location of these injuries

7 caused by the shotgun?

8 MR MPOFU: Oh, yes. Ja, no, no, that's

9 why I was saying it's ongoing work. When the time comes

10 we'll refer you to all the post mortems, all the injuries,

11 whether the people were, when they – well, I think the

12 dates of death are already there, and we'll give a proper

13 analysis, Commissioner, thanks.

14 CHAIRPERSON: Without guessing, perhaps

15 we can look at this matter that Mr Mpofu has touched on in

16 a more focussed way. The people who participated in the

17 shootings on 16th were by and large members of the police

18 service. Is that correct?

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson.

21 CHAIRPERSON: And you say they weren't

22 equipped with shotguns which fired pellets.

23 MAJOR-GENERAL MPEMBE: Correct,

24 Chairperson.

25 CHAIRPERSON: Now on this list that Mr

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1 Mpofu has thoughtfully provided us, exhibit HHH63, there

2 are two deceased people, numbers 8 and 9 on the list,

3 Bongani Mdze, and Bonginkosi Yona. Now in due course

4 presumably we will be reminded where their bodies were

5 found, but they both died and it is said that they were

6 shotgun victims. So if they weren't shot by the police

7 because the police didn't have shotguns with pellets, they

8 were obviously shot by somebody else. Now do you know

9 anybody else, or any other persons who were involved in the

10 operations who to your knowledge were in a position to fire

11 weapons of some kind? Was it only police - you know I used

12 the phrase "by and large" earlier - who were involved in

13 the shootings? Are you aware of anybody else or any other

14 persons who were involved in the operations and might have

15 shot, taken part in the shootings in the sense that they

16 might have shot firearms during the operation?

17 MAJOR-GENERAL MPEMBE: Chairperson, as I

18 said, I don't know that, to my knowledge the securities

19 were not posted there, and also I don't know whether they

20 might have gone there. The only thing that I do remember

21 is that I don't know what type of firearms that were taken

22 from the securities by the strikers. Whether they were

23 shotguns or whether, I don't remember.

24 CHAIRPERSON: Are you suggesting that

25 these two people might have in fact been shot, if they were

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1 strikers, might have been shot by some of their own people,

2 presumably by accident, but nevertheless, they may have

3 been shot by them? Is that what you're suggesting is a

4 possibility which merits consideration?

5 MAJOR-GENERAL MPEMBE: Only if,

6 Chairperson, it could be discovered that one of the

7 security shotguns they were –

8 CHAIRPERSON: Ja.

9 MAJOR-GENERAL MPEMBE: - they were taken

10 by strikers and that the securities were not posted there,

11 or didn't come there at any time.

12 CHAIRPERSON: Alright, thank you. No,

13 the only reason, I think I'd like to take the tea

14 adjournment in a moment, but before we do that, what we

15 were given in exhibit HHH60.1 was this list of postings and

16 then on the second page, 60.2, there are enlargements of

17 some of the names that appear on 60.1, and the enlargements

18 relate to two people who are obviously employees of Lonmin.

19 They are listed against the number 15 at the foot of the

20 page, a Mr PW Botha and a Mr Kellerman. Now it appears, I

21 think I'm correct in saying that they were either at or

22 from or linked to, in some way, Western Platinum, because

23 next to their names are the letters WPL, but above their

24 names are the following, and these are enlarged in the

25 photographs 60.2, one against Botha is 9mm and "one

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1 multiplied by SG" (shotgun) and in the case of Kellerman

2 there's a similar, there's an entry Kellerman 9mm, one by

3 SG, that's shotgun, and LM5. Do you know where Mr Botha

4 and Mr Kellerman were on the 16th? Were they together with

5 the police or in a position to fire shotguns in the

6 direction of the strikers?

7 MAJOR-GENERAL MPEMBE: No, Chairperson.

8 CHAIRPERSON: So in other words there are

9 a couple of possibilities we'll have to look at. One is

10 the possibility that these shotgun victims were killed by

11 strikers with shotguns, if it can be shown that the

12 strikers or some of them were in possession of shotguns;

13 that's one possibility. The other possibility we obviously

14 have to look at, is these two gentlemen, Messrs Botha and

15 Kellerman, see what they did, if they did anything with

16 their shotguns. But that's a matter you help us on.

17 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

18 CHAIRPERSON: On that note we'll take

19 tea.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]

