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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 179

31 JANUARY 2014

PAGES 21421 TO 21515



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<p>1 [PROCEEDINGS ON 31 JANUARY 2014] 2 [09:15] CHAIRPERSON: The Commission resumes. 3 Provincial Commissioner, you're still under oath. 4 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 5 CHAIRPERSON: Mr Semenya. 6 EXAMINATION BY MR SEMENYA SC (CONTD.): 7 General, can I cast your mind back to the meeting you had 8 with the Lonmin people, Mr Kwadi and them, you remember 9 that meeting? We dealt with that evidence, you remember? 10 GENERAL MBOMBO: I remember, Mr Chair. 11 MR SEMENYA SC: The evidence leaders have 12 given us access to the audio recording which may point to 13 that meeting having occurred in the afternoon. 14 GENERAL MBOMBO: Mr Chair, as I said 15 yesterday I do not remember clearly when exactly that 16 meeting was held. 17 MR SEMENYA SC: Chair, those are the 18 questions I have for the witness. 19 CHAIRPERSON: Thank you, Mr Semenya. Mr 20 Budlender. 21 CROSS-EXAMINATION BY MR BUDLENDER SC: 22 Thank you, Chair. Good morning, Provincial Commissioner. 23 GENERAL MBOMBO: Good morning, Advocate. 24 MR BUDLENDER SC: I have a few 25 preliminary questions which I'd like to ask you before we</p>	<p>1 MR BUDLENDER SC: Some of the matters are 2 matters that you have personal knowledge about and as far 3 as those ones are concerned you were satisfied that it was 4 correct? 5 GENERAL MBOMBO: That is correct. 6 MR BUDLENDER SC: Then you also have in 7 front of you, I hope, the SAPS presentation to this 8 Commission, exhibit L, the fat document. 9 GENERAL MBOMBO: That is correct, Mr 10 Chair. 11 MR BUDLENDER SC: If I understand it 12 correctly that was presented at a meeting which you 13 attended, for the approval of that meeting. Is that right? 14 GENERAL MBOMBO: That is so, Mr Chair. 15 MR BUDLENDER SC: And again were you 16 satisfied that it was accurate as far as your own knowledge 17 was concerned? 18 GENERAL MBOMBO: Yes, according to the 19 information we gathered from the people who provided the 20 information. 21 MR BUDLENDER SC: Yes, I understand that, 22 but as far as matters which are within your personal 23 knowledge are concerned, you were satisfied that they were 24 correctly reflected in this presentation to the Commission? 25 GENERAL MBOMBO: Yes, as far as those</p>
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<p>1 get into the substance of my questions. Do you have the 2 file of the documents which we submitted? 3 GENERAL MBOMBO: That is correct, I do. 4 MR BUDLENDER SC: Could I ask you to go 5 to FFF9 in that bundle? 6 CHAIRPERSON: That's the third document 7 in the file. 8 MR BUDLENDER SC: You have it? 9 GENERAL MBOMBO: That is correct, Sir. 10 MR BUDLENDER SC: That is the opening 11 statement which was made to this Commission on behalf of 12 the South African Police Service. Now did you see that 13 statement before it was made to the Commission? 14 GENERAL MBOMBO: That is so, Mr Chair. 15 MR BUDLENDER SC: And I take it you were 16 satisfied that it was accurate as far as your own knowledge 17 of the events was concerned? 18 GENERAL MBOMBO: That is so, Mr Chair, as 19 it was reported to us. 20 MR BUDLENDER SC: Yes, but as far as, it 21 also was accurate as far as – sorry, let me take a step 22 back. Most the things it deals with are matters of which 23 you do not have personal knowledge; they are matters you 24 were told about. 25 GENERAL MBOMBO: That is so, Mr Chair.</p>	<p>1 that are in my personal knowledge, yes. 2 MR BUDLENDER SC: Thank you. Now if we 3 can then discuss briefly the Roots conference in 4 Potchefstroom, the main purpose of that conference was to 5 find out the facts of what happened at Marikana and to 6 prepare the police presentation to this Commission. Is 7 that correct? 8 GENERAL MBOMBO: Yes, as I know it, that 9 is correct. 10 MR BUDLENDER SC: Did you give the Roots 11 conference all of the facts in your possession which were 12 relevant to the task that meeting was undertaking? 13 GENERAL MBOMBO: Those that concern me, 14 Mr Chair, that is what I did, yes. 15 MR BUDLENDER SC: Yes, and were you 16 satisfied with the draft presentation which was produced at 17 that conference? 18 GENERAL MBOMBO: We were satisfied as far 19 as we saw it and as far as the information we had goes. 20 MR BUDLENDER SC: Yes, I understand. Now 21 another aspect is the situation which faced the SAPS at the 22 time that the strikers were on the koppie, that was a 23 situation in which there were several thousand men gathered 24 on the koppie; many of them were armed with dangerous 25 weapons. Some of them were believed to be armed with</p>

<p style="text-align: right;">Page 21425</p> <p>1 firearms and the koppie was difficult terrain. Is that a 2 fair summary of the situation you were facing? 3 GENERAL MBOMBO: As we were told, Mr 4 Chair. 5 MR BUDLENDER SC: Yes, and some of the 6 people who had gathered on the koppie had already shown a 7 willingness to kill in order to achieve their goals. 8 GENERAL MBOMBO: Can you repeat that, Mr 9 Chair? 10 MR BUDLENDER SC: Some of the people who 11 were on the koppie had already shown a willingness to kill 12 other people in order to achieve their goals. There had 13 been murders during the course of the days running up to 14 this. 15 GENERAL MBOMBO: That is correct, Mr 16 Chair, we knew that they had already killed. 17 MR BUDLENDER SC: The SAPS' case in this 18 Commission, as I understand it, has been that the situation 19 at Marikana was difficult and unprecedented. I can read 20 you the evidence of various witnesses and statements, but 21 is that also your understanding of the position? 22 GENERAL MBOMBO: Mr Chair, that is 23 correct according to the explanations of the people who 24 were there. 25 MR BUDLENDER SC: And it was a situation</p>	<p style="text-align: right;">Page 21427</p> <p>1 the problem was that they had negotiated outside bargaining 2 structures, or the problem was that they refused to 3 negotiate outside bargaining structures? 4 GENERAL MBOMBO: This paragraph, Mr 5 Chair, addresses the origin of the problem. 6 MR BUDLENDER SC: And if I understand you 7 correctly, looking at it in this context, what you're 8 referring to is the fact that Lonmin at a certain point had 9 discussions with the rock drill operators about giving them 10 an allowance, outside the bargaining structures. Is that 11 what you're referring to there? 12 GENERAL MBOMBO: That is what they told 13 us, Mr Chair. 14 MR BUDLENDER SC: And you thought that 15 was one of the causes of the problems? 16 GENERAL MBOMBO: That is how we saw it, 17 because it's something unusual. 18 MR BUDLENDER SC: Thank you, that's what 19 I thought you meant. I just wanted to be clear. Now I 20 want to turn now to the question of your personal 21 experience and training, and would you go to the document 22 which is headed, it's in your file, I hope, "Personal 23 information." It's an account of your experience and 24 training. Do you have that? 25 GENERAL MBOMBO: It's marked what</p>
<p style="text-align: right;">Page 21426</p> <p>1 which created the risk of harm to members of the public and 2 to members of the SAPS and to the strikers themselves. It 3 was a risky situation. 4 GENERAL MBOMBO: That's how it appeared 5 according to the reports from the people. 6 MR BUDLENDER SC: Yes, thank you. And 7 then one other preliminary matter; could you just go to 8 your statement LLL1, your supplementary statement, and 9 could you go to paragraph 27 of that? 10 GENERAL MBOMBO: I found it. 11 MR BUDLENDER SC: At paragraph 27 you are 12 discussing the briefing which you had with members of the 13 Lonmin management on the morning of Monday the 13th of 14 August. You see that? 15 GENERAL MBOMBO: That is correct, Mr 16 Chair. 17 MR BUDLENDER SC: And this is what you 18 say at paragraph 27, I'll read it. You say, "During the 19 briefing it became apparent to me that part of the problem 20 was Lonmin negotiating salary allowances with a particular 21 group of employees outside of their bargaining structures." 22 You see that? 23 GENERAL MBOMBO: I can see it, Mr Chair. 24 MR BUDLENDER SC: I just want to be sure 25 I understand what you're saying there. Are you saying that</p>	<p style="text-align: right;">Page 21428</p> <p>1 document? 2 MR BUDLENDER SC: It doesn't have an 3 exhibit number because it hasn't yet been introduced in 4 evidence, but it should be in your file. 5 CHAIRPERSON: It's near the back of mine, 6 so I presume it's near the back of yours. It looks like, 7 it's about three from the back, three documents in other 8 words. It's further back than that. It's – you see there 9 are flaps at the side there and it looks like the sixth 10 flap. You see these markers at the side of the pages? As 11 far as I can see - Provincial Commissioner, you see these 12 markers at the side here? Well, it looks to me as if it's 13 the sixth from the back. It's the fifth in Adv Tokota's, 14 so it may be the fifth, but sixth in mine. I think you've 15 now found it. Do we have to make it an exhibit? 16 MR BUDLENDER SC: Yes, please, Chair. 17 CHAIRPERSON: What exhibit number is 18 next? 19 MR BUDLENDER SC: LLL4, Chair. 20 CHAIRPERSON: Thank you. The document 21 headed "Personal information" which relates to you is 22 exhibit LLL4. 23 MR BUDLENDER SC: Thank you, Chair. 24 Provincial Commissioner, I'm not going to take you through 25 the detail of that. It's there, it just needs to be on</p>

<p style="text-align: right;">Page 21429</p> <p>1 record. I'd like to take you now to – we'll refer back to 2 it if necessary, but I don't think it will be necessary – 3 CHAIRPERSON: I'm sorry, let me just make 4 sure that everything is in order. I take it you got the 5 file beforehand, you got an opportunity to read that 6 document, did you? Are you satisfied that the personal 7 information contained in it is correct insofar as it 8 relates to you? 9 GENERAL MBOMBO: That is correct, Mr 10 Chair. 11 MR BUDLENDER SC: Thank you, Chair. Now 12 could you go back to your amplified statement, LLL4? 13 GENERAL MBOMBO: I found it. 14 MR BUDLENDER SC: Paragraph 8. 15 GENERAL MBOMBO: Yes. 16 MR BUDLENDER SC: There you summarise 17 your career in the police. It's a summarised version of 18 the longer information contained in LLL4, and what it comes 19 down to is this; firstly you joined the police in 1980. 20 That's correct? 21 GENERAL MBOMBO: That is correct, Mr 22 Chair. 23 MR BUDLENDER SC: From 1980 to 1981 you 24 performed crime prevention duties in Umtata. 25 GENERAL MBOMBO: After training.</p>	<p style="text-align: right;">Page 21431</p> <p>1 GENERAL MBOMBO: Page 9 of LLL4? 2 MR BUDLENDER SC: LLL4, yes. 3 GENERAL MBOMBO: Mine is to page 8. 4 MR BUDLENDER SC: Does it not have a page 5 headed "Career promotion/appointments?" 6 GENERAL MBOMBO: It's page 6 here. 7 MR BUDLENDER SC: Page 6 of yours, okay. 8 GENERAL MBOMBO: Yes. 9 MR BUDLENDER SC: You have a page headed 10 "Career promotion/appointments?" 11 GENERAL MBOMBO: Yes. 12 MR BUDLENDER SC: Alright, and what it 13 shows is that in 1981 you did your basic training. You 14 were then placed, you were a constable placed in the 15 Internal Security in 1981, a constable placed in the 16 Internal Security office processing reports and 17 administration, and in 1989 you were promoted to sergeant 18 and placed in the Finance Administering, Financial Claims 19 and SAP6. Is that correct? 20 GENERAL MBOMBO: I think there might be a 21 mistake here, Mr Chair, because after I left Internal 22 Security I first went to the station and did SAP6. That is 23 why I'm saying there might be a mistake somewhere. 24 MR BUDLENDER SC: Alright, SAP6 is a form 25 which is used by the police for recording, I think it's</p>
<p style="text-align: right;">Page 21430</p> <p>1 MR BUDLENDER SC: After training. 2 GENERAL MBOMBO: After training, Mr 3 Chair. 4 MR BUDLENDER SC: Right, then you were 5 placed at the Internal Security office where you performed 6 administrative duties. 7 GENERAL MBOMBO: That is correct. 8 MR BUDLENDER SC: That is actually, that 9 reference to the Internal Security office is a reference to 10 the Transkei Security Police. 11 GENERAL MBOMBO: That is so, Mr Chair. 12 MR BUDLENDER SC: So you performed those 13 administrative duties from, it seems from 1981 to 1987. 14 Would that be right? Because in 1987 you were placed in 15 financial management. I beg your pardon, not 1987, 1989, 16 my fault. So am I correct in thinking from '81 to '89 you 17 were doing administrative duties and then from 1989 you 18 were promoted to sergeant and put in the financial section? 19 Perhaps it would be easier – I'm sorry, I don't want to 20 make it in any way difficult. Perhaps you could look at 21 LLL4, the full account, and look at page – 22 CHAIRPERSON: On page 9 the information 23 in question – 24 MR BUDLENDER SC: Page 9, I beg your 25 pardon, yes.</p>	<p style="text-align: right;">Page 21432</p> <p>1 fast movement in the – 2 GENERAL MBOMBO: Statistics. 3 MR BUDLENDER SC: Statistics, yes. So 4 you were doing administrative work in relation to the 5 statistics. 6 GENERAL MBOMBO: Yes, I was at the 7 station when I did that. 8 MR BUDLENDER SC: Yes, okay, thank you. 9 And then in 1989 you were moved into Finance. Is that 10 right? 11 GENERAL MBOMBO: Yes, that seems to be 12 the case, yes. 13 MR BUDLENDER SC: Yes, and from 1989 – 14 and then from 2003 to 2004, 2005, I beg your pardon, from 15 2003 to 2005 you were managing what's called a support 16 environment in Gauteng. Is that right? 17 GENERAL MBOMBO: That is correct, Mr 18 Chair. 19 MR BUDLENDER SC: That's a desk job, an 20 administrative job? 21 GENERAL MBOMBO: Yes. 22 MR BUDLENDER SC: And then in 2005 you 23 were appointed as Provincial Commissioner initially in the 24 Northern Cape. 25 GENERAL MBOMBO: That is so, Mr Chair.</p>

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1 MR BUDLENDER SC: So would it be fair to
 2 summarise, to say that your experience of police – that you
 3 are somebody who has been involved in administration –
 4 sorry, let me take a step back. Before you were appointed
 5 as Provincial Commissioner your main experience had been in
 6 administration and financial management.
 7 GENERAL MBOMBO: That is correct, Mr
 8 Chair.
 9 MR BUDLENDER SC: And you in addition had
 10 one year doing crime prevention activities in Umtata.
 11 GENERAL MBOMBO: That is so, Mr Chair.
 12 MR BUDLENDER SC: That year was the only
 13 year in which you were on the beat, so to speak, actually
 14 carrying out crime prevention or crime detection or
 15 arresting people, or any of those sorts of activities. Is
 16 that correct?
 17 GENERAL MBOMBO: I will say that is so,
 18 but whilst I was working under the Transkei region,
 19 according to us there was no specialisation as such, as
 20 well as at the time when I was at Finance and at Security I
 21 was part of the operations that were planned at the time.
 22 MR BUDLENDER SC: I'm sorry, could you
 23 repeat that? Part of the operations that?
 24 GENERAL MBOMBO: I was part of the
 25 operations that were planned.

