

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

Lukmos
—communications—

31 JANUARY 2014

TRANSCRIPT PAGES 21421 TO 21515

1 **[PROCEEDINGS ON 31 JANUARY 2014]**

2 **[09:15] CHAIRPERSON:** The Commission resumes.

3 Provincial Commissioner, you are 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 Chairperson.

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 Chairperson, as I said

15 yesterday I do not remember clearly when exactly that

16 meeting was held.

17 **MR SEMENYA SC:** Chairperson, 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, Chairperson. Good morning, Provincial Commissioner.

23 **GENERAL MBOMBO:** Good morning, Advocate.

24 **MR BUDLENDER SC:** I have a few

25 preliminary questions, which I would like to ask you before we

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 is 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 Chairperson.

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 Chairperson, 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 Chairperson.

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 Chairperson.

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 Chairperson.

15 **MR BUDLENDER SC:** And again were you
16 satisfied that it was accurate as far as your own knowledge
17 was concerned? _____communications_____

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

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 Chairperson, 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 hill, that was a

23 situation in which there were several thousand men gathered

24 on the hill; many of them were armed with dangerous

25 weapons. Some of them were believed to be armed with

1 firearms and the hill was difficult terrain. Is that a
2 fair summary of the situation you were facing?

3 **GENERAL MBOMBO:** As we were told, Mr
4 Chairperson.

5 **MR BUDLENDER SC:** Yes, and some of the
6 people who had gathered on the hill had already shown a
7 willingness to kill in order to achieve their goals.

8 **GENERAL MBOMBO:** Can you repeat that, Mr
9 Chairperson?

10 **MR BUDLENDER SC:** Some of the people who
11 were on the hill 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 Chairperson, 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 Chairperson, that is
23 correct according to the explanations of the people who
24 were there.

25 **MR BUDLENDER SC:** And it was a situation

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 is 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 Chairperson.

17 **MR BUDLENDER SC:** And this is what you
18 say at paragraph 27, I shall 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 Chairperson.

24 **MR BUDLENDER SC:** I just want to be sure
25 I understand what you are saying there. Are you saying that

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 Chairperson, 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 are referring to there?

12 **GENERAL MBOMBO:** That is what they told
13 us, Mr Chairperson.

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 is something unusual.

18 **MR BUDLENDER SC:** Thank you, that is 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 is in your file, I hope, "Personal
23 information." It is an account of your experience and
24 training. Do you have that?

25 **GENERAL MBOMBO:** It has marked what

1 document?

2 **MR BUDLENDER SC:** It doesn't have an
3 exhibit number because it has not yet been introduced in
4 evidence, but it should be in your file.

5 **CHAIRPERSON:** It is near the back of mine,
6 so I presume it is near the back of yours. It looks like,
7 it is about three from the back, three documents in other
8 words. It is further back than that. It has – 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 is
13 the sixth from the back. It is the fifth in Adv. Tokota's,
14 so it may be the fifth, but sixth in mine. I think you have
15 now found it. Do we have to make it an exhibit?

16 **MR BUDLENDER SC:** Yes, please, Chairperson.

17 **CHAIRPERSON:** What exhibit number is
18 next?

19 **MR BUDLENDER SC:** LLL4, Chairperson.

20 **CHAIRPERSON:** Thank you. The document
21 headed "Personal information" which relates to you is
22 exhibit LLL4.

23 **MR BUDLENDER SC:** Thank you, Chairperson.
24 Provincial Commissioner, I am not going to take you through
25 the detail of that. It is there, it just needs to be on

1 record. I would like to take you now to – we shall refer back to

2 it if necessary, but I do not think it will be necessary –

3 **CHAIRPERSON:** I am 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 Chairperson.

11 **MR BUDLENDER SC:** Thank you, Chairperson. Now

12 could you go back to your amplified statement, LLL1?

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 is 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 is correct?

21 **GENERAL MBOMBO:** That is correct, Mr

22 Chairperson.

23 **MR BUDLENDER SC:** From 1980 to 1981 you

24 performed crime prevention duties in Umtata.

25 **GENERAL MBOMBO:** After training.

1 **MR BUDLENDER SC:** After training.

2 **GENERAL MBOMBO:** After training, Mr

3 Chairperson.

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 Chairperson.

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 am sorry, I do not 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.

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 is 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 Chairperson, because after I left Internal
22 Security I first went to the station and did SAP6. That is
23 why I am 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 is

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 Chairperson.

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 Chairperson.

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 Chairperson.

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 Chairperson.

