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 74  16 APRIL 2013    PAGES 7849 TO 7955

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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but we would wait until he returns. That's on the assumption that he returns next Monday. Also we'll be unable to continue this morning with the cross-examination of the National Commissioner, and I indicated to him that I would ask everyone else to cross-examine, and thereafter I would excuse the National Commissioner on the basis that she must return when he's ready to continue with his cross-examination. National Commissioner, you're still under oath.

MANGWASHI VICTORIA PHIYEGA: s.u.o.

CHAIRPERSON: I understand that Mr Bruinders is to be the next counsel to cross-examine. Is that correct, Mr Bruinders? In fact, I understand by Adv Tip, and then I have some question marks on my piece of paper. Which of the representatives of the parties wishes to cross-examine after Mr Tip? So it's going to be Mr Bruinders first, then Mr Tip – Ms Lewis, are you going to ask questions on behalf of the families?

MS LEWIS: Mr Chairperson, the families do wish to cross-examine the National Commissioner. However, Mr Ntsebeza is not here today.

CHAIRPERSON: But I mean I can't expect the Commissioner – you know we want to carry on with the hearing and if counsel isn't here then I assume other arrangements have been made for someone to cross-examine on his behalf, or in his place.

MS LEWIS: Mr Chair, I will then, I'll convey that to Mr Ntsebeza and if needs be, if it's not possible to reserve it until tomorrow.

CHAIRPERSON: We don't know how long – let's cross that bridge when we get there. We don't know how long the cross-examination is going to be today. If of course the National Commissioner is still under cross-examination when we adjourn, then the problem will fall away. Do you know how long –

MS LEWIS: Ja, if we could revisit that later.

CHAIRPERSON: I know it's difficult to give a prediction, but do you know how long the cross-examination from your side is likely to be? I think Ms –

MS LEWIS: Chair, I would imagine approximately two hours.

CHAIRPERSON: Alright, anyway, Mr Bruinders, I'm not going to ask you how long you're going to be. We'll see. Would you like to start your cross-examination?

CROSS-EXAMINATION BY MR BRUINDERS SC:

Thank you. National Commissioner, at page 6804 of the transcript – you don't have to go there now, I'm going to tell you what you are recorded to have said. You say that on 10 August you are given an update. That's correct, isn't it?

GENERAL PHIYEGA: Yes, I was given updates throughout the process.

MR BRUINDERS SC: We'll get to the rest of the process later, but for now is it correct that on the 10th you get an update about what is happening in Marikana?

GENERAL PHIYEGA: Yes, I do say throughout the process since the members were here I was being given updates.

MR BRUINDERS SC: This update on the 10th, who gave it to you?

GENERAL PHIYEGA: In all cases, in most cases I was given the update by the Provincial Commissioner.

MR BRUINDERS SC: And must the Commission accept that on the 10th the update was given to you by the Provincial Commissioner?

GENERAL PHIYEGA: I have already confirmed that.

MR BRUINDERS SC: You say at 6804 that she tells you that there are activities taking place in Marikana, not so?

GENERAL PHIYEGA: That is true.

MR BRUINDERS SC: What did she tell you
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25 statement, because I just want to be very perfect in
24           GENERAL PHIYEGA:          I'll go to my other
23 at Marikana?
22           MR BRUINDERS SC:          Did she tell you
21           about the activities that were taking place
20 and were being treated in hospital."
19           MR BRUINDERS SC:          Commissioner, where are
18           the two employees that were shot and were injured
17           of the things that I was told was that the, there were
16           summary of all the reports that I have received to say one
15           GENERAL PHIYEGA:          I'm giving you a
14           MR BRUINDERS SC:          And is that what she
13           told you had happened up to that time in Marikana?
12           GENERAL PHIYEGA:          I want to just read
11           what I said in the press statement to say, "Friday 10th, on-
10           duty employees reported intimidation and assault incident.
9           Two employees were shot and were treated in hospital."
8           MR BRUINDERS SC:          Commissioner, where are
7           you reading from now?
6           GENERAL PHIYEGA:          I read that from the, I
5           said to you I'll look at the records that I'm having. I
4           read from the statement that, the press statement that we
3 gave on the 16th, or 17th.
2           MR BRUINDERS SC:          Did she tell you
1           anything else about the activities that were taking place
0 at Marikana?

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1 telling you what I was told. If you'll give me time, I'll
2 get to my copy. On this statement I didn't reflect on the
10th, but I reflected it on my other statement. I just
4 wanted to check that. So actually that's what was reported
5 to me to say that is continuing and the people who are in
6 hospital, as I've said already.
7           MR BRUINDERS SC:          Now when she reported
8 this, did she do it over the telephone?
9           GENERAL PHIYEGA:          You are correct.
10           MR BRUINDERS SC:          And did you not ask her
11 well how is it that this intimidation and these injuries
12 are occurring in Marikana?
13           GENERAL PHIYEGA:          At that point in time I
14 we already knew that the police were invited because there
15 was labour unrest in the area.
16           MR BRUINDERS SC:          So when she telephoned
17 you, you knew that - when you say labour unrest, you mean
18 you knew there was a strike at Lonmin?
19           GENERAL PHIYEGA:          We knew that there was
20 those protests, labour unrest as I'm saying, taking place
21 in Marikana.
22           MR BRUINDERS SC:          She also said to you,
23 you say at 6804, that there were deployments taking place.
24           GENERAL PHIYEGA:          Yes, because remember
25 when this whole thing started we started with the local

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1 police, and when the process escalated, as I said in my
2 evidence that we continued to match the escalation through
3 additional deployment.
4           MR BRUINDERS SC:          On the 10th when you
5 spoke on the telephone, did she say to you, "Look, at the
6 moment the deployment is of POPs people from Rustenburg?"
7           GENERAL PHIYEGA:          At that point in time I
8 did not ask that question, but I knew that the, they would
9 definitely deploy the POPs people that are in the province
10 when, of North West actually, and when they've exceeded
11 their full capacity we would then look at how we further
12 capacitate. They'll start with Rustenburg, look at other
13 areas in the province. If they're not winning, we'll then
14 deploy others.
15           CHAIRPERSON:          I'm sorry, National
16 Commissioner, I didn't hear the last sentence. You said if
17 they reach their full capacity from the North West, then
18 you said what was going to happen. I think you dropped
19 your voice.
20           GENERAL PHIYEGA:          I normally would, I
21 would then talk to the other provinces to assist.
22           CHAIRPERSON:          Thank you.
23           GENERAL PHIYEGA:          Ja.
24           MR BRUINDERS SC:          So during that
25 conversation you and the Provincial Commissioner spoke
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Rustenburg

1 GENERAL PHIYEGA: I think it's important again for me to repeat the answers I gave to the previous question. In terms of the province the commissioner has the full responsibility to deploy the capacity that she has. So I would never ask her whether she has gone to fetch people in Taung or in corners of this province.
2 MR BRUINDERS SC: Did you ask her what attention are you giving to the issues at Marikana?
3 GENERAL PHIYEGA: I think the way you are posing your question maybe makes it complex for me to respond to you but my discussion with her is based on the expectation that she is in charge of this province and at any time when you talk about attention, whether it's attention to attend to stuff or attention to attend to a protest such as this one I would take it that she would be doing her duty in accordance with what she's expected to do, her prescript, to ensure that she engages whoever she has to engage, she deploys the way she's supposed to deploy, she ensures that - what she has come to do to ensure that there is restoration of normal economic activity, ensure that there is conversation between parties that should converse. Those are the types of things I would expect of her but I would not be asking her you know ABC like a child because she is in charge.
4 MR BRUINDERS SC: Commissioner, can you not recall whether you asked the Provincial Commissioner how the province was dealing with this labour unrest, intimidation of sorts, at Marikana?
5 GENERAL PHIYEGA: Again let me say to you that I've said to this gathering that the police in the past 18 years have dealt with 151 000 of this nature of activities. It would be remiss of me really to be asking those types of minute details. She is the head of operations and being the head of operations she knows what needs to be done and I am sure she will tell you when she comes here what she did. It is not my space to be asking those minute questions to a leader of a province. Those are the discussions she will have with her operations team. I ask strategic, critical issues that makes me understand the situation and I've done so and I've given you my answer.
6 MR BRUINDERS SC: What strategic questions did you ask of her during that telephone conversation?
7 GENERAL PHIYEGA: I shall repeat again, I've said to you one of the key questions I would ask as an example is whether the capacity they have is sufficient because I carry the responsibility to actually mobilise other capacity if it is needed. That would be one of the examples of strategic questions I would ask.
8 MR BRUINDERS SC: And during that call she assured you that there was no need for any additional deployment?
9 GENERAL PHIYEGA: That's not what I've said in my answer, I've said to you capacity issues were...
<table>
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<th>Response</th>
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<td>Whatever was happening in Marikana, the continued strike, the inability to disarm those who were protesting and the continued disruption of social and economic activity, destabilisation continued. And damage to property was continuing, lives were continuously being lost, that for me spoke about capacity to do so.</td>
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<td>And was that the personal direction to the SAPS at Marikana?</td>
<td>Commissioner, you went there on the Monday not just to listen and to lend an ear but also to give strategic intervention, not so? I beg your pardon, to make strategic intervention at Marikana. The last aspect was - my answer was exactly that, I said where there is need for strategic intervention I would lend that, I've said so.</td>
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<td>She had matters under control and I was also satisfied at that point in time that whatever they needed to do she and her team had the capacity to do so.</td>
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<td>It was necessary for me to engage and to get firsthand understanding of issues as they were developing and that type of response any leader does, it is not written in any book. At that point in time my assessment, my strategic assessment was that I needed to engage.</td>
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**16th April 2013**

**Marikana Commission of Inquiry**

**Rustenburg**
16th April 2013  
Marikana Commission of Inquiry  
Rustenburg

GENRAL PHIYEGA: 

1. it was of concern to us to say if these are supposed to be 
2. Lonmin workers and Lonmin is telling us about faceless 
3. people, it was a concern for us, and when those people came 
4. they were able to identify two, three, four, five, some of 
5. them, and it was on the basis of that that the main 
6. discussion of us as the SAPS team was to say, “Do whatever 
7. you do; now that we know these are your employees, 
8. intervene and ensure that we get a peaceful resolution on 
9. this matter,” because at least we’d established that 
10. they’re not faceless.

MR BRUINDERS SC: 

1. Commissioner, we all 
2. know, because you told us at the beginning of your evidence 
3. of your managerial expertise and experience. You have a 
4. lot of that, don’t you?

GENERAL PHIYEGA: 

1. Yes, I do. 
2. And that’s the reason 
3. you were brought into the SAPS, not so? 
4. Part of that. 
5. And the reason you went 
6. to Marikana that Monday evening was not to play detective. 
7. Correct?

MR BRUINDERS SC: 

1. Your role was not to 
2. identify people and names and strikers. That was not your 
3. role. Correct?

GENERAL PHIYEGA: 

1. I think that’s your 
2. assessment. I think it was a necessary engagement because 
3. when you discuss with leaders of a place that has called 
4. you to come and assist them with the protest and they tell 
5. you about faceless people, you would be keen to know what 
6. do you mean when you say people are faceless. It’s not 
7. because I was a detective. I think it was a rational 
8. intervention by any normal thinking person.