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1 MR BUDLENDER SC: That were planned.
 2 [09:35] GENERAL MBOMBO: From time to time I
 3 would be part of that operation.
 4 MR BUDLENDER SC: Thank you. Now you
 5 referred in your evidence in chief yesterday to the fact
 6 that when Mr George Fivaz was appointed as National
 7 Commissioner of the SAPS he came from Efficiency Services
 8 in the SAPS and not from Operational Services, do you
 9 remember that?
 10 GENERAL MBOMBO: I said how I know him is
 11 that when he was appointed he was from Efficiency Services.
 12 MR BUDLENDER SC: Yes. Are you
 13 suggesting that your policing experience when you were
 14 appointed as Provincial Commissioner was in any way
 15 comparable with that of Mr Fivaz when he was appointed
 16 National Commissioner?
 17 GENERAL MBOMBO: I will not compare
 18 myself to him, Mr Chair.
 19 MR BUDLENDER SC: He was a very
 20 experience policeman in a wide variety of policing
 21 activities wasn't he?
 22 GENERAL MBOMBO: You might be telling the
 23 truth there, Mr Chair.
 24 MR BUDLENDER SC: Yes well I went onto
 25 the SAPS website to get the story of his career. Perhaps I

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1 can show you what the SAPS website says.
 2 CHAIRPERSON: Do you want this document
 3 to be an exhibit?
 4 MR BUDLENDER SC: Yes please, Chair.
 5 CHAIRPERSON: So this will be LLL5.
 6 MR BUDLENDER SC: Thank you, Chair.
 7 Shall we read together what the SAPS website says about
 8 former Commissioner Fivaz? I'll read, it says "John George
 9 Fivaz joined the former South African Police in 1964 and
 10 underwent his basic police training at the Pretoria Police
 11 College. During his career he served in many positions
 12 doing normal police duties in various fields such as
 13 patrolling, charge office duties, attending to complaints,
 14 crime detection, management, work study and police
 15 administration. He also commanded various units such as
 16 the detective branch in Harrington Street, Cape Town and
 17 the SANAB branch in Bloemfontein," that's the narcotics
 18 bureau isn't it? Is SANAB the narcotics bureau?
 19 GENERAL MBOMBO: Narcotics yes.
 20 MR BUDLENDER SC: So he commanded various
 21 units such as the detective branch in Harrington Street in
 22 Cape Town, the narcotics branch in Bloemfontein and
 23 Efficiency Services at head office. And then if you go to
 24 the next paragraph "at the end of 1976 Fivaz settled in
 25 Pretoria and became a member of the National Inspectorate

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1 of the South African Police and dealt with issues such
 2 restructuring, decentralisation of authority and strategic
 3 planning. In this capacity he visited and studied police
 4 management styles and structures in Canada, USA, Europe and
 5 Southern America." Now the National Inspectorate is the
 6 body in the police which was responsible for oversight of
 7 all of the workers of police. Is that correct?
 8 GENERAL MBOMBO: That is so, Mr Chair.
 9 MR BUDLENDER SC: So if you were in the
 10 National Inspectorate you would have to have oversight of
 11 and some knowledge of what is being done in all parts of
 12 the South African police, all the different services and
 13 units and so on.
 14 GENERAL MBOMBO: That is so.
 15 MR BUDLENDER SC: And that is what Mr
 16 Fivaz must have had by the time he was appointed National
 17 Commissioner. A very broad knowledge of all aspects of
 18 policing.
 19 GENERAL MBOMBO: That could be the case
 20 yes.
 21 MR BUDLENDER SC: If I understand you
 22 correctly you're not suggesting that you're qualified as Mr
 23 Fivaz was qualified.
 24 GENERAL MBOMBO: I'm not. Mr Chair, I
 25 said I'm not comparing myself to him, I'm not.

<p style="text-align: right;">Page 21437</p> <p>1 MR BUDLENDER SC: Now related to that, 2 Provincial Commissioner, we know from what we've heard in 3 this commission that there are three levels of command in a 4 public order policing operation. There are the commanders 5 of the units, then there is the operational commander and 6 then there is the overall commander. 7 GENERAL MBOMBO: That is correct, Mr 8 Chair. 9 MR BUDLENDER SC: Now can you tell us of 10 any public order policing operations in which you were the 11 commander of the unit which was involved in the operation? 12 GENERAL MBOMBO: I have never commanded 13 any public order commission, Mr Chair. 14 MR BUDLENDER SC: Have you ever been the 15 operational commander of a public order policing operation? 16 GENERAL MBOMBO: No I've never. 17 MR BUDLENDER SC: Have you ever been the 18 overall commander of a public order policing operation? 19 GENERAL MBOMBO: Because I have never 20 worked in the public order therefore I've never been in the 21 operations of the public order. 22 MR BUDLENDER SC: So I take it from that 23 you've also never been involved as one of the rank and file 24 members in a public order policing operation. 25 GENERAL MBOMBO: Yes I was once there</p>	<p style="text-align: right;">Page 21439</p> <p>1 Mpmembe, you are aware that that's in his statement. 2 GENERAL MBOMBO: I saw that in his 3 statement, Mr Chair. 4 MR BUDLENDER SC: He says in that 5 statement that he immediately telephoned you and informed 6 you of that threat that had been made and I want to ask you 7 because your evidence in chief wasn't altogether clear to 8 me, are you saying that that's a lie? That he never told 9 you or are you simply saying that you don't recall that? 10 CHAIRPERSON: It's not to say it's a lie, 11 I mean – 12 MR BUDLENDER SC: It's an untruth. 13 CHAIRPERSON: It's an untruth, it could 14 be an incorrect statement innocently made. I don't think 15 the witness is necessarily suggesting, if she disagrees 16 with what Colonel Vermaak says that he was lying, if she 17 wants to go that far she can. But I don't think she 18 intends to go that far. Anyway the point is are you saying 19 that that statement is, Colonel Vermaak, Lieutenant- 20 Colonel Vermaak is incorrect or just that you can't recall 21 whether it is correct or not? In other words it may be 22 correct but you can't confirm it, which of the two is it? 23 GENERAL MBOMBO: In my amplified 24 statement I addressed the issue of Colonel Vermaak, I do 25 not dispute that he phoned me, but the contents according</p>
<p style="text-align: right;">Page 21438</p> <p>1 when I was still young, when I was a constable. 2 MR BUDLENDER SC: Once in Umtata? 3 GENERAL MBOMBO: In Umtata yes. 4 MR BUDLENDER SC: Right thank you. Now I 5 want to move onto the events of Monday the 13th of August at 6 Marikana. Now you put Major-General Mpmembe in charge of 7 the operation to deal with the strikers who were next to 8 the railway line, correct? 9 GENERAL MBOMBO: I approached General 10 Mpmembe to be commander, overall commander there and to 11 assist Brigadier Calitz. 12 MR BUDLENDER SC: Chair, I'm told that we 13 haven't given a number to General Fivaz' – 14 CHAIRPERSON: You were misinformed we 15 marked it LLL5. 16 MR BUDLENDER SC: I'll take that up in 17 the adjournment, that misinformation, Chair. Sorry, 18 Provincial Commissioner. Now we know that during that 19 operation on the 13th of August five people were killed 20 including two members of the SAPS. 21 GENERAL MBOMBO: That is correct, Mr 22 Chair. 23 MR BUDLENDER SC: And we know that 24 Lieutenant-Colonel Vermaak has said in his affidavit that 25 certain of the SAPS members threatened to kill General</p>	<p style="text-align: right;">Page 21440</p> <p>1 to his statement I do not agree with it. 2 MR BUDLENDER SC: So you say that when he 3 says he told you that those threats have been made he's not 4 telling the truth? 5 GENERAL MBOMBO: It could be that he's 6 not telling the truth because that is not what he talked 7 about to me. Yes he might have talked about other things 8 CHAIRPERSON: In other words what you're 9 saying is it's not a question of he may have said, but you 10 can't remember it, you're able to say that that's not 11 correct. 12 GENERAL MBOMBO: He never mentioned that 13 or in that way, Mr Chairperson. 14 MR BUDLENDER SC: So what he says in his 15 affidavit, under oath, is not the truth. 16 GENERAL MBOMBO: He never said that to 17 me, Mr Chair. 18 MR BUDLENDER SC: So what he said, under 19 oath, in his affidavit is not the truth. 20 GENERAL MBOMBO: They would know what the 21 truth is, according to me the truth is not what he's 22 saying, that's not what he talked about. 23 MR BUDLENDER SC: No, General, you're 24 saying that he didn't say that. He says in his affidavit 25 that he said it. So then you're saying his affidavit is</p>

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1 not the truth.

2 GENERAL MBOMBO: What Vermaak talked

3 about with me is not what he's mentioning in his statement.

4 CHAIRPERSON: What did he talk to you

5 about?

6 GENERAL MBOMBO: He said he was removing

7 General Mpembe from the scene because General Mpembe was in

8 a state that can cause danger or tension at the scene where

9 they were. I had an easy answer for him and that was I

10 told you all the patrol to go back to the JOC. That is the

11 truth about what we discussed.

12 MR BUDLENDER SC: In other words when

13 Colonel Vermaak says he told that there had been threats to

14 murder General Mpembe that is not the truth.

15 GENERAL MBOMBO: According to me that's

16 not the truth that I know, that's not what happened when I

17 spoke to him.

18 MR BUDLENDER SC: Now I'd like you to

19 look at paragraph 39 of your amplified statement.

20 CHAIRPERSON: It's 39, at the moment we

21 have 29 on the screen, it's 39 isn't it?

22 MR BUDLENDER SC: 39.

23 CHAIRPERSON: 39.

24 MR BUDLENDER SC: You say the following "

25 I may also pause here to amplify what I stated in paragraph

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1 13 of GGG5 and also to address the allegation that after

2 the incident of 13 August 2012 in which members of the SAPS

3 were attacked by strikers Colonel Vermaak informed me of

4 purported threats on the life of Mpembe. Do you see that?

5 GENERAL MBOMBO: I can see that, Mr

6 Chair.

7 MR BUDLENDER SC: Now why do you refer to

8 purported threats? Do you also doubt the truthfulness of

9 Colonel Vermaak's statements, made under oath, that such

10 threats were made?

11 GENERAL MBOMBO: Because what he's

12 mentioning in his statement he did not say that to me.

13 MR BUDLENDER SC: I understand that, but

14 you refer to purported threats. Do you accept that threats

15 or do you not accept that threats were made to the life of

16 General Mpembe?

17 GENERAL MBOMBO: I cannot accept or

18 reject the threats because I have no evidence that the

19 threats did take place or not.

20 MR BUDLENDER SC: And is that why you use

21 the purported, the word purported?

22 GENERAL MBOMBO: Mr Chair, I'm not an

23 expert in English.

24 MR BUDLENDER SC: Well what do you mean

25 by the word purported? You used it. What do you mean by

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1 it? You signed an affidavit saying that.

2 GENERAL MBOMBO: I was addressing the

3 issue whether he told me about the threats that I have no

4 knowledge of.

5 MR BUDLENDER SC: No, General, I'm afraid

6 that won't assist you. You say Colonel Vermaak informed me

7 of purported threats on the life of Mpembe. That means in

8 ordinary English that you are not – the claim is made that

9 the threats were made and you don't whether they're true or

10 false. Is that correct?

11 GENERAL MBOMBO: That is correct, Mr

12 Chair, because I do not know about these threats. He never

13 mentioned them when he spoke to me.

14 MR BUDLENDER SC: I understand that you

15 don't have personal knowledge of the threats, what I'm

16 asking you is do you doubt the truthfulness of Colonel

17 Vermaak's statement that the threats were made? Do you

18 have doubts about that?

19 GENERAL MBOMBO: I have doubts because he

20 did not mention them to me.

21 MR BUDLENDER SC: All right and do you

22 have doubts about anything else you were told by other

23 members of the South African Police during this week long

24 event?

25 GENERAL MBOMBO: Anything that was not

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1 mentioned to me would make me doubtful, anything that was

2 not mentioned to me would make me doubtful if I was not

3 told about it.

4 MR BUDLENDER SC: Other than in relation

5 to Mr Myburgh is there anywhere else in your statement

6 where you've expressed any doubt or reservation about the

7 truthfulness of what you were told by members of the South

8 African Police?

9 GENERAL MBOMBO: Can you repeat the

10 question, Mr Chair?

11 MR BUDLENDER SC: You've now expressed

12 doubt about the truthfulness of what Colonel Vermaak told

13 you, says he told you. Your statement clearly expresses

14 some doubt about what Mr Myburgh says happened with the

15 alleged shooting, whether that's true. Is there anything

16 else that any member of the South African Police Service

17 told you about what happened during that week at Marikana,

18 something which you doubt the truth of?

19 GENERAL MBOMBO: All the things I was

20 told about by the police who were present at the operation

21 at this stage I trust that they are truth.

22 MR BUDLENDER SC: So you believed

23 everything you were told except what Colonel Vermaak told

24 you and what Mr Myburgh told you, is that correct?