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 am sorry, could you
23 repeat that? Part of the operations that?

24 **GENERAL MBOMBO:** I was part of the
25 operations that were planned.

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 Chairperson.

19 **MR BUDLENDER SC:** He was a very

20 experience police officer in a wide variety of policing

21 activities was not he?

22 **GENERAL MBOMBO:** You might be telling the

23 truth there, Mr Chairperson.

24 **MR BUDLENDER SC:** Yes, well I went onto

25 the SAPS website to get the story of his career. Perhaps I

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, Chairperson.

5 **CHAIRPERSON:** So this will be LLL5.

6 **MR BUDLENDER SC:** Thank you, Chairperson.

7 Shall we read together what the SAPS website says about

8 former Commissioner Fivaz? I shall 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

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 Chairperson.

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 am not. Mr Chairperson, I
25 said I am not comparing myself to him, I am not.

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 Chairperson.

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 Chairperson.

14 **MR BUDLENDER SC:** Have you ever been the
15 operational commander of a public order policing operation?

16 **GENERAL MBOMBO:** No, I have 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 have 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

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 Mpembe 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 Mpembe to be commander, overall commander there and to

11 assist Brigadier Calitz.

12 **MR BUDLENDER SC:** Chairperson, I am 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 shall take that up in

17 the adjournment, that misinformation, Chairperson. 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 Chairperson.

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

1 Mpembe, you are aware that that's in his statement.

2 **GENERAL MBOMBO:** I saw that in his

3 statement, Mr Chairperson.

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 was not 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 do not recall that?

10 **CHAIRPERSON:** It is not to say it is a lie,

11 I mean –

12 MR BUDLENDER SC: It is an untruth.

13 **CHAIRPERSON:** It is an untruth, it could

14 be an incorrect statement innocently made. I do not 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 do not 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

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 is 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 Chairperson.

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 is 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 are saying his affidavit is

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 is 39, at the moment we

21 have 29 on the screen, it is 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

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 Chairperson.

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 Chairperson, I am 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

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 am 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 do not whether they are true or
10 false. Is that correct?

11 **GENERAL MBOMBO:** That is correct, Mr

12 Chairperson, 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 do not have personal knowledge of the threats, what I am

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

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 Chairperson?

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 am sorry, Mr Budlender, I

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 is not that she does not 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 –

16 **GENERAL MBOMBO:** That is correct, Mr
17 Chairperson.

18 **MR BUDLENDER SC:** Let me move on from
19 that. Did General Mpembe tell you about the alleged
20 threats to his life?

21 **GENERAL MBOMBO:** He did not tell me, I am
22 the one who asked him.

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?

1 **GENERAL MBOMBO:** He did not tell me such
2 a thing.

3 **MR BUDLENDER SC:** Did you ask him whether
4 there had been threats to his life?

5 **GENERAL MBOMBO:** After I heard about that
6 being mentioned, yes.

7 **MR BUDLENDER SC:** When was that?

8 **GENERAL MBOMBO:** It was at night on the
9 13th when he was giving us a briefing.

10 **MR BUDLENDER SC:** And from whom did you
11 hear of the alleged threats to his life?

12 **GENERAL MBOMBO:** The police who where
13 there were talking about it, not necessarily reporting it.

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.

17 **GENERAL MBOMBO:** They were saying so and
18 saying they heard that from Colonel Vermaak.

19 **MR BUDLENDER SC:** You still doubt that
20 it is true.

21 **GENERAL MBOMBO:** Because at that time
22 Colonel Vermaak had not approached me and tell me about it.

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, Chairperson.

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 Mpenbe 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 Mpenbe,
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 have 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?

1 **GENERAL MBOMBO:** I can see that.

2 **MR BUDLENDER SC:** Now what General Mpembe
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?

6 **GENERAL MBOMBO:** I see that.

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 Mpembe, said to him
10 untruthfully, 'There's been a threat on your life, get in
11 the vehicle quickly'?

12 **GENERAL MBOMBO:** I am saying so, Mr Chairperson,
13 because even General Mpembe when he phoned me never told me
14 that there are threats on his life, that people want to
15 kill him.

16 **MR BUDLENDER SC:** So are you suggesting
17 that General Mpembe is also fabricating this incident?

18 **GENERAL MBOMBO:** I am not sure, but he
19 never told me that when we spoke on the phone.