CHAIRPERSON: 

1. I think you and counsel are 
2. talking past each other. He puts to you that you didn’t go 
3. there to act as a detective, and essentially as I 
4. understand it, you’re agreeing. You went, amongst other 
5. things, to deal with the Lonmin people who said they didn’t 
6. know who was involved in the disruption, they were faceless 
7. people, and you then were able to – after you’d spoken to 
8. the security people, to show them pictures and say, “Look 
9. here, don’t you know these people?” and they admitted that 
10. they did. So you were able to take the matter further in 
11. your discussion with them, to persuade them they weren’t 
12. just faceless people; they were actually some of their own 
13. employees who were involved. Is that correct?

GENERAL PHIYEGA: 

1. I think, I judge, you put 
2. it in a better way. I understand you. Yes. 
3. Yes, I think you and 

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1 counsel actually are not understanding it, but I think the
2 problem has been sorted out now, Mr Bruinders.
3 MR BRUINDERS SC: Thank you. Perhaps it
4 is usual with me, I'm moving ahead of myself. So let's go
5 back to the first meeting you had with the SAPS on the
6 night of the 13th. Shall we do that? At that meeting, as
7 we understand it there were SAPS and Lonmin people, not so?
8 GENERAL PHIYEGA: The meeting I had with
9 the Lonmin people was on the 13th.
10 CHAIRPERSON: Again I think, I'm afraid
11 you don't understand each other. I understood you to say
12 that on the 13th you had a meeting with the SAPS people at
13 Marikana.
14 GENERAL PHIYEGA: Yes.
15 CHAIRPERSON: You then had a meeting with
16 the Lonmin people.
17 GENERAL PHIYEGA: Yes.
18 CHAIRPERSON: Now what counsel is asking
19 you is whether your first meeting with the SAPS was a
20 meeting where the Lonmin people were also present. Is that
21 your question? He's suggesting to you, you didn't have
22 separate meetings with the SAPS people and then the Lonmin
23 people. He's suggesting to you, as I understand his
24 question, that you had a meeting with SAPS people and
25 Lonmin people both there together. Is that right?

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1 MR BRUINDERS SC: No, Chair, we accept
2 that there were three meetings, a SAPS, Lonmin, and a SAPS
3 meeting.
4 CHAIRPERSON: Yes.
5 MR BRUINDERS SC: But at the first SAPS
6 meeting I'm suggesting to the National Commissioner that
7 there were some Lonmin people present too.
8 CHAIRPERSON: Yes, that's what I
9 understand you to be asking.
10 GENERAL PHIYEGA: I'm sorry, I thought
11 you were talking about the 9th, that's why I was saying to
12 you I didn't have a meeting on the 9th: my meeting was on
13 the 13th, and the question you are asking I really am not
14 able to tell whether in that first meeting there was
15 anybody from Lonmin, and I'm sure the people who were there
16 may talk to that, but I wasn't aware of that.
17 MR BRUINDERS SC: At that meeting, this
18 is the first SAPS meeting on the evening of the 13th, the
19 SAPS officers who are there do the following. The first is
20 they give you an account of what had been happening since
21 the 9th of August, not so?
22 GENERAL PHIYEGA: Yes.
23 MR BRUINDERS SC: And the other thing
24 they do is they give you a detailed account of what
25 happened on the 13th when SAPS and employees were shot and

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1 killed - sorry, were killed. I beg your pardon.
2 GENERAL PHIYEGA: Yes, that is also
3 included.
4 MR BRUINDERS SC: Now by that stage the
5 North West POP had been there since the 9th, not so?
6 GENERAL PHIYEGA: It is true.
7 MR BRUINDERS SC: And we know this
8 because we've been given them; there are reports and plans
9 for the 9th to the 13th by essentially SAPS POP North West.
10 GENERAL PHIYEGA: It could be correct.
11 and I'm sure it will be confirmed by those who are coming
12 to talk.
13 MR BRUINDERS SC: And in fact that's what
14 they tell you. The commanders there tell you that the
15 North West POPs had been on the scene since the 9th where
16 they have been dealing with the unrest and planning for how
17 to deal with the unrest, not so?
18 GENERAL PHIYEGA: I've not discussed any
19 plan of theirs from the 9th. They gave me a broad account
20 of what was happening. The plan I haven't asked for, and
21 the plan I haven't discussed with them.
22 MR BRUINDERS SC: Will you please turn to
23 exhibit U?
24 MR MAHLANGU: What document would that
25 be, Sir?
25 look at the heading, it's the contingency plan for 10-8-

1 2012. Do you see that?
2 GENERAL PHIYEGA: I see that.
3 MR BRUINDERS SC: And the first paragraph
4 under situation reads, “On Friday 2012-08-10, plus-minus
5 7 000 employees, machine operators at East and Western
6 Karee Mine affiliated to the National Union of Mineworkers
7 and Association of Mineworkers and Construction Union
8 embarked on an unprotected strike. Among other things,
9 employees complained about poor salaries as compared to
10 their counterparts in Gauteng mines, and poor working
11 conditions in this mine.” I’ve read that correctly,
12 haven’t I?
13 CHAIRPERSON: I take it you’ve read it
14 correctly. Shall we take the tea adjournment at this stage
15 and you can then put your question based upon what you’ve
16 read, or do you want to read something else first?
17 MR BRUINDERS SC: No, we can do that, but
18 before I do that, perhaps we should before the tea
19 adjournment hand up – this is not the only plan; there are
20 plans for the 11th, 12th, 13th, etcetera, and I suppose this
21 is an opportune moment to hand those up, copies of those,
22 so that the National Commissioner can look at them as well.
23 CHAIRPERSON: Yes, alright. No, that
24 seems sensible. It will save time that way, if she doesn’t
25 mind having her tea break spoiled by reading these plans as
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25 the plan of the 10th of August. So the contingency plan
24 contingency plan which is attached to that document, it's
23 cover page “The 11th of August,” if you look at the actual
document itself you'll see that again it's the
22 the plan 10th of August, which is exhibit U,
21 and similarly, Chair, the document on the cover has
“13th of August,” if you look at the plan, the plan is
20 for the 13th of August and that's exhibit SS3. SS3, that's
right.
19 CHAIRPERSON: Do we have them already?
18 MS PILLAY: That's the 13th.
17 CHAIRPERSON: Thank you for giving us
16 these documents. We have them already, but it would be
15 useful to have them “byderhand,” as it were, while you
14 proceed with your cross-examination based upon them.
13 CROSS-EXAMINATION BY MR BRUINDERS SC (CONTD.):
12 National Commissioner, before the tea break I asked you to
look at that first paragraph of exhibit U, and you did so,
11 not so?
10 GENERAL PHIYEGA: Yes, I have.
9 MR BRUINDERS SC: And what exhibit U
8 shows is certainly by, or on the 10th, I mean this is signed
7 by the Unit Commander Marake and the Cluster Commander
6 record that ES Kgaka Attorneys and its appointed counsel do
not act for the royal family, and their stance is that the
5 Administrator of the Traditional Community, Mr Isaac Seboko
4 “Oupa” Monamodi, who signed the confirmatory affidavit in
the opposition to the application, was acting, as they put
it, on a frolic of his own insofar as not having taken into
account the interest of their client. I mention this
because I do not know whether a copy of this letter has
been sent to the Administrator or his attorneys, and if so,
I would request that a copy be communicated to them. The
matter, as I indicated earlier, will be dealt with on
Monday next when Mr Mpofu returns, but obviously it's
important that this question of the opposition and who is
behind the opposition and who is not behind the opposition
should be clarified. You're still under oath National
Commissioner.

MANGWASHI VICTORIA PHIYEGA: s.u.o.
CHAIRPERSON: Ms Pillay, you were going
12 to tell us whether these documents we've been handed are
already before us as exhibits and if not, how they must
be described.

MS PILLAY: Chair, the document with the
cover page “The 11th of August,” if you look at the actual
contingency plan which is attached to that document, it's
the plan of the 10th of August. So the contingency plan

11 plans themselves are exhibits already.
10 CHAIRPERSON: That's the 13th.
9 CHAIRPERSON: Do we have them already?
8 MS PILLAY: The substance, the actual
7 plans. We have them already, but it would be
6 useful to have them “byderhand,” as it were, while you
5 proceed with your cross-examination based upon them.
4 CROSS-EXAMINATION BY MR BRUINDERS SC (CONTD.):
3 National Commissioner, before the tea break I asked you to
2 look at that first paragraph of exhibit U, and you did so,
1 not so?

1 GENERAL PHIYEGA: Yes, I have.
0 MR BRUINDERS SC: And what exhibit U
shows is certainly by, or on the 10th, I mean this is signed
by the Unit Commander Marake and the Cluster Commander

Ms Pillay will first tell us how to mark them if
they're not before us already in a marked form. Is that
correct? We'll take the tea adjournment. The National Commissioner
will in addition to drinking her tea, look at these
documents and you'll question her about them afterwards,
and Ms Pillay will first tell us how to mark them if
they're not before us already in a marked form. Is that
correct? We'll take the tea adjournment.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[11:49] CHAIRPERSON: During the adjournment we
received a copy of a letter from Attorneys Kgomo, Mokhetle
& Tiou who act on behalf of the Bapo Ba Mogale Royal
Family. They deal with the application for the removal of
the seat of the Commission from Rustenburg in the letter,
and they say that their client, who is a party in these
proceedings, that's to say the Bapo Ba Mogale Royal Family,
have instructed them to place on record their position with
regard to the application. It's to abide by the decision
of the Commission on whether to move the Commission to
Pretoria, Centurion, or not, and they want it placed on

Tel: 011 440 3647 Fax: 011 440 9119 RealTime Transcriptions Email: realtime@mweb.co.za
my language, we use [African language], you know high level presentation, not specifically as you want me to say in this manner, but those issues were highlighted to me.

MR BRUINDERS SC: So we can accept that at the end of that first meeting of the SAPS on the 13th you had - your understanding of what had taken place was very similar to what we see at the first paragraph of exhibit U?

GENERAL PHIYEGA: I’ve say yes, there’d be a fair commonality, but the details, you see here you talk about details, machine operators and Karee Mine.

Those details were not things that I engaged in, but I understood that the Lonmin employees had an issue; there were two unions; there were salaries; there had been people not going to work, all those issues were -

MR BRUINDERS SC: Once you got this overview of what the problem was at Marikana, I take it that you would have asked your SAPS commanders present how they dealt with the labour unrest up to that point.

GENERAL PHIYEGA: Of course they would have shared what has been happening, and this is why in our report, the statement that I read earlier on from the press statement, they would have shared whether there were things that have happened, property that was damaged or people that were injured, whether the people are back at work or not at work, whether the unprotected strike continues,

those types of issues they would share.

MR BRUINDERS SC: Did you ask who’d been in charge on the ground between 10 and 13 August?

COMMISSIONER HEMRAJ: Sorry, in charge of? I didn’t hear your question clearly, Mr Bruinders, I’m sorry.

MR BRUINDERS SC: Did you ask who had been in charge on the ground at Marikana for the SAPS in the period 10 to 13 August?

GENERAL PHIYEGA: I knew who was in charge; the Provincial Commissioner together with her team.

She would appoint who goes to the JOC and all those things. I knew that the commissioner of this province was in charge.

MR BRUINDERS SC: Did the Provincial Commissioner in that first meeting give you an overview of the deployment of SAPS personnel at Marikana during that time?

GENERAL PHIYEGA: I did not ask for that because I knew she had everything in control, and should she need additional capacity she would address me on that.

MR BRUINDERS SC: Did you not in that meeting want to know whether the resources up to that point had been sufficient to cope with the unrest?