21 [11:06] CHAIRPERSON: The Commission resumes,

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

23 WILLIAM MPEMBE: Yes, thanks,

24 Chairperson.

25 CHAIRPERSON: Mr Mpofu.

<p style="text-align: right;">Page 16978</p> <p>1 CROSS-EXAMINATION BY MR MPOFU (CONTD.):</p> <p>2 Thank you, Chairperson. General - maybe, Chairperson, just</p> <p>3 for good arrangement, maybe I should – I'm going to refer</p> <p>4 to a slide, a picture actually which might require warning,</p> <p>5 so I think let's rather –</p> <p>6 CHAIRPERSON: I'm informed by Mr Mpoфу</p> <p>7 that he is going to cause to be shown on the screen a</p> <p>8 picture of someone or some people, I'm not sure which, who</p> <p>9 were killed on the 16th of August at Marikana. If members</p> <p>10 of the family of the persons who were killed are present in</p> <p>11 the chamber this picture may well cause them distress and</p> <p>12 suffering if they see it. So I will request the operator</p> <p>13 who's going to show the picture not to show it until a</p> <p>14 minute has elapsed after I have finished speaking. Half a</p> <p>15 minute has elapsed, but I see no-one is giving any</p> <p>16 indication of a desire to leave, so I suppose we can now</p> <p>17 proceed. Mr Mpoфу, shall we now proceed? People are now</p> <p>18 coming in, they weren't here when the warning was given, so</p> <p>19 that means I have to repeat it.</p> <p>20 MR MPOFU: Alright, Chairperson.</p> <p>21 CHAIRPERSON: Well, I think we should, I</p> <p>22 mean I don't want –</p> <p>23 MR MPOFU: No, no, absolutely. What I'll</p> <p>24 do then, Chairperson, yes let me just ask a couple</p> <p>25 questions –</p>	<p style="text-align: right;">Page 16980</p> <p>1 examination, about the simultaneous rollout versus the</p> <p>2 successive rollout of the barbed wire?</p> <p>3 MAJOR-GENERAL MPEMBE: I remember,</p> <p>4 Chairperson.</p> <p>5 MR MPOFU: Is it actually correct that</p> <p>6 insofar as you and I agreed that was a deviation from the</p> <p>7 plan, that the – do you acknowledge that actually the plan</p> <p>8 made a specific point that there should be a rapid</p> <p>9 deployment of the barbed wire? Remember there was a long</p> <p>10 discussion between you and I saying is it true that the</p> <p>11 simultaneous would be faster than the other one and there</p> <p>12 was a bit of a grey area. Now I am now asking you that it</p> <p>13 was a specific part of the plan that the rollout should be</p> <p>14 rapid.</p> <p>15 MAJOR-GENERAL MPEMBE: Correct,</p> <p>16 Chairperson, based on the fact that that's why it was</p> <p>17 prepositioned.</p> <p>18 MR MPOFU: Thank you, yes. In other</p> <p>19 words two measures which were going to assist in making it</p> <p>20 rapid were the prepositioning as well as the simultaneous</p> <p>21 rollout, so that it doesn't take too long, correct?</p> <p>22 MAJOR-GENERAL MPEMBE: The only one that</p> <p>23 I did not know, or let me say I did not recall a</p> <p>24 simultaneous one because I thought that the how part will</p> <p>25 be left to the operational people. But the prepositioning,</p>
<p style="text-align: right;">Page 16979</p> <p>1 CHAIRPERSON: Well, let me repeat the</p> <p>2 warning just – since I last spoke a number of people have</p> <p>3 come into the chamber. They haven't got earphones on, of</p> <p>4 course, so it's not being interpreted. Mr Ntsonkota, will</p> <p>5 you be kind enough to repeat in Xhosa, in isiXhosa, what I</p> <p>6 have said a few minutes ago or perhaps Mr Tokota can do it,</p> <p>7 say it in isiXhosa so that - some people here haven't got</p> <p>8 their headphones on and we don't want distress to be</p> <p>9 caused. I see two other people are approaching, so we'll</p> <p>10 wait until they come into the chamber and then Mr Tokota</p> <p>11 will speak in isiXhosa and give the warning that is</p> <p>12 necessary.</p> <p>13 MR MPOFU: Chairperson, maybe a better</p> <p>14 suggestion, I can just ask about one or two small other</p> <p>15 things so that when the people – we think everyone is here</p> <p>16 then Mr Tokota can do the second warning.</p> <p>17 CHAIRPERSON: Okay, you ask the other</p> <p>18 questions, ask the other questions first and when we're</p> <p>19 about to see the slide then Mr Tokota –</p> <p>20 MR MPOFU: I'll indicate.</p> <p>21 CHAIRPERSON: - will give the warning in</p> <p>22 isiXhosa.</p> <p>23 MR MPOFU: Thank you, thank you,</p> <p>24 Chairperson. General, you remember the discussion we had,</p> <p>25 I think somewhere at the beginning of your cross-</p>	<p style="text-align: right;">Page 16981</p> <p>1 it was made to do a rapid deployment.</p> <p>2 MR MPOFU: Yes, in fact you'll find that</p> <p>3 at page 12 of GGG12. Page 12, the second bullet there,</p> <p>4 Chairperson. The third, I'm sorry, the third bullet refers</p> <p>5 to what we are discussing now. "Six armoured vehicles with</p> <p>6 barbed wire trailers would be positioned between the police</p> <p>7 line and the protesters for crowd control purposes. The</p> <p>8 wire would not be deployed, only prepositioned. This would</p> <p>9 allow for rapid deployment of the barbed wire when required</p> <p>10 to cordon off the police's safe area and to protect police</p> <p>11 assets from any aggressive approaches by the protesters."</p> <p>12 So the – well there are two issues here. One is the</p> <p>13 rapidness of the deployment which you and I have just</p> <p>14 discussed, do would you agree that also the primary means</p> <p>15 by which the safe area was to be protected was meant to be</p> <p>16 barbed wire?</p> <p>17 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>18 MR MPOFU: It was never envisaged that</p> <p>19 the safe area would be protected with automatic rifles.</p> <p>20 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>21 MR MPOFU: Good. And I've already said</p> <p>22 to you the other day that I'm going to argue that that</p> <p>23 deviation was, as it were, the mother of all the other</p> <p>24 deviations, the failure to do the rapid rollout. Now do</p> <p>25 you accept that there was also a deviation in the sense</p>

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1 that Nyala 4 was not meant to go to the kraal but to go to
 2 - is it the west? Ja, towards the west. Nyala 4, 5 and 6
 3 - or let me put it this way. The fact that Nyala 4 went to
 4 the kraal was also a deviation, it was not what was
 5 planned, correct?
 6 MAJOR-GENERAL MPEMBE: No, Chairperson.
 7 I don't which one you are referring, but there was one
 8 where the JOC did give guidance, but the other issue is
 9 that the operational people could also perform their work
 10 when implementing the plan according to their situations.
 11 MR MPOFU: No, fair enough. I accept
 12 that, but all I'm saying is that do you know that according
 13 to the plan there was no Nyala that was supposed to go
 14 against the kraal?
 15 MAJOR-GENERAL MPEMBE: Correct,
 16 Chairperson.
 17 MR MPOFU: Thank you. Okay, Chairperson,
 18 if we could repeat the warning.
 19 CHAIRPERSON: Thank you, Mr Tokota. Mr
 20 Tokota has now given the warning in isiXhosa and if anyone
 21 wishes to leave - there's a lady, I think, leaving - we
 22 will give them a minute before the slide that is going to
 23 be shown will in fact be shown.
 24 MR MPOFU: Thank you, Chairperson. The
 25 warning was given in such pure Xhosa that it might require

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1 an interpretation.
 2 CHAIRPERSON: I don't think you should
 3 insult the people who are in the chamber.
 4 MR MPOFU: No.
 5 CHAIRPERSON: I'm sure they understand
 6 pure Xhosa.
 7 MR MPOFU: No, I'm insulting myself. I
 8 didn't understand it, Chairperson.
 9 CHAIRPERSON: Well, I can't stop you from
 10 doing that now.
 11 MR MPOFU: Thank you. Alright, can we
 12 then play, or rather show exhibit B30, three zero?
 13 CHAIRPERSON: You have arranged for the
 14 particular slide you want shown to be shown, so the
 15 operator knows what you want?
 16 MR MPOFU: Thank you, thank you.
 17 Chairperson, okay no, actually I failed to do that, to
 18 prime them. So maybe I'll also go to something else while
 19 Ms Pillay assists - or there you are, it's there.
 20 CHAIRPERSON: It looks as if we now can
 21 see the slides that you are referring to.
 22 MR MPOFU: Thank you. Chairperson -
 23 CHAIRPERSON: As each slide is shown I
 24 think it would be helpful if you put on record what the
 25 exhibit number is.