20 **MR SEMENYA SC:** Chairperson, maybe I do not
21 quite follow. I do not read in that excerpt which my
22 learned colleague has read that General Mpembe is saying
23 that he was confronted about that threat on the scene. I
24 do not read that –

25 **CHAIRPERSON:** I think there are two

1 points. If you read on I think you'll – it is earlier, it is
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 is 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 Mpembe and this witness on the
18 telephone; it is a conversation, as I understand it, at the
19 JOC. General Mpembe says he told the witness that Colonel
20 Vermaak had told him about the threat - he himself was not
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,

1 it is not suggested that Major General Mpembe 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 have said, Mr Chairperson,
6 at the JOC I asked General Mpembe, 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 Mpembe 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 Mpembe phoned
15 me, Mr Chairperson, 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 Mpembe on the telephone, was that before
22 or after Colonel Vermaak telephoned you?

23 **GENERAL MBOMBO:** After I spoke to General
24 Mpembe, him telling me about the incident, when I was
25 returning back, going to Lonmin, Colonel Vermaak then

1 phoned me.

2 **MR BUDLENDER SC:** General, can we go back

3 to the transcript to which I have 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 have 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 the attacker was,

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.

1 **MR BUDLENDER SC:** General, I am not

2 asking –

3 **CHAIRPERSON:** I am sorry, Mr Budlender,

4 can I ask a question first? You told me that – you told

5 the Commission that General Mpembe 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 Mpembe'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 am not sure, Mr

18 Chairperson, 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 am 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 am not sure, it

25 could have been 10 minutes.

1 **CHAIRPERSON:** Thank you.

2 **MR BUDLENDER SC:** General, I am not asking

3 you now about what General Mpmembe told you or what he

4 didn't tell you. I am asking you about, putting to you what

5 General Mpmembe said, told this Commission under oath, and

6 I am saying that he, putting to you that he told this

7 Commission under oath that on the scene Vermaak said to

8 him, "There's been a threat to your life, you must get into

9 the Nyala immediately." Can you see that?

10 **MR SEMENYA SC:** No, Chairperson, it is not that.

11 General Mpmembe, at least as far as this excerpt goes, if we

12 accept that the report that Vermaak makes to the

13 Commissioner is that 'You are emotionally disturbed, I

14 think you pose a threat,' he would equally say 'Get into

15 the Nyala.' It is not because there's a threat to his life.

16 So that logic does not follow.

17 **MR BUDLENDER SC:** Chairperson, I do not know

18 whether my learned friend and I are reading the same

19 passage. Can I read the passage again? This is what

20 General Mpmembe told you under oath, Commissioners. He

21 said, "I told her of the circumstances of that threat and

22 how do I feel about the threat itself. As I have explained

23 yesterday to say that in the first place Lieutenant Colonel

24 Vermaak informed me. I didn't see any imminent threat.

25 Chairperson, I went on to say that I did not even know who

1 was the attacker, and secondly Colonel Vermaak requested me
2 in a manner that I should enter into the Nyala as quick as
3 possible." But that's clearly all related to the threat.
4 He's talking about the threat and he says, "You'd better
5 get into the Nyala." What else can it mean?

6 **CHAIRPERSON:** Of course he says
7 "secondly," but perhaps I can resolve the difficulty by
8 asking a few questions that I would like to ask before you
9 carry on. Do I understand you to say, Provincial
10 Commissioner, that you do not believe what General Mpembe
11 said to this Commission because when he spoke to you on the
12 telephone he didn't mention the threat? Is that the basis
13 of your inability to, or your – yes, your inability to
14 believe, or hesitancy about believing what General Mpembe
15 said in the passage that's been put to you? Is that based
16 on the fact that he never told you about it when he spoke
17 to you on the telephone? Is that correct?

18 **GENERAL MBOMBO:** I am not saying so, Mr
19 Chairperson. I am not saying I do not believe him, Mr Chairperson,
20 because he did not tell me that when he phoned me. He only
21 mentioned that to me when we were at the JOC.

22 **CHAIRPERSON:** In other words you're
23 actually agreeing with what I put to you, that the reason
24 that you have difficulty in believing what he told this
25 Commission is because when he spoke to you on the telephone

1 he didn't mention the threat. That's so, isn't it? That's
2 your reason for doubting what he told the Commission
3 because when he spoke to you on the telephone he didn't
4 mention it and you would have expected him to have
5 mentioned it if it was correct. Is that your evidence?

6 **GENERAL MBOMBO:** If he had already known,

7 Mr Chairperson –

8 **CHAIRPERSON:** Alright, now let's analyse
9 that. We know that from your evidence Lieutenant Colonel
10 Vermaak telephoned you about 10 minutes after General
11 Mpembe telephoned you. Is that right?