GENERAL PHIYEGA: I have a very deep appreciation and respect for my commanders, and that’s part of their duty, is to ensure that they plan adequately and appropriately, and if they have a need they know that there are things I can unlock, and if that need presents they will tell me. I do not - and I think it’s important for me just say these are senior executive, I don’t micro manage them.

MR BRUINDERS SC: So your answer is you were not interested in whether the resources up to that point were adequate to cope with the unrest in Marikana?

CHAIRPERSON: I’m not sure if that’s a fair summary of what she said. This is an angle to it that I think is a bit unfair. Perhaps you should reformulate the question. “Wasn’t interested” implies that she was, you know, had no interest in it at all. I don’t think that’s what she was conveying, but perhaps you could reformulate the question in a way which doesn’t suggest that she showed no interest at all. I don’t think it’s at all consistent with the evidence she’s given.

MR BRUINDERS SC: National Commissioner, you did not at that meeting ask of the Provincial Commissioner and the commanders present whether the resources at that point were sufficient to cope with the unrest.

GENERAL PHIYEGA: I did not ask it in a manner that you’re asking, but if - because I knew that if there is any capacity need that requires my strategic intervention, that would be brought to my attention.

MR BRUINDERS SC: Will you please turn to exhibit SS3, and in particular to the contingency plan for 13 August 2012?

CHAIRPERSON: This of course is only part of SS3. SS3 contains a number of documents, but this part of it.

MR BRUINDERS SC: Correct Chair, and if my memory serves me correctly it isn’t - I don’t think that SS3 is numbered, I don’t think it’s paginated.

CHAIRPERSON: Some of the annexures are not paginated. The contingency plan itself has got page numbers at the bottom, except Greek letters are huge, rather than Roman letters but nothing turns on that. The pages are numbered in that rather funny way, but thereafter the annexures are not paginated whether in Greek letters or in Roman ones.

MR BRUINDERS SC: Commissioner, are you at the plan for the 13th?

GENERAL PHIYEGA: Yes, I am.

MR BRUINDERS SC: If you turn to page three under 4.1.3, Public Order Policing.

CHAIRPERSON: Sorry to interrupt you, Mr.
21st April 2013

Marikana Commission of Inquiry
Rustenburg

25 cannon at Marikana, for use at Marikana. You do accept
24 on the 13th when we see the introduction of R5 and water
23 accept from us, Commissioner, that this is the first plan
22 Mr Bruinders SC: And again you can
21 General Phiyega: Yes, I do.
20 Do you see it?
19 General Phiyega: Paragraph 8.
18 Mr Bruinders SC: Heading “Equipment.”
17 13th, paragraph 8, heading “Equipment.”
16 Mr Bruinders SC: It’s the plan of the
15 General Phiyega: You said 13?
14 Mr Bruinders SC: It’s the plan of
13 13th, paragraph 8, heading “Equipment.”
12 Mr Bruinders SC: Can you please in that
11 because it has escalated.
10 Mr Bruinders SC: Can you please in that
9 with them. What I’m simply asking you is this, do you
8 Mr Bruinders SC: Did anybody in that
7 could you repeat the question?
6 repeat it again? I’m not sure that I heard it correctly.
5 I’m saying yes, any
4 I think on the
3 equipment issue the OPS people will talk to you because I’m
2 not sure whether it was the first time you see it in
1 writing. They can tell you whether they had them on
20 standby, didn’t have them, and I’m sure they will be able
to answer those questions.
19 Mr Bruinders SC: We will pursue that
18 with them. What I’m simply asking you is this, do you
17 accept that the 13th was the first time that we see a
16 reference to the introduction of the use of R5 at Marikana?
15 General Phiyega: In the report that you
see, but I’m saying when the operations commanders come
here they will testify to you whether the equipment was
here, in abeyance, or being used. They would be able to
answer those questions.
14 Mr Bruinders SC: Did anybody in that
13 first meeting report to you that on the Monday sharp-point
12 ammunition was used in dealing with labour unrest?
11 General Phiyega: No, I’m not aware of
10 that report.
9 Mr Bruinders SC: So nobody talked about
8 sharp-point ammunition in that first meeting on the Monday?
7 General Phiyega: Because we did not
discuss ammunition and the things that you’re referring to
6 under 8 because those who are sitting in operations, I said
5 to you I didn’t discuss the operation, I didn’t discuss the
4 plan. So those people would be able to answer you on that.
3 Chairperson: Mr Bruinders, I’m not
2 entirely clear as to what the question was. Could you
1 repeat it again? I’m not sure that I heard it correctly.
0 Could you repeat the question?
1 Mr Bruinders SC: Did anybody in that
0 meeting report to you that sharp-point ammunition had been
9 used on that Monday?
8 Chairperson: I understood you to say
7 sharp ammunition had been used to redress labour unrest. I
6 thought you said that. You’re not putting it now -
5 Mr Bruinders SC: During the course of
4 labour unrest, yes.
3 Chairperson: In the course of labour
2 unrest. Our understanding is that it was never used for
1 labour unrest per se; it was used in a situation where
0 people had been killed. They were casualties of the
9 police; people were killed, policemen were killed. It’s
8 never been suggested, as far as I understand, that sharp
7 ammunition was ever used simply in a labour unrest
6 situation, unless by unrest you mean something more than
5 the word by itself connotes, and you actually are referring
4 to a system of violence, breakdown in law and order where
16th April 2013 Marikana Commission of Inquiry Rustenburg

MR BRUINDERS SC: Perhaps I can rephrase my question.

CHAIRPERSON: Please do. Your question should be reformulated in fairness to the witness, and frankly to yourself.

MR BRUINDERS SC: Did anybody in that meeting tell you that sharp-point ammunition had been used on the 13th?

GENERAL PHIYEGA: My answer is still no.

MR BRUINDERS SC: Did anybody in that meeting tell you that provision had been made for the use of sharp-point ammunition at Marikana?

GENERAL PHIYEGA: My answer is no, because we did not discuss equipment.

MR BRUINDERS SC: That first meeting, it seems as if you got there just after 8 o’clock, not so?

GENERAL PHIYEGA: Ja, it was anything – 18 and much later, around that time. 18:00 or much later.

MR BRUINDERS SC: Perhaps this is the occasion to produce the occurrence book, because I think there is a reference to it there and I suppose that will sort it out. Shall we do it now, Mr Chair?

CHAIRPERSON: Are you referring to the Lonmin occurrence book?

MR BRUINDERS SC: No.

CHAIRPERSON: The police occurrence book?

MR BRUINDERS SC: The SAPS occurrence book. I don’t think it’s in the exhibits.

CHAIRPERSON: Ms Pillay, am I correct in thinking that the SAPS occurrence book has not yet been handed in as exhibit?

MS PILLAY: That’s correct, Chair. Only the Lonmin OB book has been - an exhibit.

CHAIRPERSON: Yes, yes. So you’re correct, now I see the lady assisting you is standing up with a pile of papers in her hand. Presumably these are copies of the SAPS occurrence register. Ms Pillay, what do we call that?

MS PILLAY: Chair, it will be FFF25.

CHAIRPERSON: 25, thank you. Yes, I see this document is typed. I don’t know whether the original was typed. Do we know, this was obviously taken off the hard drive. Has anyone checked to see whether this, what is presumably a copy of the occurrence register, is in fact an accurate one? Unless it was kept, you know, in typewritten form as it was being kept.

MR BRUINDERS SC: No, I don’t think so.

I haven’t personally checked it, but I think we have, we, somebody in our team has looked at both and I don’t, I mean
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<td>GENERAL PHIYEGA: Okay.</td>
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<td>CHAIRPERSON: So we can look at FFF2 or</td>
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<td>it's paragraph 13, I'm informed.</td>
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<td>4</td>
<td>GENERAL PHIYEGA: Okay. I think</td>
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<td>5</td>
<td>basically what I wanted to refer to is that I do indicate</td>
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<td>that around 18:00 or much later I arrived there. I think</td>
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<td>that's what I said to this Commission, I arrived at</td>
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<td>Marikana. So the 20:20 could well be much later, but I</td>
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<td>9</td>
<td>arrived around 18:00 hours, 7, around that time.</td>
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<td>MR BRUINDERS SC: Okay, so let's accept,</td>
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<td>so you get there between 6 and 7 o'clock in the evening.</td>
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<td>Do you start your meeting immediately with your SAPS</td>
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<td>people?</td>
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<td>GENERAL PHIYEGA: Yes.</td>
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<td>MR BRUINDERS SC: How long does the first</td>
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<td>meeting take approximately?</td>
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<td>GENERAL PHIYEGA: I actually did not time</td>
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<td>that, but it could have been anything between an hour to</td>
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<td>19</td>
<td>two, hour and a half.</td>
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<td>MR BRUINDERS SC: And then Commissioner,</td>
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<td>do you go directly from that SAPS meeting to the Lonmin</td>
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<td>meeting?</td>
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<td>GENERAL PHIYEGA: You are correct.</td>
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<td>24</td>
<td>MR BRUINDERS SC: And how long was the</td>
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<td>Lonmin meeting?</td>
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<td>1</td>
<td>GENERAL PHIYEGA: It was quite a longish</td>
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<td>2</td>
<td>meeting. It had been in excess of two hours.</td>
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<td>3</td>
<td>MR BRUINDERS SC: And Commissioner, as we</td>
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<td>understand your evidence so far about Lonmin meeting,</td>
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<td>5</td>
<td>the first is that Lonmin said to you that the strikers</td>
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<td>on the koppie were faceless people.</td>
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<td>7</td>
<td>GENERAL PHIYEGA: It is correct.</td>
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<td>8</td>
<td>MR BRUINDERS SC: They said to you they did not know</td>
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<td>who to talk to about the demand of these strikers.</td>
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<td>10</td>
<td>GENERAL PHIYEGA: They were – yes, they did say they</td>
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<td>were unable to talk to faceless people.</td>
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<td>CHAIRPERSON: That's dealt with in</td>
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<td>paragraph 17 of your statement.</td>
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<td>MR BRUINDERS SC: And they did not say to you at that</td>
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<td>meeting, Lonmin management that they wanted to</td>
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<td>16</td>
<td>talk to NUM and AMCU?</td>
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<td>17</td>
<td>GENERAL PHIYEGA: We did ask about the</td>
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<td>unions that they have on the mine, and they told us</td>
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<td>that the official union they had was NUM. AMCU was</td>
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<td>20</td>
<td>there, but they didn't have the requisite numbers and</td>
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<td>therefore were not their official union, and they also</td>
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<td>indicated that they were outside their bargaining</td>
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<td>23</td>
<td>period. They were going to bargain in October this year.</td>
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<td>They mentioned all those issues in the process of</td>
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<td>discussion.</td>
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<td>1</td>
<td>MR BRUINDERS SC: By the end of that meeting did the</td>
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<td>2</td>
<td>Lonmin management say to you and your team</td>
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<td>3</td>
<td>that it wanted to talk to AMCU and NUM about what was</td>
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<td>happening on the koppie?</td>
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<td>5</td>
<td>GENERAL PHIYEGA: We encouraged that because we said</td>
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<td>6</td>
<td>these people, according to what we are seeing, are</td>
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<td>7</td>
<td>not faceless people, and we encouraged that everyone</td>
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<td>must do what they can to secure a peaceful solution</td>
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<td>of the matter.</td>
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<td>10</td>
<td>MR BRUINDERS SC: So Commissioner, you and your team</td>
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<td>encouraged the Lonmin management to talk to both the</td>
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<td>12</td>
<td>unions?</td>
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<td>GENERAL PHIYEGA: Yes, we did, and I am sure when</td>
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<td>General Mbombo comes to give her testimony she would</td>
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<td>15</td>
<td>even tell that for the first time we managed to get</td>
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<td>the two unions – she managed to get the two unions to</td>
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<td>meet and talk.</td>
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<td>MR BRUINDERS SC: During your Lonmin meeting, did the</td>
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<td>Lonmin management say to the SAPS delegation that it</td>
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<td>would, or that it undertook to meet with the two</td>
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<td>21</td>
<td>unions?</td>
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<td>22</td>
<td>GENERAL PHIYEGA: I did not get that commitment that</td>
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<td>23</td>
<td>encouraged, we encouraged the mine to say it is</td>
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<td>important, because those are stakeholders, to engage</td>
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<td>them. We can't direct them, but we can encourage.</td>
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<td>MR BRUINDERS SC: So National Commissioner, you quite</td>
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<td>properly encouraged Lonmin management to talk to the</td>
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<td>unions. You say you did not get that commitment from</td>
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<td>4</td>
<td>them in that meeting?</td>
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<td>GENERAL PHIYEGA: I'm comfortable in saying to you we</td>
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<td>encouraged and emphasised.</td>
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<td>MR BRUINDERS SC: Did you understand at the end of that</td>
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<td>meeting with the Lonmin management that they were not</td>
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<td>prepared to commit to talk to the two unions?</td>
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<td>[12:29] GENERAL PHIYEGA: No, I thought, you know, we</td>
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<td>had encouraged them.</td>
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<td>CHAIRPERSON: So would it be accurate then to say that</td>
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<td>you encouraged them; they did demur, they didn't say</td>
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<td>we won't do it –</td>
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<td>GENERAL PHIYEGA: Uh-uh.</td>
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<td>CHAIRPERSON: - but equally they didn't say we will</td>
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<td>do it.</td>
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<td>GENERAL PHIYEGA: Mmm.</td>
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<td>CHAIRPERSON: But you assume, I take it, in view of</td>
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<td>the fact that you'd encouraged them and they hadn't</td>
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<td>disagreed, that they would do what you suggested. Is</td>
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<td>that a fair summary of what you said?</td>
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<td>GENERAL PHIYEGA: I think it's a fair interpretation</td>
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<td>of that, Judge.</td>
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<td>COMMISSIONER HEMRAJ: But what, General,</td>
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was their actual response when you made the suggestion that Lonmin meet with the two unions? Did they verbalise a response to that?