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1 MR MPOFU: Yes, that, Chairperson, is
 2 B30, and I'm just showing this really for the purposes of
 3 the Commission, of situating the questioning. Those are
 4 bodies I and K. At this stage I've not been able to work
 5 out which one it is, but I think the one in the black pants
 6 is I. And then if we can go to 32, it's the same two
 7 bodies, Chairperson, from a different angle. That's scene
 8 1. Let's go back to 30, sorry, three, zero. The issue
 9 here, Chairperson, is that body, Mr Yona, who is identified
 10 in HHH63 -
 11 CHAIRPERSON: As one of the shotgun
 12 victims.
 13 MR MPOFU: Yes, as number 9, is one of
 14 those two. At this stage we think it's the body with the
 15 black pants, but we'll clarify that. The thing is that
 16 both of them are lying almost against the kraal. I'm sure
 17 we'll get proper measurements at a later stage, but what
 18 you can see at the back there is the kraal, Chairperson.
 19 Thank you, that's all.
 20 CHAIRPERSON: Two shotgun victims, the
 21 bodies described as I and K.
 22 MR MPOFU: No, only I.
 23 CHAIRPERSON: Only I.
 24 MR MPOFU: Only I, yes.
 25 CHAIRPERSON: Oh, and you say I is Mr

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1 Yona.
 2 MR MPOFU: This is Mr Yona, that's
 3 correct. Thank you, Chairperson.
 4 CHAIRPERSON: So his body was found at
 5 scene 1.
 6 MR MPOFU: Scene 1 next to the kraal.
 7 CHAIRPERSON: Next to the kraal. Thank
 8 you.
 9 MR MPOFU: Yes. Thank you, Chairperson.
 10 Okay. Now, General -
 11 CHAIRPERSON: I'm sorry to interrupt you.
 12 Are you going to in due course show us a slide with Mr
 13 Mdze, Mr Bongani Mdze as well?
 14 MR MPOFU: No, Chairperson, because Mr
 15 Mdze died in hospital.
 16 CHAIRPERSON: I see.
 17 MR MPOFU: He was shot there, but he died
 18 in hospital. We're still going to try and identify him
 19 from -
 20 CHAIRPERSON: Yes, I see. No, you've
 21 answered my question. We're not going to see any slide
 22 about him.
 23 COMMISSIONER HEMRAJ: Mr Mpofu, Mr Mpofu,
 24 are you going to place on record exactly where in relation
 25 to the kraal the body of Mr Yona -

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1 MR MPOFU: Yes, Chairperson. I could say
 2 within a metre.
 3 COMMISSIONER HEMRAJ: Yes, but what side,
 4 which side of the kraal?
 5 MR MPOFU: Oh. I see. This would be the
 6 eastern side of the kraal, and with the help of Mr
 7 Chaskalson we'll get proper –
 8 CHAIRPERSON: I think there's an exhibit
 9 that was put in, isn't there, showing the bodies and where
 10 they were found?
 11 MR MPOFU: B15, yes I'm being referred to
 12 B15. Can you please show B15, which might be more helpful?
 13 Thank you. Well, I don't think that's more helpful. I
 14 think it's better to look at the body itself, but in
 15 relation to the other –
 16 CHAIRPERSON: Where is K? Some of the
 17 letters aren't too clear.
 18 MR MPOFU: I, I is the one. The three,
 19 where the notation is inside the kraal, it's one of those.
 20 CHAIRPERSON: Yes, yes, I see. I is very
 21 clear, yes.
 22 MR MPOFU: Actually it's one of the three
 23 closest to the kraal, I think we can say that, ja. Try
 24 B16. Yes, well it's the same, it's a graphical
 25 representation of the same thing. Yes, I think we can

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1 safely say it's one of the three bodies closest to the
 2 kraal, to the eastern side of the kraal. Thank you. Okay,
 3 and I can place on the record, subject to some escape
 4 clause –
 5 CHAIRPERSON: Sorry to interrupt to you.
 6 Is it the eastern side of the kraal? We have an arrow
 7 which I take it is north, is it, on the sketch?
 8 MR MPOFU: Yes, I see that, Chairperson.
 9 Well let's put it –
 10 CHAIRPERSON: Or is that the cursor?
 11 Okay, if you assure me it is the eastern side of the kraal,
 12 I won't argue with you.
 13 MR MPOFU: It is, it is, yes.
 14 CHAIRPERSON: I just thought the arrow
 15 indicated something different, but maybe it's a different
 16 arrow.
 17 MR MPOFU: Thank you, Chairperson, and I
 18 was just saying just for the sake of completion, subject to
 19 an escape clause, Mr Mdze, I'm informed, died at scene 2.
 20 We will also try and –
 21 CHAIRPERSON: Thank you.
 22 MR MPOFU: Thank you, Chair. Okay, thank
 23 you very much. Now, General, you gave, I suppose
 24 speculation about the source of the fire that might have
 25 injured those people or those who were killed. Now if I

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1 say to you – okay, if it cannot be shown that there were
 2 shotguns that were in the possession of the strikers on
 3 that day but that there were shotguns that were in the
 4 possession of the Lonmin personnel, as I have showed you in
 5 HHH60.1, and if I tell you that according to the statement
 6 which is HHH52, Mr Kellerman had previously on his own
 7 account shot a worker, would you have any other speculation
 8 as to where the –
 9 [11:26] CHAIRPERSON: Is his speculation
 10 appropriate, Mr Mpofo?
 11 MR MPOFU: Well, he's already speculated
 12 that –
 13 CHAIRPERSON: No, no, he didn't
 14 speculate. He said that there were certain aspects had to
 15 be investigated, certain avenues, as it were, that had to
 16 be explored, to try to find out who was responsible for
 17 these shotgun wounds which caused the death of these two
 18 people, but I don't know if you want to take it further
 19 than that, at this stage –
 20 MR MPOFU: Well, okay, Chairperson. I
 21 was simply asking if he thinks that these are the only
 22 avenues that he gave to you, but if it's –
 23 CHAIRPERSON: Yes, that's an appropriate
 24 question. There were two possibilities we discussed; one
 25 was a striker, or strikers with shotgun killed his

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1 colleagues, presumably by mistake, in the course of the
 2 operation. The other one was that it was possibly one of
 3 Lonmin people who was in possession of a shotgun. Is there
 4 any other possibility, any other aspects of the matter
 5 which could also usefully be explored to try to solve the
 6 mystery as to who killed Mr Yona, for example?
 7 MAJOR-GENERAL MPEMBE: No any other one
 8 in my knowledge that could be there, Chairperson. Only
 9 those two possibilities.
 10 MR MPOFU: Yes, thank you very much.
 11 CHAIRPERSON: I may tell you we have
 12 requested the evidence leaders to ask the investigators to
 13 give particular attention to this aspect, among a number of
 14 others that they were looking at. So we hope there will in
 15 due course be definitive evidence on the point.
 16 MR MPOFU: Thank you, Chairperson. Now,
 17 General –
 18 CHAIRPERSON: Are you moving onto another
 19 point now?
 20 MR MPOFU: I'm moving to a new point,
 21 Chairperson.
 22 CHAIRPERSON: Right, before you do that,
 23 Mr Shozi, can you assist us, I'm not expecting the
 24 assistance now, but you'll obviously have to get
 25 instructions, but in respect of exhibit HHH60.1, will you

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1 able to get a key, as it were, to the abbreviations on this
 2 page? For example, just to take one example, we start with
 3 one is S1, what does S1 mean. Then there are names of
 4 obviously Lonmin personnel, I take it, and thereafter
 5 there's some other letters. It looks like HSC574MW dash,
 6 looks like KPL. Now, if you can perhaps ask those
 7 instructing you to ascertain what these abbreviations stand
 8 for and if you can give us a document setting them out,
 9 we'd appreciate it very much.