12 **GENERAL MBOMBO:** That is correct, Mr

13 Chairperson.

14 **CHAIRPERSON:** Now it is possible, to put
15 it no higher, that when General Mpembe telephoned you he
16 hadn't yet been told by Colonel Vermaak to get into a Nyala
17 and he hadn't been told by Colonel Vermaak that there had
18 been a threat. That's possible, isn't it?

19 **GENERAL MBOMBO:** Yes.

20 **CHAIRPERSON:** In fact it is probable that
21 he was only told to get into the Nyala, Mpembe only told to
22 get into the Nyala after Vermaak had cleared it with you by
23 speaking to you. Isn't that right?

24 **GENERAL MBOMBO:** That could be the case,

25 Mr Chairperson. That is why I am saying General Mpembe did not

1 tell me, just as Vermaak did not tell me.

2 **CHAIRPERSON:** Yes, you see but what's now

3 disappeared is your basis for disbelieving Mpembe because

4 if your basis for disbelieving Mpembe is he never told you

5 over the telephone about it, and if it seems that the

6 probabilities are that he hadn't been told himself by

7 Vermaak about it when he spoke to you on the telephone,

8 then your reason for disbelieving him falls away. Isn't

9 that right?

10 **MR SEMENYA SC:** Chairperson, I do not recall the

11 witness saying "I disbelieved Mpembe." You kept putting

12 that proposition to her, but it was not the witness's

13 evidence.

14 **CHAIRPERSON:** Yes, "disbelieve" is

15 possible too strong. I did also put it in the alternative,

16 as your hesitancy about believing him, which is – I did say

17 that as well, but anyway, that's not the main point at

18 issue. The main point at issue is you have difficulty –

19 put it this way; you have difficulty in believing what

20 General Mpembe says on this point. That's so, isn't it?

21 Whether you go so far as disbelieving him, which is a

22 stronger thing, we do not have to enter into. You have

23 difficulty in believing what he said and you said that that

24 was based on the fact that when you spoke to him on the

25 telephone he never mentioned the threat to you. I

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?

8 **GENERAL MBOMBO:** I do not dispute that
9 that could be the case, Mr Chairperson.

10 **CHAIRPERSON:** Thank you.

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?

18 **GENERAL MBOMBO:** I remember, Mr Chairperson.

19 **MR BUDLENDER SC:** Now I'd like you to go
20 to exhibit HHH40. Could you find that?

21 **GENERAL MBOMBO:** I have found it, Mr Chairperson.

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?

25 **GENERAL MBOMBO:** That is correct.

1 **MR BUDLENDER SC:** Could you go to page

2 3 –

3 **CHAIRPERSON:** I see there's a mistake on

4 the top of the first page. It says 16 July; it is obviously

5 16 August.

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?

24 **GENERAL MBOMBO:** I see it, Mr Chairperson.

25 **MR BUDLENDER SC:** Now your explanation to

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?

4 **GENERAL MBOMBO:** That is so, Mr Chairperson.

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?

9 **GENERAL MBOMBO:** That is correct, Mr

10 Chairperson.

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?

15 **GENERAL MBOMBO:** Because I could not be

16 able to give all those details, Mr Chairperson.

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?

23 **GENERAL MBOMBO:** Mr Chairperson, I was not sure

24 that this was triggered by the action of the police.

25 **MR BUDLENDER SC:** But are you now sure?

1 **[10:15] GENERAL MBOMBO:** I am still not sure.

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?

6 **GENERAL MBOMBO:** I knew, Mr Chairperson, that

7 teargas and stun grenade had been thrown by the police.

8 **CHAIRPERSON:** Did you know that that was

9 before the strikers attacked, some of the strikers attacked

10 the police?

11 **GENERAL MBOMBO:** That is so, Mr Chairperson.

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?

21 **GENERAL MBOMBO:** It could be like that,

22 Mr Chairperson.

23 **MR BUDLENDER SC:** General, thank you for

24 that, but I am afraid that doesn't go all the way. When I

25 started asking you about this you said, you agreed that you

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 Chairperson.

7 **MR BUDLENDER SC:** You just said when you
8 were having difficulty explaining your media briefing that
9 you do not 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 Chairperson.

14 **MR BUDLENDER SC:** You just said during
15 the questions which have just taken place that you do not
16 know, even now you do not 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 Chairperson.

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 Chairperson, that's a
25 report I received from General Mpembe, but because I was

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 am not sure, Mr Chairperson.