GENERAL PHIYEGA: My interpretation of it was that these are people who are always together. It's their employees, or it's people they work with, it's stakeholders they deal with. So an encouragement like that, if somebody is saying no, I will not do it, I wouldn't take it that they are saying no. I, we encouraged them because we felt you invited us to say there's a protest in this place, and we are doing what we can and what we were trying to say, to say work with us, try as much as possible to achieve a peaceful resolution of whatever misunderstanding that is there between you and the stakeholders that you are dealing with.

CHAIRPERSON: National Commissioner, it sounds to me from what you say as if it actually went further than that, because when you first spoke to Lonmin, Lonmin seemed to think that nothing could be done because they didn't know who the people were; they were faceless. You then were able, with the assistance of your colleagues, to show them that they weren't faceless people, they were actually their employees, and then you encouraged them to - as you've said, and they didn't demur, or decline to do what you were saying. Is that correct?

GENERAL PHIYEGA: That is correct, Judge, and I'm sure when my other colleagues come here they'll talk about other engagements that they've had to advance the further encouragement, because that was just, I'm talking about when I was there, what we said at the time and what we encouraged. But there was even more encouragement over and over, and I'm sure when my colleagues come here they will talk to that.

CHAIRPERSON: I take it that if you'd thought that they weren't going to do what you'd suggested that they should do, that they weren't going to talk to the unions, you would presumably not have left it there, but you would have taken the matter further in some way?

GENERAL PHIYEGA: Definitely. If indeed I thought there wasn't some common view on the matter, I would have - because while we even said if these people are faceless, let's talk, let's see; if they are your employees, it is expected of them as employers to engage their protesting employees.

CHAIRPERSON: I'm sorry, Mr Bruinders, I interrupted your cross-examination, but I was trying to get some clarity on this particular point. I think I've succeeded - at least I hope I have.

MR BRUINDERS SC: We're very appreciative, Chair. Commissioner, at this Lonmin meeting...
1. Where that employee is really, is another matter, but we
2. were interested in the employer sorting out their issues
3. with the employees. Whether they were AMCU or NUM or non-
4. members, it was important to say that destabilisation that
5. is there at that place, the employer must talk to their
6. employees.

7. MR BRUINDERS SC: So at the end of the
8. detective exercise, what happened was you said to Lonmin
9. talk to these employees who are no longer faceless, not so?
10. GENERAL PHIYEGA: I've already said yes
11. to that.
12. MR BRUINDERS SC: What was the response
13. to that encouragement from you?
14. GENERAL PHIYEGA: I did not have a sense
15. that they are saying no to whatever. I did not, they did
16. not say yes, but I thought with the employers who now
17. realise that they have to do something.
18. MR BRUINDERS SC: Their response is
19. neither yes nor no?
20. GENERAL PHIYEGA: I said my impression
21. was that it is an employer who understood that they had a
22. responsibility.
23. MR BRUINDERS SC: If we, and I know it's
24. some time and I'm not asking you to be exact, National
25. Commissioner, but if we think back and you get there just

---

1. Is that correct?
2. GENERAL PHIYEGA: It is correct, because
3. then the head of security we said, “These people that you
4. say are faceless, let us show you the pictures that we are
5. having. Do you know these faces?” and then he said, “No, I
6. would not be able to do it myself. My security people
7. are,” we said fetch them. He fetched him - he fetched them
8. and they came, they started reading faces and we said,
9. “Sure they are not faces, they are employees. Please talk
10. to these people.”
11. MR BRUINDERS SC: National Commissioner,
12. what you’ve just described happened at that third meeting,
13. not so? What you’ve just described happened at the third
14. meeting that evening.
15. GENERAL PHIYEGA: Remember the security
16. was with us in the second meeting and we said, we continue
17. with him to say, “Now we want to show you the pictures.”
18. The chief of security was in the second meeting. We
19. continued with him to say, “Now we want to show you the
20. pictures,” because we then went and we showed him the
21. pictures; we identified these people, we say talk to your
22. people. Then we continued on our own as SAPS after we
23. finished the engagement with Lonmin.
24. MR BRUINDERS SC: This engagement that
25. you – sorry, let me rephrase that. When you say that you
26. spoke to Lonmin security for the purpose of identifying who
27. employees were, or that strikers were employees, when that
28. happened, did you at the end of that exercise again call
29. upon Lonmin to talk to the NUM and AMCU, or did you call
30. upon them to talk to the strikers, their employees?
31. GENERAL PHIYEGA: What was important for
32. us is that there was an employer/employee relationship.

---

1. after 6 o’clock, between 6 and 7, you have a meeting with
2. the SAPS that takes an hour to two hours, you then have a
3. meeting with Lonmin that takes about two hours, the two
4. meetings would have finished round about 10 o’clock that
5. evening, not so?
6. GENERAL PHIYEGA: Time issues – maybe I
7. may not be able to put my finger on it, but all I know is
8. that we had a meeting in the early evening and it stretched
9. and stretched, and the facts are in my statement.
10. MR BRUINDERS SC: How long was that third
11. meeting where the SAPS met on their own?
12. GENERAL PHIYEGA: It took time. It could
13. have been, I would say between an hour, hour, two. They
14. were longish meetings, because remember this other one we
15. even had to wait for those security to come so that we can
16. show them, when we started, in other words the process of
17. security being fetched from home and all that. It was a
18. longish exercise, all those three meetings.
19. MR BRUINDERS SC: Commissioner, in
20. exhibit FFF18, which is the affidavit of Lieutenant-Colonel
21. Scott, he says at paragraph 6 of that affidavit that that
22. third meeting started at about 11 o’clock at night. Does
23. that sound right to you?
24. GENERAL PHIYEGA: It could have been
25. around there, or even much earlier, but it was those out
Mr Bruinders SC: In fact, Commissioner, it's pointed out to me that your statement also says at paragraph 20 that that meeting started at 11 o'clock. So we can accept that, not so?

General Phiyega: Ja, it could be that. I'm saying it could be.

Mr Bruinders SC: And that third meeting, how long did that take more or less?

General Phiyega: I can only approximate, you know. If I knew that I'd be sitting here, I probably would have kept a nice little diary to tell you exactly, but it could have been around an hour again, an hour, two, or even longer.

Mr Bruinders SC: Mr Russo-Bello, who seems to have been at both those meetings – he was of Lonmin – says at paragraph 7.12 of his affidavit that you left the scene at about 2:30 on Tuesday, 13 August 2012.

General Phiyega: I did say to you that it was longish meetings and it was those out hours of the day.

Mr Bruinders SC: So National Commissioner, we've now established that the question of faceless people, photograph identification, that was dealt with really at the end of the Lonmin meeting, not so?

[12:49] General Phiyega: I've already said to you in a previous response that remember the security head was then with us at JOC so that we can show him the pictures and he can go and fetch the people so that the continuation of those meetings, particularly the second one and the other one is interchanged, because we take the security boss with us to the JOC to show him the pictures. He fetches the people; we bring the people at the JOC for him to identify and we say, "These are your people; please ensure that you talk to them."

Mr Bruinders SC: And you participated in that exercise where these faceless people were identified?

General Phiyega: I was in that place when the security worked with the team to look at the pictures, to ring and to identify them to the security, ja.

Mr Bruinders SC: The purpose of that third meeting, apart – let's leave aside this question of trying to identify people, so that's been done. Now we're going to the meeting, the third meeting with the SAPS commanders, not so?

General Phiyega: Indeed when everything is finished we met as SAPS people.

Mr Bruinders SC: And the purpose of you meeting with your commanders, National Commissioner, at that hour, at that time, was so that you could give strategic guidance on the way forward in this labour unrest situation at Marikana, not so?

General Phiyega: I think the important thing for us was to say what has happened today. We've managed to actually say these are employees of this mine, we've encouraged them, encouraging them to say, you know, as you go forward work with them to ensure that this peaceful solution is found, and if there is any other thing that I can help you with, let me know so that that happens. We needed to wrap up as SAPS after that meeting.

Mr Bruinders SC: Commissioner, you participated in a discussion with your commanders. Were you advised that the way forward was first to negotiate? Would that be right?

General Phiyega: I emphasised a principle of achieving as much as possible a peaceful solution, and how they were going to do they know. They have the prescripts; they know precisely what to do to get there. They must read the situation, apply the prescripts and do what they're supposed to do, and that would also include processes of trying to achieve a peaceful solution.

Mr Bruinders SC: So in that meeting your requirement of your commanders was that they first seek to resolve the unrest by way of a peaceful solution.

General Phiyega: I did not plan the operation for the members. I am saying to you one of the philosophies and principles that I encourage everybody, I encourage the mine, I encourage my team to say together with all the stakeholders they should work towards achieving a peaceful solution. As to how that is done, there are clear prescripts, protocols, SOPs, in terms of how they should do it. They must read the situation, decide, plan and do whatever, and they would do that operationally.

Mr Bruinders SC: The next thing that you must have agreed with your commanders in that meeting was that there should be a drastic escalation of resources in Marikana.

General Phiyega: I'm on record as saying any need for additional capacity, whether it's in Marikana or anywhere else, I am advised by the heads of those environment, in this regard the Provincial Commissioner, should she need any other additional capacity, particularly from other provinces, they advise me and I make sure that that happens.