25 CHAIRPERSON: I'm sorry, Mr Budlender, I

<p style="text-align: right;">Page 21445</p> <p>1 didn't understand her to say that. When she uses the 2 expression purported threats she's talking about what he 3 says in his affidavit I think. She said to the best of her 4 recollection he phoned her, he didn't mention the threats, 5 but he mentioned something else. Of course she now knows 6 that he says in his affidavit there were threats. She 7 doubts whether, as I understand her evidence, whether that 8 is correct because he didn't mention it to her at the time. 9 So it's not that she doesn't believe what he told her, she 10 doesn't believe or, as perhaps we could put it more 11 accurately, she's not sure about the accuracy of things 12 that he says in his affidavit because they weren't told to 13 her which is different from saying she doesn't believe or 14 has reason not to believe things that she was told. I 15 think that's correct is it –</p> <p>16 GENERAL MBOMBO: That is correct, Mr 17 Chair.</p> <p>18 MR BUDLENDER SC: Let me move on from 19 that. Did General Mpmembe tell you about the alleged 20 threats to his life?</p> <p>21 GENERAL MBOMBO: He did not tell me, I'm 22 the one who asked him.</p> <p>23 MR BUDLENDER SC: Never mind who asked, 24 did he tell you on that day, the 13th of October, 13th of 25 August that there had been threats to his life?</p>	<p style="text-align: right;">Page 21447</p> <p>1 [09:55] Could we have day 124, the transcript of day 124 2 on the screen? 124, page 12796. Let's start with 12795 at 3 line 15. Now this is the evidence under oath of General 4 Mpmembe to this Commission. He's asked by Ms Le Roux, 5 "Major General, did you tell the Provincial Commissioner of 6 the threat to your life on the 13th?" Major General Mpmembe, 7 "Chairperson, as I testified yesterday I said that I spoke 8 with the Provincial Commissioner about that threat at the 9 JOC when she has arrived and I told her the circumstances 10 of that threat and how do I feel about the threat itself. 11 As I've explained yesterday, to say in the first place 12 Lieutenant Colonel Vermaak informed me. I did not see any 13 imminent threat. Chairperson, I went on to say that I did 14 not even know who was the attacker, and secondly Colonel 15 Vermaak requested me in a manner that I should enter into a 16 Nyala as quick as possible, and I indicated to him that," 17 and the Chairperson says, "You did tell us that yesterday," 18 and then the Chairperson says, "I think counsel is 19 interested in a narrower point than that. She simply wants 20 to know did you tell the Provincial Commissioner that you'd 21 been told in turn by Lieutenant Colonel Vermaak that there 22 had been threats to kill you, as a result of which you were 23 removed from the scene. That's her question and I think 24 you've answered that by saying yes, you did tell her, and 25 you said so yesterday also." You see that?</p>
<p style="text-align: right;">Page 21446</p> <p>1 GENERAL MBOMBO: He did not tell me such 2 a thing.</p> <p>3 MR BUDLENDER SC: Did you ask him whether 4 there had been threats to his life?</p> <p>5 GENERAL MBOMBO: After I heard about that 6 being mentioned, yes.</p> <p>7 MR BUDLENDER SC: When was that?</p> <p>8 GENERAL MBOMBO: It was at night on the 9 13th when he was giving us a briefing.</p> <p>10 MR BUDLENDER SC: And from whom did you 11 hear of the alleged threats to his life?</p> <p>12 GENERAL MBOMBO: The police who where 13 there were talking about it, not necessarily reporting it.</p> <p>14 MR BUDLENDER SC: So people other than 15 Colonel Vermaak were also saying that there were threats to 16 the life of General Mpmembe.</p> <p>17 GENERAL MBOMBO: They were saying so and 18 saying they heard that from Colonel Vermaak.</p> <p>19 MR BUDLENDER SC: You still doubt that 20 it's true.</p> <p>21 GENERAL MBOMBO: Because at that time 22 Colonel Vermaak had not approached me and tell me about it.</p> <p>23 MR BUDLENDER SC: That's of course what 24 you say, yes. But let's just – if you'll bear with me, one 25 moment, Chair.</p>	<p style="text-align: right;">Page 21448</p> <p>1 GENERAL MBOMBO: I can see that.</p> <p>2 MR BUDLENDER SC: Now what General Mpmembe 3 is saying is that on the scene Colonel Vermaak told him 4 that there was a threat to his life and he must get into 5 the Nyala immediately. Do you see that?</p> <p>6 GENERAL MBOMBO: I see that.</p> <p>7 MR BUDLENDER SC: Are you suggesting that 8 that's also fabricated by Colonel Vermaak, that on the 9 scene he fabricated to General Mpmembe, said to him 10 untruthfully, 'There's been a threat on your life, get in 11 the vehicle quickly'?</p> <p>12 GENERAL MBOMBO: I'm saying so, Mr Chair, 13 because even General Mpmembe when he phoned me never told me 14 that there are threats on his life, that people want to 15 kill him.</p> <p>16 MR BUDLENDER SC: So are you suggesting 17 that General Mpmembe is also fabricating this incident?</p> <p>18 GENERAL MBOMBO: I'm not sure, but he 19 never told me that when we spoke on the phone.</p> <p>20 MR SEMENYA SC: Chair, maybe I don't 21 quite follow. I don't read in that excerpt which my 22 learned colleague has read that General Mpmembe is saying 23 that he was confronted about that threat on the scene. I 24 don't read that –</p> <p>25 CHAIRPERSON: I think there are two</p>

<p style="text-align: right;">Page 21449</p> <p>1 points. If you read on I think you'll – it's earlier, it's 2 a little bit higher up than what we saw. He says what he 3 told the witness at the JOC and he said that Lieutenant 4 Colonel Vermaak informed him that there had been a threat 5 and then requested him to enter into – could we have a 6 little bit more of page 12796? – to get into the Nyala as 7 quickly as possible. That's the point. It's not a 8 question of a telephone call – 9 MR SEMENYA SC: He said it was at the 10 JOC. 11 CHAIRPERSON: Sorry? 12 MR SEMENYA SC: I seem to read him to 13 refer it to a conversation at the JOC with the Provincial 14 Commissioner. 15 CHAIRPERSON: Yes, yes, yes, you're quite 16 right. What is referred to in this passage is not a 17 conversation between General Mpmembe and this witness on the 18 telephone; it's a conversation, as I understand it, at the 19 JOC. General Mpmembe says he told the witness that Colonel 20 Vermaak had told him about the threat - he himself wasn't 21 aware of the threat, but told him about the threat and said 22 to him, "Get into a Nyala as quickly as possible." That he 23 says, it would appear, is what he told this witness in the 24 JOC, not on a telephone but at the JOC. So that seems to 25 be the position, does it not? So there's no question of,</p>	<p style="text-align: right;">Page 21451</p> <p>1 phoned me. 2 MR BUDLENDER SC: General, can we go back 3 to the transcript to which I've referred you? Could we go 4 back to page 12795, and – 5 CHAIRPERSON: What line, Mr Budlender? 6 MR BUDLENDER SC: Line 19 where he says, 7 "I said that I spoke with the Provincial Commissioner about 8 that threat at the JOC when she has arrived and I told her 9 the circumstances of that threat and how do I feel about 10 the threat itself. As I've explained yesterday to say in 11 the first place Lieutenant Colonel Vermaak informed me. I 12 did not see any imminent threat. Chairperson, I went on to 13 say that I do not, did not even know who was the attacker, 14 and secondly Colonel Vermaak requested me in a manner that 15 it, that I should enter into a Nyala as quick as possible." 16 You see that? 17 GENERAL MBOMBO: I see that. 18 MR BUDLENDER SC: You accept that that 19 must have been on the scene that he says that Colonel 20 Vermaak told him to get into the Nyala? He wouldn't have 21 told him to get into the Nyala at the JOC. 22 GENERAL MBOMBO: He did not say that to 23 me on the phone that Colonel Vermaak said he should get 24 into the Nyala. He made that report at the JOC after I'd 25 arrived at Lonmin.</p>
<p style="text-align: right;">Page 21450</p> <p>1 it's not suggested that Major General Mpmembe told you this 2 over the telephone. What is suggested, what in fact is 3 said is he told you so at the JOC. Now what's your comment 4 about that? Did he tell you that at the JOC? 5 GENERAL MBOMBO: As I've said, Mr Chair, 6 at the JOC I asked General Mpmembe, after I'd heard police 7 talking about it. He then told me he himself did not hear 8 it, he only heard it from Colonel Vermaak. 9 CHAIRPERSON: Had you had a telephone 10 conversation with General Mpmembe before that, after this 11 alleged incident of the threat? After this alleged 12 incident and your conversation with him in the JOC, did you 13 have a telephone conversation in the interim with him? 14 GENERAL MBOMBO: General Mpmembe phoned 15 me, Mr Chair, about this incident. That's when I spoke to 16 him and told him they should all go back to the JOC. As I 17 was on the way, returning back to Lonmin, I was talking to 18 him and asking him about the police officers who were 19 injured. 20 CHAIRPERSON: This conversation that you 21 had with General Mpmembe on the telephone, was that before 22 or after Colonel Vermaak telephoned you? 23 GENERAL MBOMBO: After I spoke to General 24 Mpmembe, him telling me about the incident, when I was 25 returning back, going to Lonmin, Colonel Vermaak then</p>	<p style="text-align: right;">Page 21452</p> <p>1 MR BUDLENDER SC: General, I'm not 2 asking – 3 CHAIRPERSON: I'm sorry, Mr Budlender, 4 can I ask a question first? You told me that – you told 5 the Commission that General Mpmembe telephoned you and 6 reported the incident where the police had been attacked 7 and one had been killed and so forth. 8 GENERAL MBOMBO: That's correct. 9 CHAIRPERSON: And two others injured, one 10 of whom died later. He phoned you about that, and then you 11 said that subsequently you received a phone call from 12 Lieutenant Colonel Vermaak, which you told us about. Now 13 what is the interval of time between General Mpmembe's phone 14 call to you reporting the incident where the police were 15 attacked, and Colonel Vermaak's telephone call to you? 16 What was the time gap between those two? 17 GENERAL MBOMBO: Though I'm not sure, Mr 18 Chair, I had turned around and headed in the direction of 19 Lonmin. I think it was not long, that long. It was not 20 that long, but I'm not sure – 21 CHAIRPERSON: What do you mean long? Do 22 you mean five minutes, 10 minutes, quarter of an hour? 23 What sort of time gap was there, time interval? 24 GENERAL MBOMBO: Though I'm not sure, it 25 could have been 10 minutes.</p>

<p style="text-align: right;">Page 21453</p> <p>1 CHAIRPERSON: Thank you.</p> <p>2 MR BUDLENDER SC: General, I'm not asking</p> <p>3 you now about what General Mpembe told you or what he</p> <p>4 didn't tell you. I'm asking you about, putting to you what</p> <p>5 General Mpembe said, told this Commission under oath, and</p> <p>6 I'm saying that he, putting to you that he told this</p> <p>7 Commission under oath that on the scene Vermaak said to</p> <p>8 him, "There's been a threat to your life, you must get into</p> <p>9 the Nyala immediately." Can you see that?</p> <p>10 MR SEMENYA SC: No, Chair, it's not that.</p> <p>11 General Mpembe, at least as far as this excerpt goes, if we</p> <p>12 accept that the report that Vermaak makes to the</p> <p>13 Commissioner is that 'You are emotionally disturbed, I</p> <p>14 think you pose a threat,' he would equally say 'Get into</p> <p>15 the Nyala.' It's not because there's a threat to his life.</p> <p>16 So that logic does not follow.</p> <p>17 MR BUDLENDER SC: Chair, I don't know</p> <p>18 whether my learned friend and I are reading the same</p> <p>19 passage. Can I read the passage again? This is what</p> <p>20 General Mpembe told you under oath, Commissioners. He</p> <p>21 said, "I told her of the circumstances of that threat and</p> <p>22 how do I feel about the threat itself. As I've explained</p> <p>23 yesterday to say that in the first place Lieutenant Colonel</p> <p>24 Vermaak informed me. I didn't see any imminent threat.</p> <p>25 Chairperson, I went on to say that I did not even know who</p>	<p style="text-align: right;">Page 21455</p> <p>1 he didn't mention the threat. That's so, isn't it? That's</p> <p>2 your reason for doubting what he told the Commission</p> <p>3 because when he spoke to you on the telephone he didn't</p> <p>4 mention it and you would have expected him to have</p> <p>5 mentioned it if it was correct. Is that your evidence?</p> <p>6 GENERAL MBOMBO: If he had already known,</p> <p>7 Mr Chair –</p> <p>8 CHAIRPERSON: Alright, now let's analyse</p> <p>9 that. We know that from your evidence Lieutenant Colonel</p> <p>10 Vermaak telephoned you about 10 minutes after General</p> <p>11 Mpembe telephoned you. Is that right?</p> <p>12 GENERAL MBOMBO: That is correct, Mr</p> <p>13 Chair.</p> <p>14 CHAIRPERSON: Now it's possible, to put</p> <p>15 it no higher, that when General Mpembe telephoned you he</p> <p>16 hadn't yet been told by Colonel Vermaak to get into a Nyala</p> <p>17 and he hadn't been told by Colonel Vermaak that there had</p> <p>18 been a threat. That's possible, isn't it?</p> <p>19 GENERAL MBOMBO: Yes.</p> <p>20 CHAIRPERSON: In fact it's probable that</p> <p>21 he was only told to get into the Nyala, Mpembe only told to</p> <p>22 get into the Nyala after Vermaak had cleared it with you by</p> <p>23 speaking to you. Isn't that right?</p> <p>24 GENERAL MBOMBO: That could be the case,</p> <p>25 Mr Chair. That is why I'm saying General Mpembe did not</p>
<p style="text-align: right;">Page 21454</p> <p>1 was the attacker, and secondly Colonel Vermaak requested me</p> <p>2 in a manner that I should enter into the Nyala as quick as</p> <p>3 possible." But that's clearly all related to the threat.</p> <p>4 He's talking about the threat and he says, "You'd better</p> <p>5 get into the Nyala." What else can it mean?</p> <p>6 CHAIRPERSON: Of course he says</p> <p>7 "secondly," but perhaps I can resolve the difficulty by</p> <p>8 asking a few questions that I would like to ask before you</p> <p>9 carry on. Do I understand you to say, Provincial</p> <p>10 Commissioner, that you don't believe what General Mpembe</p> <p>11 said to this Commission because when he spoke to you on the</p> <p>12 telephone he didn't mention the threat? Is that the basis</p> <p>13 of your inability to, or your – yes, your inability to</p> <p>14 believe, or hesitancy about believing what General Mpembe</p> <p>15 said in the passage that's been put to you? Is that based</p> <p>16 on the fact that he never told you about it when he spoke</p> <p>17 to you on the telephone? Is that correct?</p> <p>18 GENERAL MBOMBO: I'm not saying so, Mr</p> <p>19 Chair. I'm not saying I don't believe him, Mr Chair,</p> <p>20 because he did not tell me that when he phoned me. He only</p> <p>21 mentioned that to me when we were at the JOC.</p> <p>22 CHAIRPERSON: In other words you're</p> <p>23 actually agreeing with what I put to you, that the reason</p> <p>24 that you have difficulty in believing what he told this</p> <p>25 Commission is because when he spoke to you on the telephone</p>	<p style="text-align: right;">Page 21456</p> <p>1 tell me, just as Vermaak did not tell me.</p> <p>2 CHAIRPERSON: Yes, you see but what's now</p> <p>3 disappeared is your basis for disbelieving Mpembe because</p> <p>4 if your basis for disbelieving Mpembe is he never told you</p> <p>5 over the telephone about it, and if it seems that the</p> <p>6 probabilities are that he hadn't been told himself by</p> <p>7 Vermaak about it when he spoke to you on the telephone,</p> <p>8 then your reason for disbelieving him falls away. Isn't</p> <p>9 that right?</p> <p>10 MR SEMENYA SC: Chair, I don't recall the</p> <p>11 witness saying "I disbelieved Mpembe." You kept putting</p> <p>12 that proposition to her, but it was not the witness's</p> <p>13 evidence.</p> <p>14 CHAIRPERSON: Yes, "disbelieve" is</p> <p>15 possible too strong. I did also put it in the alternative,</p> <p>16 as your hesitancy about believing him, which is – I did say</p> <p>17 that as well, but anyway, that's not the main point at</p> <p>18 issue. The main point at issue is you have difficulty –</p> <p>19 put it this way; you have difficulty in believing what</p> <p>20 General Mpembe says on this point. That's so, isn't it?</p> <p>21 Whether you go so far as disbelieving him, which is a</p> <p>22 stronger thing, we don't have to enter into. You have</p> <p>23 difficulty in believing what he said and you said that that</p> <p>24 was based on the fact that when you spoke to him on the</p> <p>25 telephone he never mentioned the threat to you. I</p>