7 **MR BUDLENDER SC:** I am not asking you

8 whether you're sure. I am 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 Chairperson, 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 do not 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?

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 Chairperson.

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 Chairperson, 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

1 question, Mr Chairperson.

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 Chairperson, 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?

1 **GENERAL MBOMBO:** Mr Chairperson, 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 Chairperson.

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 do not
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?

1 **GENERAL MBOMBO:** It concerns this media
2 briefing of mine, Mr Chairperson. 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 police officers 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 Chairperson.

17 **MR BUDLENDER SC:** I just have to put it
18 to you, General - I do not want to go over this issue
19 endlessly - that it is clear from your evidence today and
20 it is 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 is only now that I ask why

1 you didn't mention it to the media that you say oh, maybe

2 it was not true.

3 **GENERAL MBOMBO:** As I am saying, Mr Chairperson,

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?

1 **GENERAL MBOMBO:** It is possible it was in
2 that week.

3 **MR BUDLENDER SC:** But you do not know?

4 **GENERAL MBOMBO:** I can't hear.

5 **MR BUDLENDER SC:** You do not 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 am saying,
17 Mr Chairperson.

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 Chairperson,
23 I spoke from my mouth.

24 **CHAIRPERSON:** Sorry, you spoke?

25 **GENERAL MBOMBO:** From my mouth.

1 **CHAIRPERSON:** No, I know that, but we all
2 speak from our mouths. I do not 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 Chairperson. 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 Chairperson.

15 **CHAIRPERSON:** Thank you.

16 **MR BUDLENDER SC:** General, I do not 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 shall 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

1 knowledge of that?

2 **GENERAL MBOMBO:** Come again.

3 **MR BUDLENDER SC:** Do you have personal

4 knowledge of that passage which I have 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 Chairperson, 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

1 didn't you mention that to the media?

2 **GENERAL MBOMBO:** I have already answered

3 that question, Mr Chairperson.

4 **MR BUDLENDER SC:** Yes, your answer was

5 that you didn't have personal knowledge of it, but I am 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 am concerned

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 Chairperson.

8 **MR BUDLENDER SC:** Thank you. Chairperson, I am
9 reminded by a colleague to whose seniority I defer, that I
10 should point out that it is 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, Chairperson, and then before I go into the

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 Chairperson.

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 Chairperson.

24 **MR BUDLENDER SC:** And I want to say
25 immediately, I do not criticise you for that at all.

1 **CHAIRPERSON:** That was a sensible

2 approach, obviously.

3 **MR BUDLENDER SC:** Yes. Yes.

4 **CHAIRPERSON:** We shall 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 shall

12 be continuing until 12:15, which means we won't take a

13 comfort break and then we shall 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 Chairperson.

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.

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 Chairperson.

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 am 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 shall 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 am
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,

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 shall 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, Chairperson.

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 Chairperson.

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 Chairperson.

25 **MR BUDLENDER SC:** And you estimated 800

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 Chairperson.

7 **MR BUDLENDER SC:** I am sorry. We know
8 from the fact that you told her this, what I have 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 hill.

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 am 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 am mentioning it in this transcript, but
24 at that time I was also given an explanation that they were
25 still weighing their options.

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 hill. 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 do not
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

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 Chairperson.

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.

1 **GENERAL MBOMBO:** That is correct.

2 **MR BUDLENDER SC:** Did you tell General

3 Mpembe that this was the deadline which you had in mind?

4 **GENERAL MBOMBO:** I did not discuss the

5 deadline issue with General Mpembe, 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?

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 am moving on to the
16 next aspect.

17 **CHAIRPERSON:** Right, before you move on
18 to the next point, I do not understand the answer you've
19 given now. You say when you said "I have given them now up
20 until the weekend," by "them" you meant Lonmin. I do not
21 understand that. You were talking to one of the top people
22 at Lonmin. Wouldn't you have said "I have 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 Chairperson, "them" refers

1 to the police.

2 **CHAIRPERSON:** That's what I thought. So

3 when you said "I have given them until the weekend," you

4 meant the police, and which members of the police did you

5 tell "I have 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 have given them," you

15 said by "them" you meant Lonmin, but that can't be right,

16 can it?

17 **MR SEMENYA SC:** No, Chairperson –

18 **CHAIRPERSON:** Because you're talking to

19 Mr Mokwena of Lonmin.

20 **MR SEMENYA SC:** Chairperson, 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 Chairperson. I think initially when I raised it she said it was,

1 the deadline was the deadline for the police.