Mr Bruinders SC: Please turn to exhibit DD.

Chairperson: You say DD. Has the witness got a copy of DD?

General Phiyega: Uh-uh.
Marikana, not so?

2 General Phiyega: I have indicated that, you know, in that meeting I don't recall having this specific discussion. However, as I have indicated to you that at any given time, should there be a need for additional resources, I would be approached for me to be able to do so, and I read that statement to actually be saying there is an expression of a need for additional resources, and if that is a need, Provincial Commissioner would alert me and I'd make the resources available.

3 Chairperson: I'm not sure that I understand your answer. Are you saying that if extra resources were required, you had to be approached? Is that what you're saying?

4 General Phiyega: Because what they would say is, if they would alert me, I'm saying when they need any resources outside this province – yes, Judge, I'm saying when they need any resources extra – particularly of POP members, I'm the one who should be able to say to them yes, let's talk to province Y, province Z and province X.

5 Chairperson: Yes, I understand that.

6 Gauteng arrived at Lonmin later that evening and the situation was discussed. It was decided that a drastic escalation of the police resources will be necessary to both stabilise the public order situation, as well as facilitate the investigation of the murders and attack which had occurred on the police officers.” I have read that correctly, haven't I?

7 General Phiyega: Mmm.

8 Mr Bruinders SC: Then it goes on to say, “This escalation of police resources was facilitated by the NATJOC structures and the contingency plan in place for the operation was extended and operationalised for this purpose.” I've read that correctly?

9 General Phiyega: Mmm.

10 Mr Bruinders SC: Chair, would this be a convenient – that's the only paragraph I want to read.

11 Chairperson: Do you want to put something to her about it - the witness - to comment, or do you want to do that after the lunch adjournment?

12 Mr Bruinders SC: I can do it now. What I want to put to you is this, National Commissioner, that you must have been involved in a discussion at which General Naidoo was present, where at the end of that discussion you were party to a decision that a drastic escalation of police resources would be necessary in thereafter.
16th April 2013

Marikana Commission of Inquiry

Rustenburg

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Mr Bruinders’ question, he is putting to you that according to General Naidoo’s statement the discussion that night went further. If you look at the second sentence of the third paragraph on page 2 of General Naidoo’s statement, you’ll see it reads as follows. “It was decided that a drastic escalation of the police resources will be necessary to both stabilise the public order situation, as well as facilitate the investigation of the murders and attack which had occurred on the police officers. This escalation of the police resources was facilitated via the NATJOC structures and the contingency plan in place for the operation was extend and operationalised for this purpose.”

So I understand Mr Bruinders’ point to be that the necessary decision to bring extra people in was already made that night. That is his interpretation, as I understand him, of the passages I read. It was decided that a drastic escalation of the police resources will be necessary to both stabilise the public order situation, as well as facilitate the investigation of the murders and attack which had occurred on the police officers. This escalation of the police resources was facilitated via the NATJOC structures and the contingency plan in place for the operation was extend and operationalised for this purpose.”

As I understand Mr Bruinders’ point to be that the necessary decision to bring extra people in was already made that night. That is his interpretation, as I understand him, of the passages I read. It was decided that a drastic escalation of the police resources will be necessary to both stabilise the public order situation, as well as facilitate the investigation of the murders and attack which had occurred on the police officers. This escalation of the police resources was facilitated via the NATJOC structures and the contingency plan in place for the operation was extend and operationalised for this purpose.”

If I’m wrong, I hope you’ll correct me. Now I think it might be appropriate for us to take the lunch adjournment at this stage. You can think about the question that Mr Bruinders asked, which I’ve endeavoured to paraphrase, and he’s noded his head, so he agrees with my paraphrase, so you can think about it and give us the answer after the lunch adjournment. Would that be appropriate? We’ll take the lunch adjournment.

[COMMISSION ADJOURNS COMMISSION RESUMES]


MANGWASHI VICTORIA PHIYEGA: s.u.o.

CHAIRPERSON: Mr Bruinders, do you want to repeat your question, or do you think we should just give the National Commissioner a chance to answer it without your repeating it?

MR BRUINDERS SC: No, I’m more than happy. It depends what the National Commissioner prefers.

CHAIRPERSON: National Commissioner, would you like Mr Bruinders to repeat his question?

GENERAL PHIYEGA: [Inaudible]

CHAIRPERSON: Yes.

CROSS-EXAMINATION BY MR BRUINDERS SC (CONTD.): Commissioner, before the break we referred you to the third paragraph on the second page of General Naidoo’s affidavit. Do you remember that?

GENERAL PHIYEGA: Yes, I do.

MR BRUINDERS SC: And you’ve read it?

GENERAL PHIYEGA: I have, yes.

MR BRUINDERS SC: Reading this affidavit, it appears that you must have been involved in the discussions about the escalation, the addition of a lot more resources to deal with the unrest in Marikana.

GENERAL PHIYEGA: I have indicated that that evening we did not discuss any plan. However, I’ve also said to you that issues of capacity had been a continuous strategic discussion with General Mbombo.

MR BRUINDERS SC: National Commissioner, forgive me, I didn’t quite hear the full answer. Did you say that on that evening you did not discuss any plan?

GENERAL PHIYEGA: Yes.

MR BRUINDERS SC: Now when General Naidoo says in his affidavit that what was discussed there was a drastic escalation of police resources, that of course to you did at the time make sense, not so?

GENERAL PHIYEGA: I shall again try and say what I’ve said. I’ve said issues of capacity I would always discuss with the Provincial Commissioner, and you would understand that on that day, which is the 13th, a lot had already happened. We were talking about a situation where a lot of property has already been burned. We were talking about a situation where almost nine people were dead.

MR BRUINDERS SC: Commissioner, at that final meeting that evening with your SAPS commanders, did the SAPS commanders say to you as the National Commissioner that as far as they were concerned, there was the need for a drastic escalation of resources at Marikana?

GENERAL PHIYEGA: I have indicated to you that issues of capacity have always been discussed with the National Commissioner. We did not discuss a plan around additional capacity with these members. I do not recall that, but I can continuously – I can confirm that continuously issues of capacity with the Provincial Commissioner were discussed.

MR BRUINDERS SC: Now it seems that the one thing that those commanders were concerned about on the Monday was that they didn’t have, or there wasn’t enough resources to deal with what they saw and you saw as an escalating problem. That would be right, isn’t it?

GENERAL PHIYEGA: I would say yes.

MR BRUINDERS SC: If that was so, why is that not something that they would most pertinently have discussed with you in that meeting where you had to decide as a group of leaders in the SAPS how to deal with this problem?

GENERAL PHIYEGA: Because they know that whatever operational decisions they take, their Provincial Commissioner would address me on those about the needs they require to be able to execute the operational decisions.
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<td>1. MR BRUINDERS SC:</td>
<td>1. drastic escalation, not the numbers, but the drastic</td>
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<td>2. Commissioner, we do know that on the 13th there was a</td>
<td>2. Do you agree with that?</td>
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<td>3. drastic increase in the numbers of people, personnel, SAPS</td>
<td>3. GENERAL PHIYEGA:</td>
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<td>4. personnel, at Marikana. You agree with that?</td>
<td>4. I do not agree with you</td>
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<td>5. GENERAL PHIYEGA:</td>
<td>5. because I've already answered you on that one to say I did</td>
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<td>6. MR BRUINDERS SC:</td>
<td>6. not discuss the plan on the 13th, but I continued to have</td>
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<td>7. Many of them came from</td>
<td>7. discussions with General Mbombo on various times on the</td>
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<td>8. other provinces.</td>
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<td>10. And isn't this</td>
<td>10. MR BRUINDERS SC:</td>
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<td>11. precisely what, the request that would have been made to</td>
<td>11. The numbers on the 14th</td>
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<td>12. you at that meeting that night?</td>
<td>12. and the 15th, the SAPS personnel, they came from various</td>
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<td>13. GENERAL PHIYEGA:</td>
<td>13. units from different provinces. You've already said that</td>
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<td>14. You would recall that</td>
<td>14. you accept that.</td>
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<td>15. you were saying to me I left there at about 2AM, and all</td>
<td>15. GENERAL PHIYEGA:</td>
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<td>16. those things. This couldn't have been a product of that</td>
<td>16. I've already said yes.</td>
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<td>17. meeting. This could have been a product of other</td>
<td>17. MR BRUINDERS SC:</td>
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<td>18. discussions that we already started having and we continued</td>
<td>18. You see, the fact that</td>
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<td>19. to escalate people coming there. On the 14th, on the 15th,</td>
<td>19. that could happen so quickly must be because you were aware</td>
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<td>20. we continued to do so.</td>
<td>20. of it on the night of the 13th and gave it the go-ahead and</td>
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<td>21. COMMISSIONER HEMRAJ:</td>
<td>21. said to your, or advised your employees, the people who</td>
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<td>22. General, the</td>
<td>22. report to you, to move ahead on increasing the numbers.</td>
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<td>23. requests that are made for additional personnel and your</td>
<td>23. GENERAL PHIYEGA:</td>
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<td>24. deployment of them, or your authorisation of the</td>
<td>24. Advocate, I've given</td>
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<td>25. deployment, is that recorded anywhere in your office?</td>
<td>25. you my best answer on this one. If we are not meeting in</td>
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<td>26. GENERAL PHIYEGA:</td>
<td>26. terms of that I would rest my answer to that what I've</td>
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<td>27. No, not necessarily.</td>
<td>27. given you.</td>
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<td>28. It's, I think the only one where in terms of this process</td>
<td>28. MR BRUINDERS SC:</td>
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<td>29. in front of you? Commissioner, before I move on to this,</td>
<td>29. Could I ask you to turn</td>
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<td>30. to exhibit FFF18, which is the affidavit by Lieutenant-</td>
<td>30. in front of you? Commissioner, before I move on to this,</td>
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<td>31. Colonel Scott. We referred to it earlier. Do you have it</td>
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<td>1. where you see some record is the one of the 15th, but</td>
<td>1. the affidavit, I'm not suggesting that on that night that</td>
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<td>2. ordinarily all the others that were being given to me, they</td>
<td>2. you signed approval forms and that sort of thing. What I</td>
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<td>3. would call and I would call the other Provincial</td>
<td>3. am suggesting to you is that you had a discussion with your</td>
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<td>4. Commissioners. There's no protocol that requires me to be</td>
<td>4. commanders about an escalation, a drastic escalation of</td>
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<td>5. recording that.</td>
<td>5. resources, and you agreed in principle to do whatever was</td>
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<td>6. MR BRUINDERS SC:</td>
<td>6. necessary to supply those resources quickly.</td>
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<td>7. So, Commissioner, we</td>
<td>7. GENERAL PHIYEGA:</td>
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<td>8. know from this SAPS15 documents on file that the numbers</td>
<td>8. I'll again say to you</td>
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<td>9. increased as follows, and I'm just waiting for my learned</td>
<td>9. issues of capacitation, escalation thereof, were continuous</td>
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<td>10. junior to get them, but from the 13th the numbers went up</td>
<td>10. discussions between myself and the Provincial Commissioner.</td>
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<td>11. from - sorry, on the 13th you had a total of 217 personnel</td>
<td>11. I've done so over many times. I have given her support in</td>
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<td>12. at Marikana, and that jumped to 580 on the 14th. That's not</td>
<td>12. that regard, but that night we did not discuss the plan.</td>
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<td>13. a figure you would dispute at this stage?</td>
<td>13. MR BRUINDERS SC:</td>
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<td>14. GENERAL PHIYEGA:</td>
<td>14. Have you opened</td>
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<td>15. That's a figure I'd</td>
<td>15. Lieutenant-Colonel Scott’s affidavit at paragraph 6 -</td>
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<td>16. like my operational members to talk to.</td>
<td>16. CHAIRPERSON:</td>
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<td>17. MR BRUINDERS SC:</td>
<td>17. Before you deal with</td>
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<td>18. And again from the</td>
<td>18. Lieutenant-Colonel Scott, can I just ask a question which</td>
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<td>19. SAPS15 documents that your legal team supplied, we've</td>
<td>19. flows from the question you asked, the question of</td>
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<td>20. picked up that the number went up from 580 on the 14th to</td>
<td>20. deploying people from other provinces. Now a document that</td>
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<td>21. 761 on the 15th. Again you would say that's something we</td>
<td>21. was handed in, which is headlined “Annexures Monday 2012-08-</td>
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<td>22. must canvass with your operations people.</td>
<td>22. 13” which I understand is part of exhibit S53, contains the</td>
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<td>23. GENERAL PHIYEGA:</td>
<td>23. amended contingency plan from the 13th of August, which I</td>
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<td>24. Yes, I would say that</td>
<td>24. take it was compiled either on the 12th or early on the</td>
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<td>25. escalation, but the specifics, those members will be able</td>
<td>25. 13th. Now if you look at page 3 of that document, they're</td>
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<td>26. to tell you.</td>
<td>26. dealing with what are called force levels. “Due to the</td>
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<td>27. MR BRUINDERS SC:</td>
<td>27. escalation of violence, the force,” now this is documents</td>
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<td>28. And the reason that</td>
<td>28. obviously compiled before the meeting on the evening of the</td>
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<td>29. there was this drastic escalation on 14 and 15, was because</td>
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<td>30. you were asked at the meeting of the 13th to approve such</td>
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13th, which Mr Bruinders was discussing. Paragraph 4.1 on page 3, “Due to the escalation of violence, the force increased as follows. This,” that’s from Marikana, that’s obviously local, Crime Intelligence I take it is also local. Public Order Policing, apart from Rustenburg POP there are six people from J ohannesburg POP, seven from East Rand POP, they’re obviously both from Gauteng.