<p style="text-align: right;">Page 21457</p> <p>1 suggested to you that a perfectly plausible explanation for 2 that may well be that he himself only was told about the 3 threat round about the time when Colonel Vermaak telephoned 4 you, which is about 10 minutes later. Now if that's so, 5 then your reason for being hesitant about believing General 6 Mpembe's evidence on this point falls away. Now how do you 7 react to that?</p> <p>8 GENERAL MBOMBO: I do not dispute that 9 that could be the case, Mr Chair.</p> <p>10 CHAIRPERSON: Thank you.</p> <p>11 MR BUDLENDER SC: General, I now want to 12 move to another aspect, another matter related to the 13 events of the 13th of August, and in your evidence-in-chief 14 you have confirmed the evidence of General Mpembe that he 15 told you that what triggered the attack by the strikers on 16 the police was the throwing of teargas and a stun grenade 17 at them. You remember that?</p> <p>18 GENERAL MBOMBO: I remember, Mr Chair.</p> <p>19 MR BUDLENDER SC: Now I'd like you to go 20 to exhibit HHH40. Could you find that?</p> <p>21 GENERAL MBOMBO: I've found it, Mr Chair.</p> <p>22 MR BUDLENDER SC: That is the transcript 23 of the media briefing which you held at Marikana on the 24 morning of 16 July 2012. Correct?</p> <p>25 GENERAL MBOMBO: That is correct.</p>	<p style="text-align: right;">Page 21459</p> <p>1 the public and to the world at large of what happened does 2 not mention that the police threw teargas and a stun 3 grenade at the strikers. Is that correct?</p> <p>4 GENERAL MBOMBO: That is so, Mr Chair.</p> <p>5 MR BUDLENDER SC: It gives the impression 6 that immediately before the attack all the police were 7 doing was assisting the move by the strikers to the 8 settlement. Is that correct?</p> <p>9 GENERAL MBOMBO: That is correct, Mr 10 Chair.</p> <p>11 MR BUDLENDER SC: It gives the impression 12 that the strikers turned and attacked "all of a sudden" 13 without anything having been done by the SAPS to cause that 14 to happen. Is that correct?</p> <p>15 GENERAL MBOMBO: Because I could not be 16 able to give all those details, Mr Chair.</p> <p>17 MR BUDLENDER SC: But General, is it not 18 very significant and different; on the one hand an attack 19 which happens all of a sudden, out of the blue, with no 20 warning, and an attack which happens which is triggered by 21 action of the police, isn't there a fundamental difference 22 between those two?</p> <p>23 GENERAL MBOMBO: Mr Chair, I was not sure 24 that this was triggered by the action of the police.</p> <p>25 MR BUDLENDER SC: But are you now sure?</p>
<p style="text-align: right;">Page 21458</p> <p>1 MR BUDLENDER SC: Could you go to page 2 3 –</p> <p>3 CHAIRPERSON: I see there's a mistake on 4 the top of the first page. It says 16 July; it's obviously 5 16 August.</p> <p>6 MR BUDLENDER SC: 16 August. Could you 7 go to page 3? Perhaps you could – yes, go to page 3, start 8 at line 2. You're describing what was happening at the 9 railway line. You say, "The intention was still of 10 ensuring that we disarm them peacefully. We negotiated for 11 them to hand over their weapons and leave the area on the 12 basis [inaudible] that they were gathered in that area 13 illegally and it then became a contravention of section 4 14 of the Gatherings Act, and we indicated that to them 15 clearly. [Inaudible] reported to me they moved, they 16 showed interest of leaving, although they indicated that 17 they are not going to lay down their weapons and they were 18 leaving. Our cops were trying to assist the move. All of 19 a sudden they turned and advanced to the police. In that 20 advancement confrontation started and that's when we lost 21 two of our cops and three members of the public of those 22 members that were there, very unfortunate, very sadly." 23 You see that?</p> <p>24 GENERAL MBOMBO: I see it, Mr Chair.</p> <p>25 MR BUDLENDER SC: Now your explanation to</p>	<p style="text-align: right;">Page 21460</p> <p>1 [10:15] GENERAL MBOMBO: I'm still not sure.</p> <p>2 CHAIRPERSON: Did you know at the time 3 you gave this media briefing that teargas had been used by 4 the police and a stun grenade had been fired before the 5 group attacked the police? Did you know that?</p> <p>6 GENERAL MBOMBO: I knew, Mr Chair, that 7 teargas and stun grenade had been thrown by the police.</p> <p>8 CHAIRPERSON: Did you know that that was 9 before the strikers attacked, some of the strikers attacked 10 the police?</p> <p>11 GENERAL MBOMBO: That is so, Mr Chair.</p> <p>12 CHAIRPERSON: Looking at it now with 13 hindsight, would you think that, do you think that what you 14 said was possibly misleading, it was an incomplete account 15 of what had happened and it might have caused the public to 16 believe that this happened without any precipitating action 17 on the part of the police, that as you yourself said, all 18 of a sudden they turned and advanced? Is that not perhaps, 19 looked at with hindsight, an incomplete and possibly 20 misleading way of stating what happened?</p> <p>21 GENERAL MBOMBO: It could be like that, 22 Mr Chair.</p> <p>23 MR BUDLENDER SC: General, thank you for 24 that, but I'm afraid that doesn't go all the way. When I 25 started asking you about this you said, you agreed that you</p>

<p style="text-align: right;">Page 21461</p> <p>1 had confirmed in your evidence-in-chief that General Mpembe 2 told you that the spark which triggered the attack was the 3 throwing of the teargas and stun grenade. You remember 4 that? 5 GENERAL MBOMBO: That is correct, Mr 6 Chair. 7 MR BUDLENDER SC: You just said when you 8 were having difficulty explaining your media briefing that 9 you don't know whether that was the case. Would you like 10 that to be replayed to you, or do you agree that you said 11 that? 12 GENERAL MBOMBO: Just repeat the 13 question, Mr Chair. 14 MR BUDLENDER SC: You just said during 15 the questions which have just taken place that you don't 16 know, even now you don't know whether the teargas and the 17 stun grenade triggered the attack by some of the strikers. 18 You remember saying that? 19 GENERAL MBOMBO: I remember, Mr Chair. 20 MR BUDLENDER SC: Well, how do you 21 reconcile that with your evidence which you gave earlier 22 that that was the spark which caused the attack? The two 23 seem to me to be inconsistent. 24 GENERAL MBOMBO: Mr Chair, that's a 25 report I received from General Mpembe, but because I was</p>	<p style="text-align: right;">Page 21463</p> <p>1 GENERAL MBOMBO: Because I was expected 2 to tell the Commission what General Mpembe reported to me. 3 MR BUDLENDER SC: Did you believe it when 4 you gave that evidence to the Commission yesterday? 5 GENERAL MBOMBO: I cannot believe it 6 fully because I was not there, but I believe what General 7 Mpembe told me. 8 MR BUDLENDER SC: Yes, and you still 9 believe it? 10 GENERAL MBOMBO: That is correct, Mr 11 Chair. 12 MR BUDLENDER SC: So why didn't you tell 13 that to the media? 14 GENERAL MBOMBO: Repeat the question, 15 please. 16 MR BUDLENDER SC: You've always believed 17 that this was the cause and you still believe it. So why 18 didn't you tell the media that? 19 GENERAL MBOMBO: Mr Chair, I believed it 20 as a report from General Mpembe, but I did not fully 21 believe in it. 22 CHAIRPERSON: What reason did you have 23 for not believing what General Mpembe told you on that 24 issue? 25 GENERAL MBOMBO: I did not hear the</p>
<p style="text-align: right;">Page 21462</p> <p>1 not there I cannot be sure that was the cause of this 2 attack, this is what triggered the attack. 3 MR BUDLENDER SC: General, do you believe 4 that what triggered the attack was the throwing of teargas 5 and the stun grenade? 6 GENERAL MBOMBO: I'm not sure, Mr Chair. 7 MR BUDLENDER SC: I'm not asking you 8 whether you're sure. I'm asking you what you believe. 9 General Mpembe has said that under oath. Do you believe 10 what he says? 11 GENERAL MBOMBO: Because I was not there, 12 Mr Chair, I will not know all the details of what was 13 happening there. That is why it is difficult for me to 14 believe in that. 15 MR BUDLENDER SC: General, I don't want 16 to play games. You said in your evidence-in-chief that the 17 attack was triggered by the throwing of teargas and a stun 18 grenade. Did you believe it when you said that? 19 MR SEMENYA SC: As reported to her. 20 MR BUDLENDER SC: As reported to you. 21 Did you believe it when you said that? 22 GENERAL MBOMBO: I believed it when it 23 was reported to me. 24 MR BUDLENDER SC: And did you believe it 25 when you gave that evidence to the Commission yesterday?</p>	<p style="text-align: right;">Page 21464</p> <p>1 question, Mr Chair. 2 CHAIRPERSON: Well, perhaps I should 3 rephrase the question. What reason do you have for 4 hesitating to believe or disbelieving, whichever of the two 5 you prefer, what General Mpembe told you on that particular 6 issue? 7 GENERAL MBOMBO: Mr Chair, I do not have 8 all the reports and the details except for when he says 9 teargas and stun grenades were thrown. 10 CHAIRPERSON: He is one of your deputies, 11 deputy commissioner, one of the deputy commissioners for 12 the province of which you are the Provincial Commissioner. 13 GENERAL MBOMBO: That is correct. 14 CHAIRPERSON: And he's been in that 15 position that he presently holds for about 10 years, I 16 think. Is that right? 17 GENERAL MBOMBO: Over 10 years, yes. 18 CHAIRPERSON: When you got there as 19 Provincial Commissioner he was already there as a deputy 20 provincial commissioner. Is that right? 21 GENERAL MBOMBO: That is correct. 22 CHAIRPERSON: Have you had any reason 23 during that period of your association with him, which he's 24 worked as one of your deputies, for disbelieving a report 25 that he makes to you about an incident of this kind?</p>

<p style="text-align: right;">Page 21465</p> <p>1 GENERAL MBOMBO: Mr Chair, when you are 2 not at the scene you accept what you are told, or what is 3 given to you. 4 CHAIRPERSON: You haven't answered my 5 question. Would you like me to repeat it? The question 6 was in all the period that you've been associated with 7 General Mpembe while he's been a deputy provincial 8 commissioner in the province of which you are the 9 Provincial Commissioner, have you had any reason to 10 disbelieve or to doubt the accuracy of any report that he's 11 made to you about an operation or anything of that kind 12 that he's been involved in? 13 GENERAL MBOMBO: That is not so, Mr 14 Chair. 15 CHAIRPERSON: You haven't had a reason in 16 that whole period? 17 GENERAL MBOMBO: Yes. 18 CHAIRPERSON: Now why suddenly now in 19 connection with this matter do you say that you don't 20 believe, or put it differently, you are hesitant to believe 21 a report he made to you about what happened on the 13th of 22 August when teargas was used and a stun grenade was fired? 23 Why is this different from any other report you've ever 24 received from him during the whole period of your 25 association with him?</p>	<p style="text-align: right;">Page 21467</p> <p>1 you didn't mention it to the media that you say oh, maybe 2 it wasn't true. 3 GENERAL MBOMBO: As I'm saying, Mr Chair, 4 that no matter how much I believed it, for me to talk about 5 it, tell the nation about it, I did not have all the facts 6 because I was not there. 7 MR BUDLENDER SC: Alright, let's test 8 that, General. Stay on page 3. This is what you said to 9 the media briefing. "We negotiated with them to hand over 10 their weapons and leave the area." Did you know that 11 personally, or did somebody tell you that? 12 GENERAL MBOMBO: Which line are you 13 referring to? 14 MR BUDLENDER SC: Line 3. "We negotiated 15 for them to hand over their weapons and leave the area." 16 Now do you know that personally or did someone tell you 17 that? 18 GENERAL MBOMBO: I saw that on the 19 footage. 20 MR BUDLENDER SC: You saw it when? 21 GENERAL MBOMBO: It was not on Monday. 22 It was not night of the Monday. I just can't remember the 23 day. 24 MR BUDLENDER SC: Well, was it during 25 that week? Was it before the Friday?</p>
<p style="text-align: right;">Page 21466</p> <p>1 GENERAL MBOMBO: It concerns this media 2 briefing of mine, Mr Chair. At the time when I made the 3 briefing, although I had General Mpembe's report I did not 4 have all the details and particulars to be able to tell the 5 whole world about it. 6 COMMISSIONER HEMRAJ: General, apart from 7 General Mpembe, did you hear from other officers, other 8 policemen who were on the scene, as to the sequence of 9 events that took place on the 13th? 10 GENERAL MBOMBO: Only those who were 11 assisting him in giving the report when we were at the JOC. 12 COMMISSIONER HEMRAJ: And you got a 13 similar version of what had happened on the 13th from the 14 others as well? 15 GENERAL MBOMBO: That is correct, Mr 16 Chair. 17 MR BUDLENDER SC: I just have to put it 18 to you, General - I don't want to go over this issue 19 endlessly – that it's clear from your evidence today and 20 it's clear from your evidence yesterday that at the time 21 you believed this throwing of the teargas and the stun 22 grenade was the cause, or the precipitating cause of the 23 attack, you believed it when you were told it. You 24 believed it when you gave evidence yesterday. You believed 25 it at all material times, but it's only now that I ask why</p>	<p style="text-align: right;">Page 21468</p> <p>1 GENERAL MBOMBO: It's possible it was in 2 that week. 3 MR BUDLENDER SC: But you don't know? 4 GENERAL MBOMBO: I can't hear. 5 MR BUDLENDER SC: You don't know whether 6 it was during that week or whether it was later? 7 GENERAL MBOMBO: No, it was not a week 8 later. It must have been that week. 9 CHAIRPERSON: But you say you saw the 10 footage then before you made your media statement on the 11 Thursday, the 16th? Is that correct? You'd seen that 12 footage relating to what happened near the railway line and 13 so on, on the 13th, you saw that footage at some stage 14 before you made the media statement. Is that what you're 15 saying is the position? 16 GENERAL MBOMBO: That's what I'm saying, 17 Mr Chair. 18 CHAIRPERSON: I see, thank you. May I 19 ask you this question before Mr Budlender continues? The 20 remarks that you've made, were you speaking from notes or 21 did you speak entirely off the cuff? 22 GENERAL MBOMBO: Unfortunately, Mr Chair, 23 I spoke from my mouth. 24 CHAIRPERSON: Sorry, you spoke? 25 GENERAL MBOMBO: From my mouth.</p>