2 **CHAIRPERSON:** I see. Well, then I

3 withdraw the question. It is 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, Chairperson, 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 Chairperson, 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?

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 are 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 Chairperson.

11 **MR BUDLENDER SC:** Thank you. Now I would
12 like to move to the third aspect of this meeting. Can we
13 go to – it is 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 am moving it
16 tomorrow, because tomorrow our plan is very tight and
17 very” –

18 **GENERAL MBOMBO:** I am sorry, Mr Chairperson. It
19 starts with the page?

20 **MR BUDLENDER SC:** Page 8.

21 **GENERAL MBOMBO:** Line?

22 **MR BUDLENDER SC:** I have 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.

1 **MR BUDLENDER SC:** I am sorry –

2 **CHAIRPERSON:** Have you got the line

3 beginning, “You see, I want us to remember”? That’s 15, is

4 it?

5 **MR BUDLENDER SC:** Now I am afraid I am

6 misleading the witness and the Commission. I have got the

7 wrong reference in my notes. I shall come back to that in due

8 course. Oh, here we are. Could you go to page 6, line 8?

9 I gave you the wrong page number, my apologies.

10 **CHAIRPERSON:** [Microphone off,

11 inaudible].

12 **MR BUDLENDER SC:** Failing which.

13 **CHAIRPERSON:** - “and failing which these

14 are the consequences.”

15 **MR BUDLENDER SC:** Yes, that was what I

16 was reading, having given the wrong reference. You say,

17 Provincial Commissioner, “and failing which these are the

18 consequences you should know of so that as and when I am

19 moving it tomorrow, because tomorrow our plan is very tight

20 and very, you know we are not going to bed tomorrow. But I

21 said let us speak now because remember we are tied up by

22 these new amendments in our law that says that you should,

23 we should not shoot, we should not do this. You know these

24 things, you know from [it should be Tatane’s] incident and

25 all that, so I said to them if, and once again the other

1 thing why I delayed them, remember what was happening
2 yesterday, it was annoying to the cops. If we could have
3 sent them there," and Mr Mokwena says, "Emotions are high."
4 And then you say, "Emotions are very high. Whatever
5 instruction you will have given, but because of the
6 emotions," and Mr Mokwena says, "They would have forgotten
7 about the instructions, yes." And you say, "They will have
8 forgotten about the instruction and I do not want a
9 situation where 20 people will be dead," and what you were
10 really referring to there was this was the day after two
11 members of the South African Police Service had been killed
12 and the emotions amongst the members of the SAPS were very
13 high.

14 **GENERAL MBOMBO:** That's what I am saying,
15 Mr Chairperson.

16 **MR BUDLENDER SC:** And at that meeting you
17 told the Lonmin management that your plan was to move in
18 the following day, on the Wednesday. Is that correct?

19 **GENERAL MBOMBO:** That is correct.

20 **MR BUDLENDER SC:** And what you agreed
21 with Lonmin at that meeting was that they would issue an
22 ultimatum early the next morning for the workers to return
23 to work and then you would, if they didn't leave you would
24 move in and remove the workers, the strikers from the
25 hill. Is that correct?

1 **GENERAL MBOMBO:** Can you repeat the

2 question, please, Mr Chairperson?

3 **MR BUDLENDER SC:** What you agreed with

4 Lonmin at that meeting on the Tuesday was that early the

5 next morning they would issue an ultimatum to the strikers

6 to return to work and if that didn't work, you would then

7 move in and remove the strikers from the hill on the

8 Wednesday.

9 **[11:24] GENERAL MBOMBO:** That is not correct, Mr

10 Chairperson.

11 **MR BUDLENDER SC:** Why is it not correct?

12 **GENERAL MBOMBO:** What I was trying to

13 explain there it was that they should send their pamphlets

14 in the morning so that if there were things that the

15 workers did not agree with they would then have enough

16 members to try and solve this if the workers had a problem

17 with it.

18 **MR BUDLENDER SC:** I am not sure I

19 understand that. Let's take it step by step. It was

20 agreed that the management would issue pamphlets to the

21 strikers early the next morning giving them an ultimatum to

22 return to work.

23 **GENERAL MBOMBO:** That is correct, Mr

24 Chairperson.

25 **MR BUDLENDER SC:** And as things stood on

1 Tuesday your plan was that if the strikers did not leave
2 peacefully or voluntarily the police would move in on the
3 Wednesday. Is that correct?

4 **GENERAL MBOMBO:** Our going to the hill
5 on Wednesday, our going there and implementing our plan
6 would not depend on the pamphlets of Lonmin.