10 MR SHOZI: Chair, we'll happily do so.

11 CHAIRPERSON: Thank you.

12 MR MPOFU: And, Chairperson, while we are
 13 at that, could I ask more specifically that one of the
 14 aspects, when we do get that report, should be the fact
 15 that the two gentlemen who had shotguns seem to be the two
 16 people who were not allocated, or one of them, who were not
 17 allocated a posting, a particular posting, assuming those
 18 notations that the Chairperson referred to are locations.
 19 If you look at number 15 at the other side, Mr Kellerman
 20 and the unfortunately named Mr PW Botha –

21 CHAIRPERSON: I don't know, for all we
 22 know he may be proud of that name, so we won't go into
 23 that.

24 MR MPOFU: We won't go there. But those
 25 two are not allocated here. Thank you, Mr Shozi. Now,

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1 General, I am moving to something else. Once again I'm not
 2 going to spend time on this. I'm going to argue – let just
 3 tell you what I'll argue and then you can comment. In the
 4 same way that I criticised you yesterday for not having
 5 given Mr Mathunjwa's peace efforts a proper chance, I will
 6 also be arguing - and that's a criticism that will be
 7 levelled at you personally as a leader - that similarly
 8 Bishop Seoka's peace efforts were also brushed aside and
 9 not given a chance. Would you agree with that or disagree
 10 or comment?

11 MAJOR-GENERAL MPEMBE: Disagree,
 12 Chairperson, and I had no knowledge of Bishop Seoka at all.

13 MR MPOFU: Okay, you yourself didn't
 14 interact with him?

15 MAJOR-GENERAL MPEMBE: As an overall
 16 commander, yes.

17 MR MPOFU: On the 16th. Okay, no fair
 18 enough.

19 MAJOR-GENERAL MPEMBE: Not only on the
 20 16th, even before that, but as an overall commander I have
 21 never interacted with him. I didn't know about his skills.

22 CHAIRPERSON: According to the evidence
 23 he only arrived on the scene on the 16th. Of course we know
 24 that thereafter he played a very important role in helping
 25 to bring about the accord, which was eventually signed, but

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1 that's not relevant for what we're busy with at the moment,
 2 but he wasn't there, as I recall his evidence, before the
 3 16th. So it's only his role on the 16th that's relevant for
 4 the purpose of the question, but you weren't aware of the
 5 fact he was there. If he was brushed off, as suggested,
 6 you weren't the person who did it, so you can't comment?

7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.

9 MR MPOFU: Okay, General, I accept that.

10 Now, I want us to go to – this is probably my last topic,
 11 another escape clause, ja. I've decided that I'm not going
 12 to ask you a lot on EEE16, which was on the list that I was
 13 going to ask you on, because most of the issues I wanted to
 14 canvass there will probably be canvassed with Brigadier
 15 Calitz. So all I'm going to do is just play – maybe let me
 16 tell you there's only one aspect that I want to canvass
 17 with you with the videos that I'm going to play, and that
 18 aspect is simply to support my argument later that on at
 19 least two, or even three occasions, the protestors can be
 20 seen walking, or crouch-walking, if you remember that, past
 21 armed policemen without threatening to attack them. Do you
 22 see what I'm saying? You don't have to agree, but do you
 23 understand?

24 MAJOR-GENERAL MPEMBE: I do understand,
 25 Chairperson.

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1 MR MPOFU: Yes, so I'm going to show you
 2 an extract, for the purposes of supporting that argument.
 3 Then I'll ask you one or two questions. Okay, can we then
 4 play Z1?

5 CHAIRPERSON: I take it we're not going
 6 to see the whole video, so perhaps you can indicate what
 7 portion of the video we're going to see.

8 MR MPOFU: I'm sorry, Chairperson, I
 9 forget. I think it's – I'm going to take a guess, it's
 10 about 11.29.

11 [VIDEO SHOWN]

12 CHAIRPERSON: I don't think this shows
 13 any pictures of people walking in a crouching position –

14 MR MPOFU: No, I think they're still
 15 looking for it, Chairperson. Okay, it's from round about
 16 now, just before the –

17 CHAIRPERSON: Round about now is?

18 MR MPOFU: 23 minutes, it's double what I
 19 said, starting at about 23 minutes.

20 [VIDEO SHOWN]

21 CHAIRPERSON: We see people walking past
 22 a rock and just after they get to the rock, some of them at
 23 least are crouching, and they are moving forward in a
 24 crouching position.

25 MR MPOFU: Chairperson, if you can

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1 indicate the policeman?

2 CHAIRPERSON: They're walking past a

3 policeman who had a firearm in his hand, I think. The

4 point you make is that, as far as we can see from the

5 video, when they saw the policeman they went into a

6 crouching position and walked forward past him.

7 MR MPOFU: That's correct.

8 CHAIRPERSON: Past him and they're now

9 standing up again and walking normally.

10 MR MPOFU: Yes, that's enough, thank you,

11 Chair.

12 CHAIRPERSON: So the video ends?

13 MR MPOFU: No, but that's all I wanted to

14 show.

15 CHAIRPERSON: No, no, that's all you want

16 to show. We must please get an indication as to where it

17 stops now.

18 MR MPOFU: Oh, I see. At 24.

19 CHAIRPERSON: So effectively we saw from

20 23 to 24?

21 MR MPOFU: To 24, thank you, Chairperson,

22 yes. General, would you agree with the Chairperson's

23 description, but also my addition which I mentioned to you

24 a couple of days ago, namely that the crouching people

25 walked past the policeman, within one or two metres from

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1 him, correct?

2 MAJOR-GENERAL MPEMBE: Yes, Chairperson,

3 I agree. The only thing that I said there is that their

4 refusal to give the police the dangerous weapons.

5 MR MPOFU: No, we accept that. It was

6 very bad. So alright, let's go to the next video, which is

7 JJJ194. There, there are 10 extracts that were played out

8 of 71, before by Mr Chaskalson, and they are very short,

9 Chairperson, I'm just going to show –

10 CHAIRPERSON: First you indicate to us

11 what they are? When we read the record, we will be able to

12 find them again if we have to.

13 MR MPOFU: That's correct. JJJ194 is a

14 set of 71 little extracts. The ones that have been played

15 to Commission before are 194.5 to 15, and I only wanted to

16 show point 12 to 14, please.

17 CHAIRPERSON: The first video we saw of

18 course related to events of the 13th of August. This one

19 relates to the 16th of August, and it indicates – well, you

20 tell us in your words what it indicates.