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1 CHAIRPERSON: No, I know that, but we all
 2 speak from our mouths. I don't know anyone who speaks
 3 otherwise than from his mouth. What I want to know is were
 4 you speaking from notes, or was it an ex tempore speech, a
 5 speech that you made off the cuff?
 6 GENERAL MBOMBO: I apologise for the
 7 first answer, Mr Chair. I was talking not from a written
 8 document.
 9 CHAIRPERSON: Thank you. In other words
 10 it was an ex tempore address; you were speaking off the
 11 cuff, as we would say, without speaking from prepared notes
 12 of any kind?
 13 GENERAL MBOMBO: That is correct, Mr
 14 Chair.
 15 CHAIRPERSON: Thank you.
 16 MR BUDLENDER SC: General, I don't want
 17 to waste time on this, but can I just show you two things;
 18 can you look at page 2 of that transcript HHH40, line 13?
 19 Do you have it? Line 13.
 20 GENERAL MBOMBO: Yes.
 21 MR BUDLENDER SC: I'll read it to you.
 22 "When this incident started to happen last week Friday by a
 23 march to here we were some on site and our few cops came to
 24 try and defuse the situation, which fortunately they did
 25 without any incident or injury." Do you have personal

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1 knowledge of that?
 2 GENERAL MBOMBO: Come again.
 3 MR BUDLENDER SC: Do you have personal
 4 knowledge of that passage which I've just read to you?
 5 GENERAL MBOMBO: That's a report that was
 6 given to me.
 7 MR BUDLENDER SC: And you told that to
 8 the media because that was what was reported to you and
 9 that was what you believed.
 10 GENERAL MBOMBO: That is correct.
 11 MR BUDLENDER SC: Can you go to page 4,
 12 line 15 – line 18, you see line 18?
 13 GENERAL MBOMBO: Yes.
 14 MR BUDLENDER SC: You say, "In total the
 15 number of people that out of this incident happened to lose
 16 their lives, including our cops, is 10." Did you have
 17 personal knowledge of that?
 18 GENERAL MBOMBO: No, Mr Chair, I was told
 19 about it.
 20 MR BUDLENDER SC: That was a report which
 21 you received and which you believed?
 22 GENERAL MBOMBO: That is correct.
 23 MR BUDLENDER SC: Now you were also given
 24 a report, which you believed, that the throwing of teargas
 25 and stun grenade triggered the attack by the strikers. Why

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1 didn't you mention that to the media?
 2 GENERAL MBOMBO: I've already answered
 3 that question, Mr Chair.
 4 MR BUDLENDER SC: Yes, your answer was
 5 that you didn't have personal knowledge of it, but I'm just
 6 showing you that you told the media plenty of things you
 7 didn't have personal knowledge of.
 8 GENERAL MBOMBO: I do not have any other
 9 reason except to say it is not everything that I reported
 10 to the media that had happened.
 11 MR BUDLENDER SC: Alright, let's move on,
 12 General. Perhaps I should just put it to you, because you
 13 must have an opportunity to deal with it, that we're
 14 unfortunately going to have to argue to the Commission at
 15 the end of the hearing that the media briefing which you
 16 gave to the public on the 16th was misleading in a material
 17 and serious respect. Would you like to comment on that?
 18 CHAIRPERSON: The material and serious
 19 respect being the one you're dealing with, namely –
 20 MR BUDLENDER SC: [Microphone off,
 21 inaudible].
 22 CHAIRPERSON: Yes.
 23 MR BUDLENDER SC: Would you like to
 24 respond, say anything about that?
 25 GENERAL MBOMBO: As far as I'm concerned

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1 not everything is misleading.
 2 MR BUDLENDER SC: Alright, thank you.
 3 Then I now want to turn to another topic, which is the
 4 meeting which you had with the Lonmin management on the 14th
 5 of August. You know that we have the transcript of that
 6 meeting, which is JJJ192.
 7 GENERAL MBOMBO: I found it, Mr Chair.
 8 MR BUDLENDER SC: Thank you. Chair, I'm
 9 reminded by a colleague to whose seniority I defer, that I
 10 should point out that it's 10:30. The Commission might
 11 want to take the tea adjournment now?
 12 CHAIRPERSON: We started at quarter past
 13 9, so I was proposing to go on till quarter to 11, but if
 14 you –
 15 MR BUDLENDER SC: That's fine.
 16 CHAIRPERSON: If anyone has a reason why
 17 they'd like me to adjourn at 10:30 – maybe if you're moving
 18 on to a new point, it may be a suitable stage. I normally
 19 defer to counsel who's busy cross-examining or leading a
 20 witness in matters of this kind. So if you want me to take
 21 an adjournment now to marshal your notes and ideas, unless
 22 your speaking, asking these questions off the cuff, if you
 23 want to take the adjournment now I will do that.
 24 MR BUDLENDER SC: Perhaps I should just
 25 introduce the topic, Chair, and then before I go into the

<p style="text-align: right;">Page 21473</p> <p>1 specifics we could take the adjournment. General, as I 2 read that transcript and also your explanation in your 3 evidence, the purpose of the meeting was that you wanted to 4 find out what actions Lonmin were planning to take because 5 that, what they did would impact on what the police did, 6 and what the police did would impact on what they did. Is 7 that right? 8 GENERAL MBOMBO: That is correct, Mr 9 Chair. 10 MR BUDLENDER SC: If I may say so, very 11 sensibly you wanted to ensure that you acted in a manner 12 that was consistent, not a manner that was inconsistent. 13 GENERAL MBOMBO: I wanted to work and 14 maintain peace and order in such a way that there was 15 something else that is assisting us in doing that, or in 16 achieving that. 17 MR BUDLENDER SC: Yes, I think that's a 18 fair way of putting it, if I may say, that what you were 19 doing should assist, you should be mutually supportive; you 20 shouldn't act in a way which was contradictory to each 21 other because you had a shared problem. 22 GENERAL MBOMBO: That is correct, Mr 23 Chair. 24 MR BUDLENDER SC: And I want to say 25 immediately, I don't criticise you for that at all.</p>	<p style="text-align: right;">Page 21475</p> <p>1 MR BUDLENDER SC: Well, they also said it 2 at the meeting, but it doesn't matter. They told you that 3 AMCU was behind the strike and you believed that that was 4 the position. Is that correct? 5 GENERAL MBOMBO: I heard them say so, Mr 6 Chair. 7 MR BUDLENDER SC: And you assumed that 8 they knew what they were talking about and that it must be 9 true. 10 GENERAL MBOMBO: Because that is what 11 they said. 12 MR BUDLENDER SC: Now I'm going to deal 13 with six different aspects of what was said at that 14 meeting, or what happened at that meeting. Let me come to 15 the first one. If you go to page 1 we'll see at line 24 – 16 25, I beg your pardon, there's an interruption by a phone 17 call and then it quotes you, SAPS Commissioner is you, as 18 we've established, and you say, "General, yes, General, I'm 19 still with the generals. I was just going to call you and 20 give you a run-down feedback, but can I, can you give me an 21 hour, General, because we are moving in and maybe after an 22 hour I can give you a feedback in terms of what will have 23 transpired? No, it is still quiet, but we just got 24 information just now that there are once again mobilising 25 at another side whilst in that mountain. I was there,</p>
<p style="text-align: right;">Page 21474</p> <p>1 CHAIRPERSON: That was a sensible 2 approach, obviously. 3 MR BUDLENDER SC: Ja. Ja. 4 CHAIRPERSON: We'll now take the tea 5 adjournment. 6 [COMMISSION ADJOURNS COMMISSION RESUMES] 7 [11:05] CHAIRPERSON: The Commission resumes. 8 Provincial Commissioner, you're still under oath. 9 MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o. 10 CHAIRPERSON: Mr Budlender, before you 11 start, we have to adjourn this afternoon at 12:15, so we'll 12 be continuing until 12:15, which means we won't take a 13 comfort break and then we'll carry on straight until 12:15, 14 and then round about 12:15 we will adjourn until Tuesday 15 morning at 9 o'clock. 16 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.): 17 [Microphone off, inaudible]. Provincial Commissioner, you 18 have JJJ192 in front of you? 19 GENERAL MBOMBO: Correct, Mr Chair. 20 MR BUDLENDER SC: Now before I read 21 anything, there's one thing I just want to clarify. At 22 that meeting Lonmin told you that AMCU was behind the 23 strike. Is that correct? 24 GENERAL MBOMBO: Yes, that is what they 25 said, but this was not at a meeting. It was not a meeting.</p>	<p style="text-align: right;">Page 21476</p> <p>1 there are about 800 to a thousand that are there. So we 2 were thinking that whilst there are that number we can 3 maybe" – and the word, I think we all agree, should be 4 circle – "circle them around, but they are once again 5 mobilising on the other side, they say the western side. 6 So we just want to observe that, but I'll come back to you 7 in an hour's time." You see that? 8 CHAIRPERSON: While we're busy with that, 9 Mr Semenya I take it you accept that "settle" should be 10 "circle"? 11 MR SEMENYA SC: I do, Chair. 12 CHAIRPERSON: Thank you. 13 MR BUDLENDER SC: So from that we can 14 learn – well firstly, that, General Mbombo, was a call from 15 the National Commissioner, was it not? 16 GENERAL MBOMBO: That is correct, Mr 17 Chair. 18 MR BUDLENDER SC: And from this 19 conversation we can see that you knew that at that time the 20 plan was to encircle the strikers, but you knew this could 21 only be done while the number of strikers was limited. Is 22 that correct? 23 GENERAL MBOMBO: That's what I was told, 24 Mr Chair. 25 MR BUDLENDER SC: And you estimated 800</p>

<p style="text-align: right;">Page 21477</p> <p>1 to a thousand might be possible. Now we also know from 2 this that the National Commissioner would have known the 3 same thing because you told her "We are planning to 4 encircle, but depends how many people are there." 5 GENERAL MBOMBO: I did not hear the 6 question, Mr Chair. 7 MR BUDLENDER SC: I'm sorry. We know 8 from the fact that you told her this, what I've just read, 9 that the National Commissioner was told by you, she didn't 10 know it already, that the plan was to encircle the 11 strikers, but it could only be done if there was a limited 12 number of strikers on the koppie. 13 GENERAL MBOMBO: According to that there, 14 that is correct. 15 MR BUDLENDER SC: Yes. Now you said, I 16 just want to clarify something in your evidence-in-chief. 17 You said that on – I'm sorry, this meeting was on the 14th 18 of August on the Tuesday and we believe it was in the 19 afternoon. Now you said in your evidence-in-chief that on 20 the 14th the plan was DDA. What did you mean by that? 21 GENERAL MBOMBO: According to the 22 explanations that was given to me a plan with encirclement 23 was mentioned, as I'm mentioning it in this transcript, but 24 at that time I was also given an explanation that they were 25 still weighing their options.</p>	<p style="text-align: right;">Page 21479</p> <p>1 you've clarified that. Now the second aspect I want to 2 deal with about that meeting, I'd like you to go to page 15 3 of the transcript. 4 GENERAL MBOMBO: I found it, Mr Chair. 5 MR BUDLENDER SC: And could you go to 6 line 10 and this is where you say the following, "That is 7 what I was saying, you know, the other key challenges that 8 all of these members that are here I have to pay them, so 9 how much am I going to cough out for all these days? I 10 mean I have to, I have given them now up until the weekend 11 if we cannot sort this thing, but my hope is that by 12 tomorrow the latest, or," and then it ends. Now what did 13 you mean when you said "I have given them now up until the 14 weekend"? 15 GENERAL MBOMBO: I meant that this 16 operation, I thought that we'd work on it until the 17 weekend, if by then we shall not have a solution. 18 MR BUDLENDER SC: Then what would happen 19 if by then you didn't have a solution? 20 GENERAL MBOMBO: If we did not have a 21 peaceful solution we would do policing as the Constitution 22 allows us. That is what we were trying to do, planning to 23 do until up the weekend. 24 MR BUDLENDER SC: Alright. Yes, I 25 understand that. That was your position on Tuesday.</p>
<p style="text-align: right;">Page 21478</p> <p>1 MR BUDLENDER SC: I understand that, but 2 when you said that the plan was DDA on that day, that 3 included encircling as one of the methods of dispersing, 4 disarming, and arresting the strikers. Is that correct? 5 GENERAL MBOMBO: They differ, as you 6 mention them. The first they tried to give me a report on 7 was that they encircled the koppie. Now the one you're 8 talking about, the DDA one, that's another option that they 9 mentioned after looking at it from various angles. 10 MR BUDLENDER SC: No, I understand, but 11 we are clear from what you said at that meeting and what 12 you've just confirmed in your evidence that you knew that 13 on the 14th the plan was to attempt to encircle if it could 14 be done at a time when there weren't so many strikers 15 present. 16 GENERAL MBOMBO: What I knew clearly was 17 that the plan would be the DDA plan. 18 MR BUDLENDER SC: But General, I don't 19 want to get involved in an argument with you. You told, 20 the plan you described to the National Commissioner was an 21 encirclement plan. 22 GENERAL MBOMBO: When I was talking to 23 her I explained it to her, but I also knew about the DDA. 24 MR BUDLENDER SC: That's fine. Alright, 25 now that's the first aspect I wanted to deal with. I think</p>	<p style="text-align: right;">Page 21480</p> <p>1 GENERAL MBOMBO: That is correct. 2 MR BUDLENDER SC: Did you tell General 3 Mpmembe that this was the deadline which you had in mind? 4 GENERAL MBOMBO: I did not discuss the 5 deadline issue with General Mpmembe, that I was giving him a 6 deadline. 7 MR BUDLENDER SC: Did you tell anybody 8 that what you had in mind was until the end of the week, 9 until the weekend? 10 GENERAL MBOMBO: No-one except the people 11 I was discussing it with. 12 MR BUDLENDER SC: And who were those? 13 GENERAL MBOMBO: The people at Lonmin, 14 people like Mr Mokwena. 15 MR BUDLENDER SC: Oh, I understand. You 16 mean the people who were at that meeting? 17 GENERAL MBOMBO: Yes. 18 MR BUDLENDER SC: But at that time you 19 had not told anybody else that this was the deadline you 20 had in mind? 21 GENERAL MBOMBO: I did not do it like 22 that. 23 MR BUDLENDER SC: Don't you think it was 24 a matter which the police leadership on the ground should 25 have known about, that this was what you had in mind?</p>