7 **MR BUDLENDER SC:** No I understand that.
8 All I am saying is that at that stage your plan was
9 Wednesday you would move in and carry out a police
10 operation if the strikers did not leave or hand over their
11 weapons.

12 **GENERAL MBOMBO:** That is correct. That's
13 what we had prepared to do.

14 **MR BUDLENDER SC:** How high do you think
15 the emotions would have been on Wednesday if the strikers
16 had pamphlets rained down on them by helicopter or by
17 aeroplane early in the hours of morning and the police then
18 moved in on the Wednesday? How high do you think the
19 emotions would have been?

20 **GENERAL MBOMBO:** We would have assessed
21 the situation, Mr Chairperson.

22 **MR BUDLENDER SC:** All right, can we go
23 then to the fourth aspect? Now I want to take you to your
24 expandable, consolidated statements and just remind you of
25 the passage which we read a bit earlier this morning. So

1 it is 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 Chairperson.

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

1 Chairperson, 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 am afraid I do not have
5 the passage, but I do not think anything turns on that for
6 the moment. I shall 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 have 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 am not sure, Mr Chairperson.

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 Chairperson.

21 **MR BUDLENDER SC:** Now I have read that
22 transcript carefully and I do not see anything in it which
23 says that you said to them they should negotiation outside
24 the bargaining structures. Did you ever say to them you
25 must go and negotiate outside the bargaining structures?

1 **GENERAL MBOMBO:** I did not say so, Mr

2 Chairperson.

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 Chairperson, was not wholly dependent 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

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 Chairperson, 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 am 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 Chairperson, 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 Chairperson, 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.

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 Chairperson.

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

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 Chairperson.

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

1 read that. This is what the SAPS representatives told the
2 Commission at the opening. "You will 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 am 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

1 outside collective bargaining structures?

2 **GENERAL MBOMBO:** I am not sure about them

3 being told to go and talk about salaries but I am sure about

4 this, I am 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.

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 Chairperson, 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 Chairperson.

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

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 am 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

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 Chairperson, 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

1 that happening at Lonmin.

2 **MR BUDLENDER SC:** No, I am not saying

3 that. I am 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 Chairperson. 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 Chairperson.

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 am 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 Chairperson.

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 Chairperson, 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 am not sure that is how
13 it is, Mr Chairperson.

14 **MR BUDLENDER SC:** That's what you said.
15 I have read it to you. Look at page 9. I shall 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

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 Chairperson.

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 Chairperson, I wanted to
25 know if they knew what the problem was, what put them in

1 their situation, the situation which they were.

2 **MR BUDLENDER SC:** Well, I do not 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 is

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 is a rumour.

17 **MR BUDLENDER SC:** How did you hear –

18 **GENERAL MBOMBO:** It is a rumour.

19 **MR BUDLENDER SC:** A rumour? And what was

20 the rumour?

21 **GENERAL MBOMBO:** Rumour is what I am

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

1 correct?

2 **GENERAL MBOMBO:** That is a rumour, Mr

3 Chairperson.

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 is 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 Chairperson.

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

1 you heard circulating?

2 **GENERAL MBOMBO:** It is a rumour.

3 **MR BUDLENDER SC:** But is that the rumour

4 which you heard circulating?

5 **GENERAL MBOMBO:** That is correct, Mr

6 Chairperson.

7 **MR BUDLENDER SC:** Why was that a concern

8 on the part of the SAPS that political people felt that the

9 mining sector wanted to undermine the NUM and replace it

10 with a new face? Why was that a matter of concern to the

11 SAPS?

12 **GENERAL MBOMBO:** It was not important to

13 us, but in order for Lonmin people to understand the

14 position in which they were together with us, I wanted them

15 to know that there was such a rumour.

16 **MR BUDLENDER SC:** It was not important to

17 you, but it was raised by the National Commissioner and it

18 was raised by you and it was raised by you again. That's

19 what you say there. Is that correct?

20 **GENERAL MBOMBO:** I am not sure if the

21 National Commissioner raised it in that way.

22 **MR BUDLENDER SC:** Let's read what you

23 said. Still on page 9 – I am sorry, I have read it many

24 times, but I shall have to read it again. Line 6 you say, "So

25 I think yesterday, Abie, yesterday, you will recall, you

1 will recall that when this discussion with the National
2 Commissioner came she also from the discussion that she
3 raised with you and, you know, and some of these questions
4 that she raised, you remember I raised them in the morning
5 in our meeting. She also felt that, you know, it is
6 difficult to separate management from giving these people a
7 leeway, and if management gave these people this type of a
8 leeway, how do we separate them from an allegation that can
9 come and say they are supporting them?" So the National
10 Commissioner was concerned about this and raised it with
11 Lonmin. Correct?