21 MR MPOFU: Yes, thank you, Chairperson.

22 In fact, don't even play the video, I think that still

23 picture sort of captures what I wanted to show here. Here,

24 General, what I want to indicate, and I'll ask you one or

25 two questions, is that the crowd that is walking past the

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1 big pole is doing so while there are policemen who are

2 outside of the Nyalas and that the crowd is not attacking

3 those policemen, but walking in a different direction. It

4 will become clear just now. Okay, you can play.

5 [VIDEO SHOWN]

6 Okay, next one. That would be 194.12, so now

7 we're going to 13, same crowd.

8 [VIDEO SHOWN]

9 Okay, next one.

10 [VIDEO SHOWN]

11 Thank you. General, would you agree that in all

12 those three extracts we can see the crowd that is walking

13 slowly and we see members of the police service who are

14 scattered around the Nyalas and the crowd is walking in a

15 different direction, not towards those policemen or showing

16 any signs of aggression to them?

17 MAJOR-GENERAL MPEMBE: Yes, Chairperson.

18 MR MPOFU: Alright. You remember that –

19 okay, there's another extract which is in a similar vein,

20 but I think the shortcut to my next point, which is related

21 to this, would be to ask you to please - you remember that

22 you owe us, well, not me, you owe the Commission, you said

23 when you and I were discussing the issue of when did you

24 see the attack and so on, you then said you'd look at the

25 video. That was last week Wednesday or Thursday. Have you

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1 found that video?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MR MPOFU: Okay, can you then show us the

5 attack now and then maybe I'll, in the course of that, I'll

6 put my next question, which will be the last one on this

7 aspect.

8 MAJOR-GENERAL MPEMBE: Chairperson, I did

9 discuss with the technician, it's UU3, but he might tell me

10 the line with that - the technician there.

11 MR MPOFU: Yes, okay. Ja, UU3 is not too

12 long. I think we can play the whole thing. Oh, sorry,

13 Chairperson, we might need a warning.

14 CHAIRPERSON: The videos we are now going

15 to see contain sensitive images of people who'd been shot

16 on the 16th of August and they may – it is the 16th, is it?

17 MR MPOFU: Scene 1.

18 CHAIRPERSON: - of scene 1 and those who

19 are relatives or loved ones of the people whose dead bodies

20 will be seen on the video, will, I'm sure, find looking at

21 these videos something extremely painful and distressing to

22 them. So I'm going to ask the operator not to show the

23 video until a minute has elapsed from now, to enable those

24 who feel that seeing these images will be a source of

25 distress for them, to leave the chamber. No-one is showing

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1 any signs of leaving, except one lady is, and another lady
2 is putting on her jersey, perhaps she's going, and a third
3 lady is going as well. Well, we'll wait for the people who
4 are leaving to be outside the chamber before we proceed.
5 Mr Operator, I think you can now show the images.
6 MR MPOFU: Thank you, Chairperson.
7 [VIDEO SHOWN]
8 Okay, the General says it's enough. General,
9 okay now can you educate us, where was this attack?
10 [11:46] MAJOR-GENERAL MPEMBE: I spoke about the
11 charging to the police. That group there was, there's one
12 that I said in my evidence-in-chief that I see them
13 charging to the police.
14 MR MPOFU: Is that the same thing as
15 walking to the road?
16 MAJOR-GENERAL MPEMBE: Chairperson, I'm
17 using the word "charging." As I said when I was asked by
18 Adv Ngalwana, that when you see these people were they
19 walking or approaching, I used the word, "No, they were
20 charging at the police."
21 MR MPOFU: So okay, thank you, I
22 understand that. That's why I'm saying, I want to make
23 that distinction. So you're saying they were not walking
24 towards the road, but they were charging towards the
25 police?

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1 MAJOR-GENERAL MPEMBE: Correct,
2 Chairperson.
3 MR MPOFU: And that's the only sign of
4 "attack" that you were referring to when you said you saw
5 the attack, in your other evidence, correct?
6 MAJOR-GENERAL MPEMBE: I want the
7 clarity, which other evidence, Chairperson, because that's
8 the only one that I'm talking about when I say they were
9 charging at the police, and I didn't use the word "attack,"
10 but I say they were charging at the police. Maybe I just
11 wanted to find out which other evidence.
12 MR MPOFU: Okay, I'll find it for you.
13 Chairperson, if you'll just bear with me. Chairperson, can
14 I ask for a few minutes?
15 CHAIRPERSON: How many?
16 MR MPOFU: Five.
17 CHAIRPERSON: Well, it is suggested from
18 my right that we should take a comfort break, which would
19 be a source of comfort not only to you but to others also.
20 MR MPOFU: Yes, and I can indicate
21 already, Chairperson, that –
22 CHAIRPERSON: Take the comfort break.
23 MR MPOFU: - this will be a few
24 questions, so that the other side should be ready, if they
25 are ready. I'm about to finish, Chairperson.

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1 CHAIRPERSON: Right, well, I'll have
2 another attempt. We'll take the comfort break now.
3 [COMMISSION ADJOURNS COMMISSION RESUMES]
4 [12:07] CHAIRPERSON: The Commission resumes. We
5 understand that you're now ready to proceed, Mr Mpofo.
6 MR MPOFU: Yes.
7 CHAIRPERSON: You, Major-General, are
8 still under oath.
9 WILLIAM MPEMBE: Yes, Chairperson.
10 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
11 Thank you, Chairperson. General, ja, in fairness to you, I
12 was wrong, that in your evidence-in-chief you only used the
13 word "charging," as you said. It's only when I was
14 questioning you more recently that, if you remember, I said
15 to you for there to be a defence, there has to be an
16 attack, and you agreed and then we had this discussion
17 about whether you saw the attack or not. You remember
18 that?
19 MAJOR-GENERAL MPEMBE: Correct,
20 Chairperson.
21 MR MPOFU: Yes, okay. So I'm asking you
22 in that context, accepting that you used the word
23 "charging," but you'd accept that you were using it in the
24 sense that it was the sign of the attack which provoked the
25 defence, correct?

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1 MAJOR-GENERAL MPEMBE: I was using it in
2 the sense of charging, charging at the police.
3 MR MPOFU: Yes, but you were not using it
4 as – you were using it in the sense of explaining why you
5 took the view that the police were acting in self-defence,
6 in other words that the charging was part of the attack
7 against which they were defending themselves, correct?
8 MAJOR-GENERAL MPEMBE: No, Chairperson, I
9 didn't say so. I said they were not – I think the question
10 in which, or the context in which Adv Ngalwana was putting
11 it was putting it for me to show whether will they be
12 walking or approaching. He even used the word, were they
13 approaching or – then I said they were in speed, and I used
14 the word "charging."
15 MR MPOFU: Okay, no then maybe we are
16 talking about two different places where you used that
17 word. I'm talking about where you used that word to
18 explain why you concluded that the police were acting in
19 self-defence. Do you understand?
20 MAJOR-GENERAL MPEMBE: I said I was told
21 that they were acting in self-defence.
22 MR MPOFU: Yes, and what they were
23 defending themselves against was the attack which
24 manifested itself in the charging, according to that
25 theory. I'm not saying it's your theory; according to what

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1 you were told, correct?