GENERAL PHIYEGA: Yes.

CHAIRPERSON: And 15 from KwaMhlanga POP, which I think is Mpumalanga, and then there’s a reference to the Tactical Response Team. I’m not quite sure where they came from, but this document seems to indicate that already either by the morning of the 13th or possibly the night of the 12th, these personnel had been deployed from other provinces. Now I take it you must have agreed to that, because you’ve explained to us that you had to agree to the deployment of police personnel from other provinces.

GENERAL PHIYEGA: It’s true, Judge.

CHAIRPERSON: So I’m correct, am I, in saying that it’s clear from this document that you had agreed to deployment of personnel from Gauteng and from Mpumalanga before the evening of the 13th? You’d agree it was either the 12th or early in the morning of the 13th, but that seems to be an unavoidable inference that one draws from the document to which I referred.

MR BRUINDERS SC: The people in OPS are discussing this at a meeting at which you are present.

GENERAL PHIYEGA: What I’m trying to say to you is that they’re not asking for my sign-off to do that. They’re telling me what they’re doing as operations.

CHAIRPERSON: Remember I went back to be briefed, and at this point in time the briefing continues. They say they are going to develop a strategy.

MR BRUINDERS SC: So in telling you what they’re going to do, is one of the things they say look, we think there must be a big escalation of a number of resources, number of personnel at Marikana?

GENERAL PHIYEGA: It’s true, Judge.

MR BRUINDERS SC: He’s right when he suggests that you, or says that you were party to generally accepting that it was necessary to develop a coordinated strategy to resolve the situation, is he not?

GENERAL PHIYEGA: I think it’s important to – I mean again I don’t know how you interpret it. When I’m there and I’m being given a report by my operations team by the JOC who says now, given the escalation and all the issues that we’ve not yet in the investigation, we are going to develop a coordinated strategy, it’s a feedback that I’m being given. It’s a proposition that people are discussing in OPS, and they are going to.

MR BRUINDERS SC: The people in OPS are discussing this at a meeting at which you are present.

GENERAL PHIYEGA: What I’m trying to say to you is that they’re not asking for my sign-off to do that. They’re telling me what they’re doing as operations.

CHAIRPERSON: Remember I went back to be briefed, and at this point in time the briefing continues. They say they are going to develop a strategy.

MR BRUINDERS SC: So in telling you what they’re going to do, is one of the things they say look, we think there must be a big escalation of a number of resources, number of personnel at Marikana?

GENERAL PHIYEGA: And I think we should not forget that that has been happening even before then.

MR BRUINDERS SC: And do they say that what they plan to do is to, that they want resources to be pulled not just from POP, but from other units such as the NIU, TRT, STF, and so forth?

GENERAL PHIYEGA: I do not discuss those things there. I’ve said to you we did not discuss the plan.

MR BRUINDERS SC: Now at paragraph 7 Lieutenant-Colonel Scott says, “It was discussed that in hostage release operations the STF would always use dialogue first in the SAPS hostage negotiators before opting to resolve a situation with a tactical option, and recommended that the same course of action be utilised here, namely that the protesters first be engaged by the SAPS hostage negotiators to enable them to seek a peaceful resolution, before moving to an intervention to enforce the law. If this strategy is successful, it will defuse the situation without the need for a tactical intervention and allow for a peaceful resolution.” I’ve read that correctly, haven’t I?

GENERAL PHIYEGA: Yes, you did.

MR BRUINDERS SC: And what he suggests here is that at a meeting at which you were present, the
operational commanders talked about the broad plan that was to be adopted after the 13th, not so?

**GENERAL PHIYEGA:** I will tell you again that I did not discuss the plan with that meeting, and I'm sure when General, when Scott comes here, he will be able to tell you when he discusses that and with who, but I did not discuss the plan with the team.

**MR BRUINDERS SC:** What do you say you did discuss between 11 and 2 o'clock in the morning?

**GENERAL PHIYEGA:** I thought I had shared what we were doing in that meeting. I have indicated to you that part of that was we had time to look at the pictures, for the people to come in to be briefed about what was taking place there, to talk about all the issues that I've mentioned, but I did not discuss the plan with the team.

**MR BRUINDERS SC:** But you did understand, National Commissioner, that your commanders, your operational commanders were going to go and develop a plan?

**GENERAL PHIYEGA:** You are correct -

**MR SEMENYA SC:** Chair, that question has been asked many times and there have been many same answers to the same question, Chair.

**CHAIRPERSON:** Mr Bruinders, the objection of undue repetition has been raised against your question.

---

How do you answer to it?

**MR BRUINDERS SC:** I’ll move on. Do you say to your operational commanders – sorry, let me rephrase that. Do you, understanding that they’re going to go off and develop a plan, remind them about your national instruction that you’d signed off a mere three weeks earlier?

**GENERAL PHIYEGA:** I did not, because when I signed it, I signed it to all the 200 000 members and I take it that they note my instructions.

**MR BRUINDERS SC:** Do you not say to them at all, when you go away here to deal with what is clearly an escalating situation - we’re talking about the escalation of violence here – when you go away and devise your plan, just make a note of consulting my national instruction again so that you ensure that you comply with my instruction as to how to go about in a Public Order Policing situation? You don’t say that?

**GENERAL PHIYEGA:** No, I didn’t, because I know they will comply. I had given an instruction -

**CHAIRPERSON:** Mr Bruinders, will you permit me just to ask a question that flows from a question you asked a few questions ago? According to Lieutenant-Colonel Scott there was this discussion which is set forth in the paragraph that was read to you. You said you didn’t participate in that discussion. Is that right?

**GENERAL PHIYEGA:** I do say that, Judge.

**CHAIRPERSON:** Were you present in the room when it was discussed, or was it, you know, just sitting quietly listening, or had you already left the room when this discussion must have taken place?

**GENERAL PHIYEGA:** Judge, when I was in that room we did not have that discussion, and when I left the JOC, I left them there.

**MR BRUINDERS SC:** Then lastly, National Commissioner, do you not caution them when they’re thinking about bringing in people from other provinces and other units, that they should heed your national instruction, particularly in relation to the use of sharp-point ammunition?

**MR SEMENYA SC:** Chair, there’s no instruction about the use of sharp ammunition.

**CHAIRPERSON:** We had this one before.

The use of sharp ammunition was dealt with, as far as I remember, in the Standing Order. There were two glosses, as I called them earlier, on that Standing Order, one in, I think it was December 2011, and the subsequent one – or maybe in November, towards the end of 2011, and then a subsequent one that the witness signed in July 2012. They dealt with the use of rubber, the first one rubber bullets, and her one dealt with rubber balls. So she didn’t give an instruction on the use of sharp ammunition. The instruction was a standing one, which is set out in the Standing Order. That’s my understanding of the position.

If I’m wrong, I’ll be corrected. So your question requires reformulation. While Mr Bruinders is looking for something in his papers, can I ask you a question? It seems that the first involvement of the Special Task Force at Marikana was when Lieutenant-Colonel Scott was phoned by Brigadier Fritz at 6 o’clock, 6PM on the evening of the 13th of August, and instructed to report to Lonmin Mine at Marikana, and he then arrived there at 7:30PM that evening on the 13th. Now what I’d like to know from you is whose idea was it to involve the Special Task Force and to ask Lieutenant-Colonel Scott to go to Marikana? I know he was phoned by Brigadier Fritz, but the question is whose idea was it to get the Special Task Force involved and to get Lieutenant-Colonel Scott on the scene? It may be that you don’t know, but I – I say maybe you don’t know the answer to the question, but you understand the question I’ve asked you?