12 **GENERAL MBOMBO:** She told them, Mr

13 Chairperson -

14 **MR BUDLENDER SC:** Yes.

15 **GENERAL MBOMBO:** - that them as
16 management, it is possible that there's something they did
17 not do right, a decision, wrong decision that they took
18 maybe that causes them to face one of its problems. I was
19 referring to that talk.

20 **MR BUDLENDER SC:** When you referred,
21 General, to what the National Commissioner said about
22 giving these people a leeway, if management gave these
23 people this type of a leeway, that's a reference, these
24 type of people, these people is a reference to AMCU, not
25 so?

1 **GENERAL MBOMBO:** Yes, Mr Chairperson.

2 **MR BUDLENDER SC:** So the National

3 Commissioner said that, "It is difficult to separate

4 management from giving AMCU a leeway, and if management

5 gave AMCU this type of a leeway, how do we support them now

6 from an allegation that can come and say but they are

7 supporting them?" So the National Commissioner was

8 concerned that mine management would create a perception

9 that they are supporting AMCU.

10 **GENERAL MBOMBO:** I think because of what

11 was being said in that meeting and responses given by

12 Lonmin, those things caused that the National Commissioner

13 of Police to say these things, or thinking that way.

14 **MR BUDLENDER SC:** Why should she care

15 whether mine management supports AMCU or NUM?

16 **GENERAL MBOMBO:** Because now there was a

17 problem.

18 **MR BUDLENDER SC:** I want to come back to

19 "from a political point of view," and you agreed that in

20 political circles there was this suspicion. We know that

21 the – you know, and you knew that the NUM was affiliated to

22 COSATU, did you?

23 **GENERAL MBOMBO:** I knew, Mr Chairperson.

24 **MR BUDLENDER SC:** And you knew that

25 COSATU was in alliance with the governing party?

1 **GENERAL MBOMBO:** I knew.

2 **MR BUDLENDER SC:** Were those the

3 political circles that were concerned about this rumour?

4 **GENERAL MBOMBO:** I am not sure about that,

5 Mr Chairperson.

6 **MR BUDLENDER SC:** Well, which were the

7 political circles?

8 **GENERAL MBOMBO:** A rumour is a rumour.

9 **MR BUDLENDER SC:** But you know,

10 Lieutenant General, a rumour is a rumour, but it only

11 becomes a rumour when somebody says it. When it is in

12 people's minds and they do not say it, it doesn't become a

13 rumour. Who were the people who were saying it?

14 **GENERAL MBOMBO:** That is true, Mr Chairperson.

15 But I did not ask people or enquire where does this rumour

16 originate from.

17 **MR BUDLENDER SC:** From whom did you hear

18 the rumour?

19 **GENERAL MBOMBO:** If I remember correctly,

20 in the newspapers.

21 **MR BUDLENDER SC:** In the newspapers? So

22 there was a rumour in the newspapers that the mining sector

23 are undermining the NUM and supporting AMCU. Is that

24 correct?

25 **CHAIRPERSON:** I think you said NUM – I am

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 is
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 am 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 am
10 correct, that that's the kind of report that the Provincial
11 Commissioner is referring to. I do not know if that jogs
12 her memory.

13 **GENERAL MBOMBO:** That is correct, Mr
14 Chairperson, 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 is 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 am not
23 going to go around in circles. I have dealt with that. I shall
24 come back to the question of political influence in due
25 course. I now want to come to the - or perhaps just one

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 Chairperson, 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 am 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 am 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 shall give you one more

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 Chairperson, 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 Chairperson.

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 am 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

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 Chairperson.

12 **MR BUDLENDER SC:** And then if we can go
13 to page 14, line 5, you say the following – I am 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 shall 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

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 Chairperson.

12 I am saying tomorrow we shall 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 Chairperson.

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

1 Wednesday, correct?

2 **GENERAL MBOMBO:** That is so, Mr Chairperson.

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 was not 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 was not 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. Chairperson, it is now,

25 I see 10 past 12. I am about to start a new topic which may

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, Chairperson.

9 **CHAIRPERSON:** Very well, we shall now

10 adjourn until Tuesday morning at 9 o'clock.

11 **[COMMISSION ADJOURNED]**