2 MAJOR-GENERAL MPEMBE: I might not

3 confirm, I'm not in a position to confirm it, Chairperson,

4 but –

5 MR MPOFU: Okay, well then –

6 MAJOR-GENERAL MPEMBE: As I'm saying it,

7 in my understanding how it was the showing of the

8 movements, as I've explained.

9 MR MPOFU: Yes, but those movements is

10 what they were defending themselves against when they shot

11 the people, correct?

12 MAJOR-GENERAL MPEMBE: No, Chairperson,

13 I'm not in a position to confirm that.

14 MR MPOFU: So you're not able to link the

15 charging with the self-defence?

16 MAJOR-GENERAL MPEMBE: I'm not linking

17 the charging with the attack.

18 MR MPOFU: Okay, fine –

19 MAJOR-GENERAL MPEMBE: And then that I

20 leave it to those that were there.

21 MR MPOFU: That's fine. Are you linking

22 the charging with the self-defence?

23 MAJOR-GENERAL MPEMBE: Chairperson, I'm

24 linking it with the attack because that is not the word

25 that I use.

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1 MR MPOFU: Okay, so now you're linking it

2 with the attack. Okay, that's where I want us to be.

3 Alright, now the reason I'm saying this, General - I'm not

4 being funny – is because this is what you said at page

5 11576 and I've already conceded that you used the word

6 "charging" and not the word I ascribed to you wrongly,

7 which was "attack," but this is the context in which you

8 used it. You said, "Chairperson, on the 16th" – I'm sorry,

9 I'm reading against line 12, Chairperson – "Chairperson, on

10 the 16th I was not on the scene, but the first scene,

11 because the second scene I might not be in a position to

12 say on. The first scene, when I looked at the video I saw

13 that there was a group charging at the police, Chairperson,

14 and also I could attribute it to private or self-defence,

15 but what happened, what is now known as scene 2, I'm not in

16 a position to comment." Do you now understand the context

17 in which you gave that answer? General?

18 MAJOR-GENERAL MPEMBE: I hear the way in

19 which you put it, but –

20 MR MPOFU: Yes, no it's not me, you put

21 it like that. I'm quoting you. Do you accept that?

22 MAJOR-GENERAL MPEMBE: I do accept what I

23 said there.

24 MR MPOFU: Yes. Now all I'm saying is

25 that in this passage at least you were linking the charging

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1 to the question of self-defence, and I accept that it's my

2 word to say therefore from this the charging must have then

3 been part of the attack against which the people were self-

4 defending themselves, or privately defending others. You

5 understand?

6 MAJOR-GENERAL MPEMBE: My putting in that

7 word in that context, it was to say this is what I was

8 informed, and it's not coming from me. What comes from me

9 there is the charging which I saw from the video, but the

10 first sentences, and even the explanation is very clear

11 that I was not there, and that is what I'm told that that

12 contributed to the self-defence.

13 MR MPOFU: No, (a), I accept you were not

14 there; (b), I accept that you said you saw all this on

15 video, but all I'm saying to you is you were giving the

16 evidence of the charging in the same breath as you were

17 talking about the self-defence, because the charging must

18 have contributed to what triggered the defence. Do you

19 accept that?

20 MAJOR-GENERAL MPEMBE: Advocate, the

21 charging is the one that I saw, but the self-defence, I

22 said I'm told because I was not on the scene.

23 MR MPOFU: Okay, I'll leave it for

24 argument. That's not what you said, for the record. You

25 said "When I looked at the video I saw that there was a

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1 group charging at the police, Chairperson, that also I

2 could attribute it to private or self-defence, but I don't

3 know what happened at scene 2." That's what you said, but

4 I'm not going to pursue it any further.

5 CHAIRPERSON: Anyway, what importance, if

6 any, to be attributed to what you will contend is a

7 conflict in the evidence is something we'll look at later.

8 MR MPOFU: Yes, thank you, Chairperson.

9 Now General, just while we are still on this story of

10 charging, if I may just show you then, the clip that I was

11 hoping would be on your video was not, or rather the

12 portion of the crowd was not on your video. We've just

13 found it in AAA7. It's the same series. It's not long. I

14 just want you to have a look at that.

15 CHAIRPERSON: Do you want the warning to

16 be given again?

17 MR MPOFU: Yes, Chairperson, just in

18 case. I'll probably stop it before it gets gruesome, but

19 in case I miss the point, I think let's give the warning.