**GENERAL PHIYEGA:** Judge, part of dealing with entities that will be outside that area, for instance when we talk about Task Force, I would be talking to General Mawela and General Masemola to say should there be a need to give assistance to whatever, there is a request.
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<td>for additional capacity, engage with the province to</td>
<td>CHAIRPERSON: You've got exhibit S?</td>
<td>CHAIRPERSON: I'm sure Lieutenant-Colonel</td>
<td>Bruinders will have to give reasons why that argument can</td>
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<td>assist. That would be coming from, you know, our central</td>
<td>GENERAL PHIYEGA: Yes, we have.</td>
<td>Scott would like to hear you calling him General, but it's</td>
<td>be made.</td>
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<td>ORS platform. It doesn't come from the provinces. The</td>
<td>MR BRUINDERS SC: And then what I want to</td>
<td>a bit premature.</td>
<td>MR BRUINDERS SC: National Commissioner,</td>
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<td>other POP people would be coming from the provinces, then</td>
<td>refer you to particularly is paragraph 3 on the third page</td>
<td>GENERAL PHIYEGA: I'm sorry.</td>
<td>let me break it up for you. What AMCU, and I'm giving you</td>
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<td>I'd say to the commissioners, “Commissioners, engage with</td>
<td>of your national instruction. Would you turn there,</td>
<td>CHAIRPERSON: But in any event, the</td>
<td>the opportunity to respond, to say whatever it is you would</td>
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<td>General Mbombo and assist as she requests.”</td>
<td>please? Thank you. National Commissioner, do you not</td>
<td>point, what you're saying is you don't know for sure whose</td>
<td>like to say about this submission, but the submission will</td>
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<td>CHAIRPERSON: Yes, I understand, but you</td>
<td>during the course of your third meeting on the evening of</td>
<td>idea it was to get him, but one of those two gentlemen will</td>
<td>be this; if you had the time and the energy and the</td>
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<td>haven't quite answered the question. I'm not criticising</td>
<td>the 13th remind the operational commanders that when they go</td>
<td>be able to help us. Is that a fair summary of your answer?</td>
<td>inclination to get involved in the detail of identifying</td>
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<td>you because it wasn't as clear as it should have been, but</td>
<td>off to devise a plan, that their plan stays in line with</td>
<td>GENERAL PHIYEGA: Repeat your question</td>
<td>employees from photographs that night, then you would</td>
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<td>whose idea was it to - if you don't know then you must just</td>
<td>paragraph 3, and in particular 3 and 3.6 of your national</td>
<td>again, Judge.</td>
<td>surely have had the same energy, inclination, and time, to</td>
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<td>say so. Whose idea was it to engage the STF, particularly</td>
<td>instruction?</td>
<td>CHAIRPERSON: Is it a fair summary of</td>
<td>remind your commanders that their plan should stick to your</td>
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<td>Lieutenant-Colonel Scott, in the Marikana situation? Was</td>
<td></td>
<td>your answer, as I understand it, you say you're not sure</td>
<td>national instruction.</td>
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<td>it your idea or was it the idea of somebody else whom you</td>
<td></td>
<td>yourself whose idea it was to get Lieutenant-Colonel Scott</td>
<td>[14:45] CHAIRPERSON: That's the reasoning that</td>
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<td>can identify, or was it the idea of someone whom you can't</td>
<td></td>
<td>to go, but one of the two gentlemen you mentioned will be</td>
<td>will be advanced in support of the submission. I think</td>
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<td>identify?</td>
<td></td>
<td>able to give us that information?</td>
<td>he's complied with what you've said. Whether it's a good</td>
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<td>GENERAL PHIYEGA: I would have – as I've</td>
<td>GENERAL PHIYEGA: What I can say to you</td>
<td>GENERAL PHIYEGA: I'm not able to answer to.</td>
<td>reason is a matter that will be debated later, but let's</td>
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<td>said, I would have spoken to two sets of people, (1), the</td>
<td></td>
<td></td>
<td>give her a chance to answer.</td>
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<td>provinces, which is the Provincial Commissioners. When it</td>
<td>MR BRUINDERS SC: National Commissioner,</td>
<td></td>
<td>GENERAL PHIYEGA: I shall say to you, you</td>
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<td>comes to the specialist units I would have spoken to</td>
<td>please turn to exhibit S, which is your national</td>
<td></td>
<td>would appreciate that as the National Commissioner - my</td>
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<td>General Mawela, I would have spoken to General Masemola,</td>
<td>instruction.</td>
<td>members were in Marikana because there was a labour unrest</td>
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<td>because those are controlled nationally, and they would</td>
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<td>in Lonmin, and if Lonmin was saying to us you know, we've</td>
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<td>have to assist as per the request, so I'm sure the ORS</td>
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<td></td>
<td>called you here, talking about some labour unrest, but the</td>
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<td>heads and the general managers would be able to account to</td>
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<td></td>
<td>people that we see protesting we don't know, are faceless,</td>
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<td>say how did we get General Scott to go to – because that</td>
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<td></td>
<td>that would have been a very serious issue for me, because</td>
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<td>comes from that environment.</td>
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<td></td>
<td>why are we there if they can't even see the people who are</td>
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protesting are their people? That was an issue for me, and it was critical, and whether you think it was an area where I shouldn’t have invested energy, at that point in time when I looked at the situation, I considered it very critical and I gave it my energy, rightfully or wrongly judged by anyone who wants to, but at that point in time I personally as the National Commissioner found that to be critical to establish because we needed to resolve the matter.

MR BRUINDERS SC: National Commissioner, AMCU doesn’t criticise you for doing that. It commends you for taking up hands-on what you considered to be a critical issue. So we have no dispute with you over that.

CHAIRPERSON: I’m sorry to interrupt you. You will remember that this instruction which the witness gave countermanded in effect an earlier instruction which had been given late the previous year, and both of them, as I’ve said before, were in effect glossies in general Standing Order 262. So are you suggesting that what the witness should have done was she should have said to her officers, look here, when you go and work out a plan and take action, please make sure that you comply with Standing Order 262 and the extra instructions then given in connection with that? Is that going to be your submission?

MR BRUINDERS SC: Yes, and more, so that’s versed – but perhaps I should do this by way of questions to the witness rather than argument to you –

CHAIRPERSON: But your question is, you see, because I must say obviously I must listen to it with as open a mind as I can summon to the submission that’s made at the end, but there does seem to be an element of impracticality at expecting her to say by the way, when you carry out these instructions, please remember all the Standing Orders and comply with them and the legislation, and make sure that you comply with them all. I mean isn’t she entitled to say, I’m dealing with generals and colonels and people of that military, or quasi military rank; I’m entitled to assume that they will do the necessary and comply with the elementary rules that apply to their operation?

MR BRUINDERS SC: Certainly.

CHAIRPERSON: I’m putting the difficulty to you because, you know, it’s going to come up sooner or later, but –

MR BRUINDERS SC: Perhaps I should put this – I understand your difficulty. Let me see if I can meet that by way of questions. What do you say, National Commissioner, to the submission, to this submission; one of the things that you would have been careful to impress upon your commanders, would have been in the light of the escalating violence, to keep the force used by the SAPS to the minimum possible, not so?

GENERAL PHIYEGA: The use of force, the escalation thereof, the de-escalation thereof, it’s well documented in our instructions and SOPs, and it is known by members.

MR BRUINDERS SC: You see, National Commissioner, you had gone down to Marikana on the night of the 13th because of the escalation of violence there over the preceding days. Correct?

GENERAL PHIYEGA: Escalation of violence was one of those issues. The destabilisation of economic activity, social life, all those issues were very crucial and critical to me, and I have said in my submission that one of our core responsibility is to ensure that in all societies and communities, public order is maintained.

MR BRUINDERS SC: With the use of minimum force.

GENERAL PHIYEGA: We would use measures that fit a particular situation at any given time, and we assess our situation. This SOPs and our instructions and our guidelines guide our members on how to intervene.

MR BRUINDERS SC: Did you not in that third meeting say to your commanders, there’s been an escalation of violence here; as the SAPS we are responsible to de-escalate the violence with the use of minimum force?

GENERAL PHIYEGA: Advocate, I’ve not said because my instructions, the prescripts of how police should operate, are clearly communicated to all members.

MR BRUINDERS SC: Of course you’d have been concerned in that Marikana situation because there had already been so many deaths, as you point out. You would have been concerned that the SAPS bring the situation to order with the minimum force, not so?

GENERAL PHIYEGA: How it should be done is clearly provided for by our prescripts.

MR BRUINDERS SC: It’s clearly provided for in a national instruction that you had signed three weeks before that meeting, not so?

GENERAL PHIYEGA: Yes, it is one of those prescripts.

MR BRUINDERS SC: And you don’t take the opportunity at that meeting when your commanders are talking about planning ahead to stop the violence, you don’t take that opportunity to remind them of what is a very good national instruction?

GENERAL PHIYEGA: Advocate, I repeat -
16th April 2013
Marikana Commission of Inquiry
Rustenburg

1 CHAIRPERSON: Mr Bruinders, we've got another one of these undue repetition objections.
2 MR BRUINDERS SC: I'll move on, thanks.
3 Until what time did the national management forum go on, on the 15th of August?
4 GENERAL PHIYEGA: I’m not sure it could have been way beyond 6; half past 5, around there.
5 MR BRUINDERS SC: I’m just taking a moment to find a document.
6 CHAIRPERSON: You and I are looking for the same document at the same time.
7 MR BRUINDERS SC: Commissioner, at paragraph 21 of your statement, which is FFF2 –
8 CHAIRPERSON: You don’t have to worry which one. They’re all the same as far as that page is concerned, page 6.
9 MR BRUINDERS SC: National Commissioner, at paragraph 21 you say there that you were informed by Lieutenant-General Mbombo of a possibility of peaceful resolution being reached. You see that?
10 GENERAL PHIYEGA: Yes, I do.
11 MR BRUINDERS SC: And as I understand the evidence, and I don't have the reference for it here but as I recollect your evidence that you gave in the inquiry, you say this happened round about lunchtime on the 15th.
12 CHAIRPERSON: Mr Bruinders, you're under oath.
13 GENERAL PHIYEGA: I mentioned that on the 15th General Mbombo did brief me outside the, I said during the day when we were having, it was around, I think in the morning of the 15th, she gave me an update of what was happening in Marikana.
14 MR BRUINDERS SC: Commissioner, I accept that obviously you would have been keen to get an update from her, so let's accept that there was an update. But what I’m asking about is something else. You say that she told you of Mr Mathunjwa having promised that the protesters would lay down their weapons at the koppie at 9 on 16 August 2012 and thereafter leave the koppie, not so?
15 GENERAL PHIYEGA: Indeed it was part of that feedback.
16 MR BRUINDERS SC: And when was that?
17 GENERAL PHIYEGA: On the 15th.
18 MR BRUINDERS SC: What time?
19 GENERAL PHIYEGA: I think it was in one of our early morning breaks out of that meeting. It could have been our tea break, which could have been anywhere between 10, 11.
20 MR BRUINDERS SC: And this is what she told you about the –
21 GENERAL PHIYEGA: She gave me an update and part of what was significant for me was that, and particularly that you would recall I had said if the peaceful solution is important for us.
22 MR BRUINDERS SC: What else did she tell you when she was talking to you about the situation then at Marikana?
23 GENERAL PHIYEGA: That there had been discussions between her and the union, that she had facilitated discussions between the two unions.
24 MR BRUINDERS SC: And again I don't expect you to remember chapter and verse; I'm just broadly trying to establish as completely as we can what it was that she told you on the 15th.
25 GENERAL PHIYEGA: As you are saying, is I wouldn't have a verbatim – we spoke about the damage to property; we spoke about the deaths; we spoke about issues that are well reported in a lot of the statements here, and even in the press conference.

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1 National Commissioner, you’re still under oath.
2 MANGWASHI VICTORIA PHIYEGA: s.u.o.
3 CHAIRPERSON: Mr Bruinders, you’re still cross-examining.
4 CROSS-EXAMINATION BY MR BRUINDERS SC (CONTD.):
5 Commissioner, on the 16th you spoke to the Provincial Commissioner once. Is that correct?
6 CHAIRPERSON: I’m sorry, Mr Bruinders, before you go on to the 16th, have you finished with the SAPS National Management Forum meeting? Have you finished with that? You were asking questions about that. Have you finished with that?
7 MR BRUINDERS SC: That’s as much as we can – I mean it’s as far as we’ll take it with this witness. We’ll take the rest of it further with the Provincial Commissioner.
8 CHAIRPERSON: Now what time did that management forum meeting end?
9 GENERAL PHIYEGA: It was way after 6; 6, half past 6, 7?
10 CHAIRPERSON: Yes, 6, half past 6, 7?
11 GENERAL PHIYEGA: Mmm.
12 CHAIRPERSON: And do you see or speak to Lieutenant-General Mbombo after that, after the meeting was over?
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Rustenburg

1 GENERAL PHIYEGA: Yes, I did, because
2 after that meeting I had to release everybody and I asked
3 the Provincial Commissioners, because they were there - the
4 forum is beyond the Provincial Commissioners – I asked the
5 Provincial Commissioners and the Commissioner for ORS, as
6 well as the Divisional Commissioner, to remain, and we had
7 an extraordinary session where we were talking about
8 additional capacity, and again just to request them to give
9 support.
10 CHAIRPERSON: So in other words you were
11 talking amongst other things about Marikana?
12 GENERAL PHIYEGA: Not in the NMF. The –
13 CHAIRPERSON: No, no, no, I’m saying
14 after that.
15 GENERAL PHIYEGA: Yes.
16 CHAIRPERSON: You say you asked them to
17 stay behind -
18 GENERAL PHIYEGA: That extraordinary
19 session, yes.
20 CHAIRPERSON: And you had a further
21 session with them, talking about capacity, I think you
22 said.
23 GENERAL PHIYEGA: Yes.
24 CHAIRPERSON: And so obviously Marikana
25 was being discussed.