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1 GENERAL MBOMBO: We're not compelled that
2 it should be like that. It all depended on the situations
3 that we encountered.
4 MR BUDLENDER SC: So you had a deadline
5 in mind which you told to the Lonmin management, but you
6 never disclosed to any of your police commanders or
7 generals?
8 GENERAL MBOMBO: Because I was trying to
9 make the people from Lonmin to hurry up, try and get
10 solutions.
11 MR BUDLENDER SC: Alright, it looks like
12 one of the Commissioners wants to ask a question.
13 CHAIRPERSON: Are you moving on to the
14 next point?
15 MR BUDLENDER SC: I'm moving on to the
16 next aspect.
17 CHAIRPERSON: Right, before you move on
18 to the next point, I don't understand the answer you've
19 given now. You say when you said "I've given them now up
20 until the weekend," by "them" you meant Lonmin. I don't
21 understand that. You were talking to one of the top people
22 at Lonmin. Wouldn't you have said "I've given you" – you
23 wouldn't have said them if you were talking to Lonmin.
24 That can't be right, surely?
25 GENERAL MBOMBO: Mr Chair, "them" refers

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1 to the police.
2 CHAIRPERSON: That's what I thought. So
3 when you said "I've given them until the weekend," you
4 meant the police, and which members of the police did you
5 tell "I've given you now until the weekend"?
6 GENERAL MBOMBO: I did not tell a single
7 one, not a single one.
8 CHAIRPERSON: How could you have given
9 them something if you didn't tell them you had done so?
10 GENERAL MBOMBO: It was my plan in trying
11 to appeal to the Lonmin people to hurry and find a
12 solution.
13 CHAIRPERSON: Initially you said when you
14 were asked to explain this statement "I've given them," you
15 said by "them" you meant Lonmin, but that can't be right,
16 can it?
17 MR SEMENYA SC: No, Chair –
18 CHAIRPERSON: Because you're talking to
19 Mr Mokwena of Lonmin.
20 MR SEMENYA SC: Chair, with respect,
21 you're saying it for the second time, but the witness did
22 not say she was referring to Lonmin.
23 CHAIRPERSON: Am I wrong on that?
24 MR BUDLENDER SC: I think that's correct,
25 Chair. I think initially when I raised it she said it was,

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1 the deadline was the deadline for the police.
2 CHAIRPERSON: I see. Well, then I
3 withdraw the question. It's based on a misunderstanding.
4 COMMISSIONER HEMRAJ: General, can I just
5 ask you what was the thinking behind the deadline that you
6 had in your mind for the weekend? What was the reason for
7 that?
8 GENERAL MBOMBO: Mostly, Chair, my wish
9 was that all of us should work hard in finding a solution
10 because I thought it was important that we should prevent
11 any further loss of life.
12 COMMISSIONER HEMRAJ: And that would
13 include all the negotiations that were taking place,
14 including the undertaking given by Mr Mathunjwa the
15 previous day?
16 GENERAL MBOMBO: It was still on Tuesday,
17 Mr Chair, on this day when we were trying to get all the
18 plans and strategies.
19 COMMISSIONER HEMRAJ: Thank you.
20 MR BUDLENDER SC: Just by the way,
21 General Mbombo, do you know the principle of situational
22 appropriateness? Have you heard of that principle?
23 GENERAL MBOMBO: I understand.
24 MR BUDLENDER SC: And what is that
25 principle?

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1 GENERAL MBOMBO: It means if our officers
2 are working they are controlled by the situation facing
3 them at that time. The decisions they take would then
4 depend on the situation they're facing and the environment
5 presenting itself.
6 MR BUDLENDER SC: Yes, and sometimes they
7 may have to tolerate a situation which is unlawful because
8 the context and the environment require them to do so?
9 GENERAL MBOMBO: That is correct, Mr
10 Chair.
11 MR BUDLENDER SC: Thank you. Now I'd
12 like to move to the third aspect of this meeting. Can we
13 go to – it's again JJJ192, page 8, and can we start on line
14 8. You say, "and failing which these are the consequences
15 you should know of so that as and when I'm moving it
16 tomorrow, because tomorrow our plan is very tight and
17 very" –
18 GENERAL MBOMBO: I'm sorry, Mr Chair. It
19 starts with the page?
20 MR BUDLENDER SC: Page 8.
21 GENERAL MBOMBO: Line?
22 MR BUDLENDER SC: I've got the wrong
23 page. I beg your pardon. No wonder I couldn't find it.
24 Page 8, line 15.
25 GENERAL MBOMBO: Alright.

<p style="text-align: right;">Page 21485</p> <p>1 MR BUDLENDER SC: I'm sorry –</p> <p>2 CHAIRPERSON: Have you got the line</p> <p>3 beginning, "You see, I want us to remember"? That's 15, is</p> <p>4 it?</p> <p>5 MR BUDLENDER SC: Now I'm afraid I'm</p> <p>6 misleading the witness and the Commission. I've got the</p> <p>7 wrong reference in my notes. I'll come back to that in due</p> <p>8 course. Oh, here we are. Could you go to page 6, line 8?</p> <p>9 I gave you the wrong page number, my apologies.</p> <p>10 CHAIRPERSON: [Microphone off,</p> <p>11 inaudible].</p> <p>12 MR BUDLENDER SC: Failing which.</p> <p>13 CHAIRPERSON: - "and failing which these</p> <p>14 are the consequences."</p> <p>15 MR BUDLENDER SC: Yes, that was what I</p> <p>16 was reading, having given the wrong reference. You say,</p> <p>17 Provincial Commissioner, "and failing which these are the</p> <p>18 consequences you should know of so that as and when I'm</p> <p>19 moving it tomorrow, because tomorrow our plan is very tight</p> <p>20 and very, you know we are not going to bed tomorrow. But I</p> <p>21 said let us speak now because remember we are tied up by</p> <p>22 these new amendments in our law that says that you should,</p> <p>23 we should not shoot, we should not do this. You know these</p> <p>24 things, you know from [it should be Tatane's] incident and</p> <p>25 all that, so I said to them if, and once again the other</p>	<p style="text-align: right;">Page 21487</p> <p>1 GENERAL MBOMBO: Can you repeat the</p> <p>2 question, please, Mr Chair?</p> <p>3 MR BUDLENDER SC: What you agreed with</p> <p>4 Lonmin at that meeting on the Tuesday was that early the</p> <p>5 next morning they would issue an ultimatum to the strikers</p> <p>6 to return to work and if that didn't work, you would then</p> <p>7 move in and remove the strikers from the koppie on the</p> <p>8 Wednesday.</p> <p>9 [11:24] GENERAL MBOMBO: That is not correct, Mr</p> <p>10 Chair.</p> <p>11 MR BUDLENDER SC: Why is it not correct?</p> <p>12 GENERAL MBOMBO: What I was trying to</p> <p>13 explain there it was that they should send their pamphlets</p> <p>14 in the morning so that if there were things that the</p> <p>15 workers did not agree with they would then have enough</p> <p>16 members to try and solve this if the workers had a problem</p> <p>17 with it.</p> <p>18 MR BUDLENDER SC: I'm not sure I</p> <p>19 understand that. Let's take it step by step. It was</p> <p>20 agreed that the management would issue pamphlets to the</p> <p>21 strikers early the next morning giving them an ultimatum to</p> <p>22 return to work.</p> <p>23 GENERAL MBOMBO: That is correct, Mr</p> <p>24 Chair.</p> <p>25 MR BUDLENDER SC: And as things stood on</p>
<p style="text-align: right;">Page 21486</p> <p>1 thing why I delayed them, remember what was happening</p> <p>2 yesterday, it was annoying to the cops. If we could have</p> <p>3 sent them there," and Mr Mokwena says, "Emotions are high."</p> <p>4 And then you say, "Emotions are very high. Whatever</p> <p>5 instruction you will have given, but because of the</p> <p>6 emotions," and Mr Mokwena says, "They would have forgotten</p> <p>7 about the instructions, yes." And you say, "They will have</p> <p>8 forgotten about the instruction and I do not want a</p> <p>9 situation where 20 people will be dead," and what you were</p> <p>10 really referring to there was this was the day after two</p> <p>11 members of the South African Police Service had been killed</p> <p>12 and the emotions amongst the members of the SAPS were very</p> <p>13 high.</p> <p>14 GENERAL MBOMBO: That's what I'm saying,</p> <p>15 Mr Chair.</p> <p>16 MR BUDLENDER SC: And at that meeting you</p> <p>17 told the Lonmin management that your plan was to move in</p> <p>18 the following day, on the Wednesday. Is that correct?</p> <p>19 GENERAL MBOMBO: That is correct.</p> <p>20 MR BUDLENDER SC: And what you agreed</p> <p>21 with Lonmin at that meeting was that they would issue an</p> <p>22 ultimatum early the next morning for the workers to return</p> <p>23 to work and then you would, if they didn't leave you would</p> <p>24 move in and remove the workers, the strikers from the</p> <p>25 koppie. Is that correct?</p>	<p style="text-align: right;">Page 21488</p> <p>1 Tuesday your plan was that if the strikers did not leave</p> <p>2 peacefully or voluntarily the police would move in on the</p> <p>3 Wednesday. Is that correct?</p> <p>4 GENERAL MBOMBO: Our going to the koppie</p> <p>5 on Wednesday, our going there and implementing our plan</p> <p>6 would not depend on the pamphlets of Lonmin.</p> <p>7 MR BUDLENDER SC: No I understand that.</p> <p>8 All I'm saying is that at that stage your plan was</p> <p>9 Wednesday you would move in and carry out a police</p> <p>10 operation if the strikers did not leave or hand over their</p> <p>11 weapons.</p> <p>12 GENERAL MBOMBO: That is correct. That's</p> <p>13 what we had prepared to do.</p> <p>14 MR BUDLENDER SC: How high do you think</p> <p>15 the emotions would have been on Wednesday if the strikers</p> <p>16 had pamphlets rained down on them by helicopter or by</p> <p>17 aeroplane early in the hours of morning and the police then</p> <p>18 moved in on the Wednesday? How high do you think the</p> <p>19 emotions would have been?</p> <p>20 GENERAL MBOMBO: We would have assessed</p> <p>21 the situation, Mr Chair.</p> <p>22 MR BUDLENDER SC: All right, can we go</p> <p>23 then to the fourth aspect? Now I want to take you to your</p> <p>24 expandable, consolidated statements and just remind you of</p> <p>25 the passage which we read a bit earlier this morning. So</p>

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1 it's LLL1, paragraph 27. Do you have it?
 2 GENERAL MBOMBO: Yes.
 3 MR BUDLENDER SC: Let's read it again.
 4 You say "during the briefing" now this is at this meeting
 5 with – no this is at your meeting on the 13th of August.
 6 "During the briefing it became apparent to me that part of
 7 the problem was Lonmin negotiating salary allowances with a
 8 particular group of employees outside of their bargaining
 9 structures." And you've explained earlier this morning
 10 that you were referring to the discussions they had with
 11 the rock drill operators outside the bargaining structures.
 12 Correct?
 13 GENERAL MBOMBO: As they reported to us,
 14 yes.
 15 MR BUDLENDER SC: And at the meeting on
 16 the Tuesday Lonmin explained to you that they had a
 17 collective agreement with the NUM which was enforced until
 18 October 2013 and they said they told you that the NUM was
 19 the recognised union for collective bargaining. Is that
 20 correct?
 21 GENERAL MBOMBO: That is what they told
 22 us in our meeting on Monday, Mr Chair.
 23 MR BUDLENDER SC: On the Tuesday, this
 24 was at the meeting on the Tuesday, General.
 25 GENERAL MBOMBO: You can show me, Mr

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1 Chair, in the transcript, but according to my recollection
 2 it was on Monday when we spoke about NUM and their
 3 bargains.
 4 MR BUDLENDER SC: I'm afraid I don't have
 5 the passage, but I don't think anything turns on that for
 6 the moment. I'll find it over the weekend and show you on
 7 Tuesday. But in any event they told you, it doesn't really
 8 matter whether they told you on the Monday or the Tuesday.
 9 GENERAL MBOMBO: Yes.
 10 MR BUDLENDER SC: Now I've read the
 11 transcript of JJJ192 and this was a meeting you had with
 12 Lonmin management for probably 30 or 45 minutes. Would
 13 that be a fair estimate?
 14 GENERAL MBOMBO: I'm not sure, Mr Chair.
 15 MR BUDLENDER SC: And at that meeting you
 16 were discussing what they were going to do, what they
 17 should do and what you were going to do and what you should
 18 do.
 19 GENERAL MBOMBO: That is correct, Mr
 20 Chair.
 21 MR BUDLENDER SC: Now I've read that
 22 transcript carefully and I don't see anything in it which
 23 says that you said to them they should negotiate outside
 24 the bargaining structures. Did you ever say to them you
 25 must go and negotiate outside the bargaining structures?