20 CHAIRPERSON: We've been told that we're

21 going to see a video clip which will contain scenes which

22 may cause distress and pain actually to some of the people

23 present in the chamber if their loved ones or family

24 members are depicted, and so I'll ask that this clip not be

25 shown until a minute has elapsed from the time that I stop

<p style="text-align: right;">Page 17006</p> <p>1 speaking so that those who wish to leave the chamber will 2 have an opportunity to do so.</p> <p>3 MR MPOFU: And while that is happening, 4 General, I almost forgot the real reason why we had to deal 5 with this and you had to look at the video; the original 6 question that I had asked you was whether you agreed that 7 the shooting followed almost immediately after the 8 charging. Now that you've seen the video, are you able to 9 answer that question? In other words after the "charging" 10 that you referred to, which I call walking, but let's not 11 debate that now, that the shooting happened almost 12 immediately after what you describe as the charging. 13 That's all I want to know.</p> <p>14 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>15 MR MPOFU: Now, and the reason why I was 16 asking you that question was because – and I'm giving you 17 an opportunity to explain once again because I'm going to 18 criticise you around it - if you accept that these two 19 things happened within a split second of each other, how do 20 you explain your evidence that while you were on the ground 21 you heard on the radio someone saying the protesters are 22 attacking, let's use that word for now, it might not be the 23 real word that was – or are advancing, I think that's the 24 word that was used, the protesters are advancing towards 25 the TRT line. Remember your evidence is that you heard</p>	<p style="text-align: right;">Page 17008</p> <p>1 group are moving to TRT members and they try to attack 2 them. Papa1 reporting that the people are moving around 3 and some are down." That's what he heard.</p> <p>4 MR MPOFU: Yes, that's correct. You 5 understand that in terms of the report that's almost said 6 in the same breath, and that is in line with what you said, 7 or what we saw, that the so-called charging and the 8 shooting happened almost back to back, if I can use that 9 expression. Now what I'm saying in line, or in respect of 10 what the Chairperson has just read from that report, and 11 your evidence that the part about the TRT line approach 12 happened while you were still on the ground, can you 13 explain, if you may, why the "bodies down" part seems 14 according to your story to have happened 20 minutes later?</p> <p>15 CHAIRPERSON: I'm not sure that he said 16 that they happened 20 minutes later.</p> <p>17 MR MPOFU: Well, okay –</p> <p>18 CHAIRPERSON: Perhaps you can reformulate 19 the question.</p> <p>20 MR MPOFU: Okay, yes. No, that last 21 part, sorry, General, put it this way; whatever the 22 difference in minutes, but according to you the one thing 23 happened while you were on the ground, and the other 24 happened while you were on air. I can't put it stronger 25 than that.</p>
<p style="text-align: right;">Page 17007</p> <p>1 that while you were still on the ground, not when you were 2 in the air?</p> <p>3 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p> <p>4 MR MPOFU: Ja, now if the two things 5 happened within a split second of each other, how could you 6 hear the one and not the other? In other words while you 7 were still on the ground you heard they are going towards 8 the TRT line, which for now we'll call it the charging, and 9 which must have been followed immediately with the killing 10 in self-defence allegedly.</p> <p>11 COMMISSIONER HEMRAJ: Are you asking why 12 he did not hear the gunshots? Is that what you –</p> <p>13 MR MPOFU: No.</p> <p>14 COMMISSIONER HEMRAJ: A report of the 15 killings?</p> <p>16 MR MPOFU: Yes. I'm saying that 17 according – well, it's a long story which doesn't concern 18 you. According to Vermaak at least when he witnessed the 19 people walking towards the police and then he reported 20 bodies down, bodies down, or something to that nature.</p> <p>21 CHAIRPERSON: The actual words as 22 recorded in the police occurrence book FFF25 –</p> <p>23 MR MPOFU: 45.</p> <p>24 CHAIRPERSON: - page 25, entry 1017, is 25 as follows, "15:55 Situation report, Papa1 reporting the</p>	<p style="text-align: right;">Page 17009</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, I did 2 explain that there as no any other indication on the radio 3 that I heard that people were killed immediately 4 thereafter, after what we see on the video, and I explain 5 to the Commission that when I heard that some of the bodies 6 are down, it's then that I went to the JOC and that the 7 bodies are down, it didn't happen, it was not said 8 immediately after the shooting. What I see with the 9 shooting, it's also a difference in terms of the reporting 10 because I was relying on the radio, and that is my 11 evidence. But by the time when I was asked it was not 12 linked up with that video.</p> <p>13 MR MPOFU: Alright. No, of course, you 14 hadn't even seen the video then. Ja, all I'm saying is 15 that according to your evidence the one incident – it's not 16 an incident. I've just demonstrated to you that these 17 things happened within a split second of each other, and 18 the Chairperson has also read to you a report that seems to 19 talk to them, about them almost at the same time. Now I'm 20 saying, according to your evidence - and I want you to 21 explain to us, if you can – according to your evidence the 22 one part of that report happened while you were on the 23 ground; another part happened while you were in the air. 24 So those two things don't tally. If you have no 25 explanation, you have no explanation, but do you understand</p>

1 my problem?

2 MAJOR-GENERAL MPEMBE: My answer is still

3 the same, that what you see on the video, that's not what

4 was reported at the same time, because to say the bodies

5 are down, it was not said immediately after the shooting.

6 MR MPOFU: Alright. Okay, maybe we'll

7 deal with Papa1 on that one. Okay, now this is really the

8 last one. Your evidence is that – or we've already gone

9 through this. Your evidence is that Mr Mathunjwa gave an

10 undertaking about the laying down of arms the following

11 morning. I'm going to argue that your evidence in that

12 regard should not be believed and so I want again to give

13 you a chance to contradict me, firstly because Mr Mathunjwa

14 himself does not put it as high as an undertaking, but more

15 importantly, General Annandale also says it was not an

16 undertaking. So if it was just you against Mr Mathunjwa

17 we'd say well, we'll see in the end who the Commission will

18 believe, but the fact that General Annandale, who

19 effectively was on your side, also says that it was not an

20 undertaking, he wouldn't put it as high as that, I will

21 argue should support my contention that your evidence on

22 that aspect should not be believed. Do you have any

23 comment?

24 MAJOR-GENERAL MPEMBE: I have showed the

25 Commission according to GGG4 and the words that were

1 uttered by Mr Mathunjwa himself, and even where he said I

2 was, I saluted him, which I denied, but I did use the word,

3 "I'm impressed." So that to me showed that he believed

4 that as a leader the people will listen to him and they

5 will lay down their weapons.

6 MR MPOFU: Ja, well I'm prepared to even

7 accept that. So it was still subject to the people

8 accepting whatever he was going to say to them, even on

9 that version that you are now giving us, correct?

10 MAJOR-GENERAL MPEMBE: He said he has to

11 go there tomorrow, and that was my belief, I believe in him

12 as a leader and I even indicated that when we were there,

13 the cheering of the crowd, the acceptance of the crowd of

14 him could also make that belief which I was not there -

15 which I was there, and General Annandale was not there, but

16 what I'm saying is that in terms of what was there, I also

17 had a belief, hence in the GGG4 I said I am impressed,

18 after I've played even devil's advocate with him; I said,

19 "What if they cannot?" and he give me many possibilities of

20 that could not even, I must not think about that. He even

21 said, "Don't think about negativity at this stage."

22 MR MPOFU: Yes, no, so he was optimistic,

23 but the point I'm making is this; that you see, the reason

24 I'm putting this to you now is because at first I would

25 have been more inclined to say as between you and General

1 Annandale you would be in a better position because you

2 could understand the language when Mr Mathunjwa was having

3 the exchange with the workers, but that point is eliminated

4 because your evidence is that you couldn't hear, it was

5 noisy, and so on. So you are not in any better position

6 than General Annandale to have read from what Mr Mathunjwa

7 was saying as to whether it was an undertaking or not, and

8 he says it was not an undertaking. Understand where I'm

9 coming from, even if you don't agree?

10 MAJOR-GENERAL MPEMBE: No, I do

11 understand, but what I'm saying is that that is not only

12 the point where I firstly met Mr Mathunjwa. Me in terms of

13 what I was talking to him about, it was the first time,

14 because from the first time when I met him he was already

15 on the positive to say that they must go to the mountain.

16 General Annandale was not there.

17 [12:27] But even if after I have played me, it's not

18 General Annandale that, who played the devil's advocate,

19 it's me, and I even said I am impressed.

20 MR MPOFU: Yes, thank you, and General

21 Annandale was there, he was present?

22 MAJOR-GENERAL MPEMBE: All the time,

23 Chairperson.

24 MR MPOFU: Good, so last question. It

25 didn't occur to you strange - let's assume you took this as

1 an undertaking for the purposes of this question - did it

2 seem to you strange that the workers would say, we're

3 making an undertaking to lay down the arms tomorrow at

4 9:00, but we'll come at 9:00 tomorrow just for the sake of

5 laying down the arms. I mean if it was such a firm

6 undertaking to lay down the arms, they would laid the arms

7 there and then. You can't go and sleep and wake up for the

8 sake of laying down the arms. If it didn't occur to you,

9 it didn't, but I'm just saying you didn't find that

10 strange?