1 GENERAL PHIYEGA: Precisely, it was for
2 that, because I had the, all the Provincial Commissioners
3 there face to face; I could talk to them about this
4 capacity issue. I had the Divisional Commissioner and the
5 Deputy National Commissioner for Operations, so those, I
6 released every other person and I remained with those
7 because those were the people I could talk to about
8 capacity.
9 CHAIRPERSON: Thank you.
10 MR BRUINDERS SC: What did you say about
11 capacity?
12 GENERAL PHIYEGA: I requested them to
13 give the support that is necessary and requested, to
14 General Mbombo, and that was because that type of capacity
15 can only be released by me.
16 MR BRUINDERS SC: And is that all that
17 was said about capacity?
18 GENERAL PHIYEGA: Yes, because the
19 details and the specifics then would be between them and
20 the Provincial Commissioner and the ORS, because then she
21 would be able to say what is it that they would require.
22 MR BRUINDERS SC: And was that all that
23 was said about Marikana?
24 GENERAL PHIYEGA: She also shared with us
25 the fact that they continue with their plan to go out there

1 on the 15th to disarm and disperse the protesters, and she
2 also shared with me that she had been given a promise that
3 in the morning of the 16th there would be a laying down of
4 arms.
5 MR BRUINDERS SC: But you did say earlier
6 today that that information she gave to you earlier in the
7 morning of the 15th?
8 GENERAL PHIYEGA: I have said to you that
9 on the 15th I’ve had two almost briefing sessions with
10 General Mbombo. In the morning she gave me an update. In
11 the afternoon we had this discussion, and this particular
12 one, particularly the one that you’re mentioning, on the
13 15th is shared in the afternoon.
14 CHAIRPERSON: National Commissioner, you
15 say in the afternoon, but from what you say it sounds it
16 must have been in the evening because –
17 GENERAL PHIYEGA: I beg yours?
18 CHAIRPERSON: You say in the afternoon,
19 but it must, from what you have told us, have been in the
20 evening because you said it was after the management forum
21 meeting, you said some time after 6, half past 6, 7, when
22 you asked the people to stay, certain people to stay behind
23 and you spoke to them. So that must have been in the
24 evening rather than the afternoon. Is that right, or was
25 there another afternoon meeting as well?

1 GENERAL PHIYEGA: I think let me be
2 proper and stop direct translation from Sepedi to English.
3 [African language] “Mantapama” means afternoon and
4 afternoon can drag into “busho.” So that time in proper
5 English would be early evening.
6 CHAIRPERSON: So the statement about the
7 laying down – the promise from Mr Mathunjwa that the
8 protesters would lay down their arms at 9 o’clock the next
9 morning, was that promise conveyed to you in the morning or
10 in the evening?
11 GENERAL PHIYEGA: In the evening. Let me
12 say that evening, it was in that later session.
13 CHAIRPERSON: Thank you.
14 MR BRUINDERS SC: And in the evening when
15 she made that, when she told you about the promise, what
16 she told you is what is contained at paragraph 21 of your
17 affidavit, or statement?
18 GENERAL PHIYEGA: Yes, she did indicate
19 to me that there will be that laying of weapons, laying
20 down the weapons, and that was very profound for me.
21 MR BRUINDERS SC: You say it was
22 profound. Why?
23 GENERAL PHIYEGA: Because peace would
24 have been achieved, a peaceful solution would have been
25 achieved.
16th April 2013

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1. MR BRUINDERS SC: Now you believed then during that discussion that evening with the Provincial Commissioner that there was going to be a peaceful resolution on the following morning, on the strength of what she told you?

2. GENERAL PHIYEGA: I wouldn’t say “believe.” I had high hopes.

3. MR BRUINDERS SC: You had high hopes for what?

4. GENERAL PHIYEGA: That there would be a resolution, and a peaceful one.

5. MR BRUINDERS SC: If that was the case, why would you be talking to the Provincial Commissioner about, I think what you called either the tactical or the third phase of disarming the strikers?

6. GENERAL PHIYEGA: My use of the word “hope” talks exactly to what you’re saying. I hoped, and it was important for us to still plan because it was just a hope.

7. MR BRUINDERS SC: What planning did you and the Provincial Commissioner then discuss that evening?

8. GENERAL PHIYEGA: None.

9. MR BRUINDERS SC: Well then when you say it was important for you to plan and that’s why you talked about dispersing and disarming, that doesn’t make any sense.

10. GENERAL PHIYEGA: Disarming, dispersing, and –

11. MR BRUINDERS SC: And what?

12. GENERAL PHIYEGA: - letting people go, is not a plan. It’s an action. It needs to be planned. On the, the Operations in Marikana would plan the specific actions to achieve that.

13. MR BRUINDERS SC: You say you didn’t talk to her about the plan for the next day at all?

14. GENERAL PHIYEGA: Because that’s the function of her JOC under her leadership.

15. MR BRUINDERS SC: Your answer is yes, you didn’t discuss anything about a plan for the next day?

16. GENERAL PHIYEGA: I did not discuss the plan with General Mbombo.

17. MR BRUINDERS SC: And she did not talk to you about a plan?

18. GENERAL PHIYEGA: We did not discuss the plan with General Mbombo.

19. MR BRUINDERS SC: Perhaps now I’ll be permitted to move to the 16th. As I understand it, there was only one conversation between you and the Provincial Commissioner, National Commissioner, on the 16th? Or let me rephrase that. I beg your pardon, I’m being vague. Before
the unintended consequences of the 16th. They were going
there to encircle, to disarm, and to disperse members, and
she also indicated that, you know, there had been several
calls and exchanges that had, you know, that had been
attempted with the leader of AMCU that morning. It wasn't
like when that didn't happen there weren't a conversation,
and I'm sure she will attest to that when she comes to
testify.

MR BRUINDERS SC: Must the Commission
accept that you never asked her in that conversation about
the possibility at that late stage of still exploring
negotiation rather than encircle, disarm, and disperse?
[15:41] GENERAL PHIYEGA: I've already indicated
to you that in her conversation she indicated that she had
been trying to talk to the leaders of AMCU, and I'm sure
she would give details of her attempts for that very day
when she gives her testimony.

MR BRUINDERS SC: These words "encircle,
disperse, and disarm," where do they come from?

GENERAL PHIYEGA: It is a way of
operating, and I'm sure the operations managers would
be able to tell you. Those are some of the policing, you
know, OPS processes.

MR BRUINDERS SC: So they're not your
words?

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GENERAL PHIYEGA: Being the social worker
that I am, I wouldn't have even known of those words.
MR BRUINDERS SC: So these words must –
so they were obviously told to you by somebody else during
the course of that week?

GENERAL PHIYEGA: I'm saying they are
police operations terminology and activities, and police
would talk about that.

MR BRUINDERS SC: When during the course
of the week of the 13th of August did you first hear the
words “encircle, disperse, and disarm” in relation to
strikers on the koppie in Marikana?

GENERAL PHIYEGA: In terms of what was
happening in Marikana, the encircling, the whatever, has
been spoken about, because you, there was a large crowd
that was armed, and the conversation has always been
around that.

MR BRUINDERS SC: My question is when did
you first hear those words during the course of that week?

GENERAL PHIYEGA: Remember I was already
two months in that organisation and I've been reading a lot
of documents and I've signed instructions. So those, the
lingua franca of the police had started getting into me and
I could have heard it not only on, during that week, I read
about it, I hear about it, so to say where I heard it on

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this day, I wouldn't be able to say yesterday or tomorrow
or whatever, but I've heard about the encircling and all
those things, which is the police environment.

MR BRUINDERS SC: When did you first hear
that encircle, disperse, and disarm, was part of the
plan for the week of the 13th?

GENERAL PHIYEGA: I don't know.

MR BRUINDERS SC: And when was the first
time that you knew that what was going to be done?

GENERAL PHIYEGA: Since the Marikana
intervention I knew that the police were wishing to disarm
the armed protesters. I mean even the footage just shows
you on the 13th and other days to say our quest was to
ensure that peaceful protest takes place, and therefore the
disarming of the protesters has always been an issue for
us.

MR BRUINDERS SC: You see, Commissioner,
I'm using the words that I heard you use here this
afternoon, which were “encircle, disperse, and disarm,” not
just disarm. What I really want to know is when did you
first know that that was what police were going to do on
the 16th?

GENERAL PHIYEGA: I'm not able to give
you a day on that one, unfortunately.

MR BRUINDERS SC: Thank you,
MR BRUINDERS SC: So apart from that general request, you don’t remember anything else that they asked the SAPS, that they wanted the SAPS to do at Marikana?

GENERAL PHIYEGA: Lonmin wanted the strike to end and Lonmin wanted to go back to business, and they were concerned about also damage to property, the protesting workers, and we were here, public order issues, we were here to give assistance in that space. That’s what they had asked us to come here for, and that’s what we were discussing in that meeting.

MR BRUINDERS SC: In that meeting did the SAPS delegation and Lonmin then talk about how the SAPS might go about putting an end to the strike?

GENERAL PHIYEGA: No, because Lonmin can never tell us what to do, neither can we tell Lonmin how to mine. We don’t know how to. They don’t know how we work.

MR BRUINDERS SC: No further questions.

CHAIRPERSON: Thank you. Now Mr Tip, we have Mr Ntsebeza with us now. I don’t know, do you have an arrangement with him as to who is going to cross-examine first?

MR NTSEBEZA SC: I’d understood the position to be that he would go first, if he’s available.

CHAIRPERSON: Well, he is here, but let’s ask him.

MR NTSEBEZA SC: Mr Chairman and members of the Commission -

CHAIRPERSON: Mr Ntsebeza, are you going to cross-examine or should I ask Mr Tip -

MR NTSEBEZA SC: I understood that Mr Tip might not be as long as I think I will be.

CHAIRPERSON: I see, alright.

MR NTSEBEZA SC: And on that basis -

CHAIRPERSON: On that basis.

MR NTSEBEZA SC: Even from Johannesburg I arranged that he should go in first.

CHAIRPERSON: Yes, thank you, Mr Ntsebeza.

MR NTSEBEZA SC: Thank you.

CHAIRPERSON: Mr Tip, I doubt whether you can – I don’t know how long you will take, you’ll probably go on tomorrow, but would you like to use the 10 minutes available today to start your cross-examination?

MR TIP SC: Chair, may I say this, I’m going to be really short. My colleague Mr Ntsebeza is quite correct about that, but it’s a set of six propositions with a preamble and it would really be convenient if it were done in one segment from beginning to end. So there’s not very much time left this afternoon.

CHAIRPERSON: Mr Semenya was complaining of exhaustion. I suppose we must have regard to that. We will adjourn until 9:30 tomorrow morning.

[COMMISSION ADJOURNED]
16th April 2013
Marikana Commission of Inquiry
Rustenburg

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