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1 GENERAL MBOMBO: I did not say so, Mr
 2 Chair.
 3 MR BUDLENDER SC: In fact your view was
 4 that that was one of the causes of the problem that had
 5 happened.
 6 GENERAL MBOMBO: That is correct.
 7 MR BUDLENDER SC: I found the passage.
 8 Let's go to page 4, line 2. You see at line 2 Mr Mokwena
 9 says "and we say we are not going to talk wages because
 10 there is no reason for us to open wages." And then someone
 11 from Lonmin says "and by the way with AMCU we do not have
 12 any collective bargaining arrangements" and the Mr Mokwena
 13 says " we do not have anything, so we avoid legitimising
 14 illegal behaviour, that is our position." Do you see that?
 15 GENERAL MBOMBO: I see that.
 16 MR BUDLENDER SC: You didn't express any
 17 disagreement with them and say but I think you should go
 18 and negotiate with the strikers?
 19 GENERAL MBOMBO: The assistance I wanted
 20 from Lonmin, Mr Chair, was not wholly dependant on them
 21 negotiating about wages. They could have approached the
 22 workers, talked, explained to them their policy and how
 23 they work. We were expecting any - in terms of their
 24 authority and how they work.
 25 MR BUDLENDER SC: Did you, at any stage

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1 in that meeting, say to the Lonmin management I think you
 2 should talk to and communicate with your workers?
 3 GENERAL MBOMBO: I said so, Mr Chair, in
 4 the transcript –
 5 MR BUDLENDER SC: Let me show you the
 6 passages I found and then you can tell me if there are any
 7 others. Yes let's do it that way, it may shorten things.
 8 Let's go to page 2, I'm sorry, well let me rather ask you
 9 one more question. Hold on one moment. Let me put it this
 10 way to you, try to shorten it. Lonmin told you that they
 11 were planning to communicate with their workers by issuing
 12 an ultimatum by way of pamphlets they would drop from an
 13 aeroplane or a helicopter. Do you remember that?
 14 GENERAL MBOMBO: After I had requested
 15 them, Mr Chair, I remember.
 16 CHAIRPERSON: The ultimatum is referred
 17 to in page 3, third line.
 18 MR BUDLENDER SC: Did you ever encourage
 19 or say anything to the Lonmin management at that meeting
 20 which said they should have any other communication with
 21 their workers?
 22 GENERAL MBOMBO: It was important, Mr
 23 Chair, for Lonmin to know that I said the previous day that
 24 we agreed we would all get assistance. It was not
 25 necessary for me to put words in their mouth.

<p style="text-align: right;">Page 21493</p> <p>1 MR BUDLENDER SC: I want to say to you 2 that the transcript of your meeting on the 14th shows that 3 there was only one matter in respect of which they planned 4 to communicate with the strikers and which you apparently 5 supported and that was to give them an ultimatum to return 6 to work. Do you disagree with that? 7 GENERAL MBOMBO: That is one of the 8 things they said they were thinking of doing, I had no 9 reason not to support it. 10 MR BUDLENDER SC: All right well can I 11 give you – we've all got homework for the weekend, can I 12 give you a bit of homework for the weekend? Could you read 13 the transcript and you can tell us when we get together 14 again on Tuesday whether you find anything in the 15 transcript in which you encouraged Lonmin to communicate 16 with their workers other than through the ultimatum? Do 17 you get my question? 18 GENERAL MBOMBO: I read the transcript, 19 Mr Chair. 20 MR BUDLENDER SC: And did you see 21 anything there in which you encouraged them to communicate 22 with their workers other than through the ultimatum? 23 GENERAL MBOMBO: It is true that I did 24 not mention it to them but the gist of what I said to them 25 was that every company they had the right to use whatever</p>	<p style="text-align: right;">Page 21495</p> <p>1 read that. This is what the SAPS representatives told the 2 Commission at the opening. "You'll hear evidence that at 3 various stages the police service tried to encourage mine 4 management and labour representatives to engage in peaceful 5 negotiations without involving itself in labour disputes. 6 Specifically the police service tried to persuade AMCU and 7 NUM to address differences and tensions between the two 8 unions." Now this is the part that I wanted you to focus 9 on. "Senior officers also made efforts to get Lonmin 10 management to address workers, but management's constant 11 refrain was that it was not prepared to negotiate outside 12 collective bargaining structures." Now who were the senior 13 police officers who made efforts to get Lonmin management 14 to address workers? Are you aware of any? 15 GENERAL MBOMBO: If I remember correctly 16 when General Mpembe testified he explained that when they 17 had a meeting on Wednesday his efforts were that whilst the 18 unions were trying on their side, the management was also 19 present in that meeting, they also had to try and do 20 whatever they could. 21 MR BUDLENDER SC: What I'm asking, 22 perhaps I should ask my question more specifically, do you 23 know of any senior police officer who attempted to get 24 Lonmin management to address workers and was told by 25 management no we won't because we will not negotiate</p>
<p style="text-align: right;">Page 21494</p> <p>1 avenues they had, authorities they had as the employer to 2 talk to their workers. 3 MR BUDLENDER SC: All right, let's move 4 on from that. Are you aware of any attempt which any 5 senior police officer made to persuade Lonmin management to 6 negotiate outside the established collective bargaining 7 structures? 8 GENERAL MBOMBO: General Mpembe testified 9 in the Commission that he also tried. 10 MR BUDLENDER SC: He tried to get them to 11 negotiate wages outside the bargaining structures? 12 GENERAL MBOMBO: Not to negotiate wages 13 outside the bargaining structures but to get help. 14 MR BUDLENDER SC: But your view was that 15 to negotiate outside the bargaining structures was likely 16 to cause more trouble. It had already caused trouble in 17 your view. 18 GENERAL MBOMBO: I know that, Mr Chair. 19 That is why I was saying to them they should find and use 20 whatever they can use as a company within their rights. 21 MR BUDLENDER SC: Can I ask you to look 22 at the opening statement of the South African Police at the 23 Commission? That's FFF9, FFF9, paragraph 22. 24 GENERAL MBOMBO: Paragraph 22? 25 MR BUDLENDER SC: Paragraph 22. Let's</p>	<p style="text-align: right;">Page 21496</p> <p>1 outside collective bargaining structures? 2 GENERAL MBOMBO: I'm not sure about them 3 being told to go and talk about salaries but I'm sure about 4 this, I'm sure that an appeal was made to them to go and 5 talk to their workers, whatever it is they would talk to 6 their workers about, and to which the workers would listen. 7 MR BUDLENDER SC: Are you aware of any 8 senior police senior police officer who encouraged Lonmin 9 to discuss and negotiate wages outside collective 10 bargaining structures? 11 GENERAL MBOMBO: I know about General 12 Mpembe reporting to me that there were such talks. 13 MR BUDLENDER SC: There were talks that 14 the police encouraged Lonmin to negotiate wages outside 15 collective bargaining structures. Are you saying that 16 General Mpembe said they had tried that? 17 GENERAL MBOMBO: And that they should not 18 just talk about wages, they should talk about those 19 people's – 20 MR SEMENYA SC: No, Mr Interpreter, I 21 think your interpretation is not accurate. Can the witness 22 repeat her answer? 23 GENERAL MBOMBO: General Mpembe spoke to 24 the Lonmin people and appealed to them to please use all 25 avenues to talk to their people to solve this matter.</p>

<p style="text-align: right;">Page 21497</p> <p>1 MR BUDLENDER SC: I understand that. 2 Were you told that General Mpembe encouraged Lonmin to 3 negotiate wages outside collective bargaining structures? 4 GENERAL MBOMBO: Mr Chair, we're not 5 going to tell the Lonmin people exactly what they should do 6 with their workers or say to their workers. 7 MR BUDLENDER SC: In fact, General, your 8 attitude was that Lonmin should not act in a manner which 9 undermines its existing agreement with the NUM and which 10 colluded with AMCU. Is that not correct? 11 GENERAL MBOMBO: That is not so, Mr 12 Chair. 13 MR BUDLENDER SC: Then let's read what 14 the record says. Let's go to JJJ192, page 8. 15 GENERAL MBOMBO: I found it. 16 [11:44] MR BUDLENDER SC: From line 15 and this 17 is what you said. "You see I want us to, you remember last 18 night, Abie, I raised this thing that when we were dealing 19 with Impala we had a lot of allegations and rumours and 20 some of these allegations they were pointing to the 21 management, that the management is colluding with AMCU, and 22 so on and so forth, and at some point, at some point 23 ourselves, we were asking ourselves questions to say but 24 these rumours that we are getting, these issues that have 25 been said, they might find truth somehow because we are</p>	<p style="text-align: right;">Page 21499</p> <p>1 leeway, and if management gave these people this type of a 2 leeway, how do we separate them from an allegation that can 3 come and say but they are supporting them? So I want us 4 to, when you said people must be arrested, I want us to be 5 very clear that any information that we get so we arrest 6 people, that is our interest because yourselves here as 7 management, you will clear yourselves from this" – Mr 8 Mokwena says, "Perception," and you say, "perception, you 9 know." Mr Kwadi says, "Yes." Then you say, "You will 10 clear yourself by ensuring that you defuse, that you give 11 us information that is related to this thing and we are 12 able to actually act on that information." 13 Now I want to suggest to you what that clearly 14 shows is that two things, there was a story, or there was a 15 rumour or a report that mine management was colluding with 16 AMCU to undermine the NUM, and that you said mine 17 management should act in a way which distanced themselves, 18 or cleared them from that perception. Is that correct? 19 GENERAL MBOMBO: I was making an example, 20 Mr Chair, about what we experienced at Impala. 21 MR BUDLENDER SC: General, let's take it 22 step by step. There was a perception around that mine 23 management was colluding with AMCU to undermine the NUM, 24 correct? 25 GENERAL MBOMBO: I was not talking about</p>
<p style="text-align: right;">Page 21498</p> <p>1 looking at how the management was moving forward in terms 2 of taking action, in terms of, you know, because what we 3 believe is, is that whether there is this unrest, now this 4 unrest does not withdraw our policy. Our policies are 5 still intact. They need to be implemented in the best way 6 and the unrest situations could then take its own form. 7 But like I said yesterday that once we are on site as the 8 cops then we take control of the security issue, but the 9 administrative issues should also take their own line. So 10 at the end of the day when we were dealing with these 11 issues we ended up ourselves not being comfortable in terms 12 of understanding whether the AMCU mine management really 13 is" – I'm sorry, "Impala Mine management really is 14 colluding with the mine." I think that must be colluding 15 with AMCU. "But also remember from a political point of 16 view there was even this feeling that, you know, the mining 17 sector wants to replace NUM, you know, with a new face, and 18 maybe that is why these things are erupting. So I think 19 yesterday, Abie, yesterday, you will recall, you will 20 recall that when this discussion with the National 21 Commissioner came she also from the discussion that she 22 raised with you and, you know, and some of these questions 23 that she raised, you remember I raised them in the morning 24 in our meeting. She also felt that, you know, it is 25 difficult to separate management from giving these people a</p>	<p style="text-align: right;">Page 21500</p> <p>1 that happening at Lonmin. 2 MR BUDLENDER SC: No, I'm not saying 3 that. I'm saying that you say there was a feeling that the 4 mining sector wants to replace NUM and is colluding with 5 AMCU. That was that perception which was around, correct? 6 GENERAL MBOMBO: I will not agree, Mr 7 Chair. I was not referring to the sector; I was referring 8 to Impala. 9 MR BUDLENDER SC: Let's read what you 10 say. Page 9, line 3, "But also remember from a political 11 point of view there was even this feeling that, you know, 12 the mining sector wants to replace NUM, you know, with a 13 new face and maybe that is why these things are erupting." 14 So you said there was a perception from a political point 15 of view that the mining sector was undermining, wanted to 16 replace NUM and was colluding with AMCU. Is that correct? 17 GENERAL MBOMBO: That is correct, Mr 18 Chair. 19 MR BUDLENDER SC: And you believed that 20 you encouraged Impala to act in a way which would distance 21 themselves from that perception. I'm sorry, you wanted to 22 encourage Lonmin to act in a manner which would distance 23 themselves from that perception of collusion. 24 GENERAL MBOMBO: That is what I was 25 trying to do, Mr Chair.</p>

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1 MR BUDLENDER SC: Now why is it a matter
 2 of interest to you whether mine management supports AMCU or
 3 supports the NUM?
 4 GENERAL MBOMBO: I wanted clarity, Mr
 5 Chair, on what their position was in trying to find
 6 solutions in solving this problem.
 7 MR BUDLENDER SC: No, you weren't asking
 8 for clarity, Provincial Commissioner. You were urging them
 9 to act in a way which separated them from this perception
 10 that the mining sector is colluding with AMCU to undermine
 11 the NUM.
 12 GENERAL MBOMBO: I'm not sure that is how
 13 it is, Mr Chair.
 14 MR BUDLENDER SC: That's what you said.
 15 I've read it to you. Look at page 9. I'll read it to you
 16 again. "But also remember from a political point of view
 17 there was even this feeling that, you know, the mining
 18 sector wants to replace NUM, you know, with a new face.
 19 Maybe that's why things are erupting." And you then say
 20 that it was raised by the – well, let me not paraphrase.
 21 "You will recall when this discussion with the National
 22 Commissioner came, she also from the discussion that she
 23 raised with you, and you know, on some of these questions
 24 that she raised, you remember I raised them in the morning
 25 in our meeting and she also felt that, you know, it is

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1 difficult to separate management from giving these people a
 2 leeway, and if management gave these people this type of a
 3 leeway, how do we separate them now from an allegation that
 4 can come and say but they are supporting them? So I want
 5 you when you say, when you said people must be arrested, I
 6 want us to be very clear that any information that we get
 7 we should get so we can arrest people. That's our
 8 interest, because yourselves here as management, you will
 9 clear yourselves from this," and Mr Mokwena says,
 10 "Perception." You say, "perception, you know." Mr Kwadi
 11 says, "Yes," and you say, "You will clear yourself by
 12 ensuring that you defuse, you give out information that is
 13 related to this thing, and we are able to actually act on
 14 this information." So you're saying to them give us this
 15 information about who's behind the trouble and that will
 16 clear you from the perception that you are colluding with
 17 AMCU to undermine the NUM. Surely that's obviously what it
 18 says.
 19 GENERAL MBOMBO: That information as well
 20 was important, Mr Chair.
 21 MR BUDLENDER SC: Why is it of matter to
 22 the police whether the mine management colluded with AMCU
 23 and undermined the NUM?
 24 GENERAL MBOMBO: Mr Chair, I wanted to
 25 know if they knew what the problem was, what put them in

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1 their situation, the situation which they were.
 2 MR BUDLENDER SC: Well, I don't really
 3 understand that, but you say in line 3, page 9, "But also
 4 remember from a political point of view there was even this
 5 feeling that, you know, the mining sector wants to replace
 6 NUM, you know, with a new face." Now what is the political
 7 point of view to which you're referring there?
 8 GENERAL MBOMBO: Something I heard in the
 9 air. That's why I said it is a political view.
 10 MR BUDLENDER SC: Who holds this
 11 political point of view?
 12 GENERAL MBOMBO: That is why I say it's
 13 not a tangible thing. You can't say who said it.
 14 MR BUDLENDER SC: Who held this political
 15 point of view?
 16 GENERAL MBOMBO: It's a rumour.
 17 MR BUDLENDER SC: How did you hear –
 18 GENERAL MBOMBO: It's a rumour.
 19 MR BUDLENDER SC: A rumour? And what was
 20 the rumour?
 21 GENERAL MBOMBO: Rumour is what I'm
 22 mentioning here in this script.
 23 MR BUDLENDER SC: What it really is, is
 24 there was a rumour in political circles that the mining
 25 sector wanted to replace NUM with a new face. Is that