11 MAJOR-GENERAL MPEMBE: Chairperson, I

12 need clarity on the question. Where should I actually

13 comment, about not happening or what?

14 CHAIRPERSON: No, no, what Mr Mpofo is

15 suggesting to you is that you shouldn't really have

16 believed Mathunjwa when he said that they were going to

17 come the next morning at 9:00 and lay down their arms,

18 because it was a strange proposition, because if they had

19 their arms there on the Wednesday night and they were going

20 to lay down their arms, because what Mpofo suggests to you

21 is the most sensible thing and the most logical thing will

22 be for them to have laid down their arms then and there on

23 the Wednesday evening. The story that they would go home

24 with their arms, and then go to sleep and then stand up the

25 next morning and come back especially to the koppie to put

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1 their arms down at 9 o'clock on the Thursday morning,
2 that's rather an unlikely story. That's what Mr Mpofu
3 says, and he says didn't you see it like that and realise
4 that Mathunjwa's confidence that he could get them to lay
5 down their arms the next day was probably mistaken. I
6 think basically your point, isn't it?

7 MR MPOFU: That's it –

8 CHAIRPERSON: That's what he says to you.
9 Did you not see it that way, and what's your answer to
10 that?

11 MAJOR-GENERAL MPEMBE: No, Chairperson.

12 MR MPOFU: Thank you, Chairperson, I have
13 nothing further.

14 CHAIRPERSON: Mr Mathibedi, you indicated
15 to me –

16 MR MPOFU: Oh sorry, that might have been
17 a little bit premature. Just give me one second, Chair.
18 Chairperson, I think what I was going to do was to put
19 certain things, but I think in the course of my cross-
20 examination what I wanted to put, like now, I've already
21 put and then asked the questions, so I'll take –

22 CHAIRPERSON: You're satisfied you put to
23 the witness what you wanted to?

24 MR MPOFU: Yes, Chairperson.

25 CHAIRPERSON: Thank you. Mr Mathibedi,

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1 shorten the proceedings, not to deal with aspects that have
2 already been covered. Now, taking into account that
3 tomorrow we are not sitting, that's the application, Mr
4 Chairman.

5 CHAIRPERSON: Thank you. Well, if I were
6 to give you the three hours you asked for, you'd only be
7 able to start re-examining at half past three this
8 afternoon, it now being 12:30. There's no point in that.
9 The only question is whether you should be given time at
10 all, and I want to make it clear that I'm not normally
11 going to give counsel time to prepare for re-examination.
12 Counsel must, as cross-examination proceeds, make notes and
13 be ready to re-examine immediately, but in the special
14 circumstances to which you have referred, your position
15 coming in late, most of the evidence having been given by
16 the witness when you weren't here, in the special
17 circumstances I'm prepared to give you an indulgence, but
18 other counsel mustn't assume and you mustn't even assume in
19 the case of future witnesses that I'll be prepared to give
20 the indulgence again, so that any future witness you will
21 have been here for when the witness has given evidence, and
22 so in the special circumstances, without creating a
23 precedent, I give you the indulgence you seek, and we will
24 adjourn now until 9 o'clock on Thursday morning.

25 MR MPOFU: Chairperson -

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1 you came to see me in chambers to tell me that you – you
2 indicated yesterday to the evidence leaders that you would
3 need about 3 hours to prepare for re-examination and this
4 is on the assumption that Mr Mpofu was going to end earlier
5 than he in fact did. Now, normally counsel isn't given
6 time to prepare for re-examination, but you indicated also
7 to me in chambers there's special reasons why this should
8 be allowed on this occasion. Can you perhaps just state
9 them for the record?

10 MR MATHIBEDI SC: Thanks, Mr Chairman.
11 Mr Chairman, I do not seek to create a precedent, but I'm
12 asking for an indulgence. During the better part of the
13 proceedings that dealt with the evidence of the general, I
14 was not involved therein. Now, on that basis I indicated
15 yesterday that I would ask for indulgence for a period of
16 three hours together with the team to finalise and prepare
17 for re-examination of the witness, and we thought that Mr
18 Mpofu would be done by tea this morning. That would have
19 given us an opportunity to have that indulgence of three
20 hours, but unfortunately because things being beyond my
21 colleague's control, he could not finish within the time
22 that I thought he would, and it is on this basis that I'm
23 asking for this matter to be postponed to Thursday to
24 enable the team to prepare for the re-examination of this
25 witness. I think it will also give us an opportunity to

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1 MR MATHIBEDI SC: Thanks, Mr Chairman,
2 I'm –

3 CHAIRPERSON: Do you want to appeal
4 against the –

5 MR MPOFU: No, no, it's an unrelated.
6 Let my colleague finish, I just wanted to –

7 CHAIRPERSON: I think he has finished,
8 I've already granted his application, but with a strong
9 caveat that it's not a precedent.

10 MR MPOFU: Yes, no, Chairperson, I'm not
11 getting involved. I think he was just about to thank the
12 Commission. Chairperson, just while we are here, just I
13 forgot, I wanted to make this announcement in the morning.
14 As we have been giving updates to the Commission, the
15 situation regarding the funding application is that the
16 judge has indicated that he would hear the application for
17 leave to appeal tomorrow, which fortunately is a day when
18 we are not sitting here. So we're going to be attending to
19 that. What we have done is since we had launched an
20 application in terms of rule 49(11), which is not opposed
21 really –

22 CHAIRPERSON: For the benefit of those in
23 the chamber and who are following on their worldwide web,
24 an application under 49(11) is an application for the
25 judgment to be put into effect, despite the fact that

1 there's an appeal.
2 MR MPOFU: There's an appeal, thanks,
3 that's correct, Chairperson. Now, that application to make
4 the judgment operational, we have requested the judge that
5 it should be heard simultaneously with the application for
6 leave to appeal tomorrow. So what I propose – what I'm
7 going to say in court tomorrow would be that we start with
8 the application for leave to appeal, because the other
9 application would otherwise, if leave to appeal is refused,
10 the other application will become of academic relevance,
11 and so then we will report on Thursday, Chairperson, of the
12 outcome, but the situation as it is now is that tomorrow
13 both applications will be heard and we'll have two court
14 orders, or one composite court order.

15 CHAIRPERSON: Yes, thank you for telling
16 us that and for keeping us up to date with what's
17 happening. Thank you. On that basis then we will adjourn
18 until Thursday morning. We can't sit tomorrow, because the
19 chamber is required by our hosts, the municipality, for a
20 committee meeting. That's why we will resume, however, on
21 Thursday morning at 9 o'clock.

22 [COMMISSION ADJOURNED]

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