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1 correct?
 2 GENERAL MBOMBO: That is a rumour, Mr
 3 Chair.
 4 MR BUDLENDER SC: And that was the rumour
 5 in political circles?
 6 GENERAL MBOMBO: Because it was heard it
 7 in the air.
 8 MR SEMENYA SC: Not in the air,
 9 Interpreter, it's a rumour. You're making it a literal
 10 translation now.
 11 MR BUDLENDER SC: A rumour. A rumour
 12 that is circulating. Where did you hear the rumour? Who
 13 told you that political people are worried that the mining
 14 sector wants to replace the NUM with a new face?
 15 GENERAL MBOMBO: I cannot remember, Mr
 16 Chair.
 17 MR BUDLENDER SC: But that is what you
 18 heard, that political people are concerned that the mining
 19 sector wants to replace NUM with a new face?
 20 GENERAL MBOMBO: As I said it was
 21 circulating –
 22 MR BUDLENDER SC: That is the rumour –
 23 GENERAL MBOMBO: - circulating there.
 24 MR BUDLENDER SC: Sorry. Sorry, I
 25 interrupted you. My apologies. That is the rumour which

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<p>1 you heard circulating?</p> <p>2 GENERAL MBOMBO: It's a rumour.</p> <p>3 MR BUDLENDER SC: But is that the rumour</p> <p>4 which you heard circulating?</p> <p>5 GENERAL MBOMBO: That is correct, Mr</p> <p>6 Chair.</p> <p>7 MR BUDLENDER SC: Why was that a concern</p> <p>8 on the part of the SAPS that political people felt that the</p> <p>9 mining sector wanted to undermine the NUM and replace it</p> <p>10 with a new face? Why was that a matter of concern to the</p> <p>11 SAPS?</p> <p>12 GENERAL MBOMBO: It was not important to</p> <p>13 us, but in order for Lonmin people to understand the</p> <p>14 position in which they were together with us, I wanted them</p> <p>15 to know that there was such a rumour.</p> <p>16 MR BUDLENDER SC: It wasn't important to</p> <p>17 you, but it was raised by the National Commissioner and it</p> <p>18 was raised by you and it was raised by you again. That's</p> <p>19 what you say there. Is that correct?</p> <p>20 GENERAL MBOMBO: I'm not sure if the</p> <p>21 National Commissioner raised it in that way.</p> <p>22 MR BUDLENDER SC: Let's read what you</p> <p>23 said. Still on page 9 – I'm sorry, I've read it many</p> <p>24 times, but I'll have to read it again. Line 6 you say, "So</p> <p>25 I think yesterday, Abie, yesterday, you will recall, you</p>	<p>1 GENERAL MBOMBO: Yes, Mr Chair.</p> <p>2 MR BUDLENDER SC: So the National</p> <p>3 Commissioner said that, "It is difficult to separate</p> <p>4 management from giving AMCU a leeway, and if management</p> <p>5 gave AMCU this type of a leeway, how do we support them now</p> <p>6 from an allegation that can come and say but they are</p> <p>7 supporting them?" So the National Commissioner was</p> <p>8 concerned that mine management would create a perception</p> <p>9 that they're supporting AMCU.</p> <p>10 GENERAL MBOMBO: I think because of what</p> <p>11 was being said in that meeting and responses given by</p> <p>12 Lonmin, those things caused that the National Commissioner</p> <p>13 of Police to say these things, or thinking that way.</p> <p>14 MR BUDLENDER SC: Why should she care</p> <p>15 whether mine management supports AMCU or NUM?</p> <p>16 GENERAL MBOMBO: Because now there was a</p> <p>17 problem.</p> <p>18 MR BUDLENDER SC: I want to come back to</p> <p>19 "from a political point of view," and you agreed that in</p> <p>20 political circles there was this suspicion. We know that</p> <p>21 the – you know, and you knew that the NUM was affiliated to</p> <p>22 COSATU, did you?</p> <p>23 GENERAL MBOMBO: I knew, Mr Chair.</p> <p>24 MR BUDLENDER SC: And you knew that</p> <p>25 COSATU was in alliance with the governing party?</p>
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<p>1 will recall that when this discussion with the National</p> <p>2 Commissioner came she also from the discussion that she</p> <p>3 raised with you and, you know, and some of these questions</p> <p>4 that she raised, you remember I raised them in the morning</p> <p>5 in our meeting. She also felt that, you know, it is</p> <p>6 difficult to separate management from giving these people a</p> <p>7 leeway, and if management gave these people this type of a</p> <p>8 leeway, how do we separate them from an allegation that can</p> <p>9 come and say they are supporting them?" So the National</p> <p>10 Commissioner was concerned about this and raised it with</p> <p>11 Lonmin. Correct?</p> <p>12 GENERAL MBOMBO: She told them, Mr</p> <p>13 Chair -</p> <p>14 MR BUDLENDER SC: Yes.</p> <p>15 GENERAL MBOMBO: - that them as</p> <p>16 management, it is possible that there's something they did</p> <p>17 not do right, a decision, wrong decision that they took</p> <p>18 maybe that causes them to face one of its problems. I was</p> <p>19 referring to that talk.</p> <p>20 MR BUDLENDER SC: When you referred,</p> <p>21 General, to what the National Commissioner said about</p> <p>22 giving these people a leeway, if management gave these</p> <p>23 people this type of a leeway, that's a reference, these</p> <p>24 type of people, these people is a reference to AMCU, not</p> <p>25 so?</p>	<p>1 GENERAL MBOMBO: I knew.</p> <p>2 MR BUDLENDER SC: Were those the</p> <p>3 political circles that were concerned about this rumour?</p> <p>4 GENERAL MBOMBO: I'm not sure about that,</p> <p>5 Mr Chair.</p> <p>6 MR BUDLENDER SC: Well, which were the</p> <p>7 political circles?</p> <p>8 GENERAL MBOMBO: A rumour is a rumour.</p> <p>9 MR BUDLENDER SC: But you know,</p> <p>10 Lieutenant General, a rumour is a rumour, but it only</p> <p>11 becomes a rumour when somebody says it. When it's in</p> <p>12 people's minds and they don't say it, it doesn't become a</p> <p>13 rumour. Who were the people who were saying it?</p> <p>14 GENERAL MBOMBO: That is true, Mr Chair.</p> <p>15 But I did not ask people or enquire where does this rumour</p> <p>16 originate from.</p> <p>17 MR BUDLENDER SC: From whom did you hear</p> <p>18 the rumour?</p> <p>19 GENERAL MBOMBO: If I remember correctly,</p> <p>20 in the newspapers.</p> <p>21 MR BUDLENDER SC: In the newspapers? So</p> <p>22 there was a rumour in the newspapers that the mining sector</p> <p>23 are undermining the NUM and supporting AMCU. Is that</p> <p>24 correct?</p> <p>25 CHAIRPERSON: I think you said NUM – I'm</p>

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1 sorry, AMCU, that's a mistake, management. I must say I
 2 have a recollection, which can be checked up to see if it's
 3 right, but I have a recollection of seeing a press cutting,
 4 because we've got press cuttings prepared for us and there
 5 was a press cutting, I think, that NUM issued a statement,
 6 accusing some of the mining houses of supporting AMCU in
 7 order to undermine NUM. Whether this is – I'm not sure
 8 that that's correct, and I can't take judicial notice of it
 9 even in the Commission, but it may be that that, if I'm
 10 correct, that that's the kind of report that the Provincial
 11 Commissioner is referring to. I don't know if that jogs
 12 her memory.

13 GENERAL MBOMBO: That is correct, Mr
 14 Chair, it is the papers that were saying things about this.

15 MR BUDLENDER SC: And you thought that it
 16 was important that mine management should say that this is
 17 not true? Or should show that it's not true?

18 GENERAL MBOMBO: It was not important for
 19 them to show me that it is not true. What was important
 20 was that we should know what their plans are, what they are
 21 planning to do.

22 MR BUDLENDER SC: Right, well I'm not
 23 going to go around in circles. I've dealt with that. I'll
 24 come back to the question of political influence in due
 25 course. I now want to come to the - or perhaps just one

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1 last question on this. What good reason would there be for
 2 you and the National Commissioner to want the Lonmin
 3 management to clear themselves from a perception that they
 4 are supporting AMCU and want the NUM replaced?

5 GENERAL MBOMBO: What was important, Mr
 6 Chair, was for Lonmin to know that when we have this
 7 problem we should work together with whoever is involved to
 8 try and get a solution to this.

9 MR BUDLENDER SC: I'm afraid that's not
 10 an answer to the question, Lieutenant General. Can I ask
 11 you again? What reason was there for both you and the
 12 National Commissioner to want Lonmin management to clear
 13 themselves from a perception that they are supporting AMCU
 14 and want the NUM replaced?

15 GENERAL MBOMBO: So that we should know
 16 what really is the problem that we're facing.

17 MR BUDLENDER SC: I'm afraid that's still
 18 not an answer, Lieutenant General. Can I ask you a third
 19 time? What was the reason for you and the National
 20 Commissioner to want Lonmin management to clear themselves
 21 from a perception that they are supporting AMCU and want
 22 the NUM replaced?

23 GENERAL MBOMBO: So that we know who are
 24 we facing, which is the problem, is it AMCU or what.

25 MR BUDLENDER SC: I'll give you one more

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1 opportunity to answer the question, Lieutenant General.
 2 What reason was there for both you and the National
 3 Commissioner to want Lonmin management to clear themselves
 4 from a perception that they are supporting AMCU and want
 5 the NUM replaced?

6 GENERAL MBOMBO: It was important, Mr
 7 Chair, for us to know who is involved in this problem that
 8 we're facing.

9 MR BUDLENDER SC: Alright, I won't ask
 10 you a fifth time.

11 COMMISSIONER HEMRAJ: Did you think the
 12 perception was prejudicial to Lonmin?

13 [12:04] GENERAL MBOMBO: We did not think like
 14 that, Mr Chair.

15 MR BUDLENDER SC: Right, can I move on to
 16 the fifth aspect of this meeting, and could you go to page
 17 5 of JJJ192, and I'm going to read from page 5, line 30,
 18 and you say the following at the foot of the page, "Because
 19 we this evening I am getting 480 members. Tomorrow when we
 20 go there for the second time now, that we were there today
 21 and they did not surrender, then it is blood. So I want us
 22 to be in a position to say whilst you are saying you will
 23 call them, or you'll allow us to give, but tomorrow they
 24 must be told that the company expects them to be at work."
 25 Mr Mokwena says, "Yes, and we have that and it is

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1 prepared," and then you say, "And failing which these are
 2 the consequences you should know of so that as and when I
 3 am moving in tomorrow, because tomorrow our plan is very
 4 tight and very, you know, we are not going to bed
 5 tomorrow."

6 Now what that shows, indicates, and I think
 7 you've agreed previously, that your plan on that day, the
 8 Tuesday, was that the strikers should be dispersed and
 9 disarmed the following day if they didn't leave.

10 GENERAL MBOMBO: That is correct, Mr
 11 Chair.

12 MR BUDLENDER SC: And then if we can go
 13 to page 14, line 5, you say the following – I'm sorry, just
 14 hold up for a moment. Okay, can you just first go back, go
 15 to page 12, line 23? Do you have that? Mr Mokwena says,
 16 "So I think yes, let tomorrow be the D-day where we issue
 17 the ultimatum and say if you do not show up for work,
 18 sorry, that's it. So we'll go tonight, go and print all
 19 those brochures in the languages that we want to use, use
 20 our choppers tomorrow, drop them around all the strategic
 21 places." You see that?

22 GENERAL MBOMBO: I see it.

23 MR BUDLENDER SC: And then shortly after
 24 that, page 14 line 5 you say, "So I think, but also I think
 25 the plan gels nicely. I support the idea that they must

<p style="text-align: right;">Page 21513</p> <p>1 not be given a notice tonight, rather early, in the early 2 hours of tomorrow so that it works together with our plan.” 3 You see that? 4 GENERAL MBOMBO: I see that. 5 MR BUDLENDER SC: So what would gel 6 nicely would be that in the early hours of the morning they 7 would be given an ultimatum to come back to work and if 8 that didn't happen then during the course of that day the 9 police would move in, disperse, disarm, and arrest. Is 10 that correct? 11 GENERAL MBOMBO: Not exactly, Mr Chair. 12 I'm saying tomorrow we'll get more officers. 13 MR BUDLENDER SC: You've agreed, General, 14 that your plan at that stage was to move in and disperse 15 the strikers on the Wednesday, the following day. 16 GENERAL MBOMBO: At an opportune time. 17 MR BUDLENDER SC: Yes, but your plan was 18 to move on the Wednesday if things worked out 19 satisfactorily. 20 GENERAL MBOMBO: That is correct, Mr 21 Chair. 22 MR BUDLENDER SC: That was your plan. 23 GENERAL MBOMBO: That is correct. 24 MR BUDLENDER SC: The Lonmin plan was to 25 issue the ultimatum notices early in the morning of that</p>	<p style="text-align: right;">Page 21515</p> <p>1 be quite lengthy – 2 CHAIRPERSON: Yes, I was going to say to 3 you that obviously we have to stop at quarter past and if 4 the topic you're going to begin won't be concluded by 5 quarter past, then you must take it up again on Tuesday 6 morning. 7 MR BUDLENDER SC: It definitely won't be 8 concluded, Chair. 9 CHAIRPERSON: Very well, we'll now 10 adjourn until Tuesday morning at 9 o'clock. 11 [COMMISSION ADJOURNED] 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 21514</p> <p>1 Wednesday, correct? 2 GENERAL MBOMBO: That is so, Mr Chair. 3 MR BUDLENDER SC: And so when you say on 4 page 14, line 5, “So I think, but I also think the plan 5 gels nicely. I support the idea that they must not be 6 given the notice tonight, rather early, in the early hours 7 of tomorrow so that it works together with our plan,” what 8 you were saying is their plan of issuing the notices, the 9 ultimatums, would gel nicely with your plan to move in on 10 the Wednesday if nothing else, if it wasn't resolved, 11 correct? 12 GENERAL MBOMBO: At that morning we had 13 more officers, we would then see if it was still opportune 14 for us to continue with our plan. 15 MR BUDLENDER SC: Yes. Sure, I 16 understand that, but as you were sitting there on the 17 Tuesday discussing this, your plan was to move in the 18 following day if it wasn't resolved some other way. 19 GENERAL MBOMBO: If we had found a 20 suitable time. 21 MR BUDLENDER SC: Yes. That was your 22 plan, correct? 23 GENERAL MBOMBO: That is correct. 24 MR BUDLENDER SC: Yes. Chair, it's now, 25 I see 10 past 12. I'm about to start a new topic which may</p>	